

## Report

# Polluter Pays Principle in Practice

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**Moderator:** Victor Dries  
**Reporter:** Tania Van Laer

**Subject:** Polluter Pays Principle in Practice

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## 1 Opening statements representatives without presentation

*Theresa Kjell (Senior Policy advisor with ChemSec)*

Chemsec is really supportive on all initiatives that will make polluters pay. We may not forget about the full picture. Remediation is sometimes seen as solution for PFAS, but there are serious challenges:

- 1) available technologies are limited (e.g. all pollution in one place and treat soil, but remaining soil is not the same as the initial clean soil),
- 2) numbers (costs) are really incredible,
- 3) we keep on contaminating so remediation will not be sufficient.

There is a huge investors' initiative ongoing within Chemsec who want companies to stop producing PFAS and are worried about litigation and remediation costs. We see the same shift with insurance companies: exoneration as force majeure in case of PFAS pollution.

*Athina Giannoutsou (Associate Director working on the UWWTD file, public affairs department of EFPIA)*

The pharmaceutical sector relies on PFAS in order to produce safe medicines. We use PFAS in the entire supply chain (e.g. storage, medical devices,...) since PFAS are health/chemical resistant and easy to decontaminate. Without PFAS the pharmaceutical sector is not able to provide services and safe medicines, but they use a low amount of PFAS with no risks. The following questions are asked by the sector: are we going to have a study to identify all stakeholders (and not only look at the pharmaceutical sector/cosmetics)? Are we going to put in

place Extended Producer Responsibility (EPR)? Will this help to give an incentive to R&D in order to help find better products for health and environment? How will this impact patients' access to medicines?

## 2 Q&A

**Q: In the presentation 'How Flanders achieved a remediation agreement with 3M' a PFAS fund was mentioned. Who will fund it? Can it be a EU fund and will it be proposed in the framework of Belgian presidency?**

A: At this point the PFAS fund is not yet in force/elaborated. The Flemish government, together with the other competent authorities at national and regional level merely decided to create a financial instrument to solidarize financial costs. The idea is to ask contributions to the participants of the REACH supply chain. Legal and economic studies will be started in the near future and we hope implementation will follow. Scaling up on a European level would be ideal, also for guaranteeing a level playing field. Given the necessity of financial means and the need for a fast solution, we already took some steps to start creating such instrument at regional/national level in advance on the EU. As regards the Belgian presidency, we are negotiating on counsel conclusions in which we will take up the establishment of such an instrument.

**Q: Would this instrument also do something for people with too much PFAS in their blood.**

A: Yes, in the decision to start researching the start-up of this instrument health issues was a specific demand of the minister of health.

**Remark:** Having high levels of PFAS in blood is damage according to Supreme court in Sweden and not merely a loss of chance (Judgement of December 2023 based on Swedish liability law).

**Q: Is it worth considering the possibility of imposing an insurance for such extra costs on activities when PFAS are used? So the insurance amount would be lower if you prevent risk of using PFAS (cf. oil industry). That way one can make using PFAS costly right now and not after one has polluted.**

A: Contacts with insurance companies learn they are not keen on insuring PFAS because they are super scared on the possibly high costs related to PFAS. As of today insurance companies don't want to have anything to do with PFAS. So it is an interesting thought, but it is very unlikely one will be able to go to the private sector to achieve this. Working with a 'governmental insurance' system might be a good idea.

**Q: Do we really have a polluters pays principle or just aspirations? Do we really hold polluters accountable (e.g. staff, board members). We didn't change liability and polluters delay taking measures intentionally because they make money out of it.**

A: We don't have it yet, but we want it. There is no boundary to human inventiveness and one will always find a way to bend the rules. In Belgium the first question was who is the polluter. When a risk is related to a product, then the producer is morally responsible. At a certain moment you know what PFAS costs (more or less). When industry is discharging PFAS, then they are responsible as "producer" (e.g. waste incinerator, water company).

**Q: Uncertainty in making hard the relationship between the PFAS-concentration in blood and damage/disease creates heavy burden. Is the relationship between pollution and mental health on the table? Is it part of the discussions? Therefore one cannot repay...**

A: This has to be part of preventive health. The impact of pollution on mental health has to be taken into account in the preventive health policy of Flanders. Flanders tried to implement some measures (transparency

of information, taking blood samples,...) but we still have to learn. We need to teach doctors and schools how to deal with increased health risks. This is not a simple question to clear, but it needs to become a standard aspect of the hot spot functioning. At global level it starts to be more recognized, namely as the human right not to be polluted. Yet we are all born with pollution.

**Q: EPR is also buzzing around with regard to the legal proposal of the Water Framework Directive and priority substances. These substances are used in many products and not limited to a few contributors. How might EPR work? Imposing obligations also needs to take into account competition with producers outside the EU.**

A: Imposing general taxes is sometimes very easy, but difficult from the point of view of taking into account a level playing field. EPR could work for situations with many contributors in the way it is done for litter. You perform studies on the current cost of the pollution, identify which products are responsible for this and then divide cost over all products. One might for example think on EPR-scheme looking at the highest produced volumes and where alternatives are available. EPR schemes apply on all products entering the markt, so also products imported from outside the EU.

**Q: EPR is perceived as a solution for the pollution cost of the public authority and citizens. Can EPR also help in costs for private companies?**

A: One has to make a distinction between different types of costs. The necessity of using a different type of PFAS-free fire-fighting foam is not an external cost and the company needs to find its own solution. As regards waste recycling companies who face extra difficulties to deal with the waste containing PFAS and to find solutions on the treatment of waste, one could internalize the costs in the EPR-scheme (e.g. in Flanders it is internalized in Recupel).

**Q: A consumer can be “polluter” for many substances. Is that a right way to see EPR?**

A: This is very correct. In the end it is the consumer who is the polluter. EPR is a very specific instrument that is hot topic nowadays.

**Q: Are members of the pharmaceutical sector also looking into alternatives for PFAS (e.g. on coating of tubes)?**

A: Finding good alternatives is part of the problem. The sector is aware of the need to find alternatives, but it takes 12-20 years before an alternative is found and can enter the market. One needs to be sure that the used substances will have the same characteristics as PFAS. For some PFAS there is no valid alternative and thus it is exempted from the PFAS-ban. On top of that often one needs to change the whole process of manufacturing and in order to place a product on the market one has to have the necessary autorisation from EMEA.

**Key message: there is an urgent need for initiatives to financially tackle PFAS pollution and compensate for negative health impact (including mental health) due to PFAS. In order to guarantee a level playing field, these initiatives should be taken at EU level and look into EPR and possible other instruments to divide the costs solidarily among all the actors in the producer/user chain.**

## ANNEX 1 – PRESENTATION

- Deloitte Consulting – Maarten Dubois

## **ANNEX 2 – LIST OF PARTICIPANTS**

1. De presentaties van de sprekers – nog toe te voegen
2. Lijst met bedrijven die aanwezig zijn – nog toe te voegen