

LE PRINCIPE DE PRECAUTION DANS LE DROIT DE L'UNION EUROPEENNE

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ABSTRACT: *The precautionary principle or precautionary approach states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.*

This principle allows policy makers to make discretionary decisions in situations where there is the possibility of harm from taking a particular course or making a certain decision when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

In some legal systems, as in the law of the European Union, the application of the precautionary principle has been made a statutory requirement.

Many definitions of the precautionary principle exist. Precaution may be defined as "caution in advance," "caution practiced in the context of uncertainty," or informed prudence. All definitions have two key elements.

1. an expression of a need by decision-makers to anticipate harm before it occurs. Within this element lies an implicit reversal of the onus of proof: under the precautionary principle it is the responsibility of an activity proponent to establish that the proposed activity will not (or is very unlikely to) result in significant harm.

2. the establishment of an obligation, if the level of harm may be high, for action to prevent or minimize such harm even when the absence of scientific certainty makes it difficult to predict the likelihood of harm occurring, or the level of harm should it occur. The need for control measures increases with both the level of possible harm and the degree of uncertainty.

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One of the primary foundations of the precautionary principle, and globally accepted definitions, results from the work of the Rio Conference, or "Earth Summit" in 1992. Principle #15 of the Rio Declaration notes:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

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