



# Client Alert

## EU Court limits the scope of environmental liability for new owners of polluted land

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The Court of Justice of the European Union (the “CJEU”) has shed light on the application of the “polluter pays” principle in the context of the EU’s Environmental Liability Directive<sup>1</sup>. The judgment, handed down on 4 March 2015 in Case C-534/13<sup>2</sup> *Fipa Group & Others*, confirms that EU law does not require Member States to impose liability on the new owners of polluted land who are not responsible for that environmental damage.

The case at hand concerns land in Tuscany that had been contaminated by chemical substances as a result of activities carried out by the former owners, which had manufactured insecticides and herbicides on-site. The Italian authorities tried to compel the new owners, Tws Automation, Ivan and Fipa Group, to adopt “emergency safety measures” to protect the groundwater, even though the new owners were not responsible for the environmental damage.

In the dispute that followed, the Italian *Consiglio di Stato* held that Italian law did not allow the authorities to require owners that are not responsible for pollution to adopt preventative and remedial measures. However, it referred the case to the CJEU, asking whether this position was consistent with the requirements of EU environmental law, in particular the Environmental Liability Directive 2004/35, and the “polluter pays” principle.

According to the Environmental Liability Directive, the “polluter pays” principle means that *“an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures”*.

The CJEU held that the Italian law was not in conflict with the “polluter pays” principle or with the EU Environmental Liability Directive. It referred to the concept of the “operator” which, under the Directive, may be deemed responsible for the damage. It also underlined the importance of the causal link between the activity of the operator and the damage, and confirmed that the Member States authorities’ obligation to establish a causal link applies both in the context of the system of strict environmental liability of operators and in the context of the fault-based liability system — under which liability arises from fault or negligence on the part of the operator.

In light of this, EU law did not require, in cases where it is impossible to identify

**Jacquelyn MacLennan**  
Partner, Brussels  
+32 2 239 25 63  
[jmaclennan@whitecase.com](mailto:jmaclennan@whitecase.com)

**Genevra Forwood**  
Counsel, Brussels  
+32 2 239 25 37  
[gforwood@whitecase.com](mailto:gforwood@whitecase.com)

**Emma Bichet**  
Associate, Brussels  
+32 2 239 25 08  
[emma.bichet@whitecase.com](mailto:emma.bichet@whitecase.com)

**David Strelzyk-Herzog**  
Director of European Regulatory and  
Government Affairs, Silicon Valley  
+32 2 239 25 91  
[dstrelzykherzog@whitecase.com](mailto:dstrelzykherzog@whitecase.com)

<sup>1</sup> Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ 2004 L 143, p.56. The consolidated Environmental Liability Directive is available [here](#).

<sup>2</sup> Case C-534/13 Ministero dell’Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group Srl and Others. The judgment is available [here](#).

the polluter or to have that operator adopt remedial measures, competent authorities to require the new owner of the land, if it is not responsible for the pollution, to adopt preventive and remedial measures.

The CJEU noted however that Member States may adopt stricter requirements. In the present case, Italy had chosen not to do so, merely providing that a new owner may be required to reimburse costs associated with measures undertaken by competent national authorities, within the limit of the market value of the site, determined after those measures have been carried out. This confirms the importance of considering the position under both EU and national law.

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