

Environment - Italy

Cradle to grave: a new pattern for waste liability?

Contributed by **B&P Avvocati**

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The Environmental Code (Decree-Law 152/2006) expressly provides that waste producers must verify that all necessary environmental licences are held by the treatment plant to which the waste is transferred. If the treatment plant lacks such licences, both the waste producer and the treatment plant manager face criminal liability.

However, the first treatment plant is not always the final destination of the waste. Waste frequently needs preliminary treatment before eventually being disposed in a landfill or incineration plant.

This raises the question of where and when the original waste producer's duty of care ends.

According to the answer traditionally given by most Italian courts, such liability comes to an end when waste is accepted by the first treatment plant; the following steps are the sole responsibility of the treatment plant owner.

However, the Venice Administrative Tribunal adopted a different approach in a recent decision (1181/2013). According to the court, the original producer retains a full duty of care even after transferring the waste to the first treatment plant. This conclusion is grounded on the 'polluter pays' principle, which in this case implies joint and several liability between the original producer and the first treatment plant.

If this line of thinking becomes generally accepted by the Italian courts, original producers will need to change their environmental procedures and management systems, including in them a series of checks until final disposal of their waste.

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