

Environment & Climate Change - Italy

Legally compliant industrial emissions precluded from public nuisance offence

Contributed by **B&P Avvocati**

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Industrial operators in Italy may rest assured that they will not incur criminal penalties for causing emission-induced nuisance affecting or likely to affect the public under Article 674 of the Criminal Code, provided that they possess valid permits and operate within the emission limits established thereunder or by law.

Following the direction of case law and confirming what is widely regarded as a settled legal principle, a recent Court of Cassation ruling (Decision 18896, May 8 2014) held that the offence under Article 674 of the Criminal Code will not apply in cases where authorised emissions comply with relevant legal standards.

In support of this conclusion, the court held that respecting emission limits creates a presumption of legality in respect to the emitter's conduct, noting that in order for the offence under scrutiny to arise, proof that emissions have caused nuisance must be seconded by an actual breach of the relevant emission limits laid down by law.

The decision is important in that it confirms an evolutionary trend in the recent judgments of the Court of Cassation, whereby the court has moved away from past evaluations of the legitimacy of emissions under the lens of Article 674 of the Criminal Code.

Nuisance no longer arises where emissions have merely exceeded the limits of normal tolerance (Article 844 of the Civil Code), regardless of how compliant the activity is with sectoral environmental legislation (eg, Decision 15734, April 15 2009). On the contrary, compliance with sectoral standards that stipulate specific limits in tabular form – as is the case with permit regulations or laws setting air emission limits – is now upheld as the primary assessment factor.

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