

# Council of State issues decision on landowners not responsible for pollution

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## Facts Decision

In judgment 10214/2014, the Council of State made a clear stand in the debate concerning the duties of an owner of contaminated land that is not responsible for the pollution.

### Facts

The judgment focuses on the case of a landowner who conducted commercial activities on contaminated land. The Council of State specified that the owner had a duty to adopt preventive measures only – that is, the measures required to avoid or minimise an immediate threat to health or the environment. By 'immediate threat' the law means a sufficient likelihood that damage to health or the environment will occur in the near future.

Nevertheless, the owner of contaminated land can undertake voluntary rehabilitation work. This intervention does not prejudice the obligations incumbent on the party responsible for the contamination. According to the polluter pays principle, the polluter must bear remediation costs, not the owner.

The polluter is responsible for remediation, safety operations and recovery measures. If the polluter does not immediately adopt the necessary measures or cannot be identified, the competent municipality or regional authority must adopt them. In this case, an owner that is not responsible for the contamination may be required to reimburse the costs of the measures that the competent authority adopts, but only within the limits of the market value of the land. These principles also apply when the owner conducts commercial activities on the contaminated site.

### Decision

Quoting the European Court of Justice (ECJ) judgments C- 534/13 and C-378/08, the court affirmed that the liability of an owner that conducts commercial activities on polluted land cannot be based solely on that party's status as owner, given that the pollution cannot be attributed to that party for its individual actions or on the basis of objective criteria. Equally, it cannot be said that the owner's liability is a result of negligent behaviour, given that it has no duty to undertake remediation.

According to the ECJ's interpretation of the polluter pays principle, even if establishing the fault, negligence or intent of operators whose activities are deemed to be responsible for environmental damage is not required, a causal link must be established between the damage caused and the activities of the operator that the authority holds responsible for it.

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