

# PUBLIC SECTOR AS GUARANTOR OF PROPER MANAGEMENT

PROPER WASTE MANAGEMENT IS GUARANTEED BY THE PUBLIC SECTOR THROUGH A COMPLEX FUNCTION SYSTEM LEADING TO EFFECTIVE CONTROL ACTIVITIES AIMED AT PROTECTING COMPETITION, HEALTH AND ENVIRONMENT.

**I**talian laws on waste stem from the EU system. Our regulators implemented – with the necessary adaptations – the specific European directives in the field.

The Economic European Community (EEC), whose main goal was to guarantee the free circulation of people and goods within the common market area, issued the first directive in 1975. Thus, Directive 75/442/EEC was issued by an entity which was more concerned about the freedom of the market than by environmental protection.

As a consequence, it was necessary to have common rules for waste management, which, by the way, is a cost for businesses. Therefore, different rules – as it was the case – would have an impact on the final product price then leading to unfair conditions likely to affect competition. Namely, member states should not make their societies pay – at least not entirely – to create a competitive advantage for their companies.

Only at a later stage environmental protection has become one of the main pillars of the European Community, thus leading to a major development of waste management rules, until the currently discussed ideas on circular economy and the zero waste goal.

This preliminary remark makes us better understand the role and function played by public controls.

The EU architecture relies on:

- the appeal generated by the definition of “waste”: any object and/or substance left over after having been used as originally intended can be considered as waste
- the waste traceability through a code expressing their origin and grade, and reporting information about their own management
- the required compliance of facilities and operators
- the classification of treatment operations.

In other words, proper waste management is guaranteed through a series of formal steps aiming at checking



competition, health and environmental protection.

Therefore, the role of the public sector is primary and threefold: first it turns principles and criteria into planning actions and norms; secondly it issues authorization and permits; thirdly, it guarantees controls and inspections. State administrations guarantee, as third party, the consistency of the required market conditions and provide guarantees to citizens. Market conditions are also checked by European institutions. The public function system therefore is the core of the whole waste management policy.

The more the free circulation of waste is extended, including special waste, the more this function becomes unavoidable. The principle of self-sufficiency and proximity – exclusive prerogative of unsorted urban waste and of waste that are going to be disposed – is considered as a derogation to the free circulation, which can be limited only when waste import or export aims at bypassing proper waste management for the environmental reasons listed by Regulation 1013/2006 (EC).

The latter raised a question whether

environmental protection prevails on free market namely if we consider paragraph b), articles 11 and 12, allowing to reject the notification when the shipping or the treatment does not comply with the national environmental protection laws, public order, public security or public health protection as far as actions in the objection-raising country are concerned. It is therefore implied/intended, for instance, that the treatment global cost needs to be considered, including the environmental impact of shipping, therefore in order to ban shipping to faraway plants, even if commercially less expensive.

The issue, still without a commonly shared answer, does not jeopardize the importance of the public sector that has to promote as a priority the interests of the represented communities, as well as to avoid any tricky behaviour by market operators.

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