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“How to stimulate secondary raw material markets”

“Regulatory and operational barriers to creating SRMM”

“Potential solutions to overcome the main barriers”

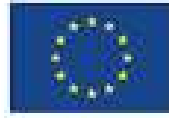
Paola Ficco

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20/21 March 2018 - 3rd Interregional Workshop



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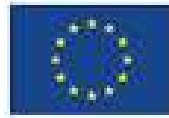
“WASTE” DEFINITION Art. 183, paragraph 1, lett. a):

IN THE PAST	NOWADAYS
Any substance or object <u>which falls within the categories set out in Annex A, Part IV of this Decree and whose the holder discards or intends to discard or is obliged to discard.</u>	Any substance or object whose the holder discards or intends to discard or is obliged to discard.

Therefore, we have still an absolutely OPEN system



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“TO DISCARD” ACCORDING TO THE EU

The verb << **To discard** >> has to be interpreted considering the purpose of the Directive 75/442 that, according to the third recital, consists in the protection of human health and environment against the harmful effects coming from the collection, transport, treatment, accumulation and storage of waste. But it has to be interpreted even in the light of the **article 174, n. 2, of the Treaty on European Union** (*), according to that, the Union policy on the environment aims at a high level of protection and it is based on the precautionary and the preventive action principles.

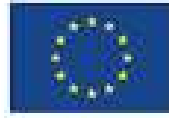
As consequence, the “waste” notion CAN NOT be interpreted with a restrictive sense

- ✓ Points from 36 to 40 of the European Court of Justice judgment dated 15th June 2000 (C- 418/97 e C- 419/97, ARCO)
- ✓ Point 23, European Court of Justice judgment dated 18th April 2002 (C-9/00, Palin Granit Oy)
- ✓ Point 33 of the European Court of Justice judgment dated 11th November 2004, Niselli (C-457/02)

(*) now art. 191 of the Treaty on the Functioning of the European Union



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THEN... "DISCARDING" FOR THE COURT OF CASSATION

"It does not have relevance the interest that others may have on the exploitation of the unserviceable good and no longer useful to its holder, **since this interest does not transform the waste into something different ...** It is therefore necessary to lay in the exclusive viewpoint of the waste holder / producer not in that of people interested in using the waste itself"

It is the objective certainty of re-use that excludes upstream the intention to discard of the object / substance.

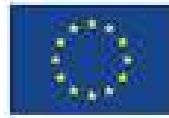
The broken pallets purchased by the defendant to be repaired and put back on the market were waste in all respects and the activity put in place by YYY Ltd constituted an unauthorized activity of "recovery" ...

Pallets constituted, in fact, objects whose destination was not known from the beginning and that XXX Inc would have discard if they had not been purchased by YYY Ltd

Penal Cassation Section II 2nd December 2014 n. 50309



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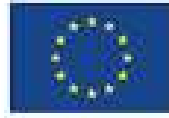


THEN... "DISCARDING" FOR THE COURT OF CASSATION

The Supreme Court is absolutely certain that, according to the established general principles, any subjective assessment on the materials nature to be classified or not as waste it should be considered unacceptable

Penal Cassation Section III 19th December 2014 n. 52773

Penal Cassation Section III 16th November 2016 n. 48316



ART. 183, PARAGRAFH 1, LEGISLATIVE DECREE 152/2006 - DEFINITION -

q) preparation for re-use

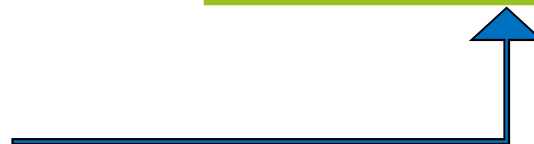
the operations of

- control,
- cleaning,
- disassembly and
- repair

through which products or components of products that have **become waste**, are prepared in such a way that they can be reused without **any other** pre-treatment.

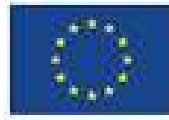
r) reuse

any operation through which products or components that **are not waste**, are reused for the same purpose for the which they had been conceived





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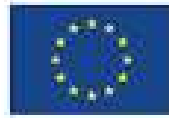
THE LEGAL NATURE OF WASTE REGULATIONS

The rules on waste are rules of public law since they concern the organization of the State and other public bodies and the relationships in which the State or other public bodies can exercise power of command over citizens; therefore, they can not be waived by acts of private law.

Waste also has commercial value but the organization wanted to maximize its control and traceability.



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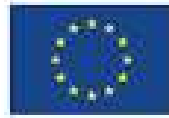


THE LEGAL NATURE OF WASTE REGULATIONS

For this reason the rules that provide favorable situations integrate the extremes "of dispositions having **exceptional** nature and **derogatory** from the discipline ordinary waste, with the consequence that, as repeatedly stated by this Court, the **burden of proof** about the existence of the conditions of the law must be fulfilled by him that invokes its application (Court of Cassation Section III, June 27, 2012, n. 25358).



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ART. 184-TER PARAGRAPH 1, LEGISLATIVE DECREE 152/2006

End of the waste status

1. A waste ceases to be such, when it has been subjected to a recovery operation, including recycling and preparation for re-use, and meets the specific criteria to be adopted under the following conditions:
 - a) the substance or object is commonly used for specific purposes;
 - b) there is a market or a demand for this substance or object;
 - c) the substance or object meets the technical requirements for the specific purposes and complies with the existing legislation and standards applicable to the products;
 - d) the use of the substance or object will not lead to overall negative impacts on the environment or on human health.

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Thanks for the attention ...

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