
PRODUCER RESPONSIBILITY

1 - In the Italian legal system, producer responsibility - by which we intend the responsibility that a manufacturer bears for his own products once these have reached the end of their life-cycle - is not contemplated as part of an overall scheme of application, but it does exist related to certain product categories.

1.1 - As far as **packaging** is concerned, the regulations to refer to are in articles 36, 37 and 38 of the legislative decree of 5 February 1997 no. 22 (*"Implementation of the EEC directives 91/156 on waste, EEC directives 91/689 on hazardous waste and EEC directives 94/62 on packaging and packaging waste"*). In particular, art. 38 of legislative decree no. 22/1997 asserts the principle by which *"producers and users are responsible for the correct environmental management of packaging and packaging waste engendered by the consumption of their own products"*.

In order to fulfill these obligations, producers can adopt (art. 38, para. 3) one of the following three options: taking care by themselves of collection, reuse and recovery of packaging waste; taking part in a voluntary consortium that deals with the same type of packaging, the so called "same sector consortia"; organizing a deposit scheme.

Art. 41 of legislative decree no. 22 of 1997 institutes the National Packagers Consortium (CONAI), which has the task of:

- defining, in harmony with local authorities, the territorial limits of an integrated system of collection, sorting and transport of sorted material,
- defining, together with the government agencies, the general conditions of pick-up;
- promoting "programming agreements" with the Regions and with local authorities; and
- on a more general level, organizing and guaranteeing the necessary link between Public Administration, same sector consortia and manufacturers/merchants so as to implement the correct management of the system.

The CONAI has been defined by case-law (Lazio TAR, section II bis, 18 November 1999 no. 2214) as "*an indirect organ of government administration inasmuch as it is granted by law of the execution of a public service relating to the type-differentiated collection of packaging waste*".

For each kind of packaging there is then a law providing (art.40 of legis. Decree no.22, 1997) for the setting up of a specific consortium having a legal status as contemplated in private law. The so-called same-sector consortia that exist at present concern the following materials: steel, aluminium, paper, wood, plastic and glass.

1.2 - For a number of categories of **durables goods**, legis. decree no. 22 of 1997 dictates specific regulations for the handling of goods which have reached the end of their lifetime.

These goods - which, in the first stage of application, art 44 of legis. decree no. 22/1997 identifies with the following categories: refrigerators, freezers, televisions, computers, washing machines and dishwashers, air conditioners - must be "*delivered to a seller at the time of purchase of an equivalent type of durable good or must be given over to public or private establishments which handle the collection and disposal of urban waste or to designated collection centers*".

Producers and importers must take care of the pick-up, recovery and disposal of durables goods brought back by the consumer to the seller on the basis of specific "programming agreements" stipulated as per art. 25 of legis. decree no. 22/1997).

1.3 - Another set of regulations regarding products which have reached the end of their lifecycle has to do with **end-of life vehicles**.

With reference to this category of goods, legis. decree no. 209 of 24 June 2003 (Implementation of the EEC directive 2000/53 concerning scrap vehicles") provides that the Ministry of Commerce adopt, as a precautionary measure, initiatives aimed to encourage, in particular:

- a) vehicle manufacturers, in liaison with material and equipment manufacturers, to limit the use of hazardous substances in vehicles and to reduce them as far as possible from the conception of the vehicle onwards;

- b) the design and production of new vehicles which take into full account and facilitate the dismantling, reuse and recovery, in particular the recycling, of end-of life vehicles, their components and materials, promoting as well the development of the technical regulation in that sector;
- c) vehicle manufacturers, in liaison with material and equipment manufacturers, to integrate an increasing quantity of recycled material in vehicles and other products, in order to develop the markets for recycled materials (art. 4).

Legis. decree no. 209/2003 also contains the provision that obliges the owner or holder of a vehicle to deliver the vehicle to be dismantled to a "*collection facility*", or, in the case of the purchase of a new vehicle, to deliver it to the car dealer, who in turn is to turn it over to a collection facility. Collection facilities are organized independently, either on individual or collective basis, by vehicle makers (art. 5, para. 1 and 3).

1.4 - Besides those organizations previously mentioned (CONAI and same-sector consortia), Italian law envisages other compulsory consortia.

One of these is COBAT (**Compulsory Consortium for end-of-life lead batteries and lead waste**), instituted by law in 1988 so as to implement the EEC directive 157/91 (law no. 475/1988), which mandates the collection, transport and recycling of spent lead batteries to consortia-operated facilities.

Particularly important is the COOU or **Compulsory Consortium for Waste Oils**, instituted with legis. decree no. 95/1992 so as to implement EEC directives 75/439

and 87/101, in which all the companies that place basic and refined lubricating oils on the market take part.

The main functions of the COOU are:

- see to and promote the collection of waste oils by arranging pick-up from users, stockists and authorized establishments;
- directly carry out the pick-up of waste oils from users and stockists that directly request the service, in the cases required by law;
- sort the waste oils collected so as to see that they are correctly disposed of.

It is also opportune to mention the **National Consortium to collect and treat oil products and end-of-life vegetable and animal fats**, instituted by art. 47 of legis. decree no. 22, 5 February 1997. This is a non-profit consortium that has private law legal status, and is regulated by a charter approved with Environmental Ministry decree. Its task is to ensure the disposal of those waste oils for which regeneration is not possible or not worthwhile.

Finally, art 48 of legis. decree no. 22/1997 has instituted the **Consortium to recycle polyethylene-based waste**, which must see to 1) promote the managing of the flow of polyethylene-based goods; 2) make sure that polyethylene-based goods get recycled or are submitted to other forms of recovery and re-use, and 3) make sure that non-reusable polyethylene scrap receives due promotion.

1.5 - The setting up of the National Packaging Consortium, the same-sector consortia and the other consortia just mentioned undoubtedly raises possible conflicts with regard to competition law.

The first decisions handed down by the National Antitrust Authority and by judges in the administrative law courts tend however to justify, for the time being in any case, the activities of same-sector consortia, which, though constituting *de facto* monopolies in their single sectors, appear to represent the guarantee necessary to achieve the objective of making packaging waste differentiated collection efficient and cost-effective. Moreover, it is emphasized the relative newness of the system, to the extent that it is not yet possible to draw definitive conclusions about compliance with anti-trust laws.

PRODUCT POLICY

2 - In the field of product policy as well, a general set of regulations is missing in Italy.

2.1 - There are, viceversa, significant examples of regulations relating to specific sectors.

An important example has to do with the GMOs and derives from legis. decree no. 224, 8 July 2003 ("Implementation of EEC Directive 18/2001) concerning the *"deliberate release into the environment of genetically modified organisms"*. Legis. decree no. 224/2003 aims to define *"in accordance with the precautionary principle,*

the measures aimed at protecting human and animal health as well as environment as concerns the release of genetically modified organisms," with regard to placing GMOs on the market as such or contained in products and also with regard to *"releasing GMOs",* (by which is meant any *"intentional introduction into the environment of a GMO for which no specific containment measures are used"*).

According to legis. decree no 224/2003, whoever intends to release or introduce GMOs is obliged to effect previous notification to the "Competent national authority" (the Ministry of the Environment and Land Protection), consequent to having already submitted an *"environmental risk assessment"*.

As for the act of placing a GMO on the market, the obligation to give notice (as well as environmental risk assessment) does not hold for those organisms already authorized by EU laws issued after EEC directive 2001/18, which make explicit reference to the directive at hand and require, in turn, an environmental risk assessment to be submitted as well as certain measures to be fulfilled - risk management, labelling, monitoring and informing the public - equivalent to those contemplated in the decree.

2.2 - There are rules regulating the specific means of **seed** control (cfr, for example, for maize and soy seed, the ministerial decree of 27 November 2003).

2.3 - For **phytosanitary** products as well, one must look at the specific regulations for this sector. Recently, the ministerial decree of 22 July 2003 discharged EEC directives 2002/79 and 2002/100, by updating the maximum thresholds for active

substance residuals contained in phytosanitary products, allowable in products bound for human intake.