

THE IN HOUSE PROVIDING AS A SELF-ORGANIZATION MODEL FOR THE PUBLIC ADMINISTRATION

Paola SOLOMBRINO*

ABSTRACT: *Recognizing the opportunity for Public Administration to directly commit a public local service is an attempt to conciliate the Competition Policy of the European Law and the self-organization power recognized to Public Administration. PA is not obliged to lift these services out, but only to respect the public contract regulation if PA decides to turn to market as the most suitable solution to grant the affordability, the efficiency and the efficacy of the administrative action.*

The In house providing is the result of the enhancement of the self-organization power recognized to Public Administration: it assumes that a public subject has the power to externalize some activities in order to fulfil many public interest tasks, promoting the creation of new organizational models as instruments that could determine and increase innovation processes, improve workers performances and their wellness, as well.

However, this operation must be organized in order not to compromise any rules that regulate a correct market operation, and so not violating any rules contained in the Competition policy Treaty.

This paper will talk about the most important steps in this institution evolution, to highlight the negative approach about its use by the Italian legislator - and so the national Courts - that considers this practice a derogatory instrument of the competition policy. Even if the European guidelines about contracts have fixed the principle of "free administration by public authorities", the Italian legislator imposed many limits to the use of the In house providing in the new public contracts guideline (art. 192, comma 2, d.lgs n.50/2016), highlighting a basic adversity against this system and promoting a derogatory and exceptionally perspective of its nature.

KEYWORDS: *In house, public procurement, public administration, free competition, digitalization, local services.*

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* Executive Director of the Department of Legal Sciences, University of Salento; Master's degree in "Principles and Rules of Public Administration"; President of the National Coordination of University Administrative Managers; Internal Auditor for ISO 9001: 2000 Quality Management Systems; Recorded in the Register of Scientific Experts at the Ministry of Education, University and Research for the sections: Economic and Financial Evaluation and Administrative and Accounting Review, ITALY.