

Elisabetta Saladino, Public and private certainties: from the public power of *certum facere* to the private certifying organisms.

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The certainty of trade and of public life is a matter of primary importance for the legal system. From ancient societies onwards the governmental powers have reserved to themselves in various ways the discipline of economic facts, states and situations, in order to warrant the regular course of economic and social relations.

On this ground the public ascertainties have been preserved from private interest, in that they are destined to certify the genuineness of facts which are relevant for the whole community. For the sake of making uniform the partner's relations and of warranting the authenticity or at least the verifiableness of facts. The capacity of providing certainty (*certum facere*) is one of the basic manifestations of royal power and is reserved to the public administration.

Since the end of the XIXth century the legal doctrine has met many difficulties in his attempt to give a unitary definition of such proceedings. The reasons are due to the heterogeneity of the matters that public authorities are appealed to certify, not to mention the different level of efficacy recognized in each case by law.

In the long run the demand of certainty has been bound to confront with new requests and principles, connected with the growth of economy. Private individuals seemed to be better suited to perform complex duties, on account of their scientific knowledge and of the difficulties met by the administrative organization.

The activity of privates, entrusted with the task of certify, has in any case public nature. The discussion is about the traditional view of public administration, which seems superseded by an objective and functional (teleological) conception. Today it is widely accepted that a private, practising public activity in a free market, does not acquire a public legal qualification.

It seems moreover meaningful that private authorities, charged to certify different matters, don't conform usually to the national legal rules, but to the principles and bounds of the European Community. The public nature of their activity is justified by the existence of an interest of the E.C., recognized by its legal system. Even in this field the national administrative system must therefore refer to new institutes, principles, exigencies and sceneries.

It is also easy to see that the new systems of private certifications reveal a genuine explosion of the need of verification, evaluation and control, associated with an equally diffused request to conform the business activities to general standards, suited to be verified and published. The verifiableness and the reliability of the matters that are certified have become not only a basic concern, but also an object of protection and regulations. It turns out that the object of the certifications has ceased to lie in the attribution of legal qualifications, fixed by law: really important are the actual qualities created by market.

In the meantime the object of certifications has changed. More than certainty about legal qualifications, the general interest requests technical guarantees, which don't need a legal frame, but a classification/evaluation. The private individuals are not only users, but also producers of certainty. In this transformation the public powers are holders of special powers, as the accrediting, in addition to the request of certifications.

The certifications are new legal tools for the protection of opposite interests. Their development has taken place through regulations by mutual consent, non related to public rules. This is the first important difference as regards the traditional public certifications.

As a matter of fact the certifications have been created in the business world and are a consequence of a constant technological, commercial and industrial development. Therefore they are able to answer efficaciously both to the market and the public needs. This has given rise to a different meaning of certainty, no more connected to the exigence of stability of legal relations and trade, but rather to the public trust, entirely guaranteed by private structures.

The greater or minor efficacy of such mechanisms is determined by three factors:

- 1) The degree of scientific accuracy employed in fixing the standards of evaluation;
- 2) The independence and the technical skills of the subject charged to certify;
- 3) The ensuing credibility and the authoritativeness of the certifications.

Therefore the confidence of the citizen is placed on the certifying authority not through its public nature, but through its specialized knowledge.

The certified quality, born in the market and aimed to the market, is therefore a recognized value in the economic exchanges, spendable among consumers in a global market. The possession of particular qualities or the environmental supportability of the product rise to factors able to weigh heavily on the success of firms.

To sum up, we must renounce to the idea that the public power can offer certainty about facts, states, qualities and economic relations.