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Summary

SIGNIFICANT CURRENT DEVELOPMENTS IN RURAL LAW

This report is the result of an arduous selection of the signs of significant current development in Italian agricultural law and is, therefore, necessarily succinct and non-exhaustive. Starting from the premise that Italian agricultural law is inevitably influenced by the evolution of EU policies and strategies, which in turn are sometimes conditioned by decisions, recommendations or suggestions adopted at international level, this report only marginally takes into consideration the main news related to the two pillars of CAP 2014-2020, that are examined in the national reports of Commissions I and II, but instead takes into account the 2013 National Report.

The main significant developments in Italian agricultural law since the last Congress are related to:

A. The application of Regulation (EU) No 1169/2011 on the provision of food information to consumers. In particular, the focus is on the debate on the absence of “the site of production or packaging” information among mandatory indications for pre-packed food, and on additional mandatory information about the place of provenance of food.

B. The protection of quality products and the fight against counterfeiting that the Italian government is currently carrying on especially in the PDO and the PGI sectors, thanks to the *ex officio* protection provided for in regulation (EU) No 1151/2012, and in the extra virgin olive oil sector, through the introduction of the mandatory use of non-refillable bottle caps.

C. The issue of land use, with special reference to agricultural land consumption and abandonment, e.g. through the creation, at Regional level, of “Land Banks” which manage and repurpose an inventory of underused and abandoned rural lands in order to promote productive and sustainable use of uncultivated arable lands especially by young farmers.

Sustainable Food Security has been chosen as the specific theme addressed in this report. As it is the overarching theme of Expo 2015, it has been attracting the attention of the Italian Government, Regions, Universities and Research Institutes during the last year. The various legal issues related to this topic include, for example: compatibility of 2014-2020 CAP with article 39 TFEU; competing interests of energy production and food production in situations of arable land use scarcity; promotion of the so-called “short supply chain” as an instrument of food waste prevention, and the promotion of local agriculture and food chains as instruments to support local rural economies reducing land abandonment; explicit mention of “food security” as exclusively national State legislation in the constitutional reform draft currently before the Italian Parliament and debate concerning the introduction into the Italian Constitution of explicit recognition of the fundamental right to food.

National Report

SIGNIFICANT CURRENT DEVELOPMENTS IN RURAL LAW

Introduction

Italian agricultural law is inevitably influenced by the evolution of EU policies and strategies, which in turn are sometimes conditioned by decisions, recommendations or suggestions adopted at international level.

Concerning Common Agricultural Policy (CAP) 2014-2020, this report will only marginally take into consideration the main news related to the two pillars because, first and foremost, they are examined in the national reports of Commissions I and II, and any further impact on Italian agricultural law can be better identified in future, after the CAP implementation.

From a methodological point of view, the last Cedr Congress National Report for Commission III (Luzern, 2013) was the starting point of the present report which, in fact, underlines the evolution of some issues examined in the previous one (about land consumption and some aspects of food legislation). Other issues characterising significant current developments in Italian Agricultural Law, including its agri-food and agri-environmental aspects, concern the tackling of arable land abandonment, the fight against the counterfeiting of Italian quality products, and food security.

These have been identified and selected taking into account heterogeneous sources of information for the reference period September 2013-June 2015, listed below. However, it should be immediately noted that the prevalence of topics on food rules depends on the fact that Italy is the host country of Expo 2015 “Feeding the planet. Energy for life” (from 1 May 1 to 31 October 2015)” and so the Expo theme has been attracting the attention of the Italian Government, Regions, Universities and Research Institutes mostly during the last year.

Apart from Union legislation, the main sources for investigating significant current developments in Italian rural law are the following:

- the development of State and Regional legislation (comprehensive of draft laws at State level);
- ministerial decrees and guidelines, and policy documents;
- important congresses and workshops on agricultural law topics;
- books and publications in Italian reviews or journals on agricultural law (also on agri-food law and agri-environmental law).

This report is, of course, the result of an arduous selection of the signs of significant current development in Italian agricultural law and, therefore, is necessarily succinct and non-exhaustive.

1. What are the main developments in rural law since the last Congress?

Some of the most important recent developments in Italian rural law are related to:

A. The application of Regulation (EU) No 1169/2011 on the provision of food information to consumers and in particular concerning, on the one hand, the debate on the absence of “the site of production or packaging” information (“*la sede dello stabilimento di produzione o di confezionamento*”) among mandatory indications for prepacked food established by Regulation (EU) 1169/2011, and, on the other, additional mandatory information on the place of provenance of food.

B. The protection of quality products and the fight against counterfeiting that the Italian government is currently carrying on especially in the PDO and PGI sectors, thanks to the *ex officio* protection provided for in regulation (EU) No 1151/2012, and in the extra-virgin olive oil sector, through the introduction of mandatory use of non-refillable bottle caps.

C. The issue of land use, with special reference to reducing agricultural land consumption and tackling land abandonment, e.g. through the creation, at Regional level, of “Land Banks” which manage and repurpose an inventory of underused and abandoned rural lands in order to promote the productive and sustainable use of uncultivated arable lands, especially by young farmers.

1.1. What are the sources for each of these developments?

A. Food information

In Italy, although the Ministry of Economic Development has been publishing a series of notes and circulars on the application of specific provisions of Regulation (EU) No 1169/2011 in its territory¹, the law amending the previous Italian rules on food labelling (*legislative decree* n. 109/1992) to comply with

¹ See: Note of Economic Development Ministry, prot. n. 0018169 of 28 July 2014 *sull'applicazione dell'articolo 26 “Paese d'origine e luogo di provenienza” del regolamento (UE) n. 1169/2011*; Information Note of Economic Development Ministry prot. No 170164 of 30 September 2014 on “*Regolamento (UE) 1169/2011 relativo alla fornitura di informazioni sugli alimenti ai consumatori – Art. 8 Responsabilità*”; Information Note of Economic Development Ministry prot. No 218759 of 11 December 2014 on *Le disposizioni del regolamento ancora oggetto di corretta interpretazione da parte della DG Sanco*; “Circolare” 6 March 2015 of “Direzione generale per la politica industriale, la competitività e le PMI” that clarifies the application of sanctions provided by article 18 of Legislative decree No 109/1992 to the infringements that remain also in Regulation (EU) No 1169/2011. All these documents are available at www.sviluppoeconomico.gov.it.

the Union Regulation has not yet been adopted. This is mainly due to the ongoing debate on the absence of “the site of production or packaging” (*la sede dello stabilimento di produzione o di confezionamento*) among mandatory indications for prepacked food established by Regulation (EU) 1169/2011, nor does the Regulation provide for a specific derogation for Member States legislation, such as that laid down by the previous Directive under which «Member States may retain national provisions which require indication of the factory or packaging centre, in respect of home production» (art. 3.2 Directive 2000/13/EC).

In this situation, petitions and parliamentary questions have been presented on this issue invoking the national reintroduction of this requirement or, to avoid the possible opening of infringement procedures, proposing an amendment to the EU Regulation, which would allow Member States to require the information regarding the production or packaging site. This information would be useful for consumer protection purposes: on the one hand, for food traceability, because it would allow the authorities to immediately identify the establishment in the event of health risk; on the other, for making an informed food choice, if purchasing is guided by ethical or quality motivation (e.g. the intention of buying a product from a certain territory)².

The issue is complex and last February, the Italian government formally decided to take action to restore this obligation, evaluating the various options without risking infringement proceedings. In the meantime, a considerable number of large retailers (such as Esselunga, Conad, Carrefour) have decided to continue providing this type of information on their private-label products.

Italian consumers, in fact, seem very sensitive to this issue and especially to the wider topic of information regarding food origin or provenance, as evidenced by the recent on-line public consultation that was launched by the Ministry of Agriculture and whose results were published last April³. This public consultation seems to be a first step in an Italian strategy to adopt (upon notification to the European Commission and MSs, pursuant to article 45) national measures requiring additional mandatory information on the place of provenance of specific types or categories of foods, by way of derogation of

² About this specific matter, see F. CROCI, “Il (discusso) superamento dell’obbligo di indicare ‘in etichetta’ la sede dello stabilimento di produzione dei prodotti alimentari: armonizzazione ‘al ribasso’ o ritardo delle istituzioni italiane?”, *Eurojus.it*, 15 April 2015 (available at <http://www.eurojus.it>). About mandatory food information and National measures on additional mandatory particulars, see COSTATO-BORGHI-RIZZIOLI, *Compendio di diritto alimentare*, VI edition, Padova, Cedam, 2013, at p. 263 ss.; A. GERMANÒ, *Diritto agroalimentare. Le regole del mercato degli alimenti e dell’informazione alimentare*, Torino, Giappichelli, 2014, at p. 106 ss.; S. BOLOGNINI, *La disciplina della comunicazione business to consumer nel mercato agroalimentare europeo*, Giappichelli, Torino, 2012.

³ For details about the online public consultation of 7 November 2014, which was attended by about 26.000 people, according to Ministerial data, see <http://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8531>.

articles 9.1 and 10 of the Regulation. The derogation is laid down in article 39 of the Regulation, which, in fact, requires that MSs «shall provide evidence that the majority of consumers attach significant value to the provision of that information».

(See also *infra* para. B, referring to the extra-virgin olive oil law)

B. The protection of Italian quality production

In recent years, the Italian government has made a firm commitment to fighting fraud in the food chain, particularly in the counterfeiting field of Italian quality food (PDO and PGI) that is well known and recognized in Europe and the world.

New impetus to this activity has been given by Regulation (EU) No 1151/2012 *on quality schemes for agricultural products and foodstuffs*, which introduced the *ex officio* protection of PDO and PGI (art. 13.3)⁴. In accordance with article 13.3, the “Ispettorato centrale della tutela della qualità e della repressione frodi dei prodotti alimentari” (ICQRF) of the Ministry of agriculture is the competent authority designated for adopting measures to prevent or stop the unlawful use of PDO and PGI produced and marketed in Italy, as well as ensuring communication between authorities from other MSs responsible for stopping the unlawful use of Italian PDO and PGI in the European Union territory⁵. The *ex officio* protection also applies to products sold via Internet, so that ICQRF (together with the Italian Association of Geographic Indication Consortia-AICIG) initialled an agreement with *eBay* to protect Italian PDO and PGI against counterfeit and at the same time encourage the publication of accurate information to consumers on the web⁶.

However, fighting against counterfeiting and the phenomenon of “Italian sounding” in the food sector also implies fighting against organized crime in the agricultural sector, which creates real parallel businesses and is increasing

⁴ The protection *ex officio* does not apply to spirit drinks, aromatised wines or grapevine products, pursuant to article 2.2 of Regulation (EU) No 1151/2012. About PDO and PGI of wine sector, see Regulation (EU) No 1308/2013 *establishing a common organisation of the markets in agricultural products*.

⁵ Ministerial Decree No 12511 of 14 October 2013, implementing Regulation (EU) No 1151/2012 (“Disposizioni nazionali per l'attuazione del regolamento (UE) n. 1151/2012 del Parlamento europeo e del Consiglio del 21 novembre 2012, sui regimi di qualità dei prodotti agricoli e alimentari in materia di DOP, IGP e STG”). See also Ministerial Decree No 481 of 18 March 2014. They are available at <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/7805>.

⁶ About the results obtained by ICQRF in 2014 against fraud, misuse, cases of Italian sounding and counterfeit products against “made in Italy” quality and consumers, as well as in the fight against agribusiness crime, see the ICQRF Activities Report 2014, available at <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8580>.

despite the Italian economic recession⁷. In addition to government initiatives on prevention and enforcement regarding criminal aspects, it should be mentioned that, in March 2014, the Foundation “Observatory on crime in agriculture and the food system”, promoted by Coldiretti and Eurispes, was established to analyse and address the problem of “agromafie”⁸.

In line with this, in May 2015, the Italian government presented a new symbol at Expo Milano 2015 developed by the Ministry of Agriculture to identify Italian food products (“*Made in Italy*”) and contrast the “Italian sounding” phenomenon⁹.

Specific attention has also been dedicated to the fight against counterfeiting in the extra-virgin olive oil sector, thanks to law 14 January 2014 No 9 on quality standards and transparency in the virgin olive oil supply chain (“*Norme sulla qualita' e la trasparenza della filiera degli oli di oliva vergini*”), the so-called “save oil law”. In particular, the introduction of mandatory use of non-refillable bottle caps in the case of oils intended for consumption in restaurants, hospitals, canteens and other similar catering establishments (art. 7.2, as emended by the “European law 2013-bis”¹⁰) should be mentioned.

C. Land use

The 2013 Italian Report for III Commission analysed the two Italian drafts of law on reducing land consumption presented by the two successive Governments of 2012 and 2013, underlining their environmental and food security motivations, but also their differences in the legal instruments provided¹¹.

⁷ See Eurispes, *Agromafie. 3° Rapporto sui crimini agroalimentari in Italia*, 2015 (available at <http://www.eurispes.eu/content/agromafie-rapporto-crimini-agroalimentari-eurispes>).

⁸ See the online review of “Osservatorio sulla criminalità nell’agricoltura e nel sistema agroalimentare”, whose scientific committee is chaired by the Attorney Giancarlo Caselli: <http://www.osservatorioagromafie.it>.

⁹ See <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8687>.

¹⁰ Article 19 of Law 30 October 2014, No 161, *Disposizioni per l’adempimento degli obblighi derivanti dall’appartenenza dell’Italia all’Unione Europea - Legge europea 2013-bis*.

¹¹ The 2013 National Report of A. DI LAURO-L. RUSSO describes environmental effects of land consumption (such as impermeabilization of soil) and food security impacts due to the reduction of productivity that traditionally compensated the loss of cultivated land for urbanization or uses other than for agriculture (at p. 1). About the innovations introduced by the proposal of 2013 compared to the previous, the principle of “the priority of the re-use and re-generation” of urban areas can be mentioned, that implies «at least the obligation of appropriate and documented motivation, in all planning deeds, authorisations, approvals and consents and all else, relating to public and private works for the transformation of the territory, concerning the impossibility or the excessive cost of alternative location in areas already undergoing building development, but unused or nonetheless susceptible to regeneration, recovery, re-qualification and a more effective use» (at p. 6). Properly, National Reports noted that some regional laws had already laid down provisions to reduce land take and suggested to see URBANI, “La disciplina

The two drafts were not approved and additional ones were presented later. Although this means that the issue continues to be relevant for Italy, also considering the EU impulse to achieve the goal of no net land take by 2050¹², the complex implications of this issue make the Parliamentary process slow.

The draft law currently under discussion in the Italian Parliament is named “Framework-Law for enhancement of agricultural areas and containment of land consumption” (*Legge quadro in materia di valorizzazione delle aree agricole e di contenimento del consumo del suolo*) and is the result of the unification of several drafts and a series of amendments accepted by the Committee charged with elaborating the final text to be voted by the Assembly¹³. The objectives of the proposed law are: reducing land consumption, enhancing unbuilt-on land, promoting agricultural activities in these areas. It is interesting to note that soil is considered a “common good” and a nonrenewable environmental resource¹⁴. Moreover, it promulgates the principle of “the priority of re-use” of built-up areas that should be guaranteed by regional and local urban planning tools. One of the main debated issues concerns the definition of “agricultural area” and “land consumption” because the scope and the effects of the law depend on the choice of these definitions¹⁵.

The growing awareness of the Italian legislature regarding the sustainable land use issue is also evidenced by examining recent initiatives approved at regional level governing “Land Banks”. The first Region that approved a law on land banking was Tuscany (law No. 80 of 27 December 2012¹⁶). Following its example, also Liguria, Veneto, Lombardia, Molise, Marche e Sicily Regions¹⁷ approved laws on land banking which aim to enhance regional assets consisting of agricultural land and forestry, through the promotion of farm and forest land access to young people. The land banks contain a complete and updated

urbanistica delle aree agricole”, *Trattato di diritto agrario*, vol. 2, *Il diritto ambientale*, Utet, Torino, 2011, at p. 597 ss.

¹² Roadmap to a resource efficient Europe, COM(2011) 571 final of 20 September 2011, para. 4.6 (see *infra* para. 1.2 B).

¹³ The draft of law No 2039 is available at <http://www.camera.it/leg17/126?tab=1&leg=17&idDocumento=2039&sede=&tipo=>

¹⁴ See M. ALABRESE, “Agricoltura e ambiente: quali strumenti per una gestione sostenibile della risorsa terra in Italia?”, *Challenges of Contemporary Agrarian Law. Proceedings of XIII UMAU Congress* (Ribeirão Preto, 2014), San Paolo, 2014, at p. 740 ss. (available at http://www.union-umau.org/images/pdf_ajout/Acts-XIII_Congress_UMAU_2014.pdf).

¹⁵ About data on Italian land take, see ISPRA, *Il consumo di suolo in Italia. Rapporto 2014*, Roma, 26 March 2014 (available at <http://www.isprambiente.gov.it/it/pubblicazioni/rapporti/il-consumo-di-suolo-in-italia>).

¹⁶ See also “Decreto del Presidente e della Giunta Regionale” 4 marzo 2014, n. 13/R (available at <http://raccoltanormativa.consiglio.regione.toscana.it>).

¹⁷ Liguria Law 11 March 2014, No 4; Lombardia Law 26 November 2014, No 30; Marche Law 24 March 2015, No 11; Molise Law 24 March 2015, No 4; Sicilia Law 28 January 2015, No 5; Veneto Law 28 August 2014, No 26.

inventory of the privately and publicly owned lands available for cultivation on offer. The census also regards lands which have been uncultivated and abandoned for a brief period of time (generally 2 to 3 years), that may be allocated and cultivated in accordance with the development plan approved by the appropriate regional body. The purpose is, in fact, to limit environmental degradation, protect soil and the hydrogeological equilibrium, and limit forest fires¹⁸. Regional legislation expressly refers to Italian law No 440 of 1978 on *use of uncultivated, abandoned or inadequately cultivated land*, that requires Regions to apply its principles in order to recover those lands, preserve the hydrogeological equilibrium and protect the environment¹⁹. Therefore, this current regulatory trend recovers and is inspired by the Italian constitutional values of "*rational land use*" (art. 44) and of the "*social function*" of private ownership (art. 42).

1.2. In particular, are they linked to international, European, national and/or regional obligations or guidelines? Are the developments compatible and in conformity with international, European, national and/or regional obligations or guidelines?

A. Food information

The political orientation described above is linked to Union obligations and presents risks of making decisions that are (or whose effects are) not compatible with Union legislation.

Indeed, Regulation (EU) No 1169/2011 on the provision of food information to consumers entered into force on 12 December 2011 and has been applied in all Member States since 13 December 2014 (art. 55)²⁰. Consequently, from that date, the Regulation repeals and replaces previous Directive 2000/13/EC relating to the labelling, presentation and advertising of foodstuffs²¹. The decision to adopt a Regulation on food information instead of a Directive proves the EU's objective of carrying out a plan of unification and codification of food information rules in a more systematic text (Masini, 2015, 191). Therefore, «As regards the matters specifically harmonised by this Regulation, Member States may not adopt nor maintain national measures unless authorised

¹⁸ See M. ALABRESE, *supra* note 14, at p. 745 ss.

¹⁹ Law 4 August 1978, No 440 is available at www.normattiva.it.

²⁰ More specifically, according to article 55 of Regulation (EU) No 1169/2011, point (1) of Article 9(1) shall apply from 13 December 2016, whereas Part B of Annex VI should have been applied from 1 January 2014.

²¹ Art. 53 of Regulation (EU) No 1169/2011: «Directives 87/250/EEC, 90/496/EEC, 1999/10/EC, 2000/13/EC, 2002/67/EC and 2008/5/EC and Regulation (EC) No 608/2004 are repealed as of 13 December 2014».

by Union law. Those national measures shall not give rise to obstacles to free movement of goods, including discrimination as regards foods from other Member States» (art. 38.1).

For this reason, the adoption of an Italian requirement of mandatory information on the site of food production or packaging is likely to open an EU infringement procedure. Otherwise, in accordance with article 39 on *National measures on additional mandatory particulars*, Italy may adopt this measure, notifying the EC Commission and MSs, but only for specific types or categories of foods and justifying it on the grounds of consumer protection, but honestly it seems difficult to maintain.

B. The protection of Italian quality production

The Italian commitment to fighting fraud in the food chain, particularly in the counterfeiting field of the Italian PDO and PGI, and in the extra-virgin olive oil sector through the improvement of the checks and sanctions system, as well as through the introduction of rules on restricting or prohibiting certain selling arrangements on national territory, is linked to European legislation and guidelines. The EU legislative framework is represented first and foremost by article 13.3 of Regulation EU No 1151/2011 (mentioned *supra*, para. 1.1 B), but also by article 8 of Regulation (EC) No 178/2002 (the “General Food Law”), on the prevention of “fraudulent and deceptive practices” and “adulteration of food”.

Moreover, it is useful to mention the “5-point Action Plan” of the European Commission (March 2013) and the EU Food Fraud Network (FFN), created in July 2013 in accordance to Regulation (EC) No 882/2004²², and especially European Parliament Resolution of 14 January 2014 on the food crisis, fraud in the food chain and the control thereof. However, Italy has distinguished itself by promoting European initiatives on food fraud and food related crime.

Of course, Italy is closely following the negotiations for the US-EU trade agreement (Transatlantic Trade and Investment Partnership-TTIP), interested in the effects it might have on the protection of PDO and PGI overseas.

The Italian “save oil law” formally entered into force on 22 November 2013 at the end of the so-called “standstill period” (decision no. 2012/650/I) requested by the European Commission, pursuant to art. 9.3 of Directive 98/34/EC, when it was notified of the draft as it was discussing the modification of labelling rules provided by Regulation EU No 29/2012 on marketing standards for olive oil. Despite this, the Italian law had been approved and published in the Official Gazette of 31 January 2013.

EU label rules for the extra virgin olive oil sector were not changed. At this point, the Italian government had to intervene to modify “save oil law” rules not

²² See http://ec.europa.eu/food/safety/official_controls/food_fraud/index_en.htm.

in compliance with European legislation, one of which was precisely the part of article 7.2 concerning the selling of olive oil in catering establishments, where the use of non-refillable bottle caps was not mandatory if the oil label indicated the origin of the product and the lot. This label however is a derogation from the mandatory European rules on food labelling²³.

Article 7.2, substituted in law No 161 of 30 October 2014 which was necessary to align Italy with its obligations towards the EU as a Member State, deleted the derogation and introduced sanctions for breaching the obligation to use non-refillable bottle caps, that was absent in the original version of the article.

C. Land use

The Italian legislature's interest in the use of arable land, considered both as a non-renewable environmental resource and as a social and economic resource, is linked especially to EU policy for agricultural land protection and in general to the reduction of the intensive use of EU resources (such as water, air, land and soil, biodiversity)²⁴. Although a European regulatory framework does not exist, Italy follows the recommendations of the EU Commission *Roadmap to a Resource Efficient Europe* of 2011. About "land and soil", this document aims to achieve no net land take by 2050 and calls for the MSs to integrate direct and indirect land-use and its environmental impacts in their decision making and limit land take and soil sealing to the extent possible. This goal has recently been strengthened by the EU 7th Environmental Action Programme (2013-2020)²⁵, because it not only proposes the previous goal, but also requires that,

²³ MASINI, "Qualità e trasparenza della filiera degli oli di oliva vergini (commentario breve della l. 14 gennaio 2013, n. 9)", *Diritto e giurisprudenza agraria alimentare e dell'ambiente*, 2013, at p. 20. See, also, AA.VV., *La disciplina giuridica della filiera olivicolo-olearia tra problemi applicativi e spunti propositivi*, Proceeding of IDAIC Congress (Firenze, 5 November 2013), Giuffrè, Milano, 2014.

²⁴ The UE Strategy on soil protection started at the beginning of this millennium (see COM (2002) 179 final of 16 April 2002), but Commission attempts to approve a specific Directive on soil protection failed due to the lack of agreement between Member States (see COM (2006) 232 final of 22 September 2006, establishing a framework for the protection of soil and amending Directive 2004/35/EC). However, considering that soil degradation and loss of agricultural and natural areas have continued to increase, the EU Commission has adopted some guidelines for increasing Member States' resource efficiency (see COM (2011) 571 final, *supra* note 12). It should be remembered that the 68th UN General Assembly declared 2015 the International Year of Soils aiming "to increase awareness and understanding of the importance of soil for food security and essential ecosystem functions" (see <http://www.fao.org/soils-2015/about/en/>).

²⁵ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet". It should be noted that exam of land use also includes the ongoing debate on the conflict between land use for food and land use for bio-energy (see E. ROOK BASILE-S. CARMIGNANI (ed.), *Sicurezza energetica e sicurezza alimentare nel sistema. Profili giuridici e*

by 2020, EU policies shall take into account their direct and indirect impact on land use.

In turn, the European initiative is evidently within the context of the actions called for by international agreements on sustainable development and combating climate change (such as the Rio Conference so-called “Rio+20”).

However, there are also strictly internal reasons. Certainly, the worryingly progressive reduction of cultivated land in Italy, as well as the reduction of the number of employed in the agriculture sector have determined the recent development of agrarian legislation towards the recovery of the productive and social function of the arable land while protecting the environment and climate.

1.3. What are the main elements of each of these developments?

A. Food information

The Italian interest in increasing transparency in food information especially referring to the country of origin or place of provenance of foods is not new. However, this special sensitivity of the Italian Government to issues concerning food information relevant for purchasing decisions appears to be getting stronger, while the share of Italian consumers who choose on the basis of other than economic criteria (e.g. ethical, social, religious) has been increasing, in spite of the economic crisis.

The example examined in this report (relating to the additional mandatory indication of “site of production or packaging”) shows the difficulty of intervening with an appropriate tool at national level to protect food consumers and local economy, without, on the one hand, going against European free competition and non-discrimination principles and, on the other, creating confusion or misleading consumers with an information overload.

B. The protection of Italian quality production

The evolution of the agri-food Italian law shows the permanent search for tools to enable Italy to enhance and protect Italian quality foodstuffs, especially using rules relating to food information and selling arrangements for products in the Italian territory. There is a risk, however, that farmers and, in general, food business operators feel confused and fail to understand if the Italian law is applicable, due to its profile of not compliance with EU legislation or to formal initiatives of the Commission about it.

C. Land use

In the context of the European strategy for an efficient use of natural resources, including land and soil, and the simultaneous approval of the CAP Reform for 2014-2020, the Italian agricultural law renews attention, on the one hand, for the productive function of land and, on the other, for the social function of “agricultural ownership” (i.e. ownership of land), which therefore should not result abandoned or not-cultivated. Moreover, recent legislation shows a renewed interest in the traditional issue of Italian agricultural law related to economically viable parcel sizes, where land fragmentation in many areas is still high.

1.4. What are their effects; and do any difficulties in implementation arise?

A. Food information

See above, para. 1.1 *sub* A e 1.2 *sub* A.

B. The protection of Italian quality production

See above, para. 1.1 *sub* B e 1.2 *sub* B.

C. Land use

See above, para. 1.1 *sub* C e 1.2 *sub* C.

2. Focus on *Sustainable Food Security*

Food security is the overarching theme of EXPO 2015 in Milan²⁶. This reveals the current relevance of the topic both at international and Italian level.

From an international perspective, although this theme has been always the core of UN activity (through FAO), it has had a new impulse after the 2012 Zero Hunger Challenge launched by UN Secretary-General in 2012 in the context of the Millennium Development Goals (MDG). The challenge of Zero

²⁶ In 18 April 2015, in the Expo contest, the Italian Government presented the “Milan Charter” as “a great commitment for citizens, associations, businesses and institutions. A tool for a global citizenship to affirm the right to food as a fundamental human right” (see [www.http://carta.milano.it/en/](http://carta.milano.it/en/)). The Milan Charter is inspired by the Milan Protocol, which is an initiative launched at the 2013 edition of the *Barilla Center of Food Nutrition* International Forum, to address the issue of food sustainability with a triple objective: to promote healthy lifestyles and fight obesity; to promote sustainable agriculture; to reduce food waste by 50% by 2020 (see <http://www.milanprotocol.com>).

Hunger for 2030 means: zero stunted children under 2; 100% access to adequate food all year round; 100% sustainable food systems; 100% increase in smallholder productivity and income; zero loss or waste of food.

Interestingly, although the UN's report on the State of Food Insecurity (SOFI 2015) reported that 72 countries have reached the target of the first MDG to halve the proportion of hungry people²⁷, the issue of food poverty in Europe and especially in Italy has become very worrying in the last years, so that, for example, on World Food Day (16 October) of 2013, the Fondazione Banco Alimentare, together with other Italian charitable organizations, launched a campaign called "Food Emergency"²⁸.

The main cause of the increase in the number of people without access to adequate food in Italy is certainly the economic crisis which began in 2008, which has determined a progressively large increase in the level of unemployment and a significant reduction in real purchasing power.

At the same time, on the food assistance side and at EU level, it is worth noting that EU food stocks have been progressively reduced, so that in 2013 EU decided to close the "Food Distribution Programme for the Most Deprived Persons of the Community" (MDP), which was created and financed by the CAP²⁹. Although it was replaced by the "Fund for European Aid to the Most Deprived" (FEAD) at the beginning of 2014, it was created in the context of social cohesion policy, where the approach adopted was essentially identical to that of the cohesion funds, providing the "most deprived persons" not only with food but also essential items for personal use³⁰.

²⁷ See <http://blog.zerohungerchallenge.org/three-years-of-zero-hunger/>

²⁸ See S. BOLOGNINI, "The future of Agro-energy in the European Union Considering the Relationship between Food Emergency and Energy Emergency", *European Food and Feed Law*, 2015, at p. 197.

²⁹ The MDP was based on the distribution of public intervention stocks of agricultural products and later, due to the reduction of available stocks, also on market purchases. Indeed the CAP reforms that have taken place especially in the new millennium, introducing progressively the decoupling of direct aid to producers (cutting the link between support and production) have led to a progressive abandon of essential food production (e.g. wheat) that can be bought from countries other than Italy at cheaper prices. See S. BOLOGNINI, *ibidem*.

On the urgency of addressing food security at European level, especially through a radical modification of the current CAP, for a prompt return to forms of agricultural support that stimulate the production, see, recently, L. COSTATO, "Agricoltura, ambiente, alimentazione nell'evoluzione dell'Unione europea", *Rivista di diritto agrario*, 2015, I, at p. 227.

³⁰ European Parliament and Council Regulation EU No 223/2004 of 11 March 2014, "On the Fund for European Aid for the Most Deprived" for the 2014-2020 period. See, in this regard, S. BOLOGNINI, *supra* note 27, at p. 197 ss.

For an overview on "the new food insecurity" see A. JANNARELLI, "La nuova food insecurity: una prima lettura sistemica", *Agricoltura e in-sicurezza alimentare, tra crisi della pac e mercato globale*. IDAIC Congress Proceeding (Siena, 21-22 October 2010), Milano, Giuffrè, 2011, at p. 17 ss.

In this contest, the legal issues which have been examined by Italian experts in agricultural law and academics are especially related to:

- the compatibility of 2014-2020 CAP with article 39 TFEU and especially the objectives of “increas[ing] agricultural productivity” and “assur[ing] the availability of supplies”;
- arable land use between the competing interests of energy production (especially photovoltaic or wind plants) and food production (in a territory with scarcity of arable land, such as Italy);
- the strategy to reduce wasting of natural resources (such as water and soil) especially in the food chain (in the contest of EU strategy of 2011 to a resource efficient Europe);
- the specific strategy to reduce food waste and food loss (also in the contest of EU actions against food waste and for food waste prevention³¹) which implies a reflection on whether to modify EU food information rules (e.g. about the date of minimum durability) and EU hygienic rules for promoting food donation by charitable organizations;
- the promotion of the so-called “short supply chain” in food systems as an instrument of food waste prevention, and the promotion of local agriculture and food chains as instruments to support the local rural economy reducing land abandonment;
- the close relationship between food security and food safety and the role of food information;
- the constitutional reform draft, currently being discussed by Italian Parliament³², that explicitly mentions “food security” among the list of domains of exclusive State legislative competence and contextually eliminates the matter of “food” (*alimentazione*) currently mentioned among those of State and Regions concurrent legislative competences (art. 117, para. 3 Cost.)³³. The debate on the draft also concerns whether

³¹ See COM (2014) 398 final, *Towards a circular economy: a zero waste programme for Europe*. See also European Parliament Resolution of 19 January 2012 *on how to avoid food wastage: strategies for a more efficient food chain in the EU*.

In accordance with National Program of Waste Prevention Italian Environmental Ministry published the National Programme for Food Waste Prevention (PINPAS), with the purpose of supporting the recovery of unsold foods and contributing to achieving a reduction of organic waste landfill disposal. One of the recent documents prepared by the PINPAS board concerns the regulatory framework of food donation (PINPAS, *Position paper* “La donazione degli alimenti invenduti verso la semplificazione normativa”, 4 February 2015, available at <http://www.minambiente.it>).

³² Draft constitutional law (*disegno di legge costituzionale*) A.C. 2613-A.

³³ See E. VIVALDI, “Dall’alimentazione alla ‘sicurezza alimentare’. Il cammino della materia nell’ordinamento interno ed i possibili sviluppi connessi all’approvazione del ddl di riforma costituzionale A.C. 2613”, *Rivista di diritto agrario*, 2015, I, at p. 235 ss. The A. noted that the centralisation of power on *food security* (and the subsequent reduction of Regions’ power,

to introduce an explicit constitutional recognition of the fundamental right to food, on the model on the younger Constitutions³⁴.

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[note: *in bold to topics suggested in point 2 of the Questionnaire included in the report, even if only marginally*]

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increasingly limited by EU and State competences) is merely apparent, because the draft provides that States shall have competence in “establishing general and common rules” on food security (*norme generali e comuni*). Therefore, Regions seem to conserve a sort of competence, but the range of this competence is not clear.

³⁴ For an overview of the world recognition of right to food, see FAO, *Constitutional and Legal Protection of the Right to Food around the World*, Roma, 2011 (available at <http://www.fao.org/docrep/016/ap554e/ap554e.pdf>).

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