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Commission I

Statut juridique des conjoints et de leurs enfants dans l'entreprise agricole – **Legal status of cohabitantes and their children in the agricultural enterprise** – Rechtliche Stellung der Partner und deren Kinder im landwirtschaftlichen Unternehmen

National report for Italy

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A. Stocktaking

1. Which are the characteristics distinguishing the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in general?

Legal status of partners and children in agricultural enterprise is outlined by several Italian regulations, as per sets of rules in the following:

1. The first one includes rules concerning internal and external relationships of family business, of which, some referred to farm business only. In the legislation in force, the general rule on family business is laid down in Civil Code, art. 230 bis. It regulates enterprise's internal relationship, ensuring the democratic participation of all family members in decisions concerning business management and the equitable sharing of operating income. Art 230 bis is a general provision of family law, that applies to family farms too; in the last paragraph, it provides a special rule for farms, referring to the application of country's local customs. Indeed, in current legislation, this rule applies as long as it does not conflict with the law and it is considered as a residual rule, suitable for a limited application, considering a modern definition of "family" far from the pre-modern and patriarchal family structures (considered by customs, until 1975 reform of family law).

As far as the relations with third parties, specific rules are provided for tenancy, enforceable to relations between the farmer's family and the landlord, and regulating only obligations arising from the tenancy.

Finally, it is important to notice that, in the frame of company law, Italian legislation does not provide specific rules for family business or family farm business.

2. Secondly, with the aim to avoid breaking up of land (e.g., in the case of transferring of business and in application of succession rules), Italian legislation provides several rules related to the transmission of agricultural enterprise within the family. Some of them are general rules of civil law as in the case of artt. 768 bis and following of Civil Code, introduced in 2006, regulating the agreement for transferring business between family member - and so preventing sharing rules of succession. Other rules are specifically provided for agriculture: in particular, that regulating succession law in tenancy, as well as, outside tenancy law, those providing voluntary agreement among heirs with the aim to preserve the land unit.

3. A third set of rules includes legislative initiative providing subsidies for supporting agricultural holdings, of which, some, implement UE regulations. Among these rules, in particular within UE rural developments measures, specific rules have been settled to shift family farm to new generations and to strengthen family enterprise in agriculture. Furthermore, at the national level, measures are provided to support women in starting or improving enterprises managed by themselves. Besides these measures, other rules provide incentives, related to some aspects of taxation and the simplification of procedures (e.g., bank loan for young farmers).

2. Which are the characteristics distinguishing the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise *in particular*, namely

2.2. in the following branches of law and area fields?

2.2.1. Subsidy law

In Italian legislation there are several categories of financial measures suitable to improve the efficacy of family farms; some of them are specifically oriented to improve women and young farmers condition; other measures (mainly provided by Rural development national strategy plan, in accordance with Regulation 1698/2005) are applied at the regional level, with the goal to support farms, but fully useful for implementation of family farms.

1) Subsidy legislation for enterprises managed by women, with regard to agriculture.

Law 215/1992 “Positive actions for women enterprise” (currently integrated in the “Code of Equal Opportunities”, legislative decree n. 198/2006, artt. 52 ff.) introduced in Italian legislation a set of subsidies aimed at implementing women’s participation to economic activities.

Rules currently provided by decree 198/2006 are available for all business activities. However, general principles, pointed out by art. 52, decree 198/06, pays attention to family enterprises, if managed by women. In general, these provisions have the purpose of “support women enterprises, including cooperatives, promote the competence of women entrepreneurs, facilitate access to financing, support business qualification and management of family enterprises run by women, support the presence of women-run firms”. These measures have been implemented through grants application for starting or improving existing business. Furthermore, has been introduced a Committee for women business, with the task to planning measures in this frame (Decree n. 101/2007). Cash grants for women business are actually financed by an

inter-ministerial agreement (on 14th march 2013) establishing a special section of State Found, dedicated to warranty claims and co-guarantee to cover financial transactions aimed at women business activities.

In this context, but with the specific goal to promote women's work and business in agricultural sector, it is to notice the institution of the "Woman's Business and Labour Observatory for Agriculture" Ministerial Decree of 13rd October 1997: the decree is repealed by art. 12 c. 20 DL 95/2012, converted in L 135/2012, in following of a legislative simplification providing the abolition of boards operating in the public administration; however their duties are currently transferred to Minister of Agriculture.

2) Subsidy legislation for Young farmers.

Among national measures for supporting "self-business" activities, with the aim to increase youth employment, provided by D lgs 185/2000, art. 9 introduce specific benefits for the takeover of young people in the family farm. Grants and soft loans are provided to young farmers (between 18 and 35 years old) taking over the family-run farm, under condition to submit plan for improving his holding. In particular, measures provided by law are: subsidies paid as not refundable grants; technical assistance for investment; training and qualification useful for the improvement plan.

Furthermore, in the frame of rural development, law 441/1998 implemented UE regulation in order to young farmers starting rural activities or taking over a family farm.

In light of a general review of rules concerning legal status of subjects (individual and corporation) operating in agriculture, legislative decree n. 99/2004 introduced fiscal and financial measures reserved to young farmers: exemption of tax registration for tenancy (art. 3) and reduction of fee due to institute a cooperative, if 1/5 of member are young farmers (art 11); tax credit for young farmers obtaining benefits for the initial establishment, in accordance to UE Regulation on support for rural development.

In 2006 was established a government fund for the development of youth enterprise (Law 296/2006), to ensure credit access to young farmers. Likewise yet mentioned for women's business promoting legislation, it has been established by art. 8 Law 441/98 a "Young farmers observatory", i.e. an advisory body actually established at the Ministry of Agriculture, after the legislative simplification cited above (12 c. 20 DL 95/2012).

However, it is to notice that most of mentioned measures are generically addressed to young farmers who start a new agricultural activity, regardless of the presence of a family agricultural enterprise.

2.2.2. Land law and tenancy

As far as the current issue, concerning legal status of family farm, essential aim of national legislation on land law and tenancy, is to ensure the continuity of the agricultural holding.

Tenancy:

Within Law 203/82, regulating tenancy, farmer's family plays an active role in managing relationships with the landlord, both as regards to external relationships, connected to the contract, and as regards to internal relationships among family members.

Art 48 define the family role in the specific context of tenancy relationship; therefore the definition of family and the related rules does not correspond with the requirements of the general provisions on family enterprise provided by family law (see below, 2.2.4).

Indeed, family enterprise defined by art 230 bis Civil code expressly identifies relatives composing family business for the purpose of the law, aiming at regulating only the internal relations among participant taking part to enterprise activities; whereas family farm laid down by tenancy regulation is referred to the business management strictly related to tenancy. Consequently, in this context, the definition of family is also related to the manpower required for the production on the land of tenancy: par. 2 provides that tenancy pursues also with a single participant of the family, if manpower is equivalent to at least 1/3 of that required for farming.

Differently from the general provision of art 230 bis, art 48 L. 230/82, useful only for the purpose of the law, does not identify members of the family as participants to the farm, therefore it does not include a restriction based on kinship degree.

Accordingly these remarks, it may be noted that the legal definition of family depends on the matter in hand: the general rule of family enterprise (230 bis civil code, see wider below: family law) has purely internal relevance, and it applies to entity defined within nuclear family (partner, children and relatives under third degree and relatives in law under second degree); in the case of family farm, by virtue of 48 Law 203/82, no specific restriction of relatives is provided.

For this reason, it is not possible to extend the provisions of the law on tenancy to different relationships, while art. 230 bis represent a general rule¹.

Art 48 provides that relationships arising from the tenancy agreement “exists between landlord and family enterprise, which is represented in respect of him, if he so request, by one of his family members”. Therefore, even if the agreement is signed only by the tenant as individual, the farmer’s family, as legal entity, takes external relevance, as opposite party of landlord: family members involved in the farm management have power of representation in respect of the landlord.

This “external relevance” of farmer’s family, as already noted, is however limited to tenancy. Therefore, relationships involving different subjects (i.e.: bank for loan, also if requested for the agricultural holding activities), are referred only to the farmer.

As far as the “internal relevance” of relationships among family members, art. 48 provides a rule concerning liability for obligation undertaken in the frame of tenancy, firstly providing that family members have to fulfil the obligations undertaken in execution of tenancy with the business goods. Secondly, it is laid down that members who acted in the name and on behalf of the family are personally and jointly responsible for the partnership’s liabilities; only in presence of express agreement, responsibility is extended to the other relatives.

These remarks, however, does not allow to consider the farmer’s family as a simple partnership by virtue of artt. 2251-2290 civil code (although obligation of family participants taken upon as contractual liabilities under art. 48, are regulated following the same rules provided for simple partnership regulation by Civil Code²:

1. the external relevance, provided by art. 48, as already noticed, is expressly limited to relationships referred to tenancy;

2. furthermore, a decision undertaken by a family member representing the tenant is ever charged to the family enterprise, according to the rules of democratic participation to the decisions, provided by art. 230 bis;

3. on the contrary, by virtue of law, each member of a simple partnership is entitled, for obligations concerning the holding’s management, to manage the company as its own (2257 c.c.).

¹ On this issue, see Ferrucci, *La famiglia in agricoltura* (1999), p. 87 ss; Russo, in *Trattato* p. 84.

² Russo, in *Trattato*, p. 186.

As previously noticed, the tenancy relationship, based on the agreement originally signed by the tenant as individual farmer, goes on even in the presence of a single family member (if the manpower is at least one third of what is required for farming): it is evident the relevance given by legislation to the development of productive activity started on the land. Likewise, has to be considered the provision, giving to the tenant the right to transfer the contract to a family member, without the consent of the landlord, also in lack of family enterprise (see also transfer of business).

Land Law

In Italian Civil Code (1942) were formerly provided a rule providing the lowest size of the agricultural land. The size should have been calculated as that “necessary and sufficient for allowing the work of a family farm”. The provision aimed do avoid a breaking up of the land and to preserve the productivity of small family farms; however it has never been implemented by administrative measures required in fixing the legal definition of “lowest size” of the land.

After a long period of inapplicability, these rules have been finally repealed by art. 7 legislative decree n. 99/2004; simultaneously it has been introduced a new rule, with a similar goal (safeguard of land unit in presence of family farm), but leaved to private autonomy, enforceable in the frame of succession: the rule allows the constitution of a land unit at the opening of succession, with the aim to avoid the breaking up of the land among coheirs: “agricultural unit” (see more below, Law of succession): the dimension of land unit is related to the economic viability of the holding, defined by Regions, as access condition to rural development measures.

2.2.3. Law of succession

As far as law of succession, the aim of Italian legislation is, as well as considered about Land and tenancy, to avoid a breaking up of the land. Some special rules are provided for agricultural enterprise (farm) in the framework of Land law and Tenancy (1); other general rules, concerning all family business, should be applied to farms to join this goal (2).

(1) Transfer of land by succession. - Art. 5 *bis* of legislative decree no. 228/2001 (introduced by art. 7 of legislative decree no. 99/2004) regulates the case of the agricultural unit, equivalent to the “extension of land necessary to achieve the minimum level of profitability determined by rural development plans” in order to obtain the related EU financing. The discipline is applied on request of the coheirs planning to enjoy the tax benefits mentioned in the provision

(stamp duty, land and mortgage taxes exemption and reduction of notarial acts costs). Once established the agricultural unit, the indivisibility restriction for ten years is recorded on the public registers of title and implies the break up prohibition, with subsequent invalidity of any deed and testamentary disposition containing it. In order to encourage its implementation, the provision also implies the repeal of the right to the entitlements and to the quota, should the agricultural unit not be established during succession.

The presence of several coheirs implies, for the heir assignee of the farm land, the obligation to pay off the difference in value within two years since the succession opening. Should any dispute arise with regard to the land value, the parties can request the intervention of the specially-instituted court of arbitration at the Ministry of agriculture.

This discipline was already in force in the Italian legal system, although limitedly in reference to farm businesses in upland areas (law no. 97/1994, art. 5 *bis*). Another special discipline, traditionally linked to the Bolzano province territory (undivided farmstead, so called “*maso chiuso*”), is similarly aimed at preventing the break up of land in case of succession, with obligation of direct management of the farm business for ten years by the assignee heir, identified among those grown up in the farmstead and who have participated habitually in the cultivation (Bolzano province law of 28th November 2001, no. 17). To such cases, territorially limited to the Bolzano province, the same tax benefits provided for by the law on the agricultural unit are now applied.

Another provision aimed at avoiding the break up of land at the time of succession, now historically obsolete, but nevertheless built on the same normative model, was included in the land reform law no. 230/1950, art. 10 for dispossessed large landed estates, assigned to growers: also in this case, the land transfer *mortis causa* had to take place in favour of a unique heir, subject to equality of value to the other coheirs during hereditary division.

(2) A specific succession provision is included in art. 49 of law no. 203/82 on farm land tenancy contracts. The provision gives the tenant's heirs the right to take over the farm land tenancy contract, on condition that a link with the business activity exists: the contract take over is provided for as long as the heirs have exercised and keep exercising agricultural activity on the lands object of the contract. However, the provision only refers to the take over of farm land tenancy contracts (nor is it necessarily connected to the presence of the cultivating family business). As for the hereditary division of the business among coheirs participating in the family business, the general provision of art. 230 *bis*, paragraph 5, applies: “in case of hereditary division or transfer of

the business, the participants mentioned in paragraph 1 have a right of pre-emption on the business”.

2.2.4. Family law

The evolution of national law, traceable back to the family law reform (1975), has marked the transition from a patriarchal family model to the extension, also in agriculture, of rules set in defence of equality of treatment between family members in the regulation of family businesses and in the distribution of work within the family in general.

In fact, in the civil code (1942), the special discipline dedicated to the farm business (articles 2135 – 2140 civil code) initially included a provision specifically addressed to the legal regime applicable within peasant families.

The institution, introduced under the name of “tacit family community”, remanded to local customs the determination of rules relating to internal business relationships, and complemented the existence of specific provisions for the farm family³, mentioned within the sharecropping co-operative contract, the stipulation of which has been forbidden by law no. 756 of 1964 and the legal regime of which is regulated by farm land tenancy contracts pursuant to law no. 203 of 1982.

The model identified in the 1942 legislation corresponded to the extended family one, justified by the need for agricultural workforce; in this perspective, the reference to local customs had the goal of shaping rules according to the different realities of Italian countryside. In any case, the regulation emerging from customs sanction a strong inequality of (economic) treatment between the position of women and adolescents compared to that of adult men⁴; it identified a concept of family composed by people not necessarily linked by family ties, but rather by “common roof and dinner-table” and by the “collective management of a common business, i.e. the common economic exploitation of one or more productive goods passed to the participants through hereditary succession or joint purchase”⁵.

³ The report to the Civil code (Civil code: report of the Minister of Justice: anticipated by the report on the bill on “the legal value of the employment chart”, Rome, Istituto poligrafico dello Stato, 1943) states that: “art. 2140 makes reference to the customs as for the discipline of tacit family communions in the exercise of agriculture and therefore substantially with reference to the determination of internal relationships between the farm family members”.

⁴ Cfr. Costato, *Corso di diritto agrario*, p. 375: the ownership of family property was divided so as to guarantee to women and adolescents a share equivalent to 50% of what was attributed to men.

⁵ Cass. 1st February 1960, no. 157. Although art 2140 Civil code concerning the “tacit family community” has been repealed, and, since 1975, the regulation of corresponding situation is

The overcoming of this discriminatory custom and of the patriarchal family approach in the internal regulation of the farm business relationships has been achieved with the adoption of art. 230 *bis* introduced in the civil code within the family law reform of 1975 which subjects the reference to customs, as provided for in the discipline on tacit family communions in the exercise of agriculture, to the condition that they are not in contrast with the legal provisions introduced in order to regulate the internal family business relationships.

Therefore, starting from the reform, the general discipline applicable to the family business constitutes the general framework for the regulation of internal family business relationships in agriculture, in the absence of a different legal configuration of the relation (company, subordinate work relations). The customary rules, although still formally referred to in the law, in this context, keep a marginal significance, as in large part incompatible both with the constitutional principles and with the special discipline on family businesses⁶.

According to art. 230 *bis*, the family business discipline applies if no other legal relationship between the parties emerges; its goal is to guarantee “the right to maintenance according to the wealth condition of the family” and the “family business profit-sharing and participation to the assets purchased with such profits as well as to the increment of the business, also with regard to the start up, in proportion to the quantity and quality of the work provided”, as well as to overcome the inequality of treatment between family members caused by sex or age⁷. The property rights awarded to the family members participating in the business consist of the definition of a right of credit towards the family entrepreneur, they vary according to the quantity and quality of work provided and are in any case influenced by the performance of the business.

The right to maintenance is guaranteed to family members regardless of the activity carried out.

submitted to art 230 bis Civil Code, for former relationships, the ancient rule is still suitable of application. In order to define the contents of the “tacit family community”, the Supreme Court recently declared that evidence is done by mutual cooperation among family members; not only by a community property (Cass 7981/2013).

⁶ See also, *Comunione tacita e impresa familiare*, in Alessi Pisciotta, *L'impresa agricola*, Il codice civile commentario, 2 ed. Milano 2010, p. 368 ss.

⁷ Paragraph 1, last sentence, states that “the family members participating in the business who do not have full legal capacity are represented in their vote by those exercising parental authority on them”; paragraph 2 specifies that “women’s labour is considered equivalent to men’s”.

Furthermore, the provision also guarantees the participation of all family members to the decisions relating to the business management, adopted by majority.

2.2.5 Social security law

Relatives' occasional, joint and gratuitous work performances within the scope of the agricultural activity are excluded from labour market rules. According to art. 74 of decree no. 276/2003, when they do not constitute a subordinate or a self-employment relation, performances carried out by relatives and in-laws up to the fourth degree of consanguinity, occasionally or periodically, in the short run as help, mutual aid, moral obligation without remuneration, except for maintenance and execution expenses, are excluded from the general discipline on employment and labour market, contained in decree no. 276/2003 and do not entail any contributory obligation.

The ban on discrimination in the access to social-security services is sanctioned by art. 30 of decree no. 198/2006.

2.2.6 Tax law

Forms of soft taxation are provided for in relation to the above mentioned measures: in particular in the constitution of the "agricultural unit" under art. 7 decree no. 99/2004, or in the succession of young farmers in the firm. On the contrary, in general, the forms of soft taxation provided for by the Italian legislation for farm business are linked to the farmer's volume of business, rather than to subjective aspects.

2.2.7. Corporate law

Farm businesses and, among them, family farm businesses, can be freely established in individual or corporate form.

The introduction of "farm corporations" in Italian law (law no. 99/2004, art. 2) pursues the sole aim of awarding the status of farmers to such individuals, if they carry out the agricultural activities defined according to art. 2135 civil code (land cultivation, silviculture, livestock raising and related activities), thus allowing them to enjoy the related benefits provided for farms by national law.

In company law, no specific corporate form has been provided for in relation to family businesses: as a matter of fact, the family business has a mere internal relevance and art. 230 bis is actually applied in the absence of any form of different legal relationship between family members, whether of corporate or self-employment nature.

2.2.8 Transfer of business

Within the scope of tenancy contracts, a case of sell-off within the family is made possible by art. 48 of law no. 203/1982 (see above: Family law). Art. 48, par. 4, allows the transfer of the tenancy contract, without the landlord's consent, to a family member, even in the absence of a family business, provided that the family member carries on the direct cultivation of the farm land and has been carrying out agricultural activity for at least 3 years as his main activity.

A wide-ranging provision, applicable to all sell-offs within the family, aimed at facilitating business transfers within the family as anticipation of inheritance succession, can be found in articles 768 *bis* and followings of the civil code, introduced by law no. 55/2006. The new institution is named "family pact": it is achieved through a "contract with which, consistently with the provisions on the subject of family business and in obedience to the various corporate typologies, the entrepreneur transfers, entirely or partially, the firm, and the stockholder transfers, entirely or partially, his equity stake, to one or more descendants". The discipline also allows the firm to be transferred to several heirs and the transfer to concern single business branches or company shares. Said provisions, as they have a general scope and are applied regardless of the firm activity, do not set any limit to the fractionization of the land already part of the farm, by the beneficiary descendant, whereas such limits are set in case of inheritance succession through the constitution of the agricultural unit for small size lands. However, these provisions are applicable during inheritance successions at the discretion of the heirs and they do not invalidate the family pact.

2.3 by comparison

2.3.1 to partners and their children in the non-agricultural enterprise?

As already mentioned, the specific regulation of family farm businesses is limited to certain sectors. A specific set of rules exists for tenancy contracts, for inheritance law, as well as for the family business-related concessions; other provisions concerning the family business have, on the other hand, a broad scope. The purpose of the specific provisions for the agricultural sector is to guarantee the continuity of the firm practice and in particular to avoid fragmentation of farm land, if small sized. Among the specific support measures for agriculture, the aim of facilitating the generational transition in favour of young farmers can be pointed out, in view of the increase of the agricultural sector competitiveness and of the preservation of the population in the rural environment, through the continuity in the farm activity started within the family.

2.3.2 between female and male partners in the agricultural enterprise?

Some specific (abovementioned) provision concern women's entrepreneurship, not only in agriculture; the principle of equality of treatment between men and women has been guaranteed in the Italian legislation with the family law reform of 1975 (see above).

B. Legal Developments

3. Has the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in the jurisdiction of your country changed with regard to the following branches of law and area fields? If yes, how and to which extent?

3.1. Subsidy law

The abovementioned national provisions, since the beginning of the '90, paid particular attention to female entrepreneurship, join to UE measures on support for rural development, concerning young farmers: these measures, implemented in Italian legislation in accordance to rural development national strategy plan, in accordance to UE Reg. 1698/2005, represent a legal instrument for implementing the transfer of business within the family too.

Within the rural development rules adopted at regional level, it is to notice that measure 112 (axis I, rural development) aim at improve generational renewal in agriculture allowing a subsidy for young farmers, setting up for the first time a agricultural business and undertaking liability and fiscal responsibility of the holding.

3.2. Land law and tenancy / 3.3 Law of succession

The most important innovation in the national legislative framework is represented by introduction of the "agricultural unit", art. 7 of legislative decree no. 99/2004

Although the system is based on private autonomy at the opening of the succession (it applies on request of the heir interested in the assignment of the land), the provision is strengthened by tax advantages and by the provision of the loss of entitlements and quotas in case of fragmentation of the land under the minimal size.

A relevant question coming out from the application of this rule is to fix the time of constitution of the land unit, in order to establish his indivisibility for further 10 years, as required by law. Indeed, the land

unit should be formed by a series of land estate, and therefore it may require several purchase acts.

Some regional laws set a time limit within it is allowed to constitute the agricultural unit, starting from the date of purchase⁸. As regards requirements for the constitution, according to tax courts it is enough that the heir has the legal qualification of professional agricultural entrepreneur and that he undertake to cultivate the land as farmer or as professional agricultural entrepreneur⁹.

Another question, discussed in application of art 7, is represented by the economic viability of the land as defined by regional development plans. Indeed, in some regional rules, the constitution of land unit as “agricultural unit” under art 7 decree 99/2004 is allowed only until it join the minimal size; whereas the opposite interpretation seems in compliance with the aim of legislation¹⁰.

3.4. Family law

According to the case-law on art. 230 bis, this rule regulates only internal relations between family members of the enterprise, so it does not affect the legal nature of the partnership.

The Constitutional Court (case n. 419/1993), confirming the legitimacy of a regional law that did not consider family business under the provisions for the protection of specific categories of entrepreneurs and employees, said that family business “is as quite peculiar membership institute: an institute that excludes on one hand, in the external relations, the presence of a corporate bond susceptible to extend the management responsibility beyond the figure of the entrepreneur; on the other hand, in internal relations, the possibility to consider the working activities of relatives as dependent job”.

A further consequence of exclusively internal relevance of family business regulation is that the pre-emption right to purchase neighbouring land, under art. 8 Law n. 590/65, is not recognized to family members, also in presence of a family farm (as decided by Supreme court: Cass. 2896/99).

The Supreme Court case-law on art. 230 bis fixed requirements to define as criteria for profit-sharing, the increasing of business productivity related to the quantity and quality of the work provided (Cass 5448/2011, Cass 433/2012); as well as the costs of maintenance (C

⁸ Toscana Region, law no. 45/2007 art 9.

⁹ Provincial Tax Court of Foggia, case no. 115/06/10, of 15th July 2010

¹⁰ Iannarelli, *Del riordino della proprietà rurale, commento agli artt 846-848 c.c* in Della proprietà, commentario al codice civile diretto da Gabrielli, artt 810-868; Torino 2013 p. 554

4057/1992); instead, it was excluded that remuneration of participant's job would be calculated considering the remuneration paid to employees for similar jobs. (C 11332/99).

3.5. Social security law

The labour market reform (introduced by Law n. 92/2012, proposed by the employment minister of Monti Government, Elsa Fornero), assigned to the special category "occasional form of employment", available for fees lower than 5000 Euros, the following typologies of employment, in the field of agriculture: (1) seasonal work, employing young men until 25 years old as well as retired persons; (2) employment of workers, not included in the list of agricultural workers, by an enterprise with a volume of business lower than 7000 Euros (art. 70 d.lgs. 276/2003, modified by art 1 c. 32 L. 92/2012). The method of payment is based on a credit instrument, including both loan and social security contributions; it is purchased by the employer from the Social Security National Body, and the worker collect his payment from the body itself¹¹.

Furthermore, the legislation in force after Law 92/2012, excluded family business from the abovementioned simplified payment system.

3.6. Tax law

(see above, 2.2.6)

3.7. Corporate law

Corporate law does not provide a special form of partnership, neither for agricultural activities, nor for the family enterprise. However, since d. lgs 88/1993, implementing EU Directive n. 89/667/EEC, in national legislation has been introduced the single-member private limited-liability company. This regulation represented an opportunity for family enterprise interested in a transformation in companies, since the liability is limited to the paid up capital, but the enterprise preserve the single-member status and relatives are involved only in internal side.

3.8. Transfer of business

The "family pact" (see above, 2.2.8) is an important innovation in Italian legislation.

¹¹ See: Circolare INPS 29th March 2013, no. 49, on accessory occasional employment (par. 3.3) :
<http://www.inps.it/bussola/visualizzadoc.aspx?svirtualurl=%2Fcircolari%2Fcircolare%20numero%2049%20del%2029-03-2013.htm>

However, as general rule of Civil code, its application is not limited to the agricultural law, although it could be usefully applied in this field too.

4. Are the legal developments concerning the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, as established in your country, traceable to trends

4.1. in national law, and to which in particular?

In national legislation, most important legal developments in this field have been: in 1975, the reform of family law with the introduction of art 230bis Civil code, about family enterprise; in 1982 the legislation still in force on tenancy, that introduces rules concerning the role of family in order to tenancy obligations, as well as a special succession scheme for succession following the death of an agricultural tenant.

More recent measures, considered above, are not compulsory; they are based on freedom of contract or they introduce incentives measures.

4.2. in European law, and to which in particular? Which role are playing the advancement of the CAP, the subsidy law of the EU and the EU programmes EAFRD¹² and LEADER⁺?¹³

In Italy, as reported by data of 6th General Agricultural Census (2010), around 99% of farms use family workforce; 30,7% of chief of enterprise is female¹⁴.

Previous data (ISTAT 2000) show that 90% of agricultural farms are managed by family, with prevalence of individual enterprises (only 2% of farms are companies, located in most competitive areas).

In this framework, UE measures following rural development programs allowed a significant structural change of the transferred holdings through the measure for the setting-up of young farmers, although if measures are not aimed to transfer business within the family.

¹² European Agricultural Fund for Rural Development.

¹³ The term 'Leader' is a French acronym meaning "*Liaison entre actions de développement de l'économie rurale*" (in English: 'Links between actions for the development of the rural economy').

¹⁴ <http://www.istat.it/it/archivio/66591>. Last census confirm previous data (2000): a large prevalence of agricultural holdings managed by family: of the 2.457.960 holdings using familiar workforce (i.e. 94,7% of total), 2.108.005 of them use only workforce from family (81,3%) (<http://censagr.istat.it/principilirisultati.pdf>).

However, measure n. 112 occurs in each regional experience¹⁵. Recipients of financial measures are individual farmers or relatives working in the family enterprise, as well as companies.

In the implementation of UE measures, promotion of equality between men and women and non-discrimination is condition considered in the selection of enterprises admitted to subsidies, in accordance with UE Reg. no. 1698/2005.

4.3. in *international* law, and to which in particular? Are the country reports of the UN-Committee on the Elimination of Discrimination against Women (CEDAW) of relevance in this respect?

VI Report provided by Italian government to CEDAW (2009) includes comments on the situation of women in rural area (about this point it is noticed that the principle of equal treatment is respected by national policy: p. 483) and on the situation of business activities managed by women (it is pointed out that in agricultural sector, the percentage of female enterprise is higher in comparison with other fields: 29,3%). Furthermore, the report analyse the legislation on equal treatment and the related business financing¹⁶.

C. Prospects

5. In your country, are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, *in general*?

The previous analysis pointed out main legislative issues improving legal status of relatives in the family agricultural enterprise, both in civil and public law, aimed to improve legal status of young people and women in the frame of family enterprise.

¹⁵ For example, in Apulia Region, 80,12%, of subsidies are paid out to young farmers ; in Toscana Region has been selected a range of measures where the participation of young people and women is considered a priority in acceding to subsidies: measures n. 112, 114, 121, 122, 123 a, 311, 312, 313 (see: PSR 2007-2013 Regione Toscana, <http://www.regione.toscana.it/documents/10180/70126/testo%20vademecum-2/8ef0d954-b160-4d78-8d6e-50c27f0e2f55>).

¹⁶ http://www.retepariopportunita.it/Rete_Pari_Opportunita/UserFiles/ONU/VI_RAPPORTO_CEDAW_VersioneItaliana.pdf, Punto 484 ss

6. In your country, are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, *particularly* with regard to the following problematic issues

6.1. Demographic ageing and rural depopulation, with due regard to the exodus of women?

Such legislative measures are contemplated in range of support for rural development, in particular subsidies for young farmers.

6.2. Multifunctionality of agriculture and diversification of production, with due regard to the situation of women in part-time farming operations?

An important role in this direction has been played by measures provided by Rural development national strategy plan, as “social agriculture”, in accordance with UE Reg. no. 1698/05, axis 3, quality of life in rural areas and diversification of the rural economy: agricultural activities are oriented to diversify rural economy, into non-agricultural activities, supporting micro-enterprises, developing services in rural areas. However these measures are open to all agricultural enterprises¹⁷

6.3. Training and development and access to information and to information technology, with due regard to the requirements of women with multiple responsibilities?

Besides measures promoting development in technologies in rural areas, specified in Rural development national strategy, in accordance with 1698/2005, Art 52 b, legislative decree no. 198/2006, includes measures for setting up professional training of women managing enterprises.

6.4. Participation in organisations and in politics, with focus on the participation of women?

Councillors of equal opportunities are set up by art 12 D. lgs 198/2006 (Code of Equal opportunities), with the aim to promote actions and to adopt policy guidelines on issues provided by law.

¹⁷ INEA, *La valutazione delle azioni innovative di agricoltura sociale* p. 96 ss.

7. On the basis of experiences made in your country, are there measures identifiable which improved the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in a sustained manner and which may be borrowed by other countries?

National regulation concerning family enterprise (art 230 bis Civil code, introduced by Law 151/75) find application in the framework of agricultural holdings, also taking on account of the large presence of family enterprise in this sector. The legal scheme applied to agricultural enterprises gave positive results, regulating aspects previously left to rural customs, and getting over difference of treatment between family members. Family enterprise participants receive in this framework a basic legal protection in order to their participation to decisions and to the sharing of business profits.

In more recent legislation, a significant legal scheme introduced to avoid the breaking up of the land in case of succession (and consequently carry on the agricultural business in the framework of the family) is art 5 of legislative decree no. 99/2004, under that the heir is allowed to ask the transfer to himself of the family land, in order to constitute a minimal size agricultural unit.

Although its application is left to private autonomy, the law introduce deterrents (as loss of quotas or payment entitlements) and incentives (tax exemptions) in order to encourage the application of this rule.

This rule is expressly referred to succession of land; it is relevant in consideration of the legislative goal, pointing out the connection between the presence of the family holding and the risk of breaking up the productive unit at the moment of the succession.

For the same reason, an other significant rule, in order to transfer business in the frame of family sphere is art. 768 bis Civil Code, introduced by law no. 55/2006, which is a general rule of Civil Code, also suitable of application in case of agricultural holdings.

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Legislative Decree no. 99/2004 art. 3, art 11 (young farmers), art 5 (establishment of agricultural unit in succession law)

Law no. 203/82 (law of tenancy): art 48 (farmer's family) art 49 (succession law)

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