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**L'AGRICULTURE ET LES EXIGENCES DU DÉVELOPPEMENT
DURABLE –AGRICULTURE AND THE REQUIREMENTS OF A
SUSTAINABLE DEVELOPMENT –DIE LANDWIRTSCHAFT
UND DIE ANFORDERUNGEN AN DEREN NACHHALTIGE
ENTWICKLUNG**

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1-2. The concept of “sustainable development” starts surfacing at a social and political level in the early ‘70s of the last century, when the critical aspects of the predominant economic model, founded on the rules of free market and output maximisation, became evident.

In that period the “environmental” issue broke out and a new approach was devised whereby, on the basis of the realisation that natural resources are limited, the concept of “growth”, meaning exclusively economic growth, was set against that of “development”, and in particular of “sustainable development”, whose meaning implies an improvement, in the broad sense, in the quality of life along with a cautious and rational use of resources.

Very briefly, it is well known that the key steps of such process were as follows:

- the so called Meadows Report (1972), drafted by a few M.I.T. scientists, as an assignment by the Rome Club, titled *The limits to growth*;
- the Stockholm Conference (1972), along with the execution of the so called Stockholm Declaration;
- the Brundtland Report, *Our common future* (1987), prepared by the *World Commission on Environment and Development*, set up by the general Assembly of the United Nations and composed of representatives from 21 countries;
- the United Nations Conference on Environment and Development held in Rio de Janeiro (1992), along with the execution by participant countries of a statement of principles, the so called Rio Declaration, and of an action plan, the so called 21 Agenda, which identified the targets of sustainable development in relation to several areas; along with two multilateral conventions on environmental issues of global nature (climatic changes and biodiversity); along with the establishment of a Committee for sustainable development, charged inter alia with the task to monitor the progress made by States in the implementation of the 21 Agenda;
- the World Summit on sustainable development held in Johannesburg in 2002 and the Implementation Plan adopted thereby;
- the Amsterdam Treaty of 1997 mentioned sustainable development expressly. Section 2 set out that “The Community shall have as its task....to promote throughout the Community a harmonious, balanced and *sustainable development* of economic activities, a high level of employment and of social protection” and that “Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities....in particular with a view to promoting *sustainable development*”;

- In 2001 the EU adopted a strategy for sustainable development (Commission Communication of 15 May 2001 '*A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development*' Com(2001) 264), subsequently revised in 2005 (Commission Communication of 13 December 2005 *on the review of the Sustainable Development Strategy – A platform for action*. Com (2005));

- Finally, the current Treaty on European Union provides (section 3.3) that "The Union shall establish an internal market. It shall work for the *sustainable development* of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment".

The Brundtland Report sets out the definition, possibly the best known one, of "sustainable development": «development that meets the needs of present without compromising the ability of future generations to meet their own needs».

The concept of sustainable development is based on the concept of fairness, meaning two different, albeit strictly connected, aspects: fairness among generations and fairness within generations.

Within the context of the former, the principle of sustainable development implies that the current generation's undeniable right to satisfy its own needs by using the planet's resources be exercised so as not to jeopardize future generations' possibility in turn to satisfy their own needs.

Therefore the governments' task shall be to enforce legal provisions suitable to allow actions on the environment (both as to exploitation of resources and pollution) which appear 'sustainable', in that they comply with the biophysical limits of the ecosystem, pursuing the right balance between the needs of economic and social development and the need to safeguard the environment.

Within the context of fairness within generations, the "there is no development without environment" slogan is turned into the opposite "there is no environment without development". As a matter of fact, the problem of environmental deterioration cannot be solved without simultaneously solving the problem of poverty in the countries of the 'south' of the world. It is in those countries that life conditions trigger the exploitation of the environment and its resources beyond any limit.

So the principle of sustainable development becomes “multidimensional”. Social development goes alongside with economic growth and protection of the environment. No development is feasible unless all are guaranteed the satisfaction of certain key needs, such as food, water, education, health.

For a long time no precise definition of sustainable development could be found in Italian law. However, provisions exist which may be construed in the light of the above principle; other provisions refer expressly to such principle; in other cases, provisions derive from that principle or they implement it although they do not refer to it expressly.

A definition, albeit indirect, of the concept of sustainable development, can be found in the recent Code of the environment of 2006, which will be touched on later.

Below are only the most significant legal instruments referred to above.

- The Italian Constitution, dated 1948, does not include any clear reference to the principle of sustainable development. Nevertheless, some of its provisions may be construed evolutionally, as referring implicitly to such principle.

Section 2 recognises and guarantees people’s inviolable rights and provides for the fulfilment of duties of solidarity in all public and private contexts, so implicitly also including solidarity among generations.

Section 9 sets out the Republic’s duty to safeguard landscape and so also the environment, with a view therefore to ensuring their preservation to the benefit of future generations.

Sections 41 and 42 of the Constitution enshrine the social value of respectively the freedom of economic initiative and private ownership.

Section 44 authorises the charging of land private ownership with onuses aimed at achieving the rational exploitation of land, as well as fair social relations. Although the terms used are dated, it may nevertheless represent a limit to the exploitation of land on the ground of its sustainability.

So the principle of sustainable development is alive in the Constitution, although it is not mentioned expressly.

- Act 394 of 6th December 1991 “*Framework law on protected areas*”, sets out principles for the institution and management of natural areas with the goal to guarantee and promote the preservation and enhancement of the natural wealth of the country, providing expressly for “*the preservation for present and future generations*”.

- Act 36 of 5th January 1994 “*Protection of water resources*”, while stating that all waters are public assets, also stated that they are a resource to be safeguarded and used on the basis of solidarity, in accordance with the expectations and rights of future generations to avail themselves of an undeteriorated environment.
- Act 97 of 31st January 1994 “*New provisions for mountain areas*” promoted the economic and social development of mountain areas whilst adapting it with the protection of the environment in such areas.
- Act 157 of 11th February 1992 “*Provisions for the protection of wild animals and hunting*” regulates hunting and safeguards economic and recreational interests connected therewith along with the preservation of animals and their habitat.
- Act 499 of 23rd December 1999 “*Rationalization of actions in the agricultural, agri-food, agri-industrial and forest sectors*” promoted development and protection policies of the rural world by supporting multifunctional economy within the framework of sustainable development and territorial rebalance.
- Acts 226, 227 and 228 of 18th May 2001 provided that policies on fishery and aquaculture must follow principles of sustainability and responsibility towards the environment and consumers; that forest policies must pursue the preservation, increase and rational management of the national forest heritage in compliance with commitments undertaken by Italy in the areas of biodiversity and sustainable development.
- With Act 101 of 6th April 2004 Italy undertook to promote the sustainable use of phytogenetic resources for nutrition and agriculture.
- The Decree of the Ministry for agricultural and forest policies dated 5th March 2001 regulates the use and preservation of germplasm in the interest of farmers and as a way to guarantee the sustainable development of agriculture and food security.
- The Code of the environment of 2006 (Act 152 of 3rd April 2006) provides that any human activity, having legal relevance for the purposes of the code, must comply with the principle of sustainable development, in order to guarantee that the satisfaction of current generations’ needs does not jeopardise future generations’ quality of life and possibilities. To such end it is necessary to find a balanced relationship between current resources, due to be saved and passed on to future generations, and social and economic development, in accordance with the principle of solidarity among generations.

The Code of the environment also provides for compliance with the above principle by the Public Administration; it must give the utmost

consideration to the protection of the environment whenever a choice is to be made between public and private interests.

Thanks to the Code of the environment the principle of sustainable development is enforced also in the context of specific administrative processes aimed at monitoring the compatibility with the environment of certain private and public plans and programmes (Strategic Environmental Evaluation, VAS in short in Italian), projects (Evaluation of Environmental Impact, VIA in short in Italian). The goal of such evaluations is to ensure that anthropic activity be compatible with the conditions of sustainable development.

In Italy the entity having competence over sustainable development is the Ministry for the environment and the protection of land and sea. Within the Ministry a Directorate General for sustainable development, climate and energy has been set up and is in charge of promoting programmes and projects for sustainable development, also through cooperation with entities and associations operating in the area of environmental protection, promoting initiatives for employment in the environmental sector and agreements with companies for the pursuit of targets of sustainable development, as well as incentives to investments for the development of renewable energy resources.

In 1993 the Ministry for the environment approved the National Plan for Sustainable Development (PNSS in short in Italian) which enforced the 21 Agenda and was the first attempt to direct national policies towards sustainable development. The plan provided for certain priorities/emergencies, due to be solved through actions to be carried out in the sectors of industry, agriculture, tourism, energy, transports, waste. In particular the plan stated that sustainable agriculture means “a technically adequate, economically valid and socially acceptable productive activity aimed at preserving the soil, waters, the genetic heritage of plants and animals”.

The PNSS set out certain priorities within the agri-environmental actions of the common agricultural policy (PAC in short in Italian). a) Reduction in the amount of nitrogen, deriving from livestock or fertilisers, released into the soil, with a view to protecting waters from pollution, in particular of nitrates. b) Decrease and rationalisation in the use of pesticides. c) Adoption of agricultural techniques derived from biological agriculture. d) Withdrawal of crops from production and change of use of agricultural areas, as well as uncultivated land, to grow forests. e) Reduction of livestock resources for surface unit and promotion of the breeding of local animal species liable to extinction. f) Adoption of other production methods compatible with the need to safeguard the environment, such as the rationalisation in the use of water for irrigation purposes, also by making use of non-conventional sources, and the preservation of landscape. g) Destination of new areas to natural parks and development of agri-tourism related activities.

However, the national plan for sustainable development has not been implemented, because of its failure to provide for a suitable institutional and procedural organisation.

In 2002 the document named “National Strategy of Sustainable Development” was adopted. It focused on the following issues: “climate and atmosphere”, “nature and biodiversity”, “quality of the environment and quality of life in an urban context”, “sustainable use of natural resources and waste management”.

A specific fund exists for sustainable development.

3. Relating to “ensure the food health guarantee; the preservation of the environment and the mineral resources, which agriculture needs”, the main difficulties are: pressure of the global market on the environment and cultural heritage of rural areas; water pollution; on the contrary the main preferences are the modern multi functional nature of agriculture, the new role played by farmers as guardians of nature, the successful spread of biological agriculture.

Relating to “support the feasibility of agricultural activities and improve the quality of life of farmers and society in general”, the main difficulties are: the low reward of farmers in the markets of agricultural products; difficulties among farmers arising from generation-related changes; the main preference is for the multi-functional nature of agriculture.

Relating to “public participation in the adoption of resolutions”, the main difficulty is low educational level, whilst the main preference is that people have the right to be listened in any administrative proceeding they are involved.

4. On the basis of EC Regulation 1628/2005 on rural development Italy prepared a 2007-2013 national strategic plan for rural development. Each Italian region (in Italy competence over agriculture lies with regions) prepared individual plans of rural development setting out the following measures:-

Axis 1. improvement in the competitiveness of the agricultural and forest sector;

Axis 2. improvement of the environment and rural areas;

Axis 3. quality of life in rural areas and diversification of rural economy;

Axis 4. implementation of the Leader plan.

In particular axis 2 provides for measures aimed at promoting the sustainable use of agricultural land and forests. In particular the goal of axis 2 is to enhance the environment by supporting the management of the land and implementing the European strategy of environmental sustainability.

Such measures are aimed at the protection of waters and soil, as well as at the preservation of biodiversity, the reduction in gas emissions, the absorption of carbon by agricultural land and woods, the achievement of higher standards as to animals' welfare.

The support given to sustainable methods of land management is one of the instruments contributing to the achievement of the general goal of sustainable development, in particular by encouraging farmers and owners of forests to deploy methods of use of the soil compatible with the need to safeguard the environment and the landscape and to protect natural resources.

Within such context particular relevance lies with the so called agri-environment payments made to farmers who undertake agri-environment commitments exceeding specific legally binding provisions. The farmer makes a certain performance and he receives a payment. Such payment may have the nature of a compensation or a contribution or both. In the first case unprofitable investments are financed and the lower income deriving from the loss of productivity is topped up. In the second case the point is that of remunerating the implementation of measures aimed for example at the preservation of land. In the third case the financed initiatives aim at the same time at targets of preservation and to put in place productive investments.

The implementation of the conditionality principle is certainly important vis-à-vis sustainable development.

5-8. The role of democracy and public participation also in connection with the implementation of the principle of sustainable development is obviously key.

With respect to the issue of public access to information, Italian law provides for both a general right of access to administrative documents and a right of access in the environmental area in particular. An actual enforcement is granted to both at judicial level.

The participation of social parties (public and private institutions, trade unions, producers) occurs through processes of consultation, which do not have binding effects though.

6. Italian law enforced the principles of precaution, prevention and that of “the polluter pays”, whose regime is to be found in the Code of the environment, so as to make the protection of the environment more effective also in connection with the discharge of economic activities. Such principles will be touched on in point 9.

7. The main instruments to safeguard the environment used in particular with regard to waters are the license (as to the use) and the identification of quantitative limits, authorizations and sanctions (as to pollution).

Vis-à-vis landscape, restrictions involving prohibitions, authorizations and sanctions.

With respect to the protection of biodiversity, the creation of special area of conservation (ZPS in short in Italian) and Sites of Community importance (SIC in short in Italian).

9. Biological agriculture, first regulated by (EEC) Regulation 2092/1992 and now by (EC) Regulation 834/2007, is well known in Italy. It is based on a production method which is more compatible with the need to protect the environment and natural resources and also has a favourable impact on natural biodiversity. Therefore priority is given to such production system, whose spreading over sufficiently large areas contributes to the attainment of the targets to safeguard waters and preserve biodiversity. As an example in its 2007-2013 PSR Tuscany reinforced, through the attribution of additional resources, the item “Introduction or preservation of biological agriculture” within the agri-environment payments.

Products deriving from biological agriculture, marked by a specific label, may avail themselves of instruments such as protected designation of origin (DOP in short in Italian) or protected geographical indication (IGP in short in Italian), although this trend is not so widespread yet, save for olive oil.

Italy is leader for biological production within the EU: over 47,000 entrepreneurs are active over more than one million hectares of cultivated land according to biological methods. 2010 saw an 11% increase in terms of value in the domestic consumption of packed biological products.

Biofuel is an established reality in Italy, whose spreading is pursued through a structured system which provides also for tax incentives subject, in any case, to sustainability criteria as set out in Act 28/2011.

Environmental damages are currently regulated by the Code of the environment (sections 299-318).

Competence for the protection, prevention and restoration of damages to the environment lies with the Ministry for the environment, which cooperates with Regions, local entities and any other public law subject deemed suitable. For the identification, evaluation and quantification of the damage the Ministry avails itself of public and private parties meeting high and confirmed technical and scientific requirements.

“Environmental damage” is meant to be “any significant and measurable, direct or indirect, deterioration of natural resources or of the utility given by such resources”.

On the basis of the principle of precaution it is provided that in case of dangers (albeit only potential) for human health and the environment, identified as a result of a preliminary scientific and objective evaluation, the concerned operator must notify the entity having competence over the area where the risk is feared. The Ministry of the environment may adopt adequate, preventive, non-discriminatory measures, on the basis of an advantages/costs assessment.

Where the environmental risk gets from “potential” to represent an “imminent threat” that the damage may occur, the operator (whose economic activity gave rise to the threat) must notify the competent entity and adopt, at its cost and within 24 hours, any necessary measures of prevention and safety; in the negative, a penalty between 1,000 and 3,000 euros applies for each day of delay and the Ministry for the environment may adopt any necessary preventive measures, the operator being subject to indemnify the Ministry.

In case an environmental damage has occurred, restoration actions become relevant. The operator must notify competent authorities immediately and at the same time adopt all feasible initiatives in order to control or eliminate any damage, as well as all possible measures for environmental restoration.

The tort is identified as follows: *Whoever, doing something illegal or failing to put in place activities or actions which are due, by breaching the law, regulations or administrative proceedings, through negligence, unskilfulness, carelessness, breach of technical rules, damages the environment, modifying, deteriorating or destroying it in whole or part, must restore it as it was in the*

previous state and, failing this, is to hold the State harmless and indemnified by paying the equivalent amount of money.

It is a regime of extra-contractual liability subjectively founded on fraud or misconduct, known as “specific misconduct”, which aims to secure the restoration of the *status quo ante* as indemnification in a specific form.

10. With respect to the renegotiation of the PAC, it is necessary (in order to strengthen sustainable agriculture) to maintain the level of financing, without reductions, targeting support more precisely, with particular attention to the environment, the rural landscape, the fight against desertion of rural areas, the enhancement of agriculture also from a social standpoint.