

El sistema de registro agrícola en Italia

The agricultural registration system in Italy

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Recibido: 3-11-22. Aceptado: 25/11/2022.

Cómo citar: Costantino, Laura, “The agricultural registration system in Italy”, Revista Española de Estudios Agrosociales y Pesqueros 259 (2022): 36-56.



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DOI: <https://doi.org/10.24197/reep.259.2022.36-56>

Resumen El ordenamiento jurídico italiano prevé normas específicas sobre los registros relativos al sector agrícola, en relación con la actividad desarrollada por el agricultor: producción y bienes utilizados para el ejercicio de la actividad empresarial. Por lo tanto, este trabajo se dividirá en tres partes: en la primera, se tendrá en cuenta el registro de empresas agrícolas y los efectos jurídicos relacionados con el registro en lo que respecta a la publicidad; en la segunda parte se expondrá la normativa nacional sobre el registro de semillas y tierras agrícolas, los bienes de capital para las actividades empresariales; y en la tercera parte, finalmente, se analizarán los registros relativos a determinados tipos de productos agroalimentarios.

Palabras clave: Registros; Agricultura; Empresa; Semillas; Tierras; Productos.

Abstract: The Italian legal system provides for specific rules on registers concerning the agricultural sector, in relation to the activity carried out by the farmer, to the products of agriculture and to the goods used for the exercise of the business activity. This paper will therefore be divided into three parts: in the first, will be taken into account the register of agricultural enterprises and the legal effects related to the registration with regard to publicity; the second part will outline the national rules on the register of seeds and agricultural land, capital goods for business activities; the third part will finally analyse the registers relating to certain types of agri-food products..

Keywords: Registers; Agriculture; Enterprise; Seeds; Lands; Products.

FOREWORD

The Italian legal system provides for specific rules on registers concerning the agricultural sector, in relation to the activity carried out by the farmer, to the products of agriculture and to the goods used for the exercise of the business activity.

The reasons for the existence of specific rules in this field depending on the business activity or the assets related to it. As is well known, the rules governing the activity of enterprises belong to the exclusive competence of the State that defines the status of the entrepreneur; other aspects of agriculture, related to the market, environment, developments measures and other, are regulated by the European legislator. The presence of registers relating to goods used for agricultural production, as well as some agri-food products, derives from the European and international disciplinary evolution, as will be said later.

This paper will therefore be divided into three parts: in the first, will be taken into account the register of agricultural enterprises and the legal effects related to the registration with regard to publicity; the second part will outline the national rules on the register of seeds and agricultural land, capital goods for business activities; the third part will finally analyse the registers relating to certain types of agri-food products.

1. ENTERPRISE

1. The register of agricultural enterprises

The Italian Civil Code regulates agricultural activity with reference, first, to the definition of agricultural entrepreneur, contained in art. 2135 c.c. The exact categorization of the performance of the organized economic activity for the purpose of the production of goods or services in agriculture, together with the clear distinction from the definition of commercial entrepreneur, is the basis of the set of rules that define the statute of the agricultural enterprise.

Agricultural activity, although falling within the definition of enterprise, where carried out in compliance with art. 2135 c.c., maintained specific characteristics with respect to commercial activity, in relation to the low external relevance that the activity of the agricultural entrepreneur had in the 1940s. The original definition of agricultural entrepreneur was: “E’ imprenditore agricolo chi esercita una attività diretta alla coltivazione del fondo, alla silvicoltura, all’allevamento del bestiame e attività connesse. Si reputano connesse le attività dirette alla trasformazione o all’alienazione dei prodotti agricoli, quanto rientrano nell’esercizio normale dell’agricoltura”.

Therefore, the Code introduced a series of exemptions for the agricultural entrepreneur that concerned, among others, registration in the

Commercial Register. Art. 2136 of the Civil Code, "Inapplicability of the rules on registration"¹ provides that the rules relating to registration in the Commercial Register do not apply to farmers, except as provided by art. 2200 c.c.². If, in fact, the agricultural enterprise is exercised in corporate form, the rule requires registration in the register of companies.

With the entry into force of Law No. 580/1993, reorganization of the Chambers of Commerce, the special register was introduced. The Chambers of Commerce, organized on a provincial basis, carry out functions relating to general and sector legal publicity through the maintenance of the Register of Companies and the Administrative Economic Directory.

Art.8 establishes the register of companies with the Chambers of Commerce. The legislator has entrusted the Ministry of Economic Development, in agreement with the Ministry of Justice, with the task of standardizing the keeping of registers, in order to ensure uniform conditions of information throughout the national territory. Art.8, paragraph 4 provided for the registration in special sections of the business register for agricultural entrepreneurs referred to in article 2135 c.c., small entrepreneurs referred to in article 2083 c.c. and simple companies. The registration has the function of company registry certification and legal publicity (*pubblicità notizia*), as well as the effects established by special laws³.

1 Art. 2136 c.c.: "Le norme relative all'iscrizione nel registro delle imprese non si applicano agli imprenditori agricoli, salvo quanto è disposto dall'art. 2200".

2 G. PISCIOTTA, Commento all'art. 2136, in R. ALESSI, G. PISCIOTTA, *L'impresa agricola*, in *Il Codice Civile Commentario*, P. SCHLESINGER, Milano, 2010, p. 255 ss.; N. LUCIFERO, Commento all'art. 2136, in *Commentario del Codice Civile*, diretto da E. GABRIELLI, Torino, 2013.

3 A. IANNARELLI, A. VECCHIONE, *L'impresa agricola*, in V. BUONOCORE (a cura di), *Trattato di diritto commerciale*, Torino, 2009; A. RUGGIERO, *L'estensione della registrazione alle imprese agricole*, in *Riv. notar.*, 1996, I, p.17; M. RESTINO, *Le sezioni speciali del registro delle imprese*, in *Riv. dir. civ.*, 1998, I, p. 387. On the legal development of agricultural registers, U. BELVISO, *Il regime pubblicitario dell'imprenditore agricolo (la riforma d'inizio secolo)*, in *La riforma dell'impresa agricola*, a cura di N. ABRIANI e C. MOTTI, Milano, 2003, p. 147 e ss.; S. MASINI, *Pubblicità dell'impresa agricola e riflessi sullo «statuto» speciale dell'imprenditore*, in *Dir. e giur. agr. e amb.*, 1994, p. 539 ss.; S. BOLOGNINI, *La "specialità" dell'impresa agricola nel registro delle imprese fra codice civile e legislazione di settore*, in *Riv. dir. agr.*, 2019, p. 279.

The D.P.R. n. 581/95, art.9, provides that farmers are required to indicate, in the Directory of Economic and Administrative News, established at the office of the registry of companies, the cultivation data, the extent and type of land with the relevant land register data, the type of livestock.

The Farmer's and Fisherman's Charter, established by the D.P.R. No. 503/1999, has a purely anagraphic function. The register, established within the National Agricultural Information System (SIAN), integrated with the regional information systems, collects information on public and private entities, identified by the tax code, that are engaged in agricultural, agri-food, forestry and fisheries activities and have relations with public administration.

With the D.P.R. 14/12/1999, n. 558, of simplification of the discipline in matter of registration of the enterprises, has been arranged the unification of the precedence special sections in a single section. The D.P.R. n. 558/1999 also repealed paragraph 4 of art.8, l. n. 580/1993, inserting a provision under which are entered in a special section of the register of companies, the farmers referred to in article 2135 c.c., small entrepreneurs referred to in Article 2083 c.c., fish entrepreneurs and simple companies.

The regulatory process was, then, completed with the entry into force of the d.lgs. n. 228/2001 which made significant changes to the discipline of agricultural activity. Art. 2135 c.c., in fact, has been reformed, focusing the definition of agricultural entrepreneur around the activity of care and development of the biological cycle, by expanding the way in which farmers operate. Agricultural entrepreneur is, now defined as “chi esercita una delle seguenti attività: coltivazione del fondo, selvicoltura, allevamento di animali e attività connesse. Per coltivazione del fondo, per selvicoltura e per allevamento di animali si intendono le attività dirette alla cura ed allo sviluppo di un ciclo biologico o di una fase necessaria del ciclo stesso, di carattere vegetale o animale, che utilizzano o possono utilizzare il fondo, il bosco o le acque dolci, salmastre o marine. Si intendono comunque connesse le attività, esercitate dal medesimo imprenditore agricolo, dirette alla manipolazione, conservazione, trasformazione, commercializzazione e valorizzazione che abbiano ad oggetto prodotti ottenuti prevalentemente dalla coltivazione del fondo o del bosco o dall'allevamento di animali, nonché le attività dirette alla fornitura di beni o servizi mediante l'utilizzazione prevalente di attrezzature o risorse dell'azienda normalmente impiegate nell'attività agricola

esercitata, ivi comprese le attività di valorizzazione del territorio e del patrimonio rurale e forestale, ovvero di ricezione ed ospitalità come definite dalla legge”.

Farmers have, now, an integrated role in the production chain. In fact, agricultural activity is no longer centred on the presence of rural land, but is framed in a diversified spatial context and the specificity of the same, linked to the biological cycle of plants and animals, becomes functional to frame the agricultural enterprise within the production chain.

It is therefore not surprising that art. 2 of d.lgs. n. 228/2001 provides that the registration of farmers, direct farmers and simple companies carrying out agricultural activities (and of persons treated as such) in the special section of the register of enterprises, in addition to the functions of registry certification and those provided for by special laws, has the effectiveness referred to in art. 2193 c.c.

Therefore, the registration assumes a positive effect, in the sense that the facts for which the law requires registration are presumed to be known, with an absolute presumption (*iuris et de iure*); and a negative one, in the sense that there is a relative presumption (*iuris tantum*) of third parties' ignorance of unregistered facts⁴ (*pubblicità dichiarativa*).

The current status of the agricultural enterprise, with reference to the rules related to the register of companies, has led the doctrine⁵ that the clear disciplinary dichotomy between the agricultural enterprise and the commercial enterprise has now been overcome, with regard to the exemption rules, originally provided for by the Civil Code of 1942. The different discipline about the activity, agricultural and commercial, is, instead, still current with reference not only to the national normative data (in consideration of the codicystic plant subdivided on a binary system), but also with regard to different rules, European and international, related to production of agricultural products.

The economic evolution of agricultural enterprises, market-oriented and integrated into a system of supply chain, has led the Italian legislator to modify the rules, originally set in an exemption perspective, relating to the relations of the agricultural enterprise with third parties. The role of

4 E. CASADEI, Commento agli artt. 1-2, d.lgs. n. 228/2001, in *Nuove leggi civ. comm.*, 2001, p. 740; M. TAMPONI, *Impresa agricola e registro delle imprese alla luce del d.lgs. 18 maggio 2001, n. 228*, in *Dir. e giur. agr.*, 2001, p. 523.

5 S. BOLOGNINI, *op. cit.*

registration in the Commercial Register has therefore shifted from *pubblicità notizia* to *pubblicità dichiarativa*.

2. AGRICULTURAL EQUIPMENT

2.1. The register of certified seeds and conservation varieties.

Seeds are one of the most important equipment for agricultural enterprises and preserve a genuine link with the territory. On the other hand, the development of the modern economy, characterized by the speed of the evolution of production processes, has led to a rapid transformation of the value of the seed, in consideration of the need to ensure a high level of plant productivity. The introduction of biotechnology in agriculture has allowed the structuring of resistant varieties, able to ensure an adequate yield, opening the doors to globalized markets.

The seed discipline has followed the evolution of the European agricultural policy: the first interventions of the CAP have been oriented to the construction of an efficient production system, through various forms of incentives for primary production. In this scenario, the regulation of seeds has led to a decision of government oriented to the rapid development of primary production, by introducing a system of compulsory certification of seeds for marketing.

The abandonment of traditional agricultural practices and native plant species was encouraged by the European policy of the first period, aimed at increasing food productivity and the rapid development of agricultural enterprises⁶.

From this point of view, the use of native species has been considered unsuitable for achieving the stated objectives and the rules on seeds have been structured around the system of variety registrations, in order to select

6 On CAP perspectives and development, G. OLMI, voce Agricoltura in diritto comunitario, in *Digesto pubbl.*, 1987, p. 118 ss.; ID., Common organization of agricultural markets at the stage of the single market, in *Common market law review*, 1967, p.359 ss.; P. DE CATERINI, voce Politiche comunitarie, I) Politica Agricola, in *Enc. Giur.*, 1988, p.1 ss.; E. CAPPELLI, S. VENTURA, Problemi giuridici dell'agricoltura comunitaria, in *Riv. dir. agr.*, 1964, III, p. 4 e ss.; L. COSTATO, Il 2° piano Mansholt e la legislazione agraria italiana, in *Riv. dir. agr.*, 1972, I, p. 219 e ss.; F. G. SNYDER, *Diritto agrario della Comunità Europea*, Milano, 1990; J. A. MC MAHON, *EU Agricultural Law*, Oxford, 2007; D. BIANCHI, *La politique agricole commune (PAC). Toute la PAC, rien d'autre que la PAC !*, Bruxelles, 2006.

those deemed most productive, by prohibiting the marketing of unregistered seed.

More recently, the urgent need to take action to curb the loss of biodiversity has led to the adoption of rules aimed mainly at introducing instruments for the conservation of species, on the basis of legislative measures born in the international context, adopted at national level and by European policies.

The model of sustainable food system that is at the heart of the Communication "From farm to fork", considered essential to achieve the objectives of the Green Deal, will increase the profitability of agricultural producers, increase competitiveness and ensure fairer economic returns in the supply chain.

With particular reference to the seed sector, the Commission intends, in the document, to adopt "measures to facilitate the registration of seed varieties, including for organic farming, and to ensure easier market access for traditional and locally adapted varieties".

As mentioned, seed production necessarily had to adapt to the political choices made, so that the characteristics of the seed were as uniform and stable as possible.

At the same time as the individual COMs were created, the European legislator introduced Directive 66/402/EEC on the marketing of cereal seed. The first recitals of the Directive state that: "Greater productivity in cereal growing in the Community will be achieved by the application by the Member States of uniform and strictest standards as regards the choice of varieties allowed for marketing". In this way, a compulsory certification system for seeds marketed on European territory was established to support the cereals sector.

All the measures relating to cereals, and in particular durum wheat, show how European legislation has directed production towards the creation of a market capable of meeting domestic food demand, and at the same time, ensure producers with respect to foreign productions.

The production chain that mainly uses durum wheat, a sector particularly affected, as mentioned above, by the granting of aid in southern Italy, is certainly dedicated to the production of bread, pasta and flour. In particular, l. n. 580/1967 initially provided for the exclusive use of durum wheat for the production of pasta in Italy and therefore the regulatory intervention in favour of Italian producers played a decisive role in strengthening the national production sector.

From a different perspective, within the objectives linked to the free movement of goods, and with reference to the stage of processing of agricultural products, the well-known interpretative measures of the Court of Justice have contributed to the creation of a single market in which foodstuffs manufactured in accordance with the rules laid down by the country of origin of the product may move freely (principle of mutual recognition).

For a long time, therefore, all the European regulatory measures in the cereals sector have promoted production geared towards meeting the needs of the market, so that local producers of durum wheat are compensated by additional payments.

The promotion of the principle of mutual recognition, which is necessary for the interpretation of the Court of Justice, in favour of the application of the principle of the free movement of goods, while strengthening the internal market, It was the drive towards a homogenization of production, so that it was indifferent, for the purposes of the use of legal product names of food, the place of production. Thus, while the common agricultural policy directed agricultural production towards the market, with a view to intensifying production, including the necessary standardisation of the factors of production (seeds), on the other hand, the objective of building a common market required overcoming the regulatory differences in food production, which inevitably led to the levelling of production itself.

Another area of major legislative action is the common organisation of the market in fruit and vegetables. Established by Reg. EEC No. 23/62, subsequently replaced first by Reg. EEC No. 1035/72, then by Reg. EC No. 2200/96, the fruit and vegetable CMO has been structured around the concept of "standardization". Fresh fruit and vegetables were classified according to a system of common marketing standards (Art. 2, Reg. EC No. 2200/96) with the introduction of minimum quality criteria for products intended for industrial processing (Art. 3, Reg. EC No 2200/96).

The introduction of uniform quality standards was justified on the basis of the objective of harmonising the marketing of fresh perishable products at international level, promoting high quality production, improve the profitability of production and protect the interests of consumers.

Article 3 of Reg. EC No. 2200/96 in fact provided for the prohibition of the marketing of fruit and vegetables not complying with the criteria indicated, with the option left to the Member States to provide

for derogations for products displayed for sale, offered for sale, sold, delivered or otherwise marketed by the producer in wholesale outlets, in particular on production markets, located in the region of production.

The legislation on the marketing of vegetable seed, represented by Directive 70/458/EEC, later replaced by Directive 2002/55/EC, is closely linked to the regulation of the fruit and vegetable markets.

It provides for the objective of increasing the productivity of vegetable crops, through the application by the Member States of unified and as stringent rules as possible on the choice of varieties to be marketed.

Therefore, vegetable seed may be marketed only if, in accordance with the certification rules, it has been officially examined and certified as basic seed or certified seed; a variety may be accepted only where it is distinct, stable and sufficiently homogeneous.

With the introduction of Reg. EU No. 1308/2013 and the unification of the COMs into a single common market organisation, the rules on marketing standards, linked to the use of certified seeds, have remained in place; under this profile, is important the provisions of art. 164 of Reg. EU No. 1308/2013, which, in cases where agreements, decisions or concerted practices established by a recognised producer organisation, association of organisations or inter-branch organisation can have effect erga omnes, expressly provides, among the rules for which extension may be requested, for rules which have the purpose of using certified seed and checking the quality of the products. In this way, the action of POs and recognised IOs favours the use of "useful" seeds for the production of industrial production circuits.

Since the 1990s, the introduction of the legal protection of biodiversity has highlighted new needs to be considered in market policies and environmental policies, structuring over time a complex multi-level regulatory framework. With the approval of the 1992 Convention on Biological Diversity⁷, a number of priority purposes for the policies of the States have been identified, such as the conservation of biological diversity, the sustainable use of the components of biological diversity and the fair and equitable sharing of the benefits of using genetic resources.

7 Ratified in Italy by law n. 124/1994.

States are responsible for preserving their biological diversity and the sustainable use of resources, also in view of the close correlation between these aspects and food security, especially in developing countries⁸.

Some years later, the revision of the instruments to stop the loss of biodiversity and the resulting eco-systems services was launched at international and European level in the decade 2011-2020.

The International Treaty on Plant Genetic Resources in Agriculture was adopted in 2001, which highlights the essential role of these resources for agriculture and food⁹.

The objective of the Treaty is the conservation and sustainable use of plant genetic resources for food and agriculture, as well as the fair and equitable distribution of the benefits of their use. To this end, art. 5 provides for the census and the collection of genetic resources; art. 6, in the context of the objectives of sustainability in the use of resources, provides that agricultural policies shall encourage the establishment and maintenance of diversified agricultural systems that foster the sustainable use of agricultural biological diversity, and promote greater use of local varieties, including through the revision of seed legislation. Therefore, in the regulation of the use of seeds, we must consider the need to conserve genetic resources and encourage productive diversification. The States are entrusted with the task of recognising and protecting the rights of farmers, in order to protect traditional knowledge, to ensure a fair sharing of the benefits deriving from the use of plant genetic resources, and their participation in national decision-making forums on issues relating to the sustainable use of plant genetic resources¹⁰.

Turning to the analysis of the national framework, already in 2004 some rules were introduced to promote the achievement of the purposes of biodiversity protection, with the ratification, through Law No. 101 of 2004, International Treaty on Plant Genetic Resources. In accordance with the commitments arising from the ratification of the Convention on

8 The Convention was supplemented by the Cartagena Protocol (on the safe use of living organisms modified and ratified by Italy by Law No. 27 of 2004) and the Nagoya Protocol, on access to genetic resources and fair and equitable sharing of the benefits of their use.

9 The Treaty was ratified in Italy by law n. 101/2004.

10 L. PAOLONI, *Diritti degli agricoltori e tutela della biodiversità*, Torino, 2005.

Biological Diversity, Italy has adopted a National Biodiversity Strategy¹¹ focused, with reference to the role of agriculture, on the importance of genetic resources for the improvement of cultivated species, in view of the importance that the intensification of agricultural activities, the «structural simplification of natural ecosystems», together with the use of fertilisers and plant protection, represent the main threat to biodiversity linked to agricultural habitats. The abandonment of traditional agricultural practices and native animal and plant species, no longer considered economically suitable to support production processes, together with the «homogenization of crops with selection of varieties cultivated extensively, aimed at the demands of the market but not responding to the principles of sustainable agriculture», represent a criticality of the agricultural sector with regard to the protection of biodiversity.

Most Italian regions have enacted regional laws on biodiversity, pursuant to Law No. 101/2004 of ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture, by establishing regional registers of local breeds and varieties and regional germplasm bank.

The national legislation on conservation varieties was contained in Law No. 1096 of 1971 which, in art. 19-bis, as replaced by Law No. 46 of 2007, indicated the definitions of conservation varieties, established the national register and provided for derogations, for the purposes of registration, in conditions of homogeneity, stability and differentiation, implementing Directives 2008/62¹² and 2009/145¹³, by d.lgs. n. 149/2009

11 Ministry of Environment and Protection of Land and Sea, The National Strategy for Biodiversity, 2010. Specific objectives of the National Strategy are: to promote the protection and enhancement of local and indigenous species; to promote land use according to their aptitude/vocation, including assessing the need for and the desirability of modifying crops and varieties on the basis of climate trends; encouraging the maintenance of ecosystems and the rural landscape through targeted land management, in order to create and/or maintain a kind of «green infrastructure».

12 The Directive provides for derogations for the admission of agricultural ecotypes and varieties which are naturally adapted to local and regional conditions and threatened with genetic erosion.

13 The Directive provides for certain derogations for the admission of ecotypes and plant varieties traditionally cultivated in particular localities and regions and threatened by genetic erosion, and plant varieties without intrinsic value for commercial plant production but developed for cultivation under special conditions and for the marketing of seed of such ecotypes and varieties.

and n. 267/2010. All the aforementioned rules have been recently repealed by Legislative Decree No. 20 of 2021 on the production and marketing of seed products¹⁴ which aimed to reorganize the complex and varied discipline in a single text¹⁵.

The text follows a binary system, providing for a standard discipline for the production and marketing of certified seeds and a derogation, contained in Chapter VI, reserved for conservation varieties. The Ministry of Agriculture, Food and Forestry is the competent authority for the application of the single text.

According to the proposed discipline, seed products of the basic, certified and pre-basic categories are marketed only if they belong to

14 Legislative Decree No. 20 of 2021 reorganizes the rules for the implementation of the following European legislative acts: Directive 2002/53/EC on the common catalogue of varieties of agricultural plant species; Directive 66/401/EEC on the marketing of fodder plant seed; Directive 66/402/EEC on the marketing of cereal seed and subsequent amendments; Directive 2002/54/EC on the marketing of beet seed; Directive 2002/53/EC on the marketing of agricultural plants; Directive 2002/55/EC on the marketing of vegetable seed; Directive 2002/56/EC on the marketing of seed potatoes; Directive 2002/57/EC on the marketing of seed of oil plants; Directive 2003/90/EC implementing Art. 7 of the directive 2002/53/Ce; directive 2003/91/Ce of application of art. 7 of Directive 2002/55/EC; Reg. (Ce) No. 2100/94 on Community plant variety rights; Reg. (Ce) No. 637/2009 on detailed rules on the eligibility of variety denominations; Reg. (Ce) n. 1107/2009 on the placing on the market of plant protection products; reg. (EU) n. 2016/2031 on protective measures against organisms harmful to plants; reg. (EU) n. 2017/625 on official controls; reg. (EC) n. 1829/2003 on genetically modified food and feed. It should be noted that Law No. 46 of 2007, which contains provisions implementing the International Treaty on Plant Genetic Resources for Food and Agriculture, including the regulation on conservation varieties, is not repealed by Legislative Decree No. 20 of 2021 and is, therefore, in force. For further information see L. COSTANTINO, *Semi e biodiversità. Strumenti giuridici per la costruzione di filiere agroalimentari sostenibili*, in *Riv. dir. agr.*, n.2, 2021, p. 206.

15 National seed legislation has been reorganised through the introduction of four legislative decrees which have also adapted national seed legislation to European legislation. It is the d.lgs. n. 16 of 2021, on the production and marketing of material for the propagation of the vine; d.lgs. n. 18 of 2021, on the production and marketing of propagating material and fruit plants and vegetables; d.lgs. n. 19 of 2021, on the protection of plants against harmful organisms and Legislative Decree No. 20 of 2021 on the production for the marketing and marketing of seed products. The law of delegation n. 117 of 2019, art. 11, has ordered the adaptation of national legislation to the provisions of Reg. (EU) No. 2016/2031, on protection measures against organisms harmful to plants and the provisions of Reg. (EU) No. 2017/625 on official controls.

varieties entered in the register or in the common catalogue, and must be subject to strict rules relating both to the conditions for registration and to checks.

Therefore, the registration of seed products in the registers is necessary for the purposes of marketing.

Partially derogating rules are laid down for entry in the national register of conservation varieties; entry in the register determines the application of derogations for production and marketing.

Article 47, which opens the Chapter relating to conservation varieties, introduces the derogation in order to allow the cultivation and marketing of plant genetic resources. Local varieties¹⁶ may be entered in the National Register under the conditions laid down in Arts. 50 and ss.: first, varieties must be of interest for the conservation of plant genetic resources and may only be produced in the area of origin (Art. 55).

Seed of conservation varieties of agricultural and horticultural species may be placed on the market only if it is derived from seed produced in accordance with the procedures laid down for the maintenance of the conservation selection and if, inter alia, have a sufficient degree of varietal purity.

In addition, Article 65 introduces certain specific marketing conditions: seed of conservation varieties may, in fact, be produced and marketed exclusively in their area of origin, except for the inclusion of certain derogations for comparable areas by reference to habitat type.

Finally, Article 73 grants farmers who produce seed varieties listed in the National Register of Conservation Varieties the right to direct and local sale of seed or propagating material relating to those varieties, as well as the right to free trade within the National Biodiversity Network, established by art. 4, Law No. 194 of 2015.

According to Law n. 194 of 2015, on the protection and enhancement of biodiversity of agricultural and food interest, genetic resources of food and agricultural interest are registered in the National Register of biodiversity of agricultural and food interest, established at the Ministry, and are maintained under the responsibility and public control; they shall not be subject to an intellectual property right or to any other right or technology restricting their access to or reproduction by farmers, including

¹⁶ Defined in art. 48 as the set of populations or clones of a plant species suitable for the environmental conditions of their region.

industrial patents, and shall not be the subject of such rights or technology, in any case, protection by plant variety rights; nor are not patentable genetic resources of food and agricultural interest even partially derived from those registered in the Registry, nor their parts and components (Art. 3).

Thus in Italy there are still two different registers on conservation varieties and on genetic resources of alimentary and agricultural interest, to which are added the regional registers on local varieties.

2.2. The Land Bank

The land was a central element for agricultural activity especially at the beginning of the twentieth century; the abandonment of land, caused by different factors depending on historical periods, represents a risk not only for the adequacy of food production, food security, but also related environmental and hydrogeological problems¹⁷.

Since the First World War, the Italian legislator has intervened to introduce disciplines relating to the granting of uncultivated land, with different purposes. Public intervention in agriculture was, in fact, consistent with constitutional principles, and in particular with art.44, based on the principles of rational land use. In recent years, the law n. 440/1978, entitled “Norme per l'utilizzazione delle terre incolte, abbandonate o insufficientemente coltivate”, introduced a new method to monitor uncultivated land. Infact, the law establishes that the Regions are entrusted with the task of issuing implementing rules in accordance with the principles and criteria laid down for the productive recovery of uncultivated land, abandoned or insufficiently cultivated; also with a view to safeguarding hydrogeological balances and protecting the environment.

For the purposes of Article 2, uncultivated or abandoned land is defined as land susceptible to cultivation which has not been used for agricultural purposes for at least two years; on the other hand, insufficiently cultivated land is defined as the land whose average ordinary production, average unit, over the last three years has not reached 40% of that obtained for the same crops, In the same period in land in the same census area, with the same cadastral characteristics, taking into account the area's crop vocations.

17 G. STRAMBI, La questione delle terre incolte e abbandonate e le leggi sulle “Banche della terra”, in Riv. dir. agr., 2017, p. 599.

The Regions are responsible for identifying uncultivated or insufficiently cultivated land in their territories and allocate this land to applicants who are obliged to cultivate it in a single or associated form.

The objectives of the law are economic-social and environmental: as for the first aspect, the aims are to increase the number of agricultural businesses active in the national territory and encourage generational turnover.

The environmental aspects, on the other hand, concern the need to avoid the degradation of abandoned rural areas.

In this context, the Regions have adopted implementing laws, providing for instruments implementing national provisions, with different purposes (protection of biodiversity, encouragement of the cultivation of local products, promotion of generational turnover, etc.).

Among these, some regions have used the tool of the banks of the land, including land owned by public and private (one of the first Regions to adopt the instrument of the agricultural land bank has been Tuscany, through the regional law n. 80/2012).

The regional agricultural land banks, in addition to a function of census and publicity of uncultivated or abandoned land and rural buildings, also perform a function of reorganization and publicity of all agricultural land owned by the Region and the bodies controlled by it for the award or lease to anyone who wants to undertake an agricultural activity.

Subsequently, the national legislator intervened again, establishing the "National Bank of Agricultural Land", by art. 16 of Law 28 July 2016, n. 154, with the purpose to create a complete inventory of the supply and demand of land and farms, which are also made available as a result of abandonment of productive activity and early retirement, by collecting, organising and publicising the necessary information on natural and structural characteristics of land and by giving information about terms and conditions of sale and purchase. The Bank is managed by ISMEA and operates at national level.

Finally, the Ministry of Agricultural Food and Forestry Policies and the Agency for Payments in Agriculture have signed a memorandum of understanding for the creation of an inventory of land confiscated from the mafia.

The aim is to draw up a map of the agricultural land subject to confiscation and to facilitate the dissemination of social practices for the re-use of these goods.

At the same time, many municipalities have set up banks of confiscated agricultural land, in order to make known the land and then prepare public tenders for the allocation of the same.

3. AGRI-FOOD PRODUCTS.

3.1. The "Traditional agri-food products".

Another issue to the attention of the national legislator concerns the classification of quality products that do not fall into the types subject to European registration.

With regard to agri-food products, it is possible to identify some registration systems of different categories of products that are, in some way, an expression of a link with the territory of origin. The European Union recognises quality claims and regulates their use; at national level, the authenticity of a product with respect to local traditions is recognised through specific regulatory instruments.

The Regions enhance traditional products through the Regional List of Traditional Food Products (PAT)¹⁸. The D.M. 8 September 1999, n. 350, after having specified that traditional agri-food products are those products "whose methods of processing, storage and maturing are consolidated over time... practiced on its territory in a homogeneous manner and according to traditional rules and protracted over time, however for a period not less than twenty-five years", entrusts the reconnaissance to the Regions and Autonomous Provinces.

The regional lists are included in a national register published and updated annually by the MIPAAF, for promotional purposes in Italy and abroad.

The registration of a traditional agri-food product in the register, ascertaining the expression of uniqueness and link with the culture and traditions of the territory, also determines the possibility of derogating from the health and hygiene disciplines. By means of an agreement between the State, the Regions and the Autonomous Provinces, the rules of self-control suitable for balancing the protection of agricultural and food production traditions and public health are identified.

PATs are divided into categories; the product types are as follows:

18 S. MASINI, I "Prodotti Agroalimentari Tradizionali", in P. BORGHI, I. CANFORA, A. DI LAURO, L. RUSSO (a cura di), *Trattato di diritto alimentare italiano e dell'Unione europea*, Milano, 2021, p. 504.

Soft drinks, spirits and liqueurs
 Fresh meat and preparations thereof
 Seasonings
 Cheese
 Fat
 Natural or processed vegetable products
 Fresh pasta and bakers' wares, biscuits, cakes and confectionery
 Preparations of fish, molluscs and crustaceans and special husbandry techniques
 Products of animal origin (honey, various dairy products excluding butter)

Italy has over 5000 registered traditional products.

3.2. The municipal denominations.

On the basis of Law No. 142 of 8 June 1990, which allows municipalities to regulate, within the framework of the principles of administrative decentralisation, the enhancement of traditional agri-food activities, De.co., or municipal trademarks attesting the territorial origin of the product, were born.

Municipal designations of origin respond to the need to rediscover, promote and enhance local production traditions, on a municipal basis¹⁹.

The municipalities adopt a regulation for the enhancement of traditional local agri-food activities, with the provision of a public register of typical products with a municipal name, in which the products are entered, along with the related product specification. The product entered in the register is identified with the De.co. which attests the origin of the product and the historical link with the municipality.

There are three groups of De.co.:

The first group concerns the protection of a typical product (for example, an agricultural product cultivated in that territory, adapted over time and preserved, as a crop, by the inhabitants of a country), a product

19 S. MATTEOLI, Le “Denominazioni Comunali”, in P. BORGHI, I. CANFORA, A. DI LAURO, L. RUSSO (a cura di), *Trattato di diritto alimentare italiano e dell’Unione europea*, Milano, 2021, p. 513.

of the food crafts (which represents an identity value of a place) or a craft product.

The second group is represented by De.co. to protect a recipe, a feast, a knowledge (such as a technique of fishing, cultivation, crafts) or a land (is the case of De.co. on truffle, which protect a territory dedicated to the growth and collection of a particular species of truffle).

The third group includes the strand of multiple De.co. , which protect traditions that concern both elements of the first and second group.

The implementing tools for the establishment of the De.co., certification by a single municipality, are:

the Resolution of the City Council (to approve the regulation);

the Regulation for the "Valorization of traditional agri-food activities and the establishment of De.co." ;

the municipal register of initiatives and events;

the De.co. Product Register;

the Product Specification.

The entry of an agri-food product in the register requires a separate file accompanied by appropriate documentation showing the characteristics of the product, with particular reference to analytical and process characteristics.

Requirement and prerequisite for the acceptance of the application is the verification of the presence of all the elements contained in the production specification.

Once registered in the register De.co., the typical food products can bear the logo "De.co." (Denomination Municipal) together with the registration number.

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