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ERRATA CORRIGE

Segnaliamo un errore di composizione dell'impaginato comparso nel fasc. III, parte I, della *Rivista*. A p. 441, dopo la conclusione del saggio di GIOVANNI CAZZETTA, *L'attrazione del reale. Storicità del diritto nel pensiero di Paolo Grossi*, il testo sembra proseguire per interrompersi – come per caso – nella facciata successiva.

È il più sventurato degli errori di stampa che ci sia mai capitato. Lo scritto ha in realtà termine prima che inizi il capoverso.

Alla professione del disagio e alla richiesta di scuse al lettore uniamo la notizia che il fasc. IV è accompagnato da un estratto reimpaginato dell'“Omaggio a Paolo Grossi” in cui si trova anche l'articolo di G. Cazzetta, privo finalmente dell'errore nostro.

(N.d.D.)

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RICERCHE E DOCUMENTAZIONI

MARGHERITA BRUNORI

AGRICULTURAL DIVERSITY UNFOLDING THE CONCEPT IN EU LAW

ABSTRACT

The CAP 2023/2027 has included agricultural diversity among its strategic objectives, but there is still unclarity around its content and scope. The article aims to assess its meaning from a legal perspective, explores to what extent the value is already engrained in the CAP 2023-2027, and finally, suggests the conditions that would foster its implementation. Firstly, the article explores how diversity in general is recognised as a value in the EU legal system and to what extent it has been included in the common agricultural policy. Secondly, it unfolds the components of agricultural diversity, which are then adopted for the assessment of EU agriculture and food law. The article concludes with a comment on the challenges to promotion of agricultural diversity and finally suggests how a right-based approach, which integrates the objective with the legal principle of substantial equality, could be a strategy for effectively supporting its achievement.

La PAC 2023/2027 ha incluso la diversità agricola tra i suoi obiettivi strategici, ma permane incertezza sul suo contenuto e il suo ambito di applicazione. L'articolo mira a valutarne il significato dal punto di vista giuridico, esplora in che misura il valore sia già espresso nella PAC 2023-2027 e, infine, suggerisce le condizioni che ne favorirebbero l'attuazione. In primo luogo, l'articolo esplora come la diversità in generale sia riconosciuta come un valore nell'ordinamento giuridico dell'UE e in che misura sia stata inclusa nella politica agricola comune. In secondo luogo, vengono analizzate le componenti della diversità agricola, e quindi adottate per valutare in che misura la legislazione agricola e alimentare dell'UE riflette ed incorpora la diversità agricola. L'articolo conclude con un commento sulle sfide alla promozione

della diversità agricola e suggerisce come un approccio che integri l'obiettivo con il principio giuridico dell'uguaglianza sostanziale possa essere una strategia per sostenerne efficacemente il raggiungimento.

KEYWORDS: Common Agriculture Policy – Agriculture Diversity – Biodiversity – Biocultural Diversity – Food Systems – Rights-Based Approach.

PAROLE CHIAVE: Politica agricola comune – Diversità in agricoltura – Biodiversità – Diversità bioculturale – Sistemi alimentari – Approccio basato sui diritti.

TABLE OF CONTENTS: 1. Introduction. – 2. Diversity as a principle in EU law. – 3. Diversity in the CAP and the new delivery model. – 4. Qualifying agricultural diversity. – 5. Agrobiodiversity. – 6. Biocultural diversity. – 6.1 Quality schemes. – 7. Organizational Diversity; 8. Subjective diversity; 9. Concluding remarks: rights for agricultural diversity.

1. With the adoption of reg. (EU) n. 2021/2115, «agricultural diversity» has been inscribed as an autonomous value within one of the nine objectives of the Common Agricultural Policy (CAP)¹. This concept – it might be argued – does not represent an absolute novelty in the common agricultural policy of the European Union. The prominence accorded to agricultural diversity among the underpinning goals to support «viable farm income and resilience of the agricultural sector across the Union» should not, however, be underestimated².

Political momentum around the strategic relevance of diversity and diversification in the food and agriculture system has been growing for years, both under the impulse for economic and environmental sustainability of European agriculture and, since 2020, as a response to the international food system shocks caused by the Covid-19 pandemic, before, and the Russia invasion of Ukraine, after³. Diversity, under this angle, equates to a factor of resilience against the crises both for farmers and the whole agri-food system.

Territorial cohesion policies and the increasingly diverging views around the European Union political project constitute, as well, two different drivers for the recognition of diversity as a value. While the first develops around the recognition and valorisation of the diversity of territorial, economic and social contexts within the European regions⁴, the second drive towards stronger subsidiarity and autonomy in the

¹ This study has been conducted within the activities of the project FOODIVERSE, Diversifying sustainable and organic food systems, funded under the ERA-NETs SUSFOOD2 and CORE Organic Co-fund 2019, with the contribution from the Ministry on Agriculture and Food Sovereignty and Forestry. The author wishes to thank Miranda Geelhoed for her precious comments. Mistakes are my own.

² The first specific objective is «to support viable farm income and resilience of the agricultural sector across the Union in order to enhance long-term food security and agricultural diversity as well as to ensure the economic sustainability of agricultural production in the Union», reg. (EU) 2021/2115, art. 6, letter a).

³ IPCC *Climate change and Land 2020*, in particular, section C.2.3; FAO, IFAD, UNICEF, WFP, WHO, *The State of Food Security and Nutrition in the World 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all*. Rome, 2021, FAO.

⁴ B. GRAHAM SHAW, M. HART, *Cohesion And Diversity In The European Union: Irreconcilable Forces?*, in *Regional Studies*, 1999, vol. 33 fasc. 3, pp. 259-268

implementation of EU policies. Agriculture, as one of the strategic sectors of the European economy, absorbs and reflects such influences as well⁵.

Besides institutional agendas, synergies between academia and grass-roots movements have, in the last decades, nurtured alternative paradigms to the dominant food and agriculture industrial model, and braided claims related to environmental and social justice in food systems governance⁶. «Agroecology», the conceptual synthesis of such instances, posits that diversity is a precondition for the sustainability of food systems⁷. The circulation of this concept, and recently also its consideration by public institutions⁸, is stimulating academic debate for furthering the comprehension of the impact of diversity on the sustainability of food and agricultural systems⁹.

However, there is still much unclarity around the scope and definition of «agricultural diversity». In literature, agronomists generally limit the investigation to farm-level diversity and focus on biological diversity¹⁰; economists interpret agricultural diversity mainly in terms of income diversification¹¹, while social scientists adopt a broader perspective that encompasses rural development and food systems¹². For what concerns legal scholarship, the literature focuses on several specific elements that

⁵ F. ALBISINNI, *La nuova PAC, tra Green Deal e Pandemia*, in *Per una PAC al futuro: tra transizione e cambiamento*, Quaderni dei Georgofili, 2021.

⁶ M. MONTEDURO, P. BUONGIORNO, S. DI BENEDETTO, A. ISONI, *Law and Agroecology*. Berlin, Heidelberg: Springer Berlin Heidelberg, 2015.

⁷ IPES-Food, *From uniformity to diversity: a paradigm shift from industrial agriculture to diversified agroecological systems*. International Panel of Experts on Sustainable Food systems (Lead Coordinating author: Emile A. Frison), 2016.

⁸ FAO Council, *The Ten Elements of Agroecology November 2019* (CL 163/13 Rev.1); Opinion of the European Committee of the Regions – Agro-ecology (2021/C 106/05).

⁹ Horizon Europe Work Programme 2023-2024 9. Food, Bioeconomy, Natural Resources, Agriculture and Environment (European Commission Decision [C (2022) 7550] of 6 December 2022); L. BODIGUEL, *La place de l'agroécologie dans la nouvelle politique agricole commune 2023-2027*, in *Revue de l'Union Européenne*, 2022, fasc. 663, p. 604 ss.

¹⁰ M. DARDONVILLE, N. URRUTY, C. BOCKSTALLER, O. THEROND, *Influence of diversity and intensification level on vulnerability, resilience and robustness of agricultural systems*, in *Agricultural Systems*, 2020, fasc. 184, 102913.

¹¹ F. TACCONI, K. WAHA, J. OJEDA, P. LEITH, *Drivers and constraints of on-farm diversity*. A review, in *Agronomy for Sustainable Development*, 2022, vol. 42, fasc. 1, p. 2 ss; C. HARKNESS, F. J. AREAL, M. A. SEMENOV, N. SENAPATI, I. F. SHIELD, J. BISHOP, *Stability of farm income: The role of agricultural diversity and agri-environment scheme payments*, in *Agricultural Systems*, 2021, fasc. 187, 103009.

¹² D. GAITÁN-CREMASCHI, L. KLERKX, J. DUNCAN, J. H. TRIENEKENS, C. HUENCHULEO, S. DOGLIOTTI, ... AND W. A. ROSSING, *Characterizing diversity of food systems in view of sustainability transitions*. A review, in *Agronomy for sustainable development*, 2019, vol. 39, pp. 1-22; O. VINCENT, G. FEOLA, *A framework for recognizing diversity beyond capitalism in agri-food systems*, in *Journal of Rural Studies*, 2020, fasc. 80, pp. 302-313.

pertain to agricultural diversity, such as natural biodiversity and diversity of genetic resources¹³ agricultural diversification at farm level¹⁴, short food chains¹⁵, traditional products¹⁶, public procurement¹⁷. While cross-cutting themes such as multifunctional and sustainable agriculture find significant space in legal studies¹⁸, agricultural diversity as such is seldom considered¹⁹.

The explicit inclusion of such expression among the CAP 2023-2027 objectives represents therefore a good occasion to deepen the understanding of the term. The present study, therefore, assesses its meaning from a legal perspective, explores to what extent the value is already engrained in the CAP 2023-2027, and finally, suggests the conditions that would foster its implementation. Firstly, the article explores how diversity in general is recognised as a value in the EU legal system and to what extent it has been included in the common agricultural policy. Secondly, it unfolds the components of agricultural diversity, which are then adopted for the assessment of EU agriculture and food law. The article concludes with a comment on the challenges to promotion of agricultural diversity and finally suggests how a right-based approach, which integrates the objective

¹³ L. COSTANTINO, *Semi e biodiversità. strumenti giuridici per la costruzione di filiere agroalimentari sostenibili*, in *Riv. dir. agr.*, 2021, I, pp. 206-231, B. LA PORTA, *Riflessioni per una definizione di «prodotto agroalimentare sostenibile*, in *Riv. dir. agr.*, I, 2021, pp. 279-324. M. PIERRI, *Diritto al cibo, diversità alimentare e agrobiodiversità: quali strumenti di tutela? Osservazioni su alcune esperienze significative tra diritto internazionale e sovranità nazionale*, in *Riv. quad. dir. amb.*, 2016, fasc. 2, p. 33 ss.

¹⁴ G. STRAMBI, *Riflessioni sull'uso del terreno agricolo per la realizzazione di impianti alimentati da fonti rinnovabili: il caso dell'agrovoltico*, in *Riv. dir. agr.*, I, 2021, pp. 395-422, S. MASINI, «Terra» e «natura». *Conferme e traguardi nell'applicazione del ciclo biologico*, in *Riv. dir. agr.*, 2020, I, pp. 723-764; P. LATTANZI, *Accesso alle misure di sviluppo rurale e contratti agroambientali*, in *Riv. dir. agr.*, 2020, I, pp. 68-101.

¹⁵ P. LATTANZI, A. KAPALA, *Mandatory food information in case of short food supply chains and local food systems in EU and US legislation: a comparative study*, in *Przeegląd Prawa Rolnego*, 2021, fasc. 1, pp. 217-236; G. COCCO, *Filiera corta e "farmers' markets"*, in *Riv. giur. amb.*, 2015, fasc. 2, pp. 167-208, A. TOMMASINI, *Produzioni biologiche e filiera corta in funzione di un'alimentazione sostenibile*, in *Riv. dir. agr.*, 2014, I, pt. 1, pp. 33-69.

¹⁶ I. CANFORA, *Alimenti, nuovi alimenti e alimenti tradizionali nel mercato dell'Unione europea dopo il regolamento 2015/2283*, in *Dir. agroalim.*, 2016, fasc. 1, pp. 29-46.

¹⁷ A. I. TRAPÈ, *Il public food procurement strumento per la sostenibilità del sistema alimentare. Evoluzione del quadro normativo, criticità applicative e prospettive di innovazione*, Napoli, Editoriale Scientifica, 2022, pp. 5-360.

¹⁸ As a recent example, see S. MASINI, V. RUBINO (a cura di) *La sostenibilità in agricoltura e la riforma della PAC*, Cacucci Editore, 2021.

¹⁹ One exception is I. COUTURIER, *La diversification en agriculture: aspects juridiques*, 2000. See also S. MASINI, «Greening» e adempimento degli obblighi di condizionalità ambientale da parte delle imprese, in *Riv. dir. agr.*, 2020, I, pp. 140-166.

with the legal principle of substantial equality, could be a strategy for effectively supporting its achievement.

2. Before venturing into the challenge of understanding diversity in food and agriculture law, it is worth briefly considering the significance of diversity in legal systems, in general, and in EU law, in particular. In fact, diversity enters into the legal picture in connection to its antithesis: equality. The tension between the two lies at the core of the principle of protection, and the extent to which the two extremes are considered and balanced determines the legal outcome in terms of recognition and protection of particular social categories and situations²⁰.

From a European public law and legal order viewpoint, the literature has sought to analyse diversity *vis-à-vis* integration in the European Union constitutional setting²¹. The very adoption in 2000 of the motto «United in diversity» is a statement on the central position that this term bears within the European Union's core values²². A first reference to diversity as a value is found in art. 3, par. 3, of the Treaty on European Union, which acknowledges that the European Union «shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced». The principle of integration of the respect and promotion of cultural diversity in the implementation of the other policies is then affirmed in art. 167 TFEU, and the Charter of Fundamental Rights of the European Union reaffirms cultural diversity as a funding value²³.

Diversity coexists, and is to be balanced with, the other objectives of the EU²⁴. Indeed, the tension between the safeguard of legal and cultural

²⁰ See M. MECCARELLI (a cura di) *Diversità e discorso giuridico. Temi per un dialogo interdisciplinare su diritti e giustizia in tempo di transizione*, Universidad Carlos III De Madrid, 2016.

²¹ A. VON BOGDANDY, *The European Union as situation, executive, and promoter of the international law of cultural diversity—elements of a beautiful friendship*, in *European journal of international law*, 2008, vol. 19, fasc. 2, pp. 241-275.

²² G. N. TOGGENBURG, 'United in diversity': *Some thoughts on the new motto of the enlarged Union*, in *Il Mercator International Symposium: Europe 2004: A new framework for all languages* (pp. 27-28).

²³ «The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment», Charter of Fundamental Rights of the European Union, (2000/C 364/01), Preamble; «The Union shall respect cultural, religious and linguistic diversity», Id, *Article 22*.

²⁴ Art. 3, c. 3 TEU. While cultural diversity was acknowledged in the first version of the

diversity and the need to effectively realize the internal market has been a fundamental occupation of the Court of Justice of the European Union, which developed principles and criteria for the resolution of such legal conflicts²⁵. Remarkably, food-related legislation constituted the basis of much jurisprudence on the matter.

Taking inspiration from an etymological perspective, a study on the topic could stem from the premise that «agricultural diversity» is a manifestation of the «cultural diversity» posed as a founding value of the EU, as seen above. A study on the legal dimension of agricultural diversity can therefore investigate how effectively diversity is recognised as a value in food and agriculture EU law and policies.

3. The Treaty on the Functioning of the European Union has provided the constitutional foundation for a common agricultural policy, and consequently for a gradual harmonization of a growing number of regulatory aspects, by including agriculture as a matter of shared competence between the Member States and the Community²⁶.

An implicit enucleation of diversity as a value could be appreciated already in art. 39 TFEU, par. 2: «In working out the common agricultural policy and the special methods for its application, account shall be taken of: (a) the particular nature of the agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions; (b) the need to effect the

Treaty on European Union, its value was highlighted in the reform of the Treaty in 1997: «4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty» (Art 128 TUE 1992 Maastricht); «25. Article 128(4) shall be replaced by the following: “4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures”», Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Official Journal C 340, 10/11/1997.

²⁵ A. PATRÃO, *Party Autonomy: Removing Obstacles to Legal Diversity in the European Market*, in *Mkt. & Competition L. Rev.*, 2019, vol. 91, fasc. 3; J. MULDER, *Unity and Diversity in the European Union's Internal Market Case Law: Towards Unity in Good Governance*, in *Utrecht J. Int'l & Eur. L.*, 2018, vol. 34, p. 4 ss. C. TOWNLEY, CHRIS, A. H. TÜRK, *The Constitutional Limits of EU Competition Law – United in Diversity*, in *The Antitrust Bulletin*, 2019, vol. 64, fasc. 2, pp. 235-283; C. SEMMELMAN, *Legal principles in EU law as an expression of a European legal culture between unity and diversity*, Maastricht European Private Law Institute Working Paper n. 2012/7; D. THYM, “United in Diversity” – *The Integration of Enhanced Cooperation into the European Constitutional Order*, in *German Law Journal*, 2005, vol. 6, fasc. 11, pp. 1731-1747.

²⁶ TFEU, art. 4, par. 2, letter d).

appropriate adjustments by degrees; (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole». The creation of a common set of rules governing the agricultural sector has been characterized since the very beginning by a tension between, on the one hand, the need to harmonize national legal regimes and overcome the obstacles to the common/single market, and, on the other, the need to safeguard the traditional markets and food cultures.

In the CAP 2014-2020, agricultural diversity took mainly the form of biological diversity, crop diversification and income diversification²⁷, while the diversity of agricultural systems appeared as a factor to be considered while admitting the practices covered by agri-environment-climate measures²⁸.

Diversity in agriculture has begun to grow as an underlying value of the common agricultural policy in the wake of the 2023-2027 CAP reform. The European Parliament resolution of 27 October 2016 on how the CAP can improve job creation in rural areas represented a significant step in that direction²⁹. The new CAP structure and delivery model composed of

²⁷ Reg. (EU) 1307/2013: Biodiversity (recital 44, art. 46); Crop diversification (recital 37 and 41, art 44); Income (economic) diversification of farmers and agricultural holdings, including from non-agricultural activities (recital 26: «Given the potential for non-agricultural activities to contribute to the income diversification of agricultural holdings and to the vitality of rural areas, an agricultural area of a holding that is used also for non-agricultural activities is to be considered eligible on condition that it is used predominantly for agricultural activities»); reg. (EU) 1305/2013, art. 5: «(2) enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests, with a focus on the following areas: (a) improving the economic performance of all farms and facilitating farm restructuring and modernisation, notably with a view to increasing market participation and orientation as well as agricultural diversification»; «(4) restoring, preserving and enhancing ecosystems related to agriculture and forestry, with a focus on the following areas: (a) restoring, preserving and enhancing biodiversity, including in Natura 2000 areas, and in areas facing natural or other specific constraints, and high nature value farming, as well as the state of European landscapes»; «(6) promoting social inclusion, poverty reduction and economic development in rural areas, with a focus on the following areas: (a) facilitating diversification, creation and development of small enterprises, as well as job creation».

²⁸ «(40) In order to accommodate the diversity of agricultural systems and the different environmental situations across the Union, it is justified to recognise, in addition to the three greening practices established in this Regulation, practices covered by agri-environment-climate measures or certification schemes that are similar to greening and that yield an equivalent or higher level of benefit for the climate and the environment (...).».

²⁹ «R. whereas experience on the ground shows that other kinds of agricultural development are possible, providing better results in terms of food quality and agronomic, environmental and socio-economic performance, that it is important to support and promote diversity of agricultural systems, and that small and medium-sized farms which are generally more diversified, innovative and highly flexible, are often well organised in terms of forming

objectives and indicators contributed to highlighting and streamlining the underpinning goals of the policy, therefore making it possible to appreciate in a more direct way toward which objective each intervention is directed. Consequently, the CAP 2023-2027 included agricultural diversity among its objectives and reg. (EU) 2021/2115 indicates what actions are aimed at its promotion.

At the same time, since the new model promoted greater subsidiarity in the implementation of the policy, appreciating to what extent each State embraced a transformative approach is a more cumbersome task. When sub-national autonomies are endorsed with legislative competence, as in the case of Italian regions, the assessment has to entail this additional level. Furthermore, the policy tailoring structured in indicators and targets rather than in positive or negative obligations of conduct blurs the boundaries between legal analysis and the interpretation of quantitative data³⁰. Whereas the decentralised, result-oriented system determines *per sé* a greater variety in the implementation of the CAP – since flexibility is granted both in the choice of interventions, in the attribution of resources, and in the definition of terms and criteria –, the variability of CAP implementation does not equate directly to greater agricultural diversity.

4. In the face of this picture, the question to be posed pertains, firstly, to what extent a legal definition of agricultural diversity could be drafted and for what purpose. Indeed, to the extent that the term is already circulating, a comprehensive legal definition could become an instrument to test policy coherence, and it could also become a parameter to balance different interests. Finally, it has to be ascertained to what extent the EU regulatory framework can effectively protect and promote agricultural diversity *vis-à-vis* the other objectives.

As an extra-legal objective, agricultural diversity is the theorization of a complex of socio-economic and geographical factors and results in the different combinations of such factors in time and space. Social research has layered diversity in food systems in three dimensions: agrobiodiversity,

producer groups and co-operatives and benefit the communities in which they are located, thereby supporting a rural economy, which is the key to the development of European agriculture». European Parliament resolution of 27 October 2016 on how the CAP can improve job creation in rural areas (2015/2226(INI)).

³⁰ This choice reflects a general trend in international governance. See K. DAVIS, A. FISHER, B. KINGSBURY, S. E. MERRY (a cura di), *Governance by indicators: Global power through classification and rankings*, Oxford University Press, 2012.

biocultural diversity and organizational diversity³¹. The first dimension, biodiversity for food and agriculture has been defined as «the variety and variability of animals, plants and micro-organisms at the genetic, species and eco-system levels that sustain the ecosystem structures, functions and processes in and around production systems, and that provide food and non-food agricultural products»³². Secondly, biocultural diversity is conceptualised as «the total variety exhibited by the world's natural and cultural systems» and it builds on the assumption that culture and nature are mutually constituting³³. Finally, organizational diversity refers to the food system's economic and legal regime and pertains to the diversity of modes of organization and coordination of resources and labour in the agri-food system³⁴. The present study adopts this categorization and adds a fourth one pertaining to subjective diversity. Subjective diversity could be defined as the heterogeneity of subjects and subjective characteristics of persons and groups involved in agriculture who meet institutional recognition. Indeed, every regulatory regime recognises – either implicitly or explicitly –, specific subjective qualities to the recipients of the norm, and the complex of right and duties inscribed to subjects meeting the selected criteria result in the creation of a specific legal status. Subjective diversity could be therefore pictured as the degree of recognition of different statuses within the legal system.

Comparing and contrasting the theory and the legal framework allows us to find regulatory areas where diversity is constrained, and conversely highlight regulatory spaces where diversity is already adequately recognised as a value and promoted. In the next part, the study exemplifies to what extent the legal framework acknowledges diversity in its four dimensions, and to what extent the interplay of different regulatory regimes affects its promotion. In each of the following sections, key areas of EU agriculture and food law will be interrogated to understand to what extent diversity

³¹ Foodiverse.eu.

³² FAO, *Guidelines for the preparation of the Country Reports for The State of the World's Biodiversity for Food and Agriculture*, FAO, 2013.

³³ According to Diaz et al, biocultural diversity denotes three concepts: «Firstly, diversity of life includes human cultures and languages; secondly, links exist between biodiversity and cultural diversity; and finally, these links have developed over time through mutual adaptation and possibly co-evolution», S. DÍAZ, S. DEMISSEW, J. CARABIAS, C. JOLY, M. LONSDALE, N. ASH, ... D. ZLATANOVA, *The IPBES Conceptual Framework – Connecting nature and people. Current Opinion in Environmental Sustainability*, IPBES 2015, vol. 14, pp. 1-16.

³⁴ P. McMICHAEL, *A food regime genealogy*, in *The journal of peasant studies*, 2009, 36.1, pp. 139-169; D. GAITÁN-CREMASCHI *et al.*, *Characterizing diversity of food systems in view of sustainability transitions. A review*, *supra*.

is recognised as a value, and to what extent it is promoted while balancing other goals. Whereas the focus is on «agricultural» diversity, it is necessary to expand the scope of investigation also to upstream and downstream legal settings. Indeed, several external factors to agricultural production exert deep influence on the subjects engaging in agriculture, the way agricultural activities are organized, the kind and quality of agricultural production, and the market to which agricultural products are oriented. For this reason, the study considers key regulatory areas covering natural resources access and use (such as genetic resources and agricultural land), production methods, commercialization and presentation of agricultural products, as well as food safety and food provisioning.

5. Biological diversity enjoys strong consideration in EU agri-environmental law and its safeguard is the result of a number of laws protecting environmental resources, species and habitats³⁵; limiting and managing the use of pesticides³⁶; as well as policies encouraging or requesting the adoption of certain practices³⁷. By strengthening the green architecture, the CAP 2023-2027 has sought to streamline environmental protection in direct payments through a dedicated strategic objective³⁸.

The most contentious aspect regarding biodiversity concerns the diversity of genetic resources used for food and agriculture. In response to the call for agricultural transition and climate change adaptation strategies, contrasting claims are reinforcing the criticism and polarising the debate about the legal framework on plant reproductive material³⁹. On the one hand, technological advancements call for facilitated authorization and commercialization of biotechnologies and presuppose a reliance on strong protection of intellectual property rights⁴⁰. On the other, the diffusion of

³⁵ M. BROCCA, *Paesaggio e agricoltura a confronto. riflessioni sulla categoria del «paesaggio agrario»*, in *Rivista Giuridica dell'Edilizia*, fasc. 01-02, 2016, p. 1 ss; F. CARPITA, A. DE LORENZO, *Biodiversità, una questione fondamentale per la tutela dell'ambiente: il ruolo dell'Ente parco nella tutela delle aree protette*, in *Studi parlamentari e di politica costituzionale*, 2012, vol. 175, pp. 9-33.

³⁶ L. PASTORINO, E. TOMASELLA, *La disciplina europea dei fitosanitari all'incrocio tra diritto agroambientale e agroalimentare*, *Riv. dir. agr.*, 2022, I, pp. 36 ss.

³⁷ P. LATTANZI, *Accesso alle misure di sviluppo rurale e contratti agroambientali* in *Riv. dir. agr.*, 2020, I, pp. 68-101.

³⁸ Reg. (UE) 2021/2115, art. 6, par. 1, letter f).

³⁹ Commission Staff Working Document Study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material SWD (2021) 90.

⁴⁰ The reference is to the debate around new genome editing techniques. To this

organic agriculture and other alternative agricultural practices and markets condemn the excessive rigidity of the current regime, based on a general rule allowing only the circulation of certified seeds or reproductive material, which registration follows the processes of Distinctness, Uniformity, and Stability (DUS) testing and Value for Cultivation and Use (VCU) testing⁴¹. While exceptions were introduced to facilitate the registration of conservation varieties, amateur varieties, and varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions⁴², those are perceived by peasants' seeds associations as still too restrictive and ultimately unsuitable for meeting the needs of their users⁴³.

Scant attention to this aspect was one of the reasons that brought to the failure an earlier EU Commission's attempt to reform seed laws⁴⁴. Shortly after, the acknowledgement of a lack of suitable plant reproductive material for organic agriculture enabled a new exception to the general system⁴⁵, then formalized by the new organic agriculture reg. (EU) 848/2018. Thanks to art. 13 of the regulation, following a notification, «plant reproductive material of organic heterogeneous material may be marketed without complying with the requirements for registration and without complying with the certification categories» set out by pertinent EU legislation⁴⁶.

A symptom of the growing perception of the inadequacy of the legal regime is represented by a 2020 reform of the French rural code. The French legislator, forcing the interpretation of art. 2, letter *a*) of directive

regard, see: S. BOLOGNINI, *L'impiego in agricoltura delle tecniche di miglioramento genetico di ultima generazione: tallone di Achille della strategia «dal produttore al consumatore»*, in *Riv. dir. agr.*, 2021, I, pp. 544-568.

⁴¹ Directive 2002/53/EC and directive 2002/55/EC.

⁴² Directive 2008/62/EC, directive 2009/145/EC and directive 2010/60/EU.

⁴³ Specifically, the Distinctness, Uniformity, and Stability testing is only partially excepted by article 4 of the directive 2008/62/EC, as it only allows for a partial derogation to the uniformity level; the region of origin (article 8) limits the circulation of the resource, which is particularly constraining face to climate change.

⁴⁴ Proposal for a Regulation On the production and making available on the market of plant reproductive material (plant reproductive material law), COM/2013/0262 final - 2013/0137 (COD).

⁴⁵ Commission Implementing Decision of 18 March 2014 on the organisation of a temporary experiment providing for certain derogations for the marketing of populations of the plant species wheat, barley, oats and maize pursuant to Council Directive 66/402/EEC, C(2014) 1681.

⁴⁶ Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 98/56/EC, 2002/53/EC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 2008/72/EC and 2008/90/EC.

66/401/CE⁴⁷, in 2020 issued a modification of the Code Rural (art. L 661-8) affirming that the disposal, supply or transfer, carried out free of charge or against payment of seed or plant reproductive material of cultivated species of varieties belonging to the public domain to non-professional end users not seeking the commercial exploitation of the variety is not to be considered commercialization, provided that they comply with the health and safety rules relating to selection and production⁴⁸. The notification of this legislative project spurred the Commission's reaction, which clarified that this interpretation conflicts with the scope of the term «marketing» under directive 66/401/CE and directive 2002/55/CE⁴⁹. The Commission also remarked that – the ongoing reform project for the plant reproductive material regulation considered – States should abstain to act unilaterally⁵⁰. The reform was nevertheless enacted, exposing France to the infraction procedure *ex art. 258 TFEU*.

The Farm to Fork and the Biodiversity strategies have recently given new input for a comprehensive reform of the sector which considers the new environment and the new challenges to be faced⁵¹. The EU Council requested the Commission to conduct a new study on Plant Reproductive Material⁵². Based on the Study, the Commission is to release a regulation proposal by the end of 2023. Meanwhile, due to the complexity of the law and the narrow spaces left for the circulation of conservation varieties and peasants' seeds, the promotion of agrobiodiversity largely depends on the proactiveness of Member States (and regions) in that regard⁵³.

⁴⁷ Art. 2, letter *a*) c. 3, of directive 2002/55/EC contains another opening for the utilisation of such seeds for industrial purposes, which can be used in the context of integrated value chains. RÉSEAU SEMENCES PAYSANNES, *Kit réglementaire* August 2021, p. 14.

⁴⁸ Law No 2020-699 of 10 June 2020, art. 10.

⁴⁹ Notification 2020/155/F, Brussels, 22.06.2020 C(2020) 4275 final

⁵⁰ *Ibid.*

⁵¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final); Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final).

⁵² Council Decision (EU) 2019/1905 of 8 November 2019 requesting the Commission to submit a study on the Union's options to update the existing legislation on the production and marketing of plant reproduction material. See also: Data gathering and analysis to support a Commission study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material, Final report (SWD(2021)90 final) <https://op.europa.eu/s/pknd>.

⁵³ Besides the French example, it is worth recalling the Italian Law n. 194/2015.

6. Concerning biocultural diversity, one of its most paradigmatic expressions is food, conceived as the product of agricultural and transformation techniques, territorial characteristics and local culture⁵⁴. Its appreciation under this viewpoint has nevertheless to be balanced with the legal regime applying to foodstuff. In the EU context, food is primarily considered a commodity, and therefore the harmonization of national laws on food commercialization, and the uniformization of food characteristics and production was a necessary step to facilitate its exchange across different national markets. Technical standards for the production of food are consequently the main playfield on which to address and balance different and potentially contrasting interests. Their introduction follows the *stand-still* rule according to which the State has to notify the Commission of its intention to introduce a new regulation and wait three months before its application⁵⁵.

There are three main aspects of food law where the tension between biocultural diversity and the promotion of EU objectives is particularly evident, and they pertain to the product denomination, the food safety rules exceptions for the local sale of small quantities of food, and food with traditional characteristics. For what concerns product denomination, the seminal *Cassis the Dijon case*⁵⁶ introduced the principle of mutual recognition and opened the floor to overcome technical obstacles to the internal market⁵⁷. The negative consequences of the principle of mutual recognition on the quality of food⁵⁸ were soon evidenced, and a second principle was created to balance the effects of the *Cassis the Dijon* principle. According to the *Smanor* Principle, called after the case where it was first applied, a State can legitimately request that a product is marketed in its territory with a different name from the one used in the country of origin if in its territory the same name is used for a product with *remarkably* different

⁵⁴ V. PIERGIGLI, *Cibo e cultura: i prodotti alimentari tipici tra patrimonio culturale e industria creativa*, in L. SCAFFARDI, V. ZENO-ZENCOVICH, *Cibo e diritto. Una prospettiva comparata-Volume II*, 2020, pp. 529-553.

⁵⁵ Directive 2015/1535/EU laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification).

⁵⁶ Case 120/78 *Cassis de Dijon*, UJ C256 of 3 October 1979.

⁵⁷ By doing so, it applied to food products a jurisprudential rule created for all commodities by the case 8/74 *Dasonville*.

⁵⁸ M. GIUFFRIDA, in R. SAIJA AND P. FABBIO (eds), *La qualità e le qualità dei prodotti alimentari tra regole e mercato* (Cedam 2019) p 18. See also M. RAMAJOLI, *La giuridificazione del settore alimentare*, in *Dir. amm.*, 2015, fasc. 4, p. 677.

characteristics⁵⁹. The *Smanor* principle currently works as an exceptional rule set by art. 39 of reg. (EU) 1169/2011, whereas the general norm is the mutual recognition of the legal names of products⁶⁰. Notwithstanding the fact that States cannot prevent the commercialization in their territory of foods with different technical norms produced in another European country, they can still oblige national producers who want to sell their products in the territory to follow national technical standards⁶¹.

Regarding food safety requirements for direct sales, art. 1(3) of reg. (EC) n. 852/2004 and art. 1(4) of reg. (EC) n. 853/2004 allow the establishment of national measures concerning the direct supply, by the producer, of small quantities of primary products, and of meat from poultry and lagomorphs slaughtered on the farm, to the final consumer or to local retail establishments directly supplying the final consumer. The Commission recently stressed that such measures are allowed, provided that they are consistent with the objectives of those regulations, and that a «close relationship between the producer and the consumer»⁶². Bearing an exceptional character, the effectiveness of such provisions relies on the national or sub-national level and on the willingness of institutions to exploit regulatory windows and provide operators with clear provisions on what they can and cannot do⁶³.

⁵⁹ The ruling concerned the commercialization under the name of 'yoghurt' of a product without live lactic ferments.

⁶⁰ The norm currently in place is found in art. 17 of reg. (EU) 1169/2011.

⁶¹ An example of the application of this rule is the case of the Italian marketing rules of «pasta». According to d. PR 9 February 2001 n. 187, the name «pasta» can be used only for products using durum wheat. The act nevertheless says that the pasta produced in other countries with soft wheat can be sold in the territory, provided that it is labelled as «soft wheat pasta».

⁶² Recital (10) to reg. (EC) No 852/2004:«(...) However, in the case of the direct supply of small quantities of primary products, by the food business operator producing them, to the final consumer or to a local retail establishment, it is appropriate to protect public health through national law, in particular because of the close relationship between the producer and the consumer»; Recital (11) to Regulation (EC) No 853/2004: «(...) Moreover, where small quantities of primary products or of certain types of meat are supplied directly by the food business operator producing them to the final consumer or to a local retail establishment, it is appropriate to protect public health through national law, in particular because of the close relationship between the producer and the consumer». Detailed Opinion from the Commission 2022/613/B, issued, 'Royal Decree amending the Royal Decree of 7 January 2014 on the direct supply by a primary producer to the final consumer or to local retail trade of small quantities of certain foodstuffs of animal origin, the Royal Decree of 13 July 2014 on the hygiene of foodstuffs and the Ministerial Decree of 22 March 2013 on the easing of the detailed rules for the application of self-monitoring and traceability in certain establishments in the food chain'.

⁶³ A recent example of the exploitation of this flexibility is found in Italian law, in l.

Even before the adoption of the Hygiene Package, concerns were rising around the impact that those requirements would have on small food productions and especially on those products that derived their characteristics from the traditional processes, which often are not in compliance with hygiene rules. The Commission reg. (Ec) n. 2074/2005, in setting the details for the implementation of the regulations, therefore included some derogations for traditional products. Art. 7 defines «foods with traditional characteristics» as «foods that, in the Member State in which they are traditionally manufactured, are: (a) recognised historically as traditional products, or (b) manufactured according to codified or registered technical references to the traditional process, or according to traditional production methods, or (c) protected as traditional food products by a Community, national, regional or local law». The said foods with traditional characteristics may be exempted from the application of hygiene standards relating to the premises and the materials used in the process upon notification of the State to the Commission⁶⁴. In addition, in accordance with art. 13, par. 3 and 4, States can adopt certain adapting rules for ensuring that the regulatory framework set up by the Hygiene Package is attuned to the local context and to the necessities of small food producers but, in this case, the derogation procedure is more rigid, and the objectives of the food safety regulation should be guaranteed.

6.1 While the just illustrated norms describe exceptional regimes to the general rule, quality schemes have a positive recognition of biocultural diversity. In partial contradiction with its earlier approach, the Commission, while reforming the quality scheme framework in 2012, recognised that the communication from the producer to the consumers on the «characteristics and agricultural attributes» is to be valued. The

1 April 2022, n. 30 'Norme per la valorizzazione delle piccole produzioni agroalimentari di origine locale' (*Gazz. uff.* n. 94 del 22 aprile 2022). Its art. 7 regards the introduction, by regions and autonomous provinces, of a dedicated discipline for the simplification of the structural requirements of the premises intended for the processing, production and sale of the products. Legge regionale Toscana 21 marzo 2018, n. 12 (Disposizioni per la lavorazione, la trasformazione e il confezionamento dei prodotti agricoli di esclusiva provenienza aziendale) and its implementing regulation (Decreto del Presidente della Giunta regionale Toscana del 24 luglio 2019 - N. 46/R) are one example of a proactive regulatory approach that endows operators with clear and detailed guidelines on hygiene requirements tailored on the needs of small-scale producers and direct sales. Legge regionale Campania 4 dicembre 2019, n. 24, and Legge regionale Piemonte 22 gennaio 2019, n. 1 followed the same approach.

⁶⁴ The Italian law recognized traditional agri-food varieties with legge n. 526/1998 art. 10, and d.lgs 173/1998.

recital of reg. (EU) n. 1151/2012 affirms that «Citizens and consumers in the Union increasingly demand quality as well as traditional products. They are also concerned to maintain the diversity of the agricultural production in the Union». The Commission acknowledged the increased importance attributed by consumers not only to the tastiness of foods but also to the correspondence of such products or producing process or origin to particular emotions or sensitivity⁶⁵. Reg. (EU) 1151/2012 in addition to regulating Quality Schemes, such as protected designations of origin, protected geographical indications, and traditional specialities guaranteed, introduced a scheme for «optional quality terms» (art. 29) and recognises national rules on optional quality terms if they do not conflict with the regulation. Quality schemes represent a precious tool for connecting landscape, rural development and quality of products⁶⁶. Nevertheless, the critics moved recently by the UN Special Rapporteur on toxics and human rights against prosecco production show how they also can bear heavy contradictions⁶⁷. The new CAP has operated a reform on the regulation on quality schemes (reg. (EU) 2021/2117, art. 2) in order to better attune the framework with the sustainability objective, and the impacts will be appreciated in due course⁶⁸.

7. Even though the EU Treaties allow for some relevant exceptions to the application of competition laws in the agricultural sector, the liberalization and globalization of agricultural markets have played and still profoundly impact the organizational structure of food chains. Having

⁶⁵ Commission directive 70/50/EEC abolished all measures adopted by public authorities «which favour domestic products or grant them a preference, other than an aid, to which conditions may or may not be attached» (art. 2, par. 2). Accordingly, states cannot «confine names which are not indicative of origin or source to domestic products only» (art. 2, par. 2, letter s).

⁶⁶ P. BORGHI, *Montagna, paesaggio, marketing territoriale: le esigenze dell'economia, gli strumenti del diritto*, in *Riv. dir. agr.*, 2019, I, pp. 100-114.

⁶⁷ When too successful, they impose internal standardization and homogenization not only of a product but also of the geographical region where such food is produced, with potentially negative impacts on the environment and on the agricultural diversity at the local level. See for instance how the Prosecco case was brought to the attention from the United Nations Special Rapporteur on toxics and human rights in 2021. See: Human Rights Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, Visit to Italy. A/HRC/51/35/Add.2, 13 July 2022.

⁶⁸ On this topic: A. DI LAURO, *Le denominazioni di origine protette e le indicazioni geografiche protette: strumenti per lo sviluppo sostenibile dell'impresa agricola?*, in *Riv. dir. agr.*, 2019, I, pp. 239-258

dismissed the strong protectionist approach to regulating agriculture markets, European Union and consequently Member States can rely only on a few instruments to intervene in the market⁶⁹. Producer organizations, short food supply chains, public procurement, fair contractual practices, and access to land are some of the key contributing factors for shaping the organizational diversity of the agricultural market. The extent to which such regulatory frameworks enable the inclusion of diverse agriculture approaches affects the overall systems and enables, or hinders, diversity.

The CAP 2023-2027 includes several novelties with regard to producer organisations, short food chains and public procurement. Firstly, reg. (EU) n. 2021/2117 reformed the norms pertaining to producer organisations with the endeavour to strengthen the sustainability potential, reinforce internal democratic control and safeguard small-scale producers. In this regard, art. 158, par. 1, letter *b*) affirms that provisions fixing the minimum participants number or volume for producers' organization «shall not prevent the recognition of producer organisations which are dedicated to small-scale production». Secondly, despite the new CAP does not include a definition of the short supply chain⁷⁰, it mentions it in the Result indicator R.10PR «Better supply chain organisation: Share of farms participating in producer groups, producer organisations, local markets, short supply chain circuits and quality schemes supported by the CAP», to improve the farmers' position in the value chain. Thirdly, concerning public procurement, the reformed reg. (EU) n. 1308/2013, art. 23 par. 11, regarding the aid for the supply of school fruit and vegetables and of school milk, accompanying educational measures and related costs, included that «Member States shall choose the products to be featured in distribution or to be included in accompanying educational measures on the basis of objective criteria which shall include one or more of the following: health and environmental considerations, seasonality, variety and the availability of local or regional produce, giving priority to the extent practicable to products originating

⁶⁹ A. JANNARELLI, *Mercato e concorrenza nella nuova PAC: un cantiere aperto su un futuro incerto*, in *Riv. dir. agr.* fasc. 4, 2021, pp. 453-503.

⁷⁰ In reg. (EU) n. 1305/2013, «short supply chain» was defined as a «supply chain involving a limited number of economic operators, committed to co-operation, local economic development, and close geographical and social relations between producers, processors and consumers» (art. 2, letter *m*). Art. 35 of the regulation offered financing opportunities for projects bringing together different actions and engaging in alternative forms of production or commercialization of agricultural products fostering short supply chain and local markets. See also: A. KAPAŁA, *Legal status of direct sales of agricultural and food products in the legislation of selected EU Member States*, in *Przegląd Prawa Rolnego*, 2020, vol. 26, fasc. 1, pp. 65-77.

in the Union. Member States may encourage in particular local or regional purchasing, organic products, short supply chains or environmental benefits, including sustainable packaging, and, if appropriate, products recognised under the quality schemes established by Regulation (EU) No 1151/2012».

An apparently distant, yet strictly related to organizational diversity is land tenure. Despite the broad – and expanding – scope of the common agricultural policy, land tenure has seldom received direct consideration by EU law⁷¹. Nevertheless, as unequal land access is becoming a widespread concern, the EU Commission intervened on the matter and asserted that, although the acquisition of agricultural land falls within the sphere of competence of European law by virtue of the principle of free movement of capital and freedom of establishment, the states – due to the particular sensitivity on the matter and in view of the achievement of the objectives pursuant to art. 39 TFEU – can set restrictions on the free market in land provided that these measures are necessary, proportionate, and do not completely exclude the free market. In particular, these limitations, in the light of the jurisprudence of the Court of Justice of the European Union, may concern – given the existence of certain conditions – the prior authorization to sell, the right of first refusal, a price control, and a ceiling on the extension of the property, and a premium for local buyers⁷². The Commission's interpretative communication testifies to the need for a better consideration of the impacts of agricultural policies on land access and potentially opens the way to renewed attention to the land access framework in the EU.

These brief examples show an increasing institutional recognition of the need to affirmatively protect different realities and allow for the consideration of non-economic interests while pursuing common agricultural policy objectives. At the same time, it emerges how the national level is still endowed with crucial responsibility in adequately leveraging the regulatory space to deliver diversity at the organizational level.

⁷¹ After the land grabbing surge in 2007-2009 however, increasing pressure raised also on European agricultural land. The European Economic and Social Committee adopted an Opinion of 21 January 2015 'Land grabbing – a wake-up call for Europe and an imminent threat to family farming', and the European Parliament adopted the Resolution of 27 April 2017 'On the state of play of farmland concentration in the EU: how to facilitate access to land for farmers' (2016/2141(INI)).

⁷² Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05).

8. The previous sections highlighted how the integration of diversity as a value in the agriculture and food law passes fundamentally through recognition. Recognition and differentiated treatment, by realizing substantial equality among differences, operate as a prerequisite for the achievement of agricultural diversity. Over time, the common agricultural policy has changed several approaches towards eligible subjects, privileging certain characteristics over others.

In line with the previous policy, CAP 2023-2027 dedicates space to the subjective characteristics of CAP beneficiaries. Strategic objectives draw attention to generational change and gender equality, as well as social inclusion through rural development⁷³. Consequently, in addition to young farmers, reg. (EU) 2021/2115 introduces the «new farmer», and attempts to rebalance the previously criticised inequalities of the direct payments thanks to the complementary redistributive income support for sustainability to small and middle farmers (art. 16, c. 2, letters *b* and *c*). Besides, the new CAP, although indirectly, recognized for the first time also agricultural labourers, thanks to the social conditionality (art. 14). While affirming the prominence of active farmers, the CAP highlights the role that part-time and multi-active farmers can play. Finally, the rural population continues to be a target, thanks to the LEADER program for rural development.

Promoting agricultural diversity entails also maintaining the agents of such diversity and encouraging the multiplicity of subjective qualities, including personal characteristics and knowledge. This also passes through the recognition of those agricultural producers that, despite the modest holding size and the little public support, still play a crucial role in producing public goods. Diversity and equality are balanced through the attribution of rights: recognition, protection and promotion of the specific characteristics, practices and needs are therefore a precondition for a regulatory environment that effectively promotes diversity.

The new CAP might represent a small step in that direction, but policy coherence across sectors and levels remains crucial⁷⁴, as well as a proactive approach by national and regional regulatory bodies that complements the

⁷³ Art. 6, par. 1, «(g) to attract and sustain young farmers and new farmers and facilitate sustainable business development in rural areas; (h) to promote employment, growth, gender equality, including the participation of women in farming, social inclusion and local development in rural areas, including the circular bio-economy and sustainable forestry».

⁷⁴ O. DE SCHUTTER, N. JACOBS, C. CLÉMENT, *A 'Common Food Policy' for Europe: How governance reforms can spark a shift to healthy diets and sustainable food systems*, in *Food Policy*, 2020, vol. 96, 101849.

EU level regulatory framework. The EU and its Member States have so far refused to adopt an explicit rights-based approach to agriculture, but an opening in that direction might help build a more coherent and long-term vision of the common agriculture policy⁷⁵ that effectively meets the multiple and often conflicting CAP objectives.

9. We could draw, from the brief excursus, that agricultural diversity, as a legal objective, is a regulatory setting that favours the meaningful coexistence in the same territory of multiple forms of agricultural models, including subjects, agricultural practices and agricultural products and services. This coexistence should concur in the transformation of food systems toward sustainability and resilience, and it is to be operated by a combination of coordination and subsidiarity.

The evolution of EU food and agriculture law has been and still is the story of the compromise between fostering uniformity for the internal market and accommodating territorial specificities. Inevitably, exceptions to the general regime are left to the competence of Member States, but interdisciplinary research is needed to assess to what extent this national-level flexibility fosters diversity in practice, as much depends on the concrete action that is taken at the national or subnational level. Diversity in agriculture might be as much a matter of direct intervention as of non-intervention: on the one hand, national-level legal actions that leverage the regulatory space left by EU law might create tensions between regulatory regimes. On the other hand, uncoordinated action at the national and local levels, or inaction, could hinder local-level initiatives as the lack or the unclarity of the regulatory framework exposes operators to uncertainties regarding the applicable law. Initiatives are also hindered when knowledge about the opportunities lacks altogether.

Having analysed the different dimensions of agricultural diversity,

⁷⁵ The UN Declaration on Peasants rights could therefore find a space in the EU context under this dimension. The UNDROP has brought materiality into the human rights sphere, in the sense that it interpreted existing rights in the light of the practical socio-economic and physical challenges faced by those who work in agriculture. The Declaration showed the necessity to recognize and realize individual and collective capabilities to ensure that people working in rural areas effectively enjoy adequate standards of living and dignified life. It also shows how rights are to be accompanied by obligations of public and private actors, and procedural safeguards to guarantee that such subjects are agents rather than passive recipients of policies.

United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas: resolution / adopted by the General Assembly A/RES/73/165.

it was possible to appreciate how its promotion creates conflicts with the achievement of other EU objectives. In the context of biological resources, diversity is to be weighed with productivity which is connected both to farmers' income and food availability. Biocultural diversity finds its main counter-value in the promotion of the internal market and the safeguarding of food safety, while organizational diversity has to be attuned to the free market and competition rules.

In an effort of rebalancing the different souls and objectives of the European Union, the EU level emerges as the appropriate regulatory space for mainstreaming diversity in agriculture. In fact, it is only through the recognition of an equal value to different principles and through the integration of conflicting objectives that policies and laws can achieve the expected results. On the contrary, States' attempts to regulate or promote some alternatives bear the risk of conflicting with EU law on the basis of different premises.

EU law is therefore an appropriate regulatory level to promote agricultural diversity, provided the subsistence of some criteria. First, the general system is to be designed to adequately consider the different dimensions of agricultural diversity, as well as to recognize equal dignity to different agricultural models, systems, and actors and ensure that one does not overpower the other. Secondly, adequate standards are to be in place for ensuring that the objective is realized at the national or sub-national level when regulatory space is left. In other words, balancing flexibility in the application of EU policies, but at the same time giving safeguards for allowing a minimum diversity threshold. Fourthly, coherence within and across policy areas should be strengthened. If the CAP new delivery model has the merit of streamlining the general objectives of the policy, it can fall short of adequate safeguards for ensuring that the procedure satisfactorily reaches the objective, as its assessment is based solely on quantitative indicators. Adopting an explicitly rights-based approach in the CAP would be both coherent with EU core values and would bring a necessary complement to accomplish substantial equality in the framework of the CAP's new delivery model.