

## Rules, responsibilities and governance facing Covid-19 in the Agri-Food Sector: EU and Italian perspectives

Ferdinando Albisinni

### 1.- Agri-food sector facing Covid-19

Agri-food sector is increasingly moving toward a global dimension, in an area where science (in its multiple declinations) has a crucial role, and technical innovation and legal innovation are in a constant relation.

*Global Agri-food Law* appears as an open laboratory: its multiplicity of legal bases, of goals, of legal tools, pays the difficulty to give systemic order to a sector rich of crossing tensions, but at the same time expresses a peculiar way of rule-making, where international, regional, and national levels of governance intersect, and private and public responsibilities face the challenges of vertical and horizontal cooperation.

In this area the complexity of topics, issues, and problems (*the nature of things*)<sup>1</sup> largely exceeds the European dimension, and we are forced to take into account a *Global dimension*, which requires by its nature the adoption of a compara-

tive perspective, as a necessary tool to understand and better know trends and rules of a moving legal framework<sup>2</sup>.

This conclusion, which scholars from different countries shared during the AIDA-IFLA Congress of 2018 in Trento on *Innovation in Agri-Food Law between Technology and Comparison*<sup>3</sup>, and of 2019 in Portici on *Transparency and new rules in the European Agri-Food Law System*<sup>4</sup>, has been strongly reaffirmed by the experiences which the entire world has been forced to face (and is still now facing) due to the Covid-19 emergency.

Several legal acts have been adopted in recent months, which – searching for original answers to the serious and largely unknown and unpredicted hazards coming from Covid emergency (to human health, but even to economy, social life, and political institutions) – increased the attention to a regulation which by its proper nature is an agri-food chain discipline, and at the same time underlined the growing trend toward a systemic regulatory dimension, which moving from human health involves not only food safety but also food security, food sovereignty, market and competition rules, public and private controls, communication rules, and more generally governance and social rules.

As discussed during the AIDA Conference of 2020, tentative answers have been searched at different interplaying levels, including European Union, States, Regions<sup>5</sup>, and even private market

(<sup>1</sup>) *The nature of things*, as a relevant tool in agricultural law, has been underlined, already in the '30s of the past century, by T. Ascarelli, *L'importanza dei criteri tecnici nella sistemazione delle discipline giuridiche e il diritto agrario*, in "Atti del primo congresso nazionale di diritto agrario", 1936, Florence, p.102.

(<sup>2</sup>) For further references see L. Scaffardi – V. Zeno-Zencovich (eds.), *Cibo e Diritto. Una prospettiva comparata*, RomaTrE-Press, 2020; L. Costato – F. Albisinni (eds.), *European and Global Food Law*, 2<sup>a</sup> ed., Cedam-Wolters Kluwer, Milano, 2016; F. Albisinni, *Agri-Food Law and Comparative Tools in Global Markets*, in *The Cardozo Electronic Law Bulletin*, vol. 26, 2020, p. 1-47.

(<sup>3</sup>) The contributions discussed during the Congress have been published in AIDA-IFLA (ed.), *Innovation in Agri-Food Law between Technology and Comparison*, Cedam – Wolters Kluwer, 2019.

(<sup>4</sup>) The contributions discussed during the Congress have been published in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 3-2019.

(<sup>5</sup>) As pointed out by the comparative contributions on different countries, discussed during the AIDA-IFLA Annual Conference of 2020, loaded at <https://www.aida-ifla.it/en/events/the-conference-2020/>; see M. Holle, *Handling the covid-19 pandemic for food businesses and consumers: have we got the right legal tools? - a view from Germany*; Yangyao Yu – Edison Tang, *China's new rules for agricultural products In Covid-19 - A newly enforced certificate system*; M. T. Roberts, *How Law and Governance can facilitate the Harnessing of Innovation and Technology to build Resiliency In the Food Supply Chain – In The United States and Globally*; T. Georgopoulos, *Emergency Wine Law in France under Covid-19: is anything more definitive than the temporary?*; M. Cloutier, *Exogenous shocks to the Canadian agrifood system amid the Covid- 19 pandemic: Retrospective et prospective issues*.

players<sup>6</sup>, but not significantly – almost until to-day – at the level of international organisations.

International organisations are in fact playing a sort of ancillary role during this emergency, while the *Center* of decisions and responsibilities has been strongly reaffirmed within traditional houses of power, i.e. within National States and (partially) within European Union<sup>7</sup>.

There have been some cases of *cooperation* to face the emergency (especially during the first months, when it seemed to affect some areas and not the entire globe), but through direct negotiations and agreements among States, not within international organisations. There have been even cases of *legal transplants* of tools set up in other countries, but not within the formal framework of international institutions.

«*When the going gets tough, the tough get going!*» – says John Beluschi in "*Animal House*" – this motto seems to express the experience of those months, moving to recognize that the first answers to a crisis strictly related to globalisation, like the Covid-19 pandemia that all the countries of the world are now experiencing, have been provided at National and European Union level, and not at Global level.

The negative experience of shortage of masks and of oxygens respirators during the initial period of pandemia, and later of shortage of anti-Covid vaccines, due not only but also to some national barriers to the export of those crucial strategic goods, led to rediscover topics of *national security and national sovereignty*<sup>8</sup>.

A crucial decision (shared by the majority of Member States, with few exceptions) entrusted to the EU Commission the central question of negotiating and entering single EU contracts to buy Covid vaccines in the international market for all European citizens, and a really significant shift from traditional EU approaches in economy governance assigned a central role to EU Institutions in distributing to single MS economic resources centrally obtained in the international capital markets.

In other areas of regulation, strictly related to the emergencies due to Covid-19 pandemia – like those related to traffic of goods and persons within EU – single MS strongly affirmed their position of *effective governance*.

Rules on control of persons and goods at national borders to fight Covid-19 have not been unified, despite the attempts by EU Commission to promote a unified approach<sup>9</sup>, and the green pass to freely travel in the EU territory at the moment of writing those notes is still a proposal under development, and not a defined and applicable protocol.

Within this general trend, agri-food rules and practices once again confirmed their peculiar nature, opening a debate on competences and responsibilities, within the process of defining the new CAP for the next decade.

An analysis of decisions and choices, taken during those months inside and outside European Union, shows new models and new paradigms operating within this area of law<sup>10</sup>.

<sup>(6)</sup> On the role played by private actors in the agri-food market, with peculiar attention to the present situation, see M. Ferrari, *Managing the Covid emergency in the global food market: the role of private regulation*, contribution to the AIDA-IFLA Annual Conference of 2020, loaded at <https://www.aida-ifla.it/en/events/the-conference-2020/>, and published in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it); No 1-2021, and references there.

<sup>(7)</sup> See the contributions mentioned *supra* at note 5.

<sup>(8)</sup> See – with specific attention to food and agricultural products – the debate opened in France by agro-economists and policy analysts, with a number of webinar promoted by Agritalks – planet A, on the topic “*Act for the development of food and economic sovereignty*”, published at <https://www.youtube.com/watch?v=LqA76oxOKfc>.

<sup>(9)</sup> See *infra* par. 2.

<sup>(10)</sup> On trends emerging in the Common Agricultural Policy during the Covid-19 pandemia, and more generally on new models and practices in agri-food markets, involving producers and consumers, see the contributions discussed during the AIDA-IFLA Annual Conference of 2020, loaded at <https://www.aida-ifla.it/en/events/the-conference-2020/>: L. Costato, *Globalizzazione, Covid-19 e sopravvivenza*; L. Russo, *Emergenza Covid e Politica agricola comune*; M. Goldoni, *Green Deal e sicurezza alimentare, fra COVID e Riforma della PAC*; A. Jannarelli,  *Mercati agricoli e alimentari, concorrenza e dematerializzazione: i nuovi scenari*; P. Borghi, *Green Deal, sistema alimentare e sostenibilità: una visione olistica*; G. Brunori, *Green Deal, sostenibilità e resilienza dei sistemi agro-alimentari: oltre la Pac?*; I. Canfora,

## 2.- The European Union approach

The European Commission, already in the first months of Covid-19 pandemia, expressly recognised the direct and relevant effects on agricultural production and EU food supply, underlying: “*The outbreak of the coronavirus is having an unparalleled effect on our society and economy. Our farmers and every actor of the EU food supply chain are working hard to keep feeding Europe, despite the difficulties they face.*”<sup>11</sup>

Moving from those considerations, the Commission was expressing the intent to adopt a number of measures, including Guidelines to ensure an efficient food supply chain, Simplification in EU procedures, Direct support for farmers and rural areas, Increased flexibility, Temporary derogation from EU competition rules applicable to the sector<sup>12</sup>.

In fact – beyond the political emphasis – the European Union effective answers to the challenges in the agri-food market due to the Covid-19 emergency may be classified within three principal areas:

- a) *circulation of food products within and outside European Union;*
- b) *innovation, dematerialisation, and simplification in controls of food and other biological materials;*
- c) *reshaping of goals and lines of the CAP, as*

*outlined before Covid-19 pandemia.*

a) *Circulation of food products within and outside European Union.*

In the first months of pandemia, some MS introduced significant limitations to free circulation of goods (including food products), assuming that those provisions were aimed to protect human health.

EU authorities adopted no formal action against those controversial national provisions, which could create (and in some cases effectively created) relevant obstacles to freedom of trade. But the EU Commission published, already in March 2020, its guidelines on border controls to protect human health and guarantee “*the delivery of goods and essential services across Europe*”<sup>13</sup>, underlying that “*Member States should therefore not undertake measures that jeopardise the integrity of the Single Market for goods, in particular of supply chains, or engage in any unfair practices*”, and that “*Control measures should not undermine the continuity of economic activity and should preserve the operation of supply chains. Unobstructed transport of goods is crucial to maintain availability of goods, in particular of essential goods such as food supplies including livestock, vital medical and protective equipment and supplies.*”, concluding that:

“*Member States should preserve the free circula-*

*I mercati agroalimentari tra globale e locale ai tempi dell'emergenza covid*; S. Bolognini, *Comunicazione B2C nel mercato agro-alimentare: Green Deal e sostenibilità*; G. Spoto, *Blockchain e IoT nel mercato agroalimentare innanzi all'emergenza COVID*; L. Paoloni, *Nuovi paradigmi nell'agroalimentare in epoca di emergenza*; A. Musio, *Stato di emergenza e principio di leale collaborazione*; A. e A. Artom, *Integratori alimentari al tempo del Covid-19: luci ed ombre*; F. Aversano, *Cibo e assicurazione in tempi di emergenza*; E. Sirsi, *Emergenza e innovazione tecnologica in agricoltura e nell'alimentare*; R. Saija, *Precauzione e sussidiarietà nel mercato agroalimentare*; M. Gioia, *Abitudini alimentari e filiere resilienti nel lockdown da COVID-19*; M. Giuffrida, *Emergenza Covid-19 e disciplina agroalimentare: alcune prime conclusioni*. Contributions of L. Costato, L. Russo, G. Spoto, A. e A. Artom, M. Gioia, M. Giuffrida are also published in this Journal [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 1-2021.

(<sup>11</sup>) European Commissioner for Agriculture, *CORONAVIRUS: Emergency response to support the agriculture and food sectors*, May 2020, published at [https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/factsheet-covid19-agriculture-food-sectors\\_en.pdf](https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/factsheet-covid19-agriculture-food-sectors_en.pdf).

(<sup>12</sup>) As underlined in the document of May 2020 of the European Commissioner for Agriculture, above mentioned.

(<sup>13</sup>) European Commission, *COVID-19 - Guidelines for border management measures to protect health and ensure the availability of goods and essential services*, 2020/C 86 I/01, in O.J.E.U., 16 March 2020, C 86 I/1.

For a critical examination of the documents and regulations of the EU Commission, see L. Carrara, *Dal Regolamento (UE) 2017/625 alle misure applicative unionali e nazionali: un percorso innovativo ma non concluso*, in this Journal, [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 4-2020, 37.



*tion of all goods. In particular, they should guarantee the supply chain of essential products such as medicines, medical equipment, essential and perishable food products and livestock. No restriction should be imposed on the circulation of goods in the Single Market, especially (but not limited to) essential, health-related and perishable goods, notably foodstuffs, unless duly justified. Member States should designate priority lanes for freight transport (e.g. via 'green lanes') and consider waiving existing weekend bans.*

*No additional certifications should be imposed on goods legally circulating within the EU single market. It should be noted that, according to the European Food Safety Authority, there is no evidence that food is a source or a transmission source of Covid-19<sup>14</sup>.*

No infringement procedure was promoted, and the tools adopted have been guidelines aimed to political suasion, and not regulations or executive orders.

But the central strategic role assigned to food has been confirmed once again, with reference both to the free circulation of foodstuffs as “essential, health-related goods”, and to the ban of any sort of additional certification or communication regarding quality of food, in line with dating provisions of European legislation<sup>15</sup>.

At the same time, relevant implementing legislation has been introduced on the basis of Regulation (EU) 2017/625<sup>16</sup>, with reference both to food circulating among MS, and to food imported in Europe from other countries, taking into

account the global dimension of food markets<sup>17</sup> and the introduction of new *dematerialised controls*, to guarantee an effective level of control of food and of any other biological material, adequate to the new challenges of Covid-19 pandemia.

*b) Innovation, dematerialisation, and simplification in controls on food and other biological materials.*

The European Commission underlined that there is no scientific evidence that food is a source or a transmission source of Covid-19<sup>18</sup>, but at the same time recognised the need to update the procedures for official food controls, taking into account difficulties and limitations resulting from the emergency situation due to the pandemia.

The general system of official food control in Europe had been significantly reformed three years earlier by the new Regulation (EU) 2017/625 on official controls<sup>19</sup>, which entered in application from 14 December 2019<sup>20</sup> few months before the explosion of Covid-19 pandemia, and which adopted a systemic approach to the whole *life cycle*<sup>21</sup>.

Expressly mentioning the circumstance that “*The ongoing crisis related to coronavirus disease (COVID-19) represents an exceptional and unprecedented challenge for the capacity of Member States to fully conduct official controls and other official activities in accordance with EU legislation*”<sup>22</sup>, the European Commission in 2020 introduced a number of innovative rules and procedures, aimed to adequate to present challen-

<sup>(14)</sup> EU Commission Guidelines, cit., mentioning a document of EFSA published at <https://efsa.europa.eu/en/news/coronavirus-no-evidence-food-source-or-transmission-route>.

<sup>(15)</sup> See already art. 2 of Council Directive 79/112/EEC, of 18 December 1978, on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer.

<sup>(16)</sup> See implementing regulations mentioned at note 22, *infra*.

<sup>(17)</sup> See the analysis of I. Canfora, *I Mercati agroalimentari tra globale e locale ai tempi dell'emergenza covid*, cit.

<sup>(18)</sup> See *supra* note 13. See also WHO, “COVID-19 and food safety: guidance for food businesses”, of April 7, 2020, at [https://apps.who.int/iris/bitstream/handle/10665/331705/WHO-2019-nCoV-Food\\_Safety-2020.1-eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/331705/WHO-2019-nCoV-Food_Safety-2020.1-eng.pdf).

<sup>(19)</sup> Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

<sup>(20)</sup> Art. 167 of Reg. (UE) 2017/625.

<sup>(21)</sup> On the innovative model introduced by Regulation (UE) 2017/625, see F. Albisinni, *Regulation (EU) 2017/625: Official Controls, Life, Responsibilities, and Globalization*, in *European Food and Feed Law Review*, 2019, p. 118-131; Id., *Regolamento (UE) 2017/625: controlli ufficiali, ciclo della vita, impresa, e globalizzazione*, in this *Journal*. [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), n. 1-2018, p. 11.

<sup>(22)</sup> Whereas (2) of Commission Implementing Regulation (EU) 2020/466, of 30 March 2020; see *infra*.

ges the general model of the regulation of 2017, with specific attention to dematerialised controls and to the involvement of new actors in day to day controls.

In 2020 and 2021, with a series of implementing regulations, starting with Regulation (EU) 2020/466 of 30 March 2020<sup>23</sup>, the Commission introduced new rules for the circulation of agricultural and food products, new procedures for cross-border controls *with express reference to the pandemic* (even if food – as already mentioned – seems to be extraneous to the spreading of Covid).

Within this framework, peculiar innovations concerned: a) the role assigned to “*natural persons specifically authorised by the competent authority on the basis of their qualifications, training and practical experience*” who may be entrusted to perform “*Official controls and other official activities*”; b) the introduction of new dematerialised certifications through TRACES; c) the adoption of new systems of control “*via available means of distance communication*” .

*Simplification and dematerialisation*<sup>24</sup> have been extended also to controls on eligibility conditions for CAP payments, with the intent to minimise physical contact between farmers and inspectors, and to reduce administrative burden<sup>25</sup>.

Similar rules have been introduced for official controls on biological products<sup>26</sup>.

Such innovations deal with the core of the certification and control system, assigning a greater role to private bodies in areas traditionally considered as essentially public<sup>27</sup>, together with the focus on dematerialised certification.

All these new provisions were declared temporary, but in the following months their application, originally limited until 1 June 2020, has been extended many times, presently until 1 July 2021<sup>28</sup>.

As underlined by a distinguished contributor to the AIDA 2020 Congress, *nothing is more definitive than the temporary*<sup>29</sup>.

Temporary innovations, introduced as an answer to Covid-19 emergency in the area of agri-food controls, in fact express much more than a reac-

<sup>(23)</sup> Commission Implementing Regulation (EU) 2020/466, of 30 March 2020, on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States' control systems due to coronavirus disease (COVID-19), entered in force on 1 April 2020.

This Regulation has been later modified by Commission Implementing Regulation (EU) 2020/714 of 28 May 2020 amending Implementing Regulation (EU) 2020/466 as regards the use of electronic documentation for the performance of official controls and other official activities and the period of application of temporary measures; Commission Implementing Regulation (EU) 2020/1087 of 23 July 2020 amending Implementing Regulation (EU) 2020/466 as regards the performance of official controls and other official activities by specifically authorised natural persons, the performance of analyses, testing or diagnoses and the period of application of temporary measures; Commission Implementing Regulation (EU) 2020/1341 of 28 September 2020 amending Implementing Regulation (EU) 2020/466 as regards the period of application of temporary measures; Commission Implementing Regulation (EU) 2021/83 of 27 January 2021, amending Implementing Regulation (EU) 2020/466 as regards the performance of official controls and other official activities by specifically authorised natural persons and the period of application of temporary measures. On those implementing regulations and on the national implementing measures, see L. Carrara, *Dal Regolamento (UE) 2017/625 alle misure applicative unionali e nazionali*, cit.

<sup>(24)</sup> On the new trends in agri-food competition market regulation, within the perspective of dematerialization, see A. Jannarelli, *Mercati agricoli e alimentari, concorrenza e dematerializzazione: i nuovi scenari*, cit.; G. Spoto, *Blockchain e IoT nel mercato agroalimentare innanzi all'emergenza COVID*, cit.; S. Bolognini, *Comunicazione B2C nel mercato agro-alimentare: Green Deal e sostenibilità*, cit.

<sup>(25)</sup> See the document of May 2020 of the European Commissioner for Agriculture, mentioned above at note 11.

<sup>(26)</sup> Commission Implementing Regulation (EU) 2020/977 of 7 July 2020 derogating from Regulations (EC) No 889/2008 and (EC) No 1235/2008, as regards controls on the production of organic products due to the COVID-19 pandemia.

<sup>(27)</sup> On *certainty* as a typical public value, see M.S. Giannini, *Certezza pubblica*, in *Enc.dir.*, VI, 1960, Milano, 769. On the new European and national certification rules after Reg. (CE) n. 765/2008, see the reports discussed in the Conference “*Controlli, Certificazioni, Responsabilità*” organized by AIDA in Viterbo on 2-3 December 2011, with contributions from L. Costato, F. Albinini, S. Amoroso, F. Capelli, F. Di Porto, N. Rangone, M.C. Tallacchini, A. Moscarini, L. Ammannati, P. Borghi, L. Russo, R. Ricci Curbastro, published in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 4-2011, 1-2012.

<sup>(28)</sup> See the present version of art. 4 of Reg. (EU) 2020/466, and of art. 3 of Reg. (EU) 2020/977 as amended by Reg. (EU) 2021/772

<sup>(29)</sup> T. Georgopoulos, *Emergency Wine Law in France under Covid-19: is anything more definitive than the temporary?*, cit.

*tive innovation*, an answer to emergency, and appear linked to a fast changing social and economic organisation of markets, where dematerialisation and private operators performing public functions are a trend moving fast to occupy new territories, in agri-food markets as in many areas of public services, including school and universities.

It seems therefore reasonable to foresee that the new models of control in agri-food production and market will last well beyond the end of the Covid-19 emergency.

*c) Reshaping of goals and lines of the CAP, as outlined before Covid-19 pandemia.*

In 2018 the European Commission submitted to the European Parliament and to the Council the proposals for a set of regulations laying down the legislative framework for the CAP in the period 2021-2027<sup>30</sup>.

In the previous round of CAP Reforms of 2011-2013, the fundamental goal “*to assure the availability of supplies*” had been rediscovered, after some decades of neglect, and *food security* had been accompanied by expressions having a relevant systemic impact: all the introductory reports of 2011 emphasized that “*A strong agriculture is vital for the EU food industry and global food security*”, in the awareness that the EU food industry cannot stand by itself only in a mercantilistic logic, but requires an active agricultural produc-

tion, necessary for the identity and sustainability (economic, as well as environmental) of the entire sector and for a competitive position in world markets<sup>31</sup>.

The proposals of 2018 of the Commission, while taking note of the circumstance that “*Agricultural prices have dropped substantially, decreased by macroeconomic factors, geopolitical tensions and other forces*”, no longer mentioned *global food security or EU food industry*, insisting instead on “*challenges related to the economic health of the farm sector, care for the environment, action over climate change, and a strong and economic and social fabric for the EU's rural areas – especially in view of emerging opportunities for action in the areas of trade, the bioeconomy, renewable energy, the circular economy and the digital economy*.”<sup>32</sup>.

Even later, in December 2019, the Commission, in the Communication on *Green Deal*<sup>33</sup>, discussing the lines of the proposed CAP reforms, seemed to consider only the sustainable development and environment protection goals.

The scenario changed dramatically in the first months of 2020, with Covid-19 pandemia producing relevant effects to agricultural and food production and markets, and to the same basic perspectives of CAP reforms.

Only few months later, in May 2020, the European Commission devoted an express chapter of its new Communication, *A Farm to Fork Strategy*<sup>34</sup>,

<sup>(30)</sup> Proposal for a Regulation of the European Parliament and of the Council, establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council; Brussels, 1.6.2018, COM(2018) 392 final, 2018/0216(COD).

<sup>(31)</sup> On the need of new policies for global food security to face challenges not adequately considered by WTO Treaties, see L. Costato, in a well known series of researches, and recently *Agricoltura, salute e scienza in tempi di pandemia*, in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 4-2019, 1.

On CAP reforms of 2013 and on proposals of 2018, see F. Albisinni, *La definizione di attività agricola nella nuova PAC, tra incentivazione e centralizzazione regolatoria*, in *Riv.it.dir.pubbl.comun.*, 2014, vol. XXIV, p. 967; Id., *La nuova PAC e le competenze degli stati membri tra riforme annunciate e scelte praticate*, in *Riv.dir.agr.*, 2020, I.

<sup>(32)</sup> Point 1 CONTEXT OF THE PROPOSAL, *Reasons for and objectives of the proposal*.

<sup>(33)</sup> “Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. The European Green Deal”, Bruxelles, 11.12.2019, COM(2019) 640 final.

<sup>(34)</sup> 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*, Bruxelles, 20.5.2020, COM(2020) 381 final.



to “ensuring food security” underlying in the premises of the document: “*The COVID-19 pandemic has underlined the importance of a robust and resilient food system that functions in all circumstances, and is capable of ensuring access to a sufficient supply of affordable food for citizens. It has also made us acutely aware of the interrelations between our health, ecosystems, supply chains, consumption patterns and planetary boundaries.*”<sup>35</sup>.

In many Member States the political debate rediscovered food self-sufficiency and even food sovereignty, moving from the consideration that “*The Covid-19 pandemic revealed deficiencies and distortions in the global food supply chain and agricultural production systems and saw important questions regarding sovereignty and food security highlighted*”<sup>36</sup>.

And the European Parliament significantly amended the proposals of the Commission: modified the definition of *agricultural activity*, replaced the definition of *active farmer* to that of *genuine farmer*, underlined human factors in the definition of PDOs (rejecting the proposal of the Commission to consider the human factors only eventually relevant). More generally, in the final document of

amendments approved on 23 October 2020<sup>37</sup>, the European Parliament highlighted the necessity of attention toward “*long term food security*”<sup>38</sup> and introduced a new art. 10a on the Global dimension of the CAP, with reference both to the *right to food* as well as to the *right to development*<sup>39</sup>.

Finally, the Communication of the EU Commission of 20 December 2020, addressed to all the institutional actors of the CAP, including MS and Regions, formally declared “*Fostering a smart, resilient and diversified agricultural sector ensuring food security*”, as the first of the “*Recommendations for the CAP Strategic Plans*”, insisting now on *food security* as an essential identity goal of the CAP<sup>40</sup>, while – as already mentioned – the expression *food security* didn't even appear in the *Green Deal* document of December 2019<sup>41</sup>.

The new legislative provisions on CAP should enter in application in their final texts only in 2023, and we still do not know whether there will be further modifications or amendments<sup>42</sup>, but the new trends and priorities emerged both in National and in EU documents during this terrible 2020 seem to confirm that the challenges of Covid-19 pandemia led to a reevaluation of the

<sup>(35)</sup> On the new models and scenarios emerging within the proposals for the reform of the CAP, see M. Goldoni, *Green Deal e sicurezza alimentare, fra COVID e Riforma della PAC*, cit.; P. Borghi, *Green Deal, sistema alimentare e sostenibilità: una visione olistica*, cit.; G. Brunori, *Green Deal, sostenibilità e resilienza dei sistemi agro-alimentari: oltre la Pac?*, cit.; L. Russo, *Emergenza Covid e Politica agricola comune*, cit.

<sup>(36)</sup> Conference of Académie d'agriculture de France, October 16, 2020. See also the interview published by Reuters on December 1, 2020, of the French Agriculture Minister Julien Denormandie, declaring: “*France aims to raise the area it sows with protein-rich crops by 40% from 2022 and double it over 10 years to reduce heavy reliance on soybean imports from South America*”, with a clear political dimension of the plan of reaffirmation of France's protein sovereignty,

<sup>(37)</sup> See the document of the European Parliament, P9\_TA(2020)0287, “Amendments adopted by the European Parliament on 23 October 2020 on the proposal for a regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council”.

<sup>(38)</sup> See Amendments 102 and 1149cp1.

<sup>(39)</sup> See Amendment 809.

<sup>(40)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Recommendations to the Member States as regards their strategic plan for the Common Agricultural Policy, Brussels, 18.12.2020, COM(2020) 846 final.

<sup>(41)</sup> Incidentally it may be noted that in the *Green Deal* Communication of December 2019, the word *environment* appeared 73 times, food security was absent, security in various declinations (but not as *food security*) appeared 5 times, and food insecurity appeared only one time.

<sup>(42)</sup> For an analytical examination on the present reform of the CAP, see L. Russo, *Emergenza Covid e politica agricola comune*, cit.

security topics within European policies, including a revaluation of *food security* and *right to food* within the CAP.

Remains open the question on how much the renewed perspectives of the EU legislative intervention in agricultural policies have been translated into measures consistent with what has been declared, and how much Member States (in our case: Italy) will be able to effectively implements such innovations.

### 3.- National experiences: the case of Italy

At *national level*, single Member States of European Union have introduced a number of different measures, affirming their position of central effective governance and in some ways putting under stress fundamental principles of EU law, like freedom of trade and free circulation of persons and goods, with relevant effects on agri-food production and markets.

In the same time both European States, and States located in other areas of the world, have drawn up new models, blending within innovative frameworks an increased centralisation and a peculiar attention to the use of new dematerialised tools of control and guarantee in food markets<sup>43</sup>.

With reference to our domestic experience, Italy adopted a large set of new administrative and legislative provisions, modifying existing rules

and introducing new rules, to react to troubles and problems in food production and food supply caused by Covid-19 emergency.

Even Courts of Justice have been called to decide unusual issues and to draw new models and paradigms, in civil, criminal, and administrative cases. Just some examples on the Italian experience:

- Administrative measures adopted at central State level, restricting the free movement of people and goods in the national territory, but introducing special provisions on sale of food, which remained substantially free, with rules different from those applicable to other commercial activities<sup>44</sup>. Such measures have been judicially challenged by some Regions, claiming a violation of their competences, but the Courts rejected the petitions on the basis of an extensive reading of the principle of precaution<sup>45</sup>.

- Legislative, administrative and judicial decisions on opening or closing shops and commercial structures, even in these cases with special rules confirming the peculiar nature of food production and supply, closing restaurants and café shops, but leaving open supermarkets and food shops<sup>46</sup>.

- Legislative, administrative and judicial decisions on hunting and fishing, taking into account the special nature of such activities<sup>47</sup>.

- Legislative provisions on market communication of agri-food products, qualifying as unfair commercial practice, illicit on the basis of Directive (UE) 2019/633 of April 2019 on unfair trading practices in the agri-food chain<sup>48</sup>, any contractual

<sup>(43)</sup> On those experiences, see the analyses, discussed during the AIDA-IFLA 2020 Congress, of M. Holle on Germany, Yangyao Yu – Edison Tang on China, M.T.Roberts, on U.S.A., T. Georgopoulos on France, M. Cloutier on Canada, cit.

<sup>(44)</sup> For a systemic analysis of legislative and administrative provisions, and of judicial decisions, adopted in Italy with reference to food production and market during the Covid-19 emergency, see F. Aversano, *Effetti della pandemia nel settore agroalimentare e ruolo rassicurante del cibo*, in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 2-2019, 21.

<sup>(45)</sup> On those judicial decisions see R. Saija, *Principi di precauzione e sussidiarietà: esiti sul diritto alimentare in tempi di emergenza*, in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 2-2019, 45.

<sup>(46)</sup> See Decree of the Council of Ministers 31 January 2020, and D.L. 23 February 2020, No 6, "Misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19", and Law 5 March 2020, No 13. The full list of DPCM (Decree of the President of the Council of Ministers), D.L. and Laws adopted to face the Covid-19 emergency is published at <https://www.governo.it/it/coronavirus-normativa>.

<sup>(47)</sup> See TAR (Administrative Regional Tribunal) of Molise, Decree 9 May 2020, No 103/2020, which qualifies hunting as a sport activity which remains free even after the general emergency DPCM, but in the same time specifies that wild boar hunting is forbidden during pandemia because it is a collective activity and as such it is not allowed to avoid to spread contagion.

<sup>(48)</sup> Directive (EU) 2019/633 of the European Parliament and of the Council, of 17 April 2019, on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.



clause which requires to the seller of agri-food products a Covid-19 certification. Such provisions, initially introduced in a D.L. of 2 March 2020<sup>49</sup>, and then confirmed in a subsequent D.L. of 17 March 2020<sup>50</sup>, involve a peculiar relation between EU and National sources of law. Directive (UE) 2019/633 has to be implemented by MS before 1 May 2021, and applied from 1 November 2021. Those deadlines were very far in 2020, and Italy has adopted a law to comply with this and other EU Directives only in April 2021<sup>51</sup>. But already in March 2020, under the pressure of the pandemia, the Italian Government used the reference to the Covid-19 emergency to introduce in the Italian regulatory framework some elements of relevant innovation. The new provisions of March 2020 not only qualified as unfair a specific commercial practice related to Covid-19 emergency<sup>52</sup>, but more generally introduced a new *institutional governance* of competition in agri-food chain and a larger area of application not limited to the national dimension. The D.L. of March 2020 assigned competence to investigate and sanction such unfair commercial practice to ICQRF<sup>53</sup>, and not to the Anti-trust Authority, until then being the single Italian institution competent to evaluate and sanction anti-competitive practices in the area of

agri-food markets<sup>54</sup> as in all other market areas. This special attribution of competence has been one year later adopted as a general governance criteria by the Italian Law of 2021 implementing the Directive (UE) 2019/633<sup>55</sup>, which has assigned to ICQRF and not to Anti-trust the general competence for all cases of unfair commercial practices in the agri-food chain. Moreover the provisions of 17 March 2020 expressly extended the application of the new rules to any sale of agri-food products located in the Italian territory<sup>56</sup>, with a transnational expansion of the area of application coherent with the approach adopted by Directive (EU) 2019/633, even in this case anticipating lines which will be applied in 2021 to all practices in the agri-food chain<sup>57</sup>. Following this path, new models of *governance of competition* in agri-food markets, introduced as *rules of exception* answering to the Covid-19 emergency, have been later on adopted as general models.

- Legislative provisions, adopted within the framework of Covid-19 emergency<sup>58</sup>, extending to food and feed operators the special provisions, formerly applicable only to farmers, which admit operators violating agri-food rules to remedy to such violations in a term of 30 days assigned by the Control authority<sup>59</sup>, and extending to public

<sup>(49)</sup> Art. 33, D.L. 2 March 2020, No 9, "Misure urgenti di sostegno per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da Covid-19".

<sup>(50)</sup> Art. 78, co. 2-bis, 2-ter, 2-quater, of D.L. 17 March 2020, No 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", as inserted by L. 24 April 2020, No 27. On art. 78 see the analysis of M. Ferrari, *Managing the Covid emergency in the global food market: the role of private regulation*, cit.

<sup>(51)</sup> L. 22 April 2021, No 53, Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea - Legge di delegazione europea 2019-2020.

<sup>(52)</sup> Moving along the same lines of EU Commission and WHO, excluding any evidence that food is a source or a transmission source of Covid-19; see supra notes 14 and 16.

<sup>(53)</sup> ICQRF-Ispettorato centrale della Tutela della Qualità e della Repressione Frodi dei prodotti Agro-Alimentari, is the Central Italian Authority for food controls, competent on foods frauds and for controls on quality products. See <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/394> and the annual reports on the activity, thereby published in Italian, English, and Chinese.

<sup>(54)</sup> See art. 62 of D.L. 24 January 2012, No 1.

<sup>(55)</sup> Art. 7 of L. 53/2021, cit.

<sup>(56)</sup> See art. 78, co. 2-ter of D.L. No 18/2020, as modified by Law No 27/2020.

<sup>(57)</sup> See art. 7.1., u) of L. 53/2021, cit.

<sup>(58)</sup> D.L. 16 July 2020, No 76, "Misure urgenti per la semplificazione e l'innovazione digitale", expressly mentioning in the premises the need to face difficulties due to Covid-19 emergency.

<sup>(59)</sup> See art. 43, co. 3, of D.L. 16 July 2020, No 76. The original provision, applicable only to farmers, had been introduced by art. 1 of D.L. 24 June 2014, No 91, "Disposizioni urgenti per il settore agricolo...".

entities like the Chambers of Commerce the condition (originally limited only to private certification bodies) to be previously accredited by the National Accreditation Authority to operate as certification bodies for quality wines<sup>60</sup>. In those cases, emergency legislation has been an occasion, a push, to assign systemic application to rules which have been originally introduced as *rules of exception*, drawing a general framework on training and cooperation between official controls and all the operators of the food and feed chain (along the same lines emerging in EU legislation and administration<sup>61</sup>), and promoting fair competition among public and private bodies operating in the market of certification of PDO-PGI wines (even in this case along lines of EU legisla-

tion<sup>62</sup>).

- Administrative national decisions introducing modifications, declared as temporary, of the product specifications of PDO-PGI products, assuming as legal basis *Covid emergency*, with reference to topics like the conditioning of the product (Prosciutto di Parma<sup>63</sup>, Prosciutto Toscano<sup>64</sup>, Finocchiona<sup>65</sup>), the geographical area of wine-making cellars (Morellino di Scansano<sup>66</sup>), the milk ice storage (Mozzarella di Bufala Campana<sup>67</sup>), all pertaining to largely controversial provisions. All those *national* modifications have been adopted on the basis of EU provisions allowing “a *temporary change in the product specification resulting from the imposition of obligatory sanitary and phytosanitary measures by the public authorities or*

<sup>(60)</sup> See art. 43-ter, f) of D.L. 16 July 2020, No 76, cit., as amended by L. 11 September 2020, No 120. Previous legislation required only to private entities the requisite of a previous accreditation to be admitted to operate as certification bodies of quality wines. The different regime applied to public and private entities performing the same activity has been challenged before the Anti-trust Authority and in administrative courts already in 2013, but the question remained unsolved even after a formal opinion expressed by the Anti-trust Authority in 2016.

<sup>(61)</sup> See Commission Implementing Regulation (EU) 2021/279, of 22 February 2021, on controls and other measures ensuring traceability and compliance in organic production, which expressly underlines the relevance of training both of operators and of inspectors; and more generally the Commission Implementing Decision (EU) 2021/173, of 12 February 2021, on European Agencies, which expressly mentions the “*Single Market Programme: Food safety: health for humans, animals and plants along the food chain and better training for safer food*”.

<sup>(62)</sup> See Regulation (EC) No 765/2008 of the European Parliament and of the Council, of 9 July 2008, on accreditation of certification bodies.

<sup>(63)</sup> The Italian Ministry of Agriculture, with Decree of 29 May 2020, authorised a temporary waiver to the provisions of the Single Document of the PDO Prosciutto di Parma, which requires that slicing and conditioning are carried exclusively in the production area. Such special regime of slicing and conditioning Prosciutto di Parma, even if temporary, appears of peculiar interest, taking into account the fierce judicial conflict emerged in the first years of this century between the Consorzio di prosciutto di Parma and some large supermarkets in UK; conflict which has been solved only by the well known decision of the Court of Justice 20 May 2003 C-108/01.

<sup>(64)</sup> The Italian Ministry of Agriculture, with Decree 26 May 2020, authorised a temporary waiver to the provisions of the Single Document of the PDO Prosciutto Toscano, which requires that slicing and conditioning are carried exclusively in the production area.

<sup>(65)</sup> The Single Document published in eAmbrosia, the EU geographical indications register, of Finocchiona IGP (a well known salami from Tuscany) establishes that “*both slicing and packing, including in a vacuum or in a protective atmosphere, must be carried out exclusively in the production area*”, underlying: “*The mixing of finely minced piece of lean meat and fat makes the slices particularly delicate, during both actual slicing and handling. Preparing the product for slicing involves removing the casing, directly exposing the edible part to the external environment. Exposure to uncontrolled environmental conditions for an indeterminate period causes a deterioration in the characteristics of the product, giving rise to oxidation, changes in colour and an excessive loss of moisture, with a degradation in the particular consistency of the slices and the pronounced aroma that should characterise this salami. In order to guarantee and maintain the product’s original characteristics it is essential that those doing the slicing are in contact with the product under specific conditions and for a limited amount of time.*”. The Italian Ministry of Agriculture – Mipaaf, with Decree No 31375 of 12 June 2020, authorised slicing and conditioning of Finocchiona outside the production area, with a temporary provision, to be effective until the end of the emergency period as fixed by the Decree of the President of the Council of Ministers 31 January 2020. In fact – as above mentioned – the emergency period is still operating and it is expected to operate at least until next year.

<sup>(66)</sup> See the Italian Ministry of Agriculture Decree of 30 July 2020, which, taking into account the reduced sales of this PDO wine as consequence of the market crisis due to *Covid-19 pandemia*, introduced a temporary modification of the product specification, authorising for one year (therefore until July 2021) the wine making operations in all the territory of the province of Grosseto, even outside the limited territory where the wine is produced.

<sup>(67)</sup> See the Italian Ministry of Agriculture Decree of 19 March 2020.

linked to natural disasters or adverse weather conditions formally recognised by the competent authorities<sup>68</sup>, and were declared *temporary*, to be applied only until the end of the emergency period as fixed by the Decree of the Council of Ministers 31 January 2020, i.e. only for six months. In fact the emergency period, originally introduced until the end of July 2020, has been extended many times, and it is now effective until 31 July 2021<sup>69</sup>, with a foreseen extension until January 2022. Only in few cases such *temporary modifications* of product specifications have been removed<sup>70</sup>, while most of them are still in application, after one year and half, and it may be foreseen that such a long period of time will make it difficult to simply go back to the past regime at the end of the emergency<sup>71</sup>.

- Legislation introducing innovative legal tools in the area of civil law, like revolving pledge for PDO and PGI, including quality wines<sup>72</sup>.

- New rules on official controls of agri-food products, implementing distance and dematerialized controls and increasing transparency and access to the registers<sup>73</sup>.

- New competences assigned to Customs Agency, authorising the establishment of a new public company controlled by the Customs

Agency as sole shareholder, with the task to release official certification on quality and origin of food products<sup>74</sup>.

- New judicial models in deciding how to balance conflicting interests within private contractual relations, in some cases borrowing in the area of private law the public administrative law paradigm of *fair cooperation* (e.g. with reference to the reduction of the rent to be paid by tenants of shops of food business, due to the reduced income by reason of the Covid-19 administrative provisions on reduced hours of business)<sup>75</sup>.

- Decisions and recommendations of the *Italian Anti-trust Authority*, allowing new forms of cooperation among producers in the areas of health products and agri-food products on the basis of Covid-19 emergency, and sanctioning misleading advertising and labelling of food<sup>76</sup>.

The overall picture emerging from this (even only summary and partial) analysis of the Italian experiences on agri-food governance facing Covid-19 pandemic, appears to be marked by a multiplicity of elements and peculiarities, not necessarily homogeneous.

But some of them reveal a sort of *fil rouge* crossing the single provisions and decisions adopted: the strategic relevance recognised to food supply

<sup>(68)</sup> Art. 6.3. of Commission Delegated Regulation (EU) No 664/2014, of 18 December 2013 for agri-food quality products, and art. 11 of Commission Implementing Regulation (EU) 2019/34, of 17 October 2018 for quality wines.

<sup>(69)</sup> See Decree 21 April 2021.

<sup>(70)</sup> PDO Mozzarella di Bufala Campana; see the Italian Ministry of Agriculture Decree of 2 July 2020, which extended only until 31 December 2020 the practice of milk ice storage, which had been authorized by the previous Decree of 19 March 2020 until 31 July 2020.

<sup>(71)</sup> With a specific confirmation, with reference to the Italian experience, of the conclusions of T. Georgopoulos, expressed in his analysis of the French experience, *Emergency Wine Law in France under Covid-19: is anything more definitive than the temporary?*, cit.

<sup>(72)</sup> Art. 78, co. 2-*duodecies*, *terdecies*, *quaterdecies* D.L. 17 March 2020, No 18, "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19", as amended by Law 24 April 2020, No 27.

<sup>(73)</sup> See Instructions 6 March 2020 prot. 3662, issued by ICQRF-Ispettorato centrale della Tutela della Qualità e della Repressione Frodi dei prodotti Agro-Alimentari, which is the Central Italian Authority for food controls, originally addressed only to specific territories and later extended to all the national territory with Instructions 10 March 2020 prot. 3846; and instructions 3 July 2020 prot. 791, issued by ICQRF, on quality controls. See also the Decree Mipaaf No 9130168 of 15 September 2020 postponing until 28 February 2021 checks and controls in wine factories.

On the application on the new rules in the first semester of 2020, see ICQRF, *Covid-19 Emergency, Six Months of Controls on the agri-food chain*, Report February-July 2020, at <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/394>.

<sup>(74)</sup> Art. 103 of D.L. 14 August 2020, n. 104, "Misure urgenti per il sostegno e il rilancio dell'economia".

<sup>(75)</sup> On those judicial decisions in constitutional and private law perspectives, see A. Musio, *Stato di emergenza e leale collaborazione tra enti e nei rapporti tra privati*, in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 2-2019, 5.

<sup>(76)</sup> See Anti-trust Authority communication of 24 April 2020, "Communication of Italian Competition Authority on cooperation agreements and Covid-19 emergency", at <https://www.agcm.it>.



as an essential strategic sector, special and different from all other economic sectors, with the adoption of special provisions on trade and sale of food even during months of severe limitation to all other commercial activities; a widely shared consensus on a strong and effective central governance of emergency with reference to *health* and *food* (both considered as essential needs and fundamental rights, to be strongly protected), leaving aside most of the disputes between State and Regions which characterized the Italian political debate only few years ago; a growing trend to assign to rules and provisions, introduced as exceptional, and in some cases temporary, answers to *emergency*, the nature of tools drawing a systemic picture, where to place both the new rules and dating rules introduced years ago.

#### 4.- Trends and perspectives after Covid-19

Comparing EU and Italian experience during Covid-19 pandemic, shows some shared elements, linked by the common awareness of the central role recognised both to the *right to health* and to the *right to food*, and at the same time showing some elements drawing a new legal framework of responsibilities and governance, suitable to the new challenges.

Within this perspective a peculiar position

remains assigned to the *Agricultural Policy*, and more generally to the *Agri-Food Policy*, as essential tool to guarantee *food security*<sup>77</sup>, or – adopting an expression largely used during this terrible year – *food sovereignty*<sup>78</sup>, together with *food safety*, being aware that CAP must guarantee *European and global food sovereignty*, resulting simply unthinkable (even apart from any legal consideration based on EU Treaties) a *State food sovereignty* in present global world.

The elements emerged in 2020 in agri-food legislation and administration, during the dramatic crisis due to the Covid-19 pandemic, renewed a central attention to the dating objective “to assure the availability of supplies” after years of neglect of this topic, and at the same time expressed a reaction to crisis, which involves relevant and original *legal innovation*<sup>79</sup>.

The intimate link between *crisis* and *innovation* is not something new in the process of construction of the European agri-food law system<sup>80</sup>.

It is well known that in 2002 the Regulation (CE) n. 178/2002, universally known as *General Food Law*, was approved within the general programme outlined by the *White Paper on Food Safety*<sup>81</sup>, adopted by the European Commission as a systemic framework to draw an adequate answer to the challenges caused by the mad cow crisis of the late '90s. From there, new definitions, new principles, new institutions, a new legal framework<sup>82</sup>; in other words, a large, deep, and extended syste-

(77) See L. Costato, *Trattati europei e Politica agricola comune: una lezione da riscoprire*, in this *Journal* [www.rivistadirittoalimentare.it](http://www.rivistadirittoalimentare.it), No 4-2019, 1.

(78) On this expression, originally used with reference to the difficult access to food in countries having a poor economic condition, see L. Paoloni, *I nuovi percorsi della food security: dal "diritto al cibo adeguato" alla "sovranità alimentare"*, in *Dir. e giur. agr. alim. amb.*, 2011, fasc. 3, 159.

(79) On the peculiar role of technological innovation in the agri-food sector in emergency times, see E. Sirsi, *Emergenza e innovazione tecnologica in agricoltura e nell'alimentare*, cit.

(80) On the relation between technological and legal innovation in the area of food law, and on the peculiar reciprocal influences, see F. Albisinni, *Reactive and proactive innovation in European agriculture and food law: the new scenario*, in *Agricoltura Istituzioni Mercati*, vol. 2013, 2014, p. 225.

(81) Commission of the European Communities, *White Paper on Food Safety*, Brussels, 12.1.2000, COM (1999) 719 final.

(82) As observed by an authoritative scholar of constitutional and administrative law with reference to the innovations introduced by Regulation (EC) No 178/2002 – with considerations which appear well fit to describe many of the legal innovations introduced during Covid-19 pandemic – that regulation operates on several plans: “that of sources of law, ... [where it] bears general principles ... dictates direct provisions, for which national implementing acts are not necessary; ... that of the structure that must be implemented in each state; ... that of collaboration to be ensured between national organizations and the Community”, S. Cassese (ed.), *Per un'Autorità nazionale della sicurezza alimentare*, Introduzione, Milano, 2002.

mic innovation.

At that time, the attention of European and national legislators was almost exclusively concentrated on *food safety*.

To-day, in an emergency situation infinitely more dramatic than the *mad cow* crisis, the attention to *food safety* remains, but it is accompanied by a rediscovered attention to *food security*<sup>83</sup>, by the introduction of new dematerialised models of quality and safety control, even of IGs products, by the adoption of rules on the chain of food supply and on the role of contracts and of private regulation<sup>84</sup>, in a dimension which is necessary a global one.

These themes intersect with the regulation and asset of *food markets*<sup>85</sup> and with the preferences of *consumers*<sup>86</sup> facing a new asset of social relation and new tools of food supply adopted to fight Covid-19 pandemia; so that even the special declination of the competition rules with reference to agri-food markets is to some extent assuming original forms, within the EU and national model. Those provisions, not necessarily homogenous and operating in several areas of agri-food regulation, confirm the special nature of the agri-food sector, solemnly declared in 1957 by the TCEE and maintained in 2009 by the TFEU.

The analysis of foreign experiences discussed during AIDA-IFLA Congress offer the chance of a *comparative approach* to answers, not necessarily homogenous, to challenges which are largely common, and confirm the need to find and share new models of international governance to gua-

rantee the *right to food*<sup>87</sup>.

In this perspective, the comparative contributions of scholars from different legal systems<sup>88</sup>, are a precious tool to share knowledge, models, and tools, on *rules, responsibilities and governance of the agri-food sector*.

## ABSTRACT

*Several legal acts have been adopted in recent months, which – searching for original answers to the serious and largely unknown and unpredicted hazards coming from Covid emergency (to human health, but even to economy, social life, and political institutions) – increased the attention to a regulation, which by its proper nature is an agri-food chain discipline, moves from food safety but involves food security, food sovereignty, market and competition rules, public and private controls, communication rules, and more generally governance and social rules.*

*Tentative answers to the challenges coming from Covid-19 pandemia have been searched at different interplaying levels, including European Union, States, Regions, and even private market players.*

*The paper analyses some trends emerging at EU and Italian level, discussing new rules adopted in this area of legal experience, underlying the relevance of the comparative method as a precious*

<sup>(83)</sup> On *food security and food insecurity* after the reforms of CAP in the first decade of this century, see A. Jannarelli, *La nuova food insecurity: una prima lettura sistematica*, in *Riv.dir.agr.*, 2010, I, 565; L. Paoloni, *I nuovi percorsi della food security: dal "diritto al cibo adeguato" alla "sovranità alimentare"*, cit.; F. Albisinni, *Soggetti e oggetti della sicurezza, non solo alimentare, in Europa, prima e dopo Lisbona*, in *Riv.dir.agr.*, 2010, I, 607.

<sup>(84)</sup> See M. Ferrari, *Managing the Covid emergency in the global food market: the role of private regulation*, cit.

<sup>(85)</sup> See S. Bolognini, *Comunicazione B2C nel mercato agro-alimentare: Green Deal e sostenibilità*, cit.; G. Spoto, *Blockchain e IoT nel mercato agroalimentare innanzi all'emergenza COVID*, cit.; A. e A. Artom, *Integratori alimentari al tempo del Covid-19: luci ed ombre*, cit.

<sup>(86)</sup> See L. Paoloni, *Nuovi paradigmi nell'agroalimentare in epoca di emergenza*, cit.; A. e A. Artom, *Integratori alimentari al tempo del Covid-19: luci ed ombre*, cit.; M. Gioia, *Abitudini alimentari e filiere resilienti nel lockdown da COVID-19*, cit.; F. Aversano, *Cibo e rassicurazione in tempi di emergenza*, cit.

<sup>(87)</sup> See M. Giuffrida, *Emergenza Covid-19 e disciplina agroalimentare: alcune prime conclusioni*, cit.

<sup>(88)</sup> See contributions of M. Holle, Yangyao Yu – Edison Tang, M. T. Roberts, T. Georgopoulos, M. Cloutier, M. Ferrari, cit., loaded at <https://www.aida-ifla.it/en/events/the-conference-2020/>.

*tool to better know agri-food law not only as an academic research tool, but as a necessary tool to operate in the real world.*

*Negli ultimi mesi sono stati adottati diversi atti legislativi, che – alla ricerca di risposte originali ai gravi e in gran parte sconosciuti e imprevedibili pericoli derivanti dall'emergenza Covid (per la salute umana, ma anche per l'economia, la vita sociale e le istituzioni politiche) – hanno accresciuto l'attenzione verso una disciplina, che per sua natura è una disciplina di filiera agroalimentare, muove dalla food safety ma coinvolge la food security, la food sovereignty, le regole del mercato*

*e della concorrenza, i controlli pubblici e privati, le regole di comunicazione, e più in generale la governance e le istituzioni.*

*Alcune prime risposte alle sfide derivanti dalla pandemia di Covid-19 sono state cercate a diversi livelli di interazione, tra cui Unione Europea, Stati, Regioni, e anche protagonisti privati del mercato.*

*Il lavoro analizza alcune tendenze emerse a livello unionale e italiano, discutendo le nuove regole adottate in questo ambito di esperienza giuridica, sottolineando l'importanza del metodo comparativo come strumento necessario per conoscere meglio il diritto agroalimentare e per operare nel mondo reale.*