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Towards the next Common Agricultural Policy

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Abstract

State aid has always been the subject of discussion in doctrine and jurisprudence. In this paper, a critical summary of the institute was made, also in light of the most recent rulings of the European Union Court of Justice and national courts, focusing in particular on the Common Agricultural Policy.

The latter, in fact, in consideration of the recent conflict in Ukraine will assume a fundamental role for Italian and European economic development, becoming the fulcrum of European economic policy in the coming years.

Keywords: agriculture, politics, laws, economic goals, European union

1. The European framework: the notion of state aid and the functions of the European Commission

The European rules on state aid must be brought back to the provision of art. 3 letter b) of the TFEU, by virtue of which the European Union has exclusive competence in "defining the competition rules necessary for the functioning of the internal market".

The matter in question constitutes one of the pillars of the functioning of the internal market since it is aimed, first of all, at a better allocation of public resources and, subsequently, at the equal treatment of companies, also in order to allow compliance with market competition rules. . In particular, the provisions of the Treaty on the Functioning of the European Union to be taken as a reference are Articles 107, 108 and 109 of the European Treaty itself, to which must be added all the provisions that manifest the principles of the matter in the key sectors of the single market, including who remember the art. 42 on the production and marketing of agricultural products, art. 93 on transport and art. 106 on services of general economic interest (so-called SGEI) of the same Treaty. In particular, pursuant to art. 107, par. 1, of the TFEU¹

¹For the sake of completeness, art. 107 of the TFEU: "1. Except for derogations provided for in the Treaties, aid granted by States, or through State resources, in any form which, by favoring certain enterprises or certain products, falsifies or threatens to the extent that it affects trade between Member States, is incompatible with the internal market. to distort competition. 2. The following are compatible with the internal market: (a) aid of a social nature granted to individual consumers, provided that it is granted without discrimination based on the origin of the products; b) aid to make good the damage caused by natural disasters or other exceptional events; (c) aid granted to the economy of certain regions of the Federal Republic of Germany affected by the division of Germany, insofar as they are necessary to compensate for the economic disadvantages caused by

State aid can be defined as a subsidy, in any form adopted and granted without consideration, by the State to a specific number of subjects carrying out economic activities on a given market, giving them, in fact, an advantage capable of affect internal exchanges, and therefore to distort or threaten to distort competition, if the conditions for the relative assignment and consequent disbursement are not met².

The European Court of Justice ruled in this sense, in the well-known Seydaland ruling³, according to which "the notion of aid does not only include positive benefits, such as grants, loans or participation in the capital of companies, but also interventions which, in various forms, alleviate the burdens that usually weigh on the budget of a company and which consequently, without being subsidies in the strict sense, have the same nature and produce identical effects ».

In order for economic aid to be identified as State aid, specific criteria must exist, as listed below:

- 1) public origin of the benefit (state origin or imputability);
- 2) existence of an economically appreciable advantage for the company deriving from the gratuitousness of state intervention (advantage);
- 3) selectivity of the beneficiary companies (selectivity);
- 4) impact on trade between member states and on competition.

According to settled European jurisprudence⁴ aids are distinguished not on the basis of their cause or the aims pursued, but on the basis of their effects according to the so-called principle of irrelevance of reasons. This amounts to arguing that the purpose of the interventions does not remove them from their quantification as aid, noting so much the reason that led the Member State to adopt the measure but the effect it produces on competition and intra-European trade.

The art. 107 of the TFEU, therefore, sets out the principle of incompatibility with the internal market, or the prohibition of aid granted by States, except for those that are declared compatible with the internal market by the Commission, precisely in derogation from the principle. The control of the Commission, therefore, represents the pivot of the regulations on the subject as only an independent body is able to assess the damage caused to the functioning of the market by public aid from the Member States, operating in such a way as to channel public intervention towards objectives. compatible with community interests.

this division. Five years after the entry into force of the Lisbon Treaty, the Council, on a proposal from the Commission, may adopt a decision repealing this letter. 3. The following may be considered compatible with the internal market: a) aid intended to promote the economic development of regions where the standard of living is abnormally low, or where there is severe form of underemployment, as well as that of the regions referred to in Article 349 , taking into account their structural, economic and social situation; (b) aid to promote the implementation of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (c) aid intended to facilitate the development of certain economic activities or regions, provided that it does not adversely affect trading conditions to an extent contrary to the common interest; (d) aid to promote culture and heritage conservation, when it does not adversely affect the conditions of trade and competition in the Union to an extent contrary to the common interest; (e) the other categories of aid, determined by a decision of the Council, on a proposal from the Commission”.

²For further information see TAR Rome, Sect. III bis, 13 August 2019, n. 10528.

³Court of Justice, Section I, Seydaland Vereinigte Agrarbetriebe GmbH & Co. KG c /BVVG Bodenverwertungs und verwaltungs GmbH (C-239/09).

⁴Among the many are the 3M Italia SpA ruling of 29 March 2012 (C-417/10) and the British Agregates ruling of 22 December 2008 (C-487/06).

In particular, it should not be forgotten that the Commission's control also extends to aid from non-EU countries, by virtue of the provisions of the regulations of the World Trade Organization⁵.

In some cases, even in the absence of control by the Commission, the aid is certainly considered compatible: this is the so-called *de minimis* principle⁶ and the so-called category exemptions⁷ as well as the exceptions pursuant to art. 107, par. 2, of the TFEU. According to the Commission's practice, in fact, it is possible to identify criteria, the so-called compatibility principles, to guide the assessment regarding the definition of aid, among which it is necessary to recall the principle of transparency⁸ and the principle of the counterpart⁹.

As regards the disbursement of the aid, art. 108 TFEU places the obligation on the Member State to notify the Commission of the State aid to be paid, to allow the prior check of compatibility with the internal market. Only after the declaration of compatibility of the aid by the Commission, the Member State will be able to execute or distribute the aid, in compliance with the so-called suspension clause or stand still¹⁰. The scope of the provision cited last is direct, as it is capable of directly creating rights and obligations for individuals, so much so that its violation can be raised before the jurisdiction of national courts.

The purpose pursued by the European legislator was to establish an exclusive relationship between the Commission and the Member State, attributing to the competing beneficiaries and not the indirect role of source of information that is expressed in the power to lodge complaints to the Commission or to take legal action. National courts.

The Court of Justice¹¹ it has, in fact, established that companies already beneficiaries who do not comply with the repayment obligations cannot receive new state aid. It is, in fact, the so-called *Deggendorf* rule¹²: in national legislation this principle has been codified by article 46 of law no. 234 of 2012¹³, which requires the granting Administrations to verify compliance with the rule.

⁵In fact, if such aids are deemed incompatible, the Commission acts before the organisation's bodies (panels and appellate bodies) which may declare the aid incompatible with the CMO rules.

⁶The *de minimis* principle is the logical corollary of the requirement of prejudice to the competition of trade between States, in fact, as can be seen from the letter of art. 107 TFEU, it is easy to understand that the assessment of compatibility with the Union market evidently loses its *raison d'être* with regard to aid that does not have a significant impact on competition (for example, *de minimis* is considered in the matter of aid lasting three years those for an amount of less than 200,000 euros).

⁷The category exemptions, on the other hand, are established by the Commission itself, which pursuant to art. 109 TFEU may adopt specific Regulations which declare certain categories of aid compatible. The European legislator has provided for a system of presumption of compatibility that runs in a double direction on the one hand, art. 107 par. 2 TFEU provides for exceptions that operate *de jure*, ie aid that is always considered compatible as aids of a social nature for consumers or those granted in the face of natural disasters and on the other hand there are the exceptions of a discretionary nature pursuant to art. 107 par. 3 TFEU, left to the Commission's assessment.

⁸Principle of transparency is connected with the information obligations imposed on the States and requires that the assessment be carried out in the light of all the elements indicated by the Member State.

⁹The principle of the counterpart, on the other hand, requires balancing the national interest with the European interest, in particular the aid may be considered compatible when it is not possible to achieve otherwise the common objective according to which the derogation is established.

¹⁰L. MILANO, *L'aiuto di Stato nella legislazione europea*, in *Diritto.it*, 2018.

¹¹Judgment of the Just Court of May 15, 1997, C-250/95.

¹²The so-called *Deggendorf* clause prohibits the granting of state aid to companies that have to repay previous aid deemed illegal and incompatible by the Commission, is now contained in most of the aid schemes adopted by the various administrations.

¹³For the sake of completeness, art. 46 titled Prohibition of granting state aid to companies benefiting from illegal unreimbursed state aid: «1. No one can benefit from State aid if one of those who have received and

The European Commission therefore exercises ex ante control over the aids and also a permanent examination of the aids already existing and duly notified and / or authorized.

To this end, a system of annual reports is imposed on Member States, in addition to the preparation of complaints and reports by companies that believe they have been disadvantaged by the disbursements granted to competitors. Upon completion of the check, the Commission can adopt a positive or negative decision or a conditional decision: that the Commission itself is required to declare the measure compatible with the internal market and therefore feasible, provided that the Member State concerned take the necessary measures.

In the event that a negative decision should occur and the measure had already been applied in advance, the beneficiary is required to return it, without prejudice to the material impossibility¹⁴, under penalty of the opening of an infringement procedure pursuant to art. 28 TFEU.

2. The Italian legislation on the matter

From the point of view of national legislation, it is noted that the violation of European rules on state aid can integrate a violation of art. 2598 of the Italian Civil Code on the subject of unfair competition; in particular in paragraph 1 no. 3, which reads "whoever (omitted ...) makes use of any other means that do not comply with the principles of professional correctness and are capable of damaging the company of others" engages in acts of unfair competition.

It seems appropriate to specify that State aid not notified to the Commission, in violation of art. 108 TFEU, are not considered in themselves incompatible with European legislation, however, in the event that the Commission becomes aware of a non-notified state aid, it must necessarily proceed to verify its compatibility by adopting, pending the procedure, a decision of provisional recovery and ordering the non-compliant Member State to suspend the aid in question, as well as withholding all the documentation necessary for the examination.

Verification will have to be carried out in accordance with the legislation in force at the time the aid was granted. In fact, there are cases in which the Commission becomes aware of such aid through complaints lodged by interested and injured parties, usually competitors of the beneficiary companies. For this reason, the Commission undertakes to examine the complaints within 12 months of receiving them, but in case of delay the interested party can contact the European Ombudsman¹⁵.

subsequently not repaid or deposited in a blocked account the aid that the State is required to recover in execution of a recovery decision referred to in Article 14 of the Regulation (EC) no. 659/1999 of the Council, of 22 March 1999. 2. The administrations granting State aid verify that the beneficiaries are not among those who have received and, subsequently, not repaid or deposited in a blocked aid account that the State is required to recover in execution of a recovery decision referred to in Article 14 of Regulation (EC) no. 659/1999 of the Council, of 22 March 1999. 3. The central and local administrations that are in possession of it shall provide, where requested, the information and data necessary for the checks and controls referred to in this article to the administrations that intend to grant aid. 4. If the verification referred to in paragraph 2 is carried out through the acquisition of declarations made pursuant to article 47 of the consolidated text of the legislative and regulatory provisions on administrative documentation, referred to in the decree of the President of the Republic of 28 December 2000, no. 445, the granting administrations carry out the prescribed sample checks on the veracity of the declarations themselves. 5. No one can benefit from State aid if he is among those who have received and, subsequently, aid that the State is required to recover pursuant to a recovery decision pursuant to Article 14 of Regulation (EC) no. 659/1999 of the Council of 22 March 1999 ».

¹⁴See below.

¹⁵The European Ombudsman (or Ombudsman) is an independent body appointed by the European Parliament, authorized to receive complaints from citizens of the European Union (European Citizenship) regarding cases of maladministration in the actions of the institutions or bodies of the Union, except for jurisdictional.

From the incompatibility decision derives the obligation for the Member State to proceed with the suspension of payments still in progress and the immediate recovery of the unlawfully paid sums, with the related interests, with *ex tunc* effectiveness. The Commission's incompatibility decision concerning existing aid does not entail the obligation to recover the amount already paid until the formal control procedure is opened (*ex tunc* effect). The Commission's recovery decision can only be challenged before European courts and not before national courts.

If the decision is not enforced, the Commission can sue the Member State before the Court of Justice pursuant to art. 108 par 2 TFEU and, if the non-compliance persists, the Commission may issue a reasoned opinion and subsequently may request the Court to impose a penalty, quantified according to the gravity and duration of the violation and the deterrent effect. It should be noted that the lack of compulsory recovery of the aid declared incompatible and already paid may lead the Commission to activate the infringement procedure pursuant to art. 258 of the TFEU. The Italian State, however, has the right of recourse pursuant to art. 43 of Law 234 of 2012 against Public Bodies responsible for violations of EU law.

In this regard, we recall a Sentence of the Council of State of 15 July 2019 which clarified, recalling the jurisprudence of the European Court of Justice, that the compatibility assessment expressed by the Commission for amnesty in a subsequent period may have effects in relations between the State and the EU, which may possibly waive the imposition of further sanctions against the non-compliant state¹⁶.

However, this may not serve to remedy with effect *ex tunc* the illegality of the benefit attributed based on legislation and deeds previously notified to the Commission itself, as the Commission's decision constitutes the benefit. According to the Council of State, this interpretation corresponds to a deterrent and anti-avoidance logic: otherwise, in fact, European standards would be substantially ineffective.

3. The role of national judges

In this context, national courts also play an essential role in the application of the rules on state aid and in fact, like the Commission, judges can interpret the notion of state aid, as already indicated by the Commission itself in some of its communications¹⁷.

However, it is necessary to distinguish between the illegality and incompatibility of the aid. In fact, by virtue of the direct effect of the provisions of the EU Treaty, the national judicial authorities are called upon to protect the rights of the injured individuals in the illegal execution of the aid deriving from the failure to notify the Commission of the aid itself or from the violation of the clauses of standstill, which gives rise to rights and interests that can be directly enforced by the interested parties.

In Italy the law n. 234/2012 provides for the exclusive jurisdiction of the administrative judge (art. 49), specifying that against the measures adopted in violation of art. 108, par. 3, of the TFEU, it is possible to lodge an appeal with the TAR competent for the territory. National courts may order the suspension of the payment of the unlawful aid, the recovery of the unlawful aid, the recovery of interest due for the duration of the aid, the compensation of damages to competitors and interested third parties and the adoption of interim measures. against illegal aid.

The national court is also required to order the full recovery of the aid that is illegal regardless of its compatibility, at the same time ordering the recovery of interest from the moment in which the sum has been made available to the beneficiary.¹⁸ by the beneficiary.

¹⁶See V. DI STEFANO, A. COLANTONI, *Produzione di energiarinnovabile e agro-fotovoltaico: considerazioni alla luce del Piano nazionale ripresa e resilienza e del d.l. semplificazioni bis*, in *Diritto e giurisprudenza agraria alimentare e dell'ambiente*, 2022.

¹⁷Above all, we recall the Communication from the Commission on the application of the legislation on state aid by national courts (2021 / C 305/01).

It is necessary to point out that the recovery order of the national judge guaranteed by the legal instruments of the domestic system ensures a certain speed, while the results of a complaint to the Commission are usually slower and more uncertain, on the basis that the Commission will have to in any case proceed with the verification of the compatibility of the unlawfully granted State aid, while the national court makes an assessment limited to the mere legality of the same¹⁹.

The person injured by the state aid will have the right to appeal to the national court, which is called to rule on all claims for compensation.²⁰: for the resolution of these issues, the provisional measures can prove to be very useful, especially in the presence of aid that has just been paid or is imminent disbursement²¹.

It is also true that national courts can arrange for a preliminary reference to the Court of Justice, pursuant to art. 267 of the TFEU, and ask the Commission for simple opinions on questions of dubious interpretation, both in fact and in law, that emerged during the procedure, such as the nature of the aid of a measure or the applicability of an exemption regulation.

Furthermore, the hypothesis may arise in which the national court suspends the execution of an administrative measure for the recovery of the aid in the face of serious doubts as to the validity of the Commission's act. In this case, the immediate referral for a preliminary ruling to the European Court of Justice is made, provided that the applicant company risks serious and irreparable damage. So much in consideration of the European principle of effective judicial protection²².

If, on the other hand, the hypothesis of mere redistribution of State aid occurs, the irremediable illegality of the same can occur, with all the consequences already explained above. In conclusion, attention should be focused on the need to establish whether any changes to the state aid should really be notified in advance to the Commission.

There is no consolidated jurisprudential orientation on this issue, since, as noted by the Council of State, "in the event that the appellant refers to jurisprudential precedents that refer, however, to acts constituting the aid or extending it to new categories of beneficiaries, this does not appear to be super imposable to the measure on which the dispute is concerned, the peculiarity of which consists in redetermining, in execution of a judgment, now by then, the criteria for assigning state aid. Therefore, it

¹⁸Legitimate expectations are a principle of European origin which requires the PA to respect the subjective legal positions which, by virtue of an act or behavior of the same, have already been consolidated in the hands of private individuals.

¹⁹It may happen that the two procedures overlap, in this case, the national court must be released from any obligation to rule on the merits in the event that the commission declares the aid compatible with the internal market. It is possible that the obligation to arrange for the recovery of interest relating to the duration of the violation may be waived. If the aid had been notified, the payment would have occurred later, so that the beneficiary would probably have been forced to raise the funds on the capital market by paying interest at the market rate.

²⁰It is possible to request compensation for damages not only in the face of incompatible aid but also in the face of purely illegal aid, thereby also including violations of the suspension clause. The right to compensation for damages also arises in the face of the simple temporal advantage enjoyed by the beneficiary of an illegal aid even if it was later discovered that once examined by the commission it was approved. This responsibility exists jointly using the following assumptions: the violated law confers rights on individuals and the violation is sufficiently serious, there is a causal link of direct causality between the violation of the obligation incumbent on the state and the damages suffered by the injured parties. In the matter in question these conditions are integrated as art.

²¹M. POTO, *Le politiche di sostegno all'agricoltura come strumento di integrazione organizzativa europea*, in *Diritto e giurisprudenza agraria alimentare e dell'ambiente*, 2016.

²²See CJEU judgment of 11 May 2011 EU Commission v Italian Republic.

affects the mere application methods of the aid, without extending the subjective or objective profile nor the temporal duration of the same"²³.

4. Aid to support agriculture: the Common Agricultural Policy

The legislative framework of reference in the matter in question is represented by Title III part III of the TFEU and specifically in Articles 38 - 45, dedicated to the regulation of agriculture and fisheries in the context of the internal policies and actions of the European Union. As stated several times, the original idea in the process of European integration was that of a common commercial policy for coal and steel and a common agricultural policy²⁴. In particular, for the latter, the strategic objectives have changed over time, to the point that the primary objective of agricultural policy is no longer identified in the production of quantities of food at affordable prices but in the support of agricultural systems that guarantee production of healthy and high quality food and, consequently, also in the protection of the environment.

To fully understand the scope of the provisions of the TFEU in the specific field in question, it is necessary to make a synthetic examination of the evolution of agricultural law in its fifty-year history.

In the first place, it seems important to refer to the foundation, in 1962, of the first common market organizations (CMOs). These organizations have developed around two pillars on which the derivative agricultural law rests:

- 1) the first pillar represented by market support measures, namely pricing policy, aid, intervention measures, refunds and all other market regulation mechanisms;
- 2) the second pillar relating to rural development, i.e. the policy in favor of agricultural structures and structural investments, generational renewal in agriculture, early retirement and agro-environmental measures²⁵.

In this regard, it is important to note the dynamics of the relationship between harmonization and subsidiarity. The provisions of the TFEU have led to the initiation of a process of harmonization of agricultural rules at national level. In fact, art. 38 TFEU provides that the legislation envisaged for the establishment and functioning of the internal market also applies to the production and trade of agricultural products.

The principle of the free circulation of agricultural products within the single market, moreover, pursuant to art. 34 of the TFEU, also applies to the construction of common market organizations. Without prejudice to the exercise of its sovereignty by each Member State, also by virtue of the principle of subsidiarity, and this is relevant with reference to the introduction of restrictions for the protection of animal and plant health and human welfare, pursuant to 'art. 36 of the TFEU²⁶.

The European Treaty also provides, in Chapter III of Title VII of the TFEU, specifically in Articles 114 et seq., The competence of the Union to adopt general rules for the approximation of laws, to

²³See Council of State Ordinance, Section IV, dated 4.12.2019 no. 8299.

²⁴On questions concerning the origin of the European Union, reference should be made for all to G. NAPOLITANO, *Altiero Spinelli e l'Europa*, Bologna, 2007; G. NAPOLITANO, *Le norme di unificazione economica*, in *Riv. trim. dir. pubbl.*, 2011.

²⁵P.P. ROSSI, A. MACCANICO, *Commento art. 38 TFUE*, in C.C. Gialdino (a cura di), *Codice dell'Unione europea operativo*, Napoli, 2012.

²⁶A concrete application of this competence occurred when the member states made use of this prerogative to adopt restrictive measures regarding the prophylaxis of animal and plant diseases. These measures contributed to legal fragmentation and constituted an obstacle to the free movement of products in the internal market. See R. HENKE, *Il riorientamento delle politiche di sostegno all'agricoltura nell'UE*, J.E.L., 2004.

the extent necessary to eliminate restrictions incompatible with proper functioning, of the common market²⁷.

Specifically, art. 38 TFEU, in the first paragraph, entrusts the Union with the competence to define and implement a common agricultural and fisheries policy, replacing art. 32 TCE (formerly art. 38 TCEE), which defined agriculture as an integral part of the common market, which includes the production and trade of agricultural products. Paragraph 1 of art. 38 TFEU, in the formulation of the Lisbon Treaty²⁸, thus completed the notion of agriculture, establishing that the common agricultural policy is defined and implemented by the Union, together with that of fisheries²⁹.

The first programmatic reforms of the common agricultural policy (CAP), as mentioned above, date back to the early 1960s and after the Stresa Conference, between 1962 and 1970, the then European Economic Community (EEC) had created twenty-one CMO, each of which is governed by a basic Regulation of the Council, accompanied by a corollary of supplementary rules.

²⁷In fact, through the harmonization and approximation of national laws, the aim is to eliminate, by means of European standards, national provisions which, although constituting obstacles to free movement, cannot be disapplied as they are justified. Pursuant to art. 36 TFEU, in fact, the prohibition of quantitative and qualitative restrictions on imports with a view to legal harmonization of the common market meets with a derogation in cases where this prohibition is justified on grounds of public morality, public order, public security, protection of the health and life of people and animals or the preservation of animals, protection of the archaeological historical artistic heritage and industrial property. However, the imposition of the safeguard measure must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. In this regard, the European Court established in the 1986 Sandoz judgment that the burden of proof rests on the State that invokes the justification, specifying that, being an exception to a general principle of the Treaty, art. 36 TFEU is a norm of strict interpretation - reaffirmed also in the 1977 Baubius judgment - since its sphere of application is limited to the hypotheses strictly provided for by the law and the exercise of the faculty of derogation is subject to the scrutiny of proportionality so that the legitimacy of the exception must be limited to what is strictly necessary for the achievement of the objective to be pursued. In the specific case of the protection of public health, the Court then affirmed that whenever there are uncertainties about the current state of scientific research, it is up to the member states, in the absence of harmonization, to decide the level at which they intend to guarantee the protection of public health even though taking into account the need for the free movement of goods within the community. This approach applied to the public health case often invoked in the field of food and pharmaceutical products has given rise to the formal recognition of the precautionary principle. in the absence of harmonization, decide the level at which they intend to ensure the protection of public health while taking into account the need for the free movement of goods within the community. This approach applied to the public health case often invoked in the field of food and pharmaceutical products has given rise to the formal recognition of the precautionary principle. in the absence of harmonization, decide the level at which they intend to ensure the protection of public health while taking into account the need for the free movement of goods within the community. This approach applied to the public health case often invoked in the field of food and pharmaceutical products has given rise to the formal recognition of the precautionary principle.

²⁸The Lisbon Treaty, signed in Lisbon on 13 December 2007, is composed of the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) and enters into force on 1 December 2009. Increases the powers of the European Parliament and provides several innovations to adapt the European institutions to EU enlargement. In the first articles of the Treaty of the European Union, the values and objectives of the Union are defined. The Treaty highlights the matters that fall within the competence of the Member States and the matters in which decisions are taken directly by the European institutions, in particular the European Parliament and the Council, and also increases the democratic accountability of the Union by strengthening the Charter of Fundamental Rights and consolidating the rule of law.

²⁹M. POTO, work cit.

The basic regulations had a very similar structure and common provisions: they included general provisions, rules for managing the internal market and trade with third countries. At the same time, the then European Community adopted various agricultural policy instruments: from direct payments to farmers as compensation for lowering prices, to the related accompanying measures aimed at encouraging environmental protection.³⁰

Agenda 2000 was conceived as a "model of European agriculture", with the application of the principle of institutional subsidiarity and the maintenance of compensation to farmers: thus, support for agri-food policy appeared for the first time.

Subsequently, with the reform of July 2003, there was the introduction of the principle of decoupling aid on the basis of the volumes produced: aid was paid on the basis of cultivated hectares and not on productivity.

The innovations made were necessary in order to implement the principle of simplification.

With the adoption of Regulation (EC) no. 1782/2003, all direct payments have been brought back into a single institutional legal framework, merging the support mechanisms in the single payment scheme (SPS). The reforms initiated led to the introduction of the single company payment, the dismantling of almost all coupled aid and the abolition of most of the intervention mechanisms³¹. With Regulation (EC) no. 1234/2007³², the single CMO took the place of the twenty-one pre-existing ones and the repeal of thirty-five regulations was carried out, as well as the harmonization in a single Regulation of all the provisions on market policy.

Regulation (EC) no. 1234/2007 of the Council of 22 October 2007, containing: "Common organization of agricultural markets and specific agricultural provisions for certain agricultural products", is the Regulation which was then repealed by the subsequent EU Regulation no. 1308/2013 of the European Parliament and of the Council of 17 December 2013, containing: "Common Organization of agricultural products", and which repeals regulations (EC) no. 922/72, n. 234/79, n. 1037/2001 and n. 123/2001 of the Council.

The structure of the single CMO is similar to that of the previous CMOs, as it provides for the introductory provisions, those relating to the internal market and trade with third countries and finally the general and transitional final provisions.

The doctrine, expressing itself on the impact of the reform of the single CMO, observed that the planning of a CMO is set within a unitary project framework that shares the timing and logic of the other

³⁰Reference is made to the Mac Sharry Measure of 1992, to the Agenda 2000 of 1999, in which direct payments were sanctioned not only with compensations but also with instruments for supporting agricultural income.

³¹With the Fishler reform it was therefore possible to carry out a substantial technical simplification and to establish a single CMO. The reform takes its name from Franz Fischler, European Commissioner for Agriculture and Rural Development from 1995 to 2004. Please refer to M. SCOPPOLA, *Il disaccoppiamento della riforma Fischler della PAC: una prospettiva economica*, in *Agricoltura Istituzioni Mercati*, 1/2004.

³²Regulation (EC) n. 1234/2007 of the Council of 22 October 2007, establishing the common organization of agricultural markets and specific agricultural provisions for certain agricultural products (Single CMO Regulation). The Regulation was repealed by Regulation (EU) no. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing the common organization of agricultural products and repealing regulations (EEC) no. 922/72, (EEC) no. 234/79, (EC) no. 1037/2001 and (EC) no. 1234/2001 of the Council. On this point, see F. ALBISINNI, *Le proposte della Commissione: una lettura in chiave giuridica*, in F. De Filippis (a cura di), *La Nuova PAC 2014-2020*. Cfr. <http://www.gruppo2013.it/working-paper/Documents/La%20nuova%20Pac%202014-2020.pdf>, 124 e 125.

regulation and intervention tools of a *latu sensu* agricultural policy, recovering the systematic indications of the Treaty establishing the EEC³³.

In fact, the Regulation (EC) n. 1782/2003, in recital no. 1234, which: «for some time the community has pursued the objective of simplifying the regulatory context of the CAP. In this perspective, a horizontal legal framework for all direct payments has been established, which brings together a multiplicity of support devices in a single payment scheme, with the adoption of Regulation (EC) no. 1782/2003 of the Council of 29 September 2003 (....) It is appropriate to apply this approach also to the basic regulations. In this context, the rules contained in these regulations should be merged into a single legal framework, replacing where possible the sectoral approach with a horizontal one '.

From the examination of the Regulation, it is clear that the Commission's role as sole European actor is also given the competence to decide whether the agreements, decisions and competitive practices, pursuant to art. 101 TFEU,³⁴ are compatible with the objectives of the CAP. And in doing so, it once again refers to the need for systematicity and legal certainty. In particular, recital 38 states that "in order not to jeopardize the development of the CAP and at the same time to ensure legal certainty and equal treatment of the companies concerned, the committee should be the only competent, without prejudice to the control of the court of justice, to determine which agreements, decisions or practices referred to in art. 81 of the Treaty are compatible with the objectives of the CAP".

It is undisputed to believe that the powers of the Commission are penetrating, albeit tempered by the Committee referred to in EU Regulation no. 182/2011, and this can be perceived from the fact that they are not only limited to the evaluation of competitive practices but extend to the characteristics of the products, the size, the trade name, the labeling, the denominations, the origin and the provenance.

The EU Regulation n. 1308/2013 established a Common Organization of the Markets for agricultural products, excluding fishery and aquaculture products, even if the 2013 reform still left open the possibility of new interventions, which are those carried out with the latest regulations of 2 December 2021, which will come into effect in 2023.

In a nutshell, it can be said that the main lines of the CAP for the period 2014-2020 concern: 1) the conversion of decoupled aid into a multifunctional support system; 2) the consolidation of the instruments of the single CMO such as safety nets which intervene only in the event of a price crisis and market disturbances; 3) a more integrated, targeted and territorial approach to rural development.

According to the doctrine³⁵, the important innovations of the CAP 2014-2020 were represented in the process of European integration: in fact, when we talk about the CAP, we usually refer to political acts of management, administration, allocation of resources even if there is in fact a systematic problem of definition of the framework of the rules in which management choices and acts are registered. And this is linked to the delicate question represented by the need to define to what extent European regulatory law plays its proper role, namely that of providing certainties for all operators.³⁶

As anticipated, the adoption of Regulation (EC) no. 1782/2003, which introduced the Single Aid Scheme and the system of national ceilings for the distribution of resources³⁷, marks the beginning of a

³³See M. POTO, work cit.

³⁴First art. 81 of the Treaty of Nice.

³⁵See F. ALBISINNI, *Le proposte della Commissione: una lettura in chiave giuridica*, in F. De Filippis (a cura di), *La Nuova PAC 2014-2020*, Edizioni Tellus, Roma, 2013.

³⁶F. ALBISINNI, *Strumentario di diritto alimentare europeo*, Utet, 2020.

³⁷The system of national ceilings for the distribution of resources provides that each Member State receives the allocation of an annual amount of resources fixed until 2012, and within this ceiling it has a wide range of choices, without prejudice to the choice in favor of decoupling.

common agricultural policy different from the quantitative and productivistic one that had characterized the past of the CAP³⁸.

In this regard, it is highlighted as some authors³⁹ have focused on the promotional nature of European Union law on agricultural policy, a law that creates incentives and directs resources to the advantage of economic operators⁴⁰.

4.1 State aid in the European Union: transparency of data and administrative procedures

To date, there are nearly seven million beneficiaries of the Common Agricultural Policy (CAP) in the European Union, and in the 2018 financial year there were approximately 6.4 million beneficiaries of income support, while 3.3 million people benefited of rural development measures and 0.12 million of support under market measures. It should be noted that most rural development beneficiaries also receive income support even if it is counted only once in the calculation of the total number of beneficiaries.

Anyone who receives European funds under the CAP is placed on public lists intended to promote transparency and trust in EU funding measures. However, from a legal point of view a balance still needs to be struck between the right of taxpayers to know how their money is spent and the right of beneficiaries to protect their personal data.

Under the transparency rules, EU countries are required to publish data of CAP payment beneficiaries, concerning:

- the name of the beneficiary, with exceptions for beneficiaries of very low payments, whose thresholds are set by EU countries;
- the municipality of residence or registration of the beneficiary;
- the breakdown of the payment amounts for each measure, as well as the sum of the amounts received by each beneficiary in the financial year;
- a description of the measures financed by the funds, indicating the nature and purpose of each measure.

For funding from the European Agricultural Fund for Rural Development (EAFRD), the published amounts must include both the funds received from the EU and those from the EU country: this means that the amount indicated corresponds to the total amount of the public expenditure for the project. In addition, the information is made available directly by EU countries and published on a single website and this information is available from 31 May of the year following the year of payments and will remain available to the public for two years. after publication.

The content of the websites is the sole responsibility of the Member States concerned⁴¹: the European Commission cannot therefore guarantee the accuracy and completeness of the data or information provided and declines all responsibility for any use that may be made of them⁴².

³⁸The most significant example of the functioning of this mechanism is given by the definition of agricultural activity as a "minimum activity that the Member States define". Regulatory law is therefore based on a logic of flexible regulatory centralization, in which codes play an important role agriculture, which frame agricultural activity in a multilevel dimension, calling the Member States to participate in a conformational process, which is achieved through progressive integration of agriculture and fishing (art. 38 TFEU).

³⁹See A. JANNARELLI, *Pluralismodefinitoriodel'attività e dell'impresaagricolatradirittocomunitario e dirittointerno*, in *Studi sull'integrazione europea*, in *Rivistaquadrimestrale*, 2007. It is noted that one of the effects of this phenomenon is recorded in the broad economic impact of these guidelines on national legal systems. Furthermore, the thrust of the promotional law has induced national legislators to make incisive updates in the area of agricultural discipline. With an interesting difference between common law countries and civil law countries. Reference is made to the fact that in the Anglo-Saxon discipline, the approach of the agricultural law of the European Union has created a difficulty of coexistence with the national legislation,

⁴⁰S. LUZZI, *La riformadegli aiuti di stato*, Istituto Nazionale di Economia Agraria, 2009.

⁴¹As of 1 February 2020, the United Kingdom is no longer a member of the European Union. Pursuant to the second subparagraph of Article 137 (1) of the Withdrawal Agreement between the EU and the UK, as of claim

To ensure a full transparency regime, EU countries also transmit to the European Commission annual data on payments made to beneficiaries of the European Agricultural Guarantee Fund (EAGF).

On the basis of these data, the European Commission presents the breakdown of income support by Member State and by amount of aid. These data are accompanied by annual reports.

The procedure for submitting the request for funding under the CAP is the single application. This represents the tool that allows farmers to access the payments provided for by Reg. (EC) 73/2009, which repealed Reg. (EC) 1782/2003. The Single Application must be submitted to the Paying Body⁴³, directly or through an Agricultural Assistance Center, by 15 May of each year. Aid can be decoupled, ie released from production, or coupled, therefore linked to the production carried out.

Reg. (EC) 1782/2003 introduced, among the various support schemes, the payment of decoupled aid, linked to the liquidation of assigned rights and no longer to the type and production of the crop in place. This reform also provided for the recognition of individual rights (also called titles), in favor of those farmers who received in the reference period (years from 2000, to 2002, and from 1999 for the olive oil sector, at least one of the direct payments provided for by the CAP or which have acquired, by inheritance, the holding in whole or in part from a farmer who benefited from the contribution itself, or who have received the right to aid from the national reserve or from the transfer of the same.

The amounts obtained were transformed into company rights consisting of a fixed part of the contribution paid by right to the assignee producer and relating each title to a specific eligible area. The beneficiary producer, therefore, when submitting the Single Payment Application must guarantee the use of a corresponding eligible surface with eligible crop parcels, as provided for by art. 34 of Reg. (EC) 73/2009. Payment is made, pursuant to art. 29 of Reg (EC) 73/2009, between 1 December and 30 June of the following year by crediting the bank or postal current account indicated by the person who submitted the Single Payment Application.

5. Administrative irregularities and credit recovery procedures

Irregularities in disbursement must be understood as any violation of a provision of European law, deriving from an action or omission of an operator that has or could have as a consequence a prejudice to the general budget of the Union, through the reduction or cancellation revenue from own resources received directly on behalf of the European Union or undue expenditure⁴⁴.

year 2020 the European direct payments legislation no longer applies to the UK. The UK may continue to publish data relating to direct payment beneficiaries for claim years 2018 and 2019, until 2021 and 2022 respectively. The UK authorities have sole responsibility for the disclosure and accuracy of this data.

⁴²See https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/beneficiaries_it

⁴³The Paying Agency has the function of managing and controlling the financed expenditure relating to the EAGF and EAFRD Funds. For this purpose, the Paying Body is recognized by the Member State by the competent authority designated at ministerial level with DM 17/06/2009. The competent authority recognizes only those entities whose administrative structure and organization guarantee compliance with the criteria defined by the European Commission with Reg. (EU) no. 908/2014. Paying agencies are subject to constant supervision by the competent authority which, every three years, must communicate the results of this monitoring to the European Commission. In Italy there are 11 recognized paying agencies, of which 9 operating at regional level, 1 operating at national level in relation to specific measures (exports) and AGEA which, in addition to paying the aid for the schemes managed at national level, plays the role of paying agency for the regions that do not have it. The accounts of the Paying Agencies are annually certified by an independent body which certifies their completeness, correctness and truthfulness.

⁴⁴The definition is expressly provided for in the EU Regulation no. 2989/1995 of the Council on the protection of the financial interests of the Community.

In particular, in the agricultural field, art. 102 paragraph 1, first subparagraph, lett. C point iii) of Regulation (EU) 1306/2013, reports of irregularities are required to be made to OLAF⁴⁵ and to the EU Commission - Directorate-General for Agriculture and Rural Development, in order to monitor loans more efficiently. OLAF has created a specific system for reporting irregularities, called the "Anti-fraud Information System" identified with the acronym AFIS and since 2009 also the system called "Irregularities Management System", identified with the acronym IMS.

In Italy, the data bank called "Irregularities and Fraud Information System", identified with the acronym SIDIF, has been set up, which contains data on irregularities related to both structural and agricultural funds.

The recovery of the credit relating to unpaid amounts relating to agricultural policy must take place within 4 years from the date of the first administrative or judicial report, or if a judicial procedure has been initiated within 8 years. The financial consequences of non-recovery are charged to the Member State for 50% and the remaining 50% to the EU budget. The amounts not recovered are charged to the Member States if they have not initiated all the administrative or judicial proceedings provided for by the national and EU legislation to proceed with the relative recovery as provided for by Regulation (EU) 908/2014 and in particular by art. 54 paragraph 2 of Regulation (EU) 1306/2013 in relation to the EAFRD. This mechanism, defined as "automatic compensation", it represents an incentive for the Member States aimed at ensuring a faster recovery of the amounts not correctly allocated and in any case not due. It has been highlighted that the system presents two potential risks:

- 1) the delay in reporting which would make it possible to delay the start of the period envisaged by the legislation for recovery;
- 2) the cancellation of credits and their classification as non-recoverable before all the possible procedures for recovery have been completed.

In agricultural matters, in general, the offsetting of debts and credits is envisaged, as a form of extinction of reciprocal pecuniary obligations. It can also be done between debts and credits belonging to different sectors of the EAGF. This discipline was strengthened with the provision of organizational measures and specifically with the establishment of the European Public Prosecutor's Office (EPPO), provided for by art. 86 of the TFEU with the aim of combating crimes that harm the financial interests of the EU by identifying, prosecuting and indicting the perpetrators of the crimes themselves.

The Prosecutor's Office was set up by virtue of enhanced cooperation between 22 of the 27 EU Member States⁴⁶. For Member States, there is an obligation to notify the EU Commission of irregularities and fraud that exceed 10 thousand euros in the quarter following their detection. In Italy this obligation lies with the Presidency of the Council - Department of European Policies for structural funds and with the Ministry of Agricultural, Food and Forestry Policies for agricultural and fisheries funds.

⁴⁵OLAF investigates cases of fraud affecting the EU budget and cases of corruption and serious breach of professional obligations within the European institutions; it also draws up the anti-fraud policy for the European Commission. OLAF (European Anti-Fraud Office) was created in 1999 and succeeds UCLAF. Its main legal bases were Decision 352/99 and Parliament Regulation - (EC) n.1073 / 99 until October 2013. From 1.10.2013 these regulatory instruments have been modified since decision 2013/478 / EU (which amended decision 352/99) and the new Regulation 883/2013 which abrogates the aforementioned 1073/99 came into force on that date. OLAF is an independent body within the European Commission,

a) on conducts that prejudice the European Union budget,

b) on the conduct of the staff of the European Institutions (including the so-called Agencies) that integrate serious irregularities, if not illegal, even when they do not cause prejudice to the Community budget.

⁴⁶The Public Prosecutor's Office has a collegial structure and in 2020 its organization was concluded through the designation of its members, one for each Member State.

6. The new CAP 2023-2027

In this perspective of evolution and improvement of the current legislation on the common agricultural policy, after the favorable vote of the European Parliament on the three Regulations of the CAP, which took place on November 23, 2021, and the final approval of the Council of the European Union, at the beginning of December, it is noted that on 6 December 2021 the three new CAP Regulations were published in the Official Gazette and will come into force in 2023.

This is Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 which establishes rules on the support to the strategic plans that member states must draw up within the framework of the Common Agricultural Policy (CAP strategic plans) and financed by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). Furthermore, this Regulation also repeals the old Regulations of the CAP 2014-2020 Regulations (EU) no. 1305/2013 and (EU) no. 1307/2013; of Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021, referring to the financing, management and monitoring of the Common Agricultural Policy and which repeals Regulation (EU) no. 1306/2013; and finally of the Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021, amending the old Regulation (EU) no. 1308/2013, establishing the common organization of the markets for agricultural products and the European regulations on quality schemes for agricultural and food products, on the definition, designation, presentation, labeling and protection of geographical indications of aromatized wine products and, finally, the one containing specific measures in the agricultural sector in favor of the ultra-peripheral Regions of the Union.

The aim is to ensure that the CAP can better respond to current and future challenges, such as climate or generational change, while continuing to support European farmers to achieve a sustainable and competitive agricultural sector. The CAP reform process started in 2018, when the Commission published its initial proposal⁴⁷.

⁴⁷The EU Commission, following up on the Communication "The future of food and agriculture" [COM (2017) 713], published on 29 November 2017, in mid-2018 the European Commission presented the legislative proposals for the reform of the Agricultural Policy Municipality valid for the period 2021-2027, prepared on the basis of the multi-annual budget scheme of the European Executive for the same seven-year period. However, the protracted negotiations on the Multiannual Financial Framework made it necessary to provide for a transition period to extend the current rules and soften the transition with the future CAP. A transitional regulation was therefore adopted - EU Regulation no. 2020/2220 of 23 December 2020 - which extends the current regulatory framework of the CAP to 31 December 2022. During the Agrifish Council at the end of October 2020, the German Presidency presented the compromise proposals on the reform package around which a broad agreement was gathered by the Member States, with the final adoption of the General Approach on the three proposals of Regulations for the post-2020 CAP. Also at the end of October 2020, the European Parliament in turn approved general amendments which formed the basis of the mandate given to Comagri for negotiations with the Council. Based on these mandates, informal trilogues between the legislators and the Commission were then launched in November 2020. broad agreement by the Member States, with the final adoption of the General Approach on the three proposed Regulations for the post-2020 CAP. Also at the end of October 2020, the European Parliament in turn approved general amendments that represented the basis of the mandate conferred on Comagri for negotiations with the Council. Based on these mandates, informal trilogues between the legislators and the Commission were then launched in November 2020. broad agreement by the Member States, with the final adoption of the General Approach on the three proposed Regulations for the post-2020 CAP. Also at the end of October 2020, the European Parliament in turn approved general amendments that represented the basis of the mandate conferred on Comagri for negotiations with the Council. Based on these mandates, informal trilogues between the legislators and the Commission were then launched in November 2020.

In October 2020, the Council and the European Parliament adopted their negotiating positions, kicking off nine months of negotiations that culminated in a political agreement reached in June 2021⁴⁸ and resulted in the approval of the new Regulations referred to above⁴⁹.

For the period 2023-2027, the Common Agricultural Policy (CAP) will be based on nine key objectives, focusing on social, environmental and economic aspects, and will form the basis on which EU countries will develop their CAP strategic plans.

The nine objectives can be summarized as follows:

- 1) guaranteeing a fair income for farmers;
- 2) increase competitiveness;
- 3) rebalancing power in the food chain;
- 4) act against climate change;
- 5) to protect the environment;
- 6) preserve landscapes and biodiversity;
- 7) support generational change;
- 8) maintain dynamic rural areas;
- 9) protect food and health quality.

The new model of implementation of the CAP is of great importance and provides for the elaboration, by each Member State, of a national strategic plan whose actions must contribute to the achievement of the nine specific objectives and a transversal objective, through programming and implementation of the interventions foreseen in both pillars of the CAP (financed by the EAGF and the EAFRD).

With particular regard to this aspect, at the national level, the Ministry of Agricultural, Food and Forestry Policies, in collaboration with the Regions and Autonomous Provinces - and with the support of the National Rural Network - after having carried out complex and articulated activities of in-depth analysis and comparison within which to define the intervention strategies, it has prepared the National Strategic Plan⁵⁰ and the same has been sent to the European Commission which by 30 June 2022 will have to proceed with the relative evaluation and approval.

Italy intends to strengthen the strategic role of the agricultural, food and forestry sector within the overall national economic system and in the European and international context. The fundamental choices that will guide the CAP Strategic Plan 2023-2027 (PSP) concern:

- the ecological transition of the agricultural, food and forestry sectors⁵¹;
- strategic role of the 5 national eco-schemes⁵²;

⁴⁸In June 2021, the legislators thus reached a compromise on the reform, approved on 23 November 2021 by the European Parliament and subsequently on 2 December by the Council at first reading. The three regulations were then published in the Official Journal of the European Union series L n. 435 of 6 December 2021. These basic regulations will be followed by the implementing and delegated acts to compose the regulatory framework of the new Common Agricultural Policy.

⁴⁹M. POTO, work cit.

⁵⁰https://www.reterurale.it/downloads/Piano_Strategico_Nazionale_PAC_31-12-2021.pdf

⁵¹In total, about 10 billion euros, between the first and second pillars, are destined for interventions with clear environmental purposes, to which are added the other interventions that still contribute to the ecological transition of our production system.

⁵²A strategic role is played by the 5 national eco-schemes to which 25% of direct aid resources will be allocated, which will support companies in adopting agro-ecological practices for climate-environmental sustainability. The eco-schemes will operate in synergy with the 26 agroclimatic-environmental interventions - ACA (1.5 billion euros), interventions in favor of sustainable forestry (500 million euros), productive, non-productive and infrastructural investments for environmental purposes (650 million euros), with the

- organic farming and organic animal husbandry⁵³;
- animal welfare for the relaunch of animal husbandry from a sustainable perspective⁵⁴;
- fairer income aid system⁵⁵;
- attention to the production sectors with greater difficulties⁵⁶;
- strengthening the competitiveness of supply chains⁵⁷;

environmental actions envisaged within the sectoral interventions and the environmental investments of the NRP, an integral part of this strategy.

⁵³The Plan recognizes the importance of organic farming, as a privileged production technique to contribute to the achievement of all the envisaged environmental objectives; with this aim, approximately € 2.5 billion is allocated to the sector (including the resources to be transferred to rural development in the EAGF financial year 2028) in the five-year period in the context of rural development. The allocation already foreseen by rural development (1.5 billion euro) is in fact integrated with an additional allocation of about 1 billion euro, partly transferred from the first pillar (90 million euro / year) and partly from the increase in the national co-financing.

⁵⁴The relaunch of Italian animal husbandry and its competitiveness inevitably passes through great attention to sustainability. With this objective, a significant portion of the resources for eco-schemes is dedicated to animal welfare and the reduction of the use of drugs in animal husbandry, to counteract a real global health emergency, represented by antimicrobial resistance (about 1.8 billion euros). This initiative is accompanied by other important interventions in rural development for the adoption of good zootechnical practices for animal welfare (330 million euros), for commitments aimed at improving the management of livestock manure (70 million euros) and the Recovery Plan.

⁵⁵The process of gradual equalization of the level of income support continues, taking the entire national territory as a reference. The reference to Italy as a single region implements - through internal convergence - a significant rebalancing in the allocation of direct payments resources, to the benefit of intermediate rural areas and rural areas with development problems, as well as to the benefit of mountainous and of some inland hilly areas. At the same time, 10% of the national budget is allocated to redistributive support, focusing attention on small and medium-sized companies; also in this case, no territorial differences are envisaged, with repercussions to the advantage of intermediate rural areas and rural areas with development problems.

⁵⁶In order to take into account the challenges and difficulties that sectors and products, important for social, economic or environmental reasons, have to face and in order to improve their competitiveness, sustainability and quality, the Strategy allocates 13% of the endowment of direct payments for coupled support. To this is added a further 2% of resources to be allocated to support protein crops, in order to reduce the relative deficit of Italy and the Union, supporting crops that also allow for an improvement in the organic substance in the soil. New risk management tools, able to guarantee a wider participation of farmers. Almost 3 billion euros for subsidized insurance and the new national mutual fund, to which farmers also contribute through a withholding of 3% of direct payments. For a wider participation of farmers, the activation of a basic mutual coverage against meteorological and climatic catastrophic events was envisaged for all farms benefiting from direct payments, through the establishment of a national mutual fund. This intervention is integrated with the support for the underwriting of subsidized insurance policies, which cover losses caused by adverse weather conditions, epizootic diseases, plant diseases or parasitic infestations. For a wider participation of farmers, the activation of a basic mutual coverage against meteorological and climatic catastrophic events was envisaged for all farms benefiting from direct payments, through the establishment of a national mutual fund. This intervention is integrated with the support for the underwriting of subsidized insurance policies, which cover losses caused by adverse weather conditions, epizootic diseases, plant diseases or parasitic infestations. For a wider participation of farmers, the activation of a basic mutual coverage against meteorological and climatic catastrophic events was envisaged for all farms benefiting from direct payments, through the establishment of a national mutual fund. This intervention is integrated with the support for the underwriting of subsidized insurance policies, which cover losses caused by adverse weather conditions, epizootic diseases, plant diseases or parasitic infestations.

⁵⁷The improvement of the position of farmers along the supply chain cannot be separated from the improvement of their competitiveness, from a greater integration of the various actors, from the management of supply, from the modernization of production structures. The Plan is full of initiatives in this direction

- greater attention to young people, as they constitute a heritage for the future⁵⁸;
- greater equity and safety in working conditions⁵⁹;
- diversity and attractiveness of rural areas, as they constitute a heritage to be valued⁶⁰;
- incentives for the diffusion of sustainable forest management⁶¹;
- knowledge system (AKIS) at the service of competitiveness and sustainability⁶².

The new CAP support model provides, as in the past, a payment system in modules, at the base of which is the basic income support for sustainability (BISS), i.e. an annual decoupled payment based on the area and disbursed for the eligible hectares available to the farmer⁶³. Member States that have previously applied basic payment through payment entitlements (e.g. titles), such as Italy, may decide to continue to use payment entitlements to grant BISS: in such cases, in addition that of eligible hectares, the number of payment entitlements is taken into account, so the amount per hectare may differ according to the value of the entitlements themselves, although undergoing further variations based on the rules on internal convergence.

The right to a payment under the BISS is a precondition for farmers to be able to benefit from payments under all other types of direct payment intervention, with the exception, however, of coupled income support, eco-schemes whose aid is based on higher costs / lower revenues, and on the specific

through sectoral interventions dedicated to the wine, fruit and vegetable, olive, beekeeping and potato sectors, through support for rural development investments, but also cooperation initiatives aimed at improving relations between the actors of the supply chains. locally.

⁵⁸The Plan envisages strengthening policies in favor of young people, integrating the instruments of the first and second pillars, to mobilize a total of 1,250 million euros. Young farmers are in fact more receptive to innovation and digitization, therefore more ready to face the new challenges of competitiveness and resilience of the agricultural sector. With these objectives, 2% of the direct payments ceiling (€ 350 million) will be used as complementary income support for young farmers and 1% will be transferred to the second pillar. In this way, the allocation already foreseen in rural development (540 million euros),

⁵⁹The strategy aims to promote quality agricultural and forestry work, promoting greater transparency in contractual aspects and more safety in the workplace. Farm advisory services will be strengthened, including assistance on employment conditions and obligations of employers, as well as occupational health and safety and social assistance in farming communities, among other subjects. Similar commitments will also be envisaged for sectoral interventions.

⁶⁰The rural areas of our country are a heritage of diversity to be safeguarded and enhanced. The link of our food products with the territory, the traditional landscapes, the natural and cultural heritage represent a value not only for the competitiveness of the sector, but also for the socio-economic stability of the territory. In addition to the LEADER, a reference initiative for the local development of rural areas, the Plan offers the territories various intervention tools which, through cooperation, can favor the development of the territories (food districts, bio-districts, smart villages, river contracts) and integration with the equally relevant SNAI. The aim is to provide, in the context of rural development interventions,

⁶¹The spread of sustainable forest management pursued with the tools of rural development, through forest planning tools, but also by providing support for all those interventions that can improve the prevention of damage caused by natural disturbances and climatic events external to forest stands - See K. INGOGLIA, *Foreste e filiere forestali*, Milano, 2019 and V. DI STEFANO, K. INGOGLIA, *La pianificazione forestale alla luce della nuova Strategia forestale nazionale*, in *Diritto e giurisprudenza agraria alimentare e dell'ambiente*, 2022.

⁶²In order to support agricultural and forestry enterprises in adopting more sustainable and innovative production techniques, the introduction of new technologies, an important effort has been made to overcome the fragmentation of the knowledge system, propose more effective tools and promote greater integration. between consulting, training, information and operational groups for innovation.

⁶³The BISS, as a general rule, is paid as a uniform amount per eligible hectare declared by an "active farmer". By active farmer we mean natural or legal persons, or groups of natural or legal persons, who perform at least one level minimum agricultural activity, to be defined by the Member State, while not necessarily precluding the granting of support to multi-active or part-time farmers.

payment for cotton which, however, does not apply in Italy. When Member States decide to pay the BISS on the basis of payment entitlements, the BISS is granted to farmers who are holders of the payment entitlements at the time of 'activation' of the same entitlements, activation which is carried out annually also declaring the hectares eligible with a corresponding number of payment entitlements⁶⁴.

The reform of the CAP introduces new rules on convergence, leaving the Member States with the following choice: aiming for complete convergence with payment entitlements of uniform amount or rather proceeding to partial convergence?⁶⁵.

An important novelty is the introduction of the so-called social conditionality, also defined as the third pillar of the CAP, which consists in the respect by farmers and farms of minimum standards for the protection of workers in the absence of which it will not be possible to use the funds. Europeans. The provision of a social dimension of the CAP undoubtedly constitutes a strong signal of innovation in the reform relating to the years 2023-2027⁶⁶.

Member States must establish a list of agricultural practices beneficial for the climate, the environment and animal welfare (eco-schemes), recognizing farmers who commit to pursuing these objectives an annual payment for all eligible hectares covered by the engagements⁶⁷.

⁶⁴For the first year of implementation of the new regulatory framework, the basic payment rights pursuant to EU Reg. No. 1307/2013 are automatically converted into BISS rights without the need for a new assignment. New payment rights can also be obtained by drawing from the national reserve or by transfer.

⁶⁵In the latter case, Member States are free to decide the level of increase in the value of entitlements as long as it is ensured that, for the claim year 2026, each entitlement reaches a value of at least 85% of the unit amount envisaged for 2026. The increase in the value of entitlements with a value lower than the unit amount foreseen for the claim year 2026 will be financed by a reduction in the value of the entitlements with a value higher than the unit amount foreseen for the application year 2026. Member States may decide to apply capping and degressivity mechanisms to the BISS. In the first case, the capping threshold is set at 100,000 euros (maximum amount of the disbursable aid), while in case of application of the degressivity the maximum reduction will be of 85% for amounts exceeding 60,000 euros, with the possibility of adopting differentiated and progressively increasing brackets. From these amounts, Member States can decide to deduct labor costs, with the aim of avoiding affecting rural employment and making the CAP fairer across the EU, also recognizing unpaid work. The product of the application of capping and degressivity will be used to finance the Complementary Redistributive Income Support for sustainability or transferred to rural development. Complementary Income Redistributive Sustainability Support (CRISS) is a type of intervention (mandatory for Member States, except for specific exceptions) which aims to improve the distribution of direct payments by redistributing support from larger to smaller or medium-sized farms. It is recognized in the form of a "supplementary" payment for a limited number of hectares per farm (eg 90 EUR / ha from 1 to 25 hectares) or various supplementary payments for different bands of hectares on a farm (eg 100 EUR / ha from 1 to 15 ha and 75 euros from 16 to 25 ha). For Member States using payment entitlements, in cases where a farmer holds more eligible hectares than the entitlements, the 'excess' eligible hectares will still benefit from CRISS. The new CAP provides for the possibility for each Member State to activate a payment for small farmers in the form of an annual decoupled flat-rate payment or payment per hectare which replaces all direct payments, the maximum amount of which per farmer remains the same as the maximum established by the EU Regulation n. 1307/2013 (or equal to € 1250.00).

⁶⁶The European Commission undertakes to evaluate the effects of this social dimension by 31.12.2026 and possibly propose ways to improve its effectiveness: www.ministeropoliticheagricole.it.

⁶⁷These payments can be made in the form of additional payments to the BISS or payments in total or partial compensation of the additional costs incurred and for the loss of earnings as a result of the commitments undertaken, which in any case must be more stringent than the mandatory management criteria (CGO), and basic beneficial climate and environment (GAEC) standards, as well as other relevant mandatory requirements established by national and Union law.

The new CAP also provides for coupled support, designed to address the difficulties encountered by farmers in certain defined sectors or specific types of agricultural activity, by improving their competitiveness, sustainability or quality. Member States determine, within their National Strategic Plan, the specific sectors or types of agricultural activity to be supported⁶⁸.

7. Brief conclusions in the light of the new European strategies

From the examination carried out on the general European aid regulations, also taking into account their evolution over time, it is evident that the primary objective that Europe aims to achieve is the abolition of internal barriers between the various Member States with the formation of a common market that is progressively more incisive and governed by innovative legal instruments.

In view of the above, it is understandable how EU rules declare in principle incompatibility with the internal market. However, despite this general ban, state aid may be necessary to address market failures in order to ensure a well-functioning and fair economy.

The Treaty therefore provides for the possibility of granting state aid in relation to certain political objectives. As regards the agricultural and forestry sector, Article 107 (2) (b) of the TFEU provides for the compatibility with the internal market of aid intended to make good the damage caused by natural disasters or other exceptional events. Furthermore, in accordance with Article 107 (3) (c) of the TFEU, the Commission may consider State aid intended to facilitate the economic development of the agricultural and forestry sectors and that of rural areas compatible with the internal market, provided that do not alter trading conditions.

What has been said concretely demonstrates the continuous and increasing attention that the European Union is dedicating to the sector of state aid in the agricultural and forestry sectors. In confirmation of this, it should be noted that on 11 January 2022 the Commission launched the public consultation on the proposed revision of the EU rules on state aid for the agricultural, forestry and fisheries sectors. In particular, the proposed revision aims to align the rules in force with the current strategic priorities of the EU, and above all with the Common Agricultural Policy (CAP), the future Common Fisheries Policy (CFP) and the European Green Deal. Member States and other stakeholders have until 13 March 2022 to respond to the consultation⁶⁹.

Specifically, the consultation concerns the proposals for the revision of the various sets of state aid rules relating to the agricultural, forestry and fisheries sectors, in particular the proposals for the revision of the 2014 guidelines on state aid in the agricultural sector. and forestry and rural areas, the Agricultural Block Exemption Regulation (ABER), the guidelines for the examination of State aid in the fisheries and aquaculture sector, the Fisheries Block Exemption Regulation (FIBER) and the de minimis Regulation for the fishing sector.

The Commission has carried out an evaluation of the rules in force applicable to the agricultural and forestry sectors and is also carrying out an evaluation of the rules applicable to the fisheries sector.

On this basis, the Commission considers that the examined standards work well and are overall fit for purpose. Indeed, they largely respond to the needs of the sectors concerned and contribute to the achievement of the EU's broader policy objectives, such as the protection of the environment, plant and animal health and, more generally, public health.

At the same time, however, the evaluation revealed that the rules in force need some targeted changes, for example clarifications on some concepts, further rationalization, simplification, and

⁶⁸This support is provided in the form of an annual payment per eligible hectare or head of livestock, up to 15% of the ceiling available for direct payments.

⁶⁹https://ec.europa.eu/commission/presscorner/detail/it/ip_22_241

adjustments to integrate technological and market developments and the current strategic priorities of the EU, including those envisaged by the European Green Deal, the "from producer to consumer" strategy⁷⁰ and the biodiversity strategy. Furthermore, the rules need to be adapted to allow Member States to rapidly implement the reform of the Common Agricultural Policy (CAP) and the new European Maritime, Fisheries and Aquaculture Fund (FEAMPA).

In this context, the Commission proposes several changes to the different sets of rules, including, for example, the following:

- guidelines for state aid in the agricultural and forestry sectors and in rural areas. The Commission proposes to consider the actions taken by Member States under the reformed CAP, carried out within the framework of their CAP strategic plans, to comply with EU state aid rules, so that the necessary aid approval procedure of state can be done quickly. The proposal also introduces new categories of aid to be assessed and approved under the guidelines, such as aid for the prevention, control and eradication of infestations by invasive alien species and emerging diseases, to protect the plant and animal health and public health. Furthermore,
- Agricultural block exemption regulation. The Commission proposes to align the aid intensities foreseen for a measure to fall under the ABER Regulation with the aid intensities set out in the CAP strategic plans under the reformed common agricultural policy. It also proposes to include new categories of aid measures among those benefiting from the block exemption, such as aid to compensate for damage caused by protected animal species and aid to compensate for additional costs incurred for located agricultural land. in Natura 2000 areas;
- guidelines for the examination of state aid in the fisheries and aquaculture sector. The Commission proposes to introduce new categories of aid to be assessed by the Commission under the guidelines, in particular aid for the prevention, control and eradication of infestations by invasive alien species and emerging diseases and aid to compensate for damage caused by protected animal species (unless benefiting from the block exemption). The proposed draft guidelines also clarify and streamline the rules in a number of areas, for example the rules on aid for the renewal of the fishing fleet in the outermost regions. The aim is to increase the readability of the draft guidelines, thereby facilitating its
- Fisheries Block Exemption Regulation. The Commission proposes to exempt new categories of aid measures from the obligation of notification to and authorization by the Commission, in particular aid intended to compensate for damage caused by protected animal species and aid intended to compensate for damage caused by certain adverse weather conditions;
- De minimis regulation for the fishing sector. The Commission also proposes an update, based on more recent sectoral data, of the cumulative maximum amounts of de minimis aid that can be granted per Member State.

In conclusion, European aid in the agricultural and forestry sector is experiencing a phase of profound change: the need to adapt to the new European strategies, in fact, appears essential to achieve the objectives indicated in the Green New Deal and in the Farm to Fork strategy.

⁷⁰The Farm to Fork (F2F) strategy is the ten-year plan developed by the European Commission to guide the transition to a fair, healthy and environmentally friendly food system. It is the first time that the European Union has tried to design a food policy that proposes measures and objectives that involve the entire food chain, from production to consumption, naturally passing through distribution. The underlying goal is to make Europe's food systems more sustainable than they are today. Each EU member state will have to follow it, adopting rules at national level that make it possible to contribute to achieving the objectives set by the EU. Member countries will benefit from any additional support measures during the implementation of the strategy.