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# Social Sustainability as the Milestone for a Sustainable Food System: The Essential Role of People Working in Agriculture

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## Abstract

A Sustainable Food System needs to be implemented through a legal framework balancing measures concerning all the aspects of sustainability (the social, economic and environmental ones), as defined by the Farm to Fork strategy.

Since environmental issues are considered a structural part of CAP regulations, a special attention shall be paid both to social and economic sustainability of agricultural and food system, as fundamental pillars for a resilient and competitive development of the primary sector.

A new “social” approach of agricultural policy takes into consideration the position of farmers (in particular, a fair revenue of their activity) and workers involved in the agricultural sector (in particular, the rights to protection and safety at work). It also involves the comprehensive rural areas, ie the social context that represents the premise to reach environmental goals of sustainability in rural territories, realised by the farmers themselves as main actors of the rural economy.

Therefore, for the future of food law, a strategic consideration of the legal framework related to people working in agriculture and agri-food sector should concern two main aspects.

On one hand, the introduction of social conditionality, establishing compliance with labour law rules, including work safety and transparency of employment conditions in agricultural labour contracts in order to receive CAP subsidies – becomes a component of the process for “safe food” through an “ethical and legal food production.”

On the other hand, it is important to consider the improvement of life conditions and services in rural areas in favour of resident citizens, the attractiveness of young farmers as well as the implementing measures for an inclusive growth.

These aspects, which make up a “social sustainability model” in the agri-food chain are strongly linked together and require a comprehensive policy regulation. This policy perspective includes a new perception of entrepreneurs and workers employed in rural areas intended for the production of food and related to the environmental protection.

**Keywords:** common agricultural policy; social conditionality; social policy

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## I. Introduction: the approach towards the sustainable development and its social aspects in the new CAP 2023–2027

In recent years, the European Union consolidated its political and legislative trend oriented towards a sustainable development, on the assumption, now shared at supranational level, that SDGs are the point of reference for the governance of economic activities.<sup>1</sup>

In this context, specifically characterised by exceptional events, the European Regulations for the Common Agricultural Policy (CAP) has been finally approved for the period 2023–2027. The regulation of the agricultural production and food chain, a part of which is the CAP, takes the shape of the “sustainable food system”, as laid down by the European Commission in the “Farm to fork strategy” document.<sup>2</sup> Within the draw of the Commission, the topic of sustainability includes and defines – specifically for the agri-food system – economic, environmental and social aspects, leading to a reinterpretation of the legal rules from the primary production, involving agricultural businesses, to the stages of the consumptions, considering the consumer attitude.

The regulative framework is still evolving, as a consequence of the events and emergencies faced by the governments due to the recent crises, although it retains its foundation based on the idea of a transition towards sustainable development.<sup>3</sup>

The full awareness of the effects of globalisation on the European agriculture and agri-food system had already been acquired during the mid-term review of the previous CAP 2014–2020,<sup>4</sup> then it is mentioned, by considering the economic context of the Reform, in the premises of the draft of new CAP Regulations, presented by the Commission in 2018.<sup>5</sup> Moreover, the pandemic and war crisis shifted the attention of the European institutions to the need to ensure food security within member States, as well as to the resilience of European farms.

The conservation of agriculture within the European territory takes on key relevance, for the “food security” goals. The mere availability of raw materials for the European food industry and distribution coming from external markets, although it can be useful for the supply chain functioning, it does not satisfy the general interest for the conservation of agricultural activity and the production of food within European Union borders<sup>6</sup>.

<sup>1</sup> See the Report approved by the Resolution of the United Nation General Assembly “Report of the World Commission on Environment and Development: Our Common Future”, 4 August 1987, <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>>. Furthermore, the consolidation in Sustainable development goals has been laid down by “Agenda 2030”, signed by 195 Countries on 25 September 2015 and approved by UN General Assembly. Cf W Huck, *Sustainable development goals: Article-by-article Commentary* (Bloomsbury Academic 2022).

<sup>2</sup> Commission, “A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system”, 20 May 2020 COM(2020) 381 final.

<sup>3</sup> See the Proceedings of the XXXI European Congress and Colloquium of Rural Law, Cardiff 6–9 September 2023. Commission I, “Multiple crises: responses in agricultural law”(forthcoming in <<https://www.cedr.org>>).

<sup>4</sup> European Parliament and Council Regulation (EU) 2017/2393 of 13 December 2017 amending Regulations (EU) No 1305/2013, 1306/2013, 1307/2013, 1308/2013 and 652/2014. Furthermore, rules to correct supply chain imbalances has been introduced by the European Parliament and Council Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

<sup>5</sup> See the Explanatory Memorandum to the Commission proposal for the CAP Regulations (documents COM(2018) 392, 393, 394, Bruxelles, 1 June 2018). For a deep analysis of the regulative framework of the CAP, on the basis of the first draft of the EU Commission in 2018, and an overview of the issues of the Regulation establishing rules on strategic plans (Reg EU no 2021/2115), see the special issues of the *Rivista di diritto agrario, La politica agricola comune tra attesa per una riforma e attuali profili applicativi* (1/2020 proceedings of the Conference held in Verona 19–20 December 2019) and *Rivista di diritto agrario, Strumenti per una crescita sostenibile dell'agricoltura* (2/2022 proceedings of the Conference held in Bari 7–8 April 2022).

<sup>6</sup> See recital 25 Reg EU no 2021/2115: “In order to support viable farm income and resilience of the agricultural sector across the Union to enhance long-term food security, there is a need to improve the farmers’ position in the value chain, in particular by encouraging forms of cooperation that involve and benefit farmers, as well as by promoting short supply chains and improving market transparency”.

In line with the context described above, the CAP 2023–2027 outlines a new trend for a “socio-economic sustainability,” by defining a new vision of the functioning of the agri-food supply chain, concerning the vitality of agricultural businesses, both in the rural fabric and in the organisation of activities, and balanced supply chain relationships.

This trend can be summarised in the following three key aspects:

- (1) the economic sustainability of small farmers (implemented by the financial measures laid down in the strategic plans at national level, as well as by the rules aimed at a value chain balance within the agri-food supply chain)
- (2) a higher level of workers protection (including safety on work rules and transparency of contractual and economic conditions)
- (3) the improvement of rural fabric (taking into consideration the increasing digitalisation in agricultural sector, the competitiveness of rural networks, as well as the improvement of internal areas, by the attraction of young farmers and promotion of gender equality).

The social sustainability in the Commission’s intentions, – intended as an integral part of the sustainable development objectives set out in the Green Deal documents<sup>7</sup> – causes a renewed attention to the social inclusion policies, as well as to the legal framework concerning people employed in the primary sector and more generally in rural areas, agricultural producers and workers employed in the agricultural sector.

As declared in the Farm to fork strategy document by the Commission, “it will be particularly important to mitigate the socioeconomic consequences impacting the food chain and ensure that the key principles enshrined in the European Pillar of Social Rights are respected, especially when it comes to precarious, seasonal and undeclared workers. The considerations of workers’ social protection, working and housing conditions as well as protection of health and safety will play a major role in building fair, strong and sustainable food systems”.<sup>8</sup>

Indeed, as mentioned, the CAP Regulations reflect the fundamental lines set out in the document, by bringing them back within a regulatory framework characterised by the agricultural markets regulative tools, currently based on national strategic plans, and accompanied by a set of objectives and result indicators.

Therefore, through the analysis of these legal schemes laid down by Regulation 2021/2115, it will be possible to stress the relevance of new rules on social sustainability within the new CAP. Most of this is due to the amendments proposed by the European parliament, that paid special attention to social inclusion and social cohesion, nondiscrimination and participation, which were only partially included in the final version of the regulations.<sup>9</sup>

It is important to consider, on the level of principles, that the CAP objectives, laid down by Article 39 of the Treaty on the Functioning of the European Union, are currently addressed by the contents of the United Nations 2030 Agenda and, more generally, by the commitments undertaken at international level, recalled in the reform accompanying documents.<sup>10</sup>

In defining the general objectives to be pursued through the EAGF and EAFRD support measures, Article 5 Regulation 2021/2115 states that these measures, in accordance with

<sup>7</sup> See the 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”, 11 December 2019 COM (2019) 640 final.

<sup>8</sup> Farm to fork strategy, para 2.2. Ensuring food security, *supra*, n 2.

<sup>9</sup> 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, P9\_TA (2020)0287.

<sup>10</sup> Cf arts 10 and 11 Reg no 2021/2115.

Article 39 of the Treaty of Functioning EU, “shall aim to further improve the sustainable development of farming, food and rural areas and shall contribute to achieving general objectives in the economic, environmental and social spheres, which will contribute to the implementation of the 2030 Agenda for Sustainable Development”.

As will be said below, the implementation of SDGs, incorporated into CAP Regulations,<sup>11</sup> is entrusted to Member States, that define the planning at national level.

The choices made within the national strategic plans, tailored to those areas, are the milestone for the development of sustainability objectives, so that the evaluation of effectiveness (also preventive) and congruity of the results at European level is crucial. In this regard, the Commission’s role in monitoring the choices of the States and directing them towards the fundamental objectives of the reform has been evident, considering the observations on the proposals received from the Member States. For example, with regard to the Italian draft of the Strategic plan, and in particular the social aspects of the CAP, the Commission requested more stringent measures to be adopted with regard to the labour exploitation and the application of social conditionality.<sup>12</sup>

More generally, among the above-mentioned essential aspects of social sustainability in the new CAP, there is the economic sustainability of small farmers’ impacts on the conservation of business activities and employment in the agricultural sector. The objective of ensuring balance in the distribution of value along the agrifood supply chain and a fair remuneration for agricultural producers shall be considered as the main topic in market regulation in recent years, acknowledging an unbalanced economic and contractual strength of the parties.<sup>13</sup> In addition to the strengthening of the role of groups of producers (producers’ organisations above all) aimed at increasing the bargaining skills of farmers, the amendments to Article 168 of Regulation 1308/13 (laid down by Regulation 2021/2117) stresses on the relevance of the price formation criteria.<sup>14</sup> At the same time, the overall structure of the support measures includes those aimed at safeguarding small agricultural businesses and the family-run agricultural business model.

<sup>11</sup> See Commission, “2019 EU report on Policy Coherence for Development” 28 January 2019 SWD (2019) 20 final, para 3.1.1, Food security. According to the Commission, the CAP reform proposal increased the coherence with the international commitments entered by the EU, including that related to the sustainable development; the document point out that, beside the CAP objectives related to the sustainability in its various dimensions, environmental, economic, territorial and social, “the proposals also aim to address new societal demands eg to reduce waste and guarantee animal welfare”.

<sup>12</sup> Commission, Observation letter on Italy’s CAP strategic plan, 31 March 2022 Ref. Ares(2022)2416762, <[https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans/observation-letters\\_it](https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans/observation-letters_it)>. Para 10, concerning workers employed in agricultural sector states that: “Italy should significantly strengthen the plan’s intervention logic regarding labour exploitation. Given the very high rate of irregularities (over 55%) in the Italian agricultural sector, it is essential to address this issue to ensure economic stability, competitiveness, and social sustainability of Italian agricultural businesses. For the same reasons, the Commission would welcome an effective application of social conditionality from the beginning of the implementation of the plan”. Para 21, concerning actions aimed to enhance the socioeconomic fabric of rural areas: “In line with the long-term vision for rural areas (COM/2021/345 final), the proposed strategy should be significantly improved to adequately respond to the persistent development needs of Italian rural areas (deep gap between rural and urban areas with regard to basic services, infrastructure, unemployment, depopulation, poverty, social inclusion, gender equality and vulnerable groups), by ensuring that it is effectively targeted to the most needy rural areas”.

<sup>13</sup> See I Canfora, “The «fair price» in agri-food chain, in Agri-food market regulation and contractual relationships in the light of Directive (EU) 633/2019” (2023), AM Mancaloni, R Torino (eds), <https://romatpress.uniroma3.it/libro/agrifood-market-regulation-and-contractual-relationships-in-the-light-of-directive-eu-633-2019/>; I Canfora, “Fair remuneration of farmers and value balance in the agrifood chain” (2022) 259 *Revista Española De Estudios Agrosociales Y Pesqueros*, 201–220, <https://doi.org/10.24197/reeap.259.2022.201-220>; B Velázquez, B Buffaria, “About farmers’ bargaining power within the new CAP” (2017), *Agricultural and Food Economics* 5:16, DOI 10.1186/s40100-017-0084-y.

<sup>14</sup> Cf I Canfora, “La PAC 2023–2027: un nouvel équilibre dans les relations contractuelles au sein de la filière agroalimentaire” (2023) 3 *Revue de Droit rural*, Dossier 17.

European agriculture cannot ignore the relevance of family farms in rural areas, as well as the problems related to the access of young farmers to productive lands.

However, a significant innovation in the CAP 2023–2027 concerns the provisions regarding the protection of agricultural workers, in particular the introduction of social conditionality. This aspect is linked to the growing employment demand in the primary sector, largely satisfied by workers coming from extra-Union territories.

The explanatory memorandum to the Commission proposal for the CAP Regulations, considering the deep socioeconomic change characterising the European markets, has already pointed out, among other aspects to be considered in the reform (eg the price fall of agricultural products, the new perspectives of international markets, climate change issues) the growing employment of seasonal workers in agriculture, as a factor linked to the geopolitical context of migrants. This matter is also highlighted in the Farm to fork strategy. In addition to reaffirming the need to ensure a decent income for farmers, the document mentions the problem of manpower availability in agriculture as a strong criticality for the continuity of production activities, especially in the pandemic period; therefore, the smooth functioning of the supply chain is linked to the need to increase workers' protection.<sup>15</sup>

Nevertheless, when considering the new CAP Regulations, the attention paid to migrant workers is diminished. Recital 34 of Regulation 2021/2115, briefly mentions it by stating that “There is a potential for employment opportunities in rural areas for legally staying third-country nationals, promoting their social and economic integration especially in the framework of community-led local development strategies”. However, this remark does not introduce an intervention aimed at addressing the critical issues linked to the exploitation of migrant workers; it only refers to social inclusion tools provided within the rural development support measures.

## II. Protection of workers and European rules on social conditionality in the regulation 2021/2115

In the context of the broader issues concerning social sustainability in the new CAP, a particular regulatory profile, of an innovative nature compared to the pre-existing regulatory framework on agricultural policies, is provided for by the so-called “social conditionality”, laid down in Article 14.

This rule extends the model of the environmental conditionality (the “cross-compliance”, already regulated by the previous CAP regulations), expressed here in the form of administrative penalties for farmers who do not comply with the rules designed to protect workers.

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The starting point of this instrument begins by the valorisation of the dignity of work and the acceptance of the perspective according to which, once defined in a legal system the protection of workers (also in light of context variables), the guarantee of their effectiveness must constitute a variable independent from market conditions.

<sup>15</sup> See Farm to fork strategy, *supra*, n 2.

In particular, within the framework of the numerous remedies which, depending on the context, have been used to make the application of labour protection regulations effective, those based on various forms of conditionality represent – not only today – a very interesting frontier. because they impact on the convenience calculations of economic operators. By resorting to them, the public decision-maker chooses, in fact, to influence those calculations by hitting companies that opt for non-compliance with the protection rules with economic disadvantages of various kinds.

Of course, it is important to underline right now that, in practical terms, the real impact of the instrument on the concrete dynamics of employment relationships depends, on the one hand, on the list of protection rules whose effective application is intended to be promoted and, on the other one, on the incisiveness of the action of those who verify and monitor compliance with the rules in question, as well as on the extent of the disadvantages that affect companies that violate them.<sup>16</sup>

As regards Regulation 2021/2115, first of all it is of extreme interest that the Union has moved in the direction of expanding the content of conditionality also to the protection of workers, therefore using the CAP (whose relevance in the economic context obviously cannot be discounted) as a crowbar to unhinge behaviours that undermine the effectiveness of the rules established to protect employment. Especially since, in the past, proposals to include aspects relating to occupational safety in the framework of the legislation on agricultural support schemes had never led to a legislative provision.<sup>17</sup>

The breadth of the purposes pursued with this choice and, at the same time, the current boundaries of the chosen protection legislation are very clear from the recitals, in particular 45 and 46, where it is stated that “(45) In order to contribute to the development of socially sustainable agriculture through better awareness, on the part of beneficiaries of CAP support, of the employment and social standards, a new mechanism integrating social concerns should be introduced” and that “(46) to the compliance of farmers and other beneficiaries with basic standards concerning working and employment conditions for farm workers and occupational safety and health, in particular certain standards under Council Directive 89/391/EEC [ie the framework directive on the safety and health of workers] and Directives 2009/104/EC [concerning the minimum safety and health requirements for the use of work equipment by workers at work] and (EU) 2019/1152 [on transparent and predictable working conditions] of the European Parliament and of the Council. By 2025, the Commission should assess the feasibility of including article 7(1) of Regulation (EU) 492/2011 of the European Parliament and of the Council and should, if appropriate, propose legislation to that effect”.<sup>18</sup>

<sup>16</sup> With reference to the legislative instruments adopted in Italy to tackle undeclared work, exploitation and gangmastering in agriculture, V Leccese, D Schiuma, “Strumenti legislativi di contrasto al lavoro sommerso, allo sfruttamento e al caporalato in agricoltura” (2018) 55 <<https://agrireregioneuropa.univpm.it/it/content/article/31/55/strumenti-legislativi-di-contrasto-al-lavoro-sommerso-allo-sfruttamento-e-al>>.

<sup>17</sup> See the Explanatory memorandum “A long-term policy perspective for sustainable agriculture”, to the proposals of Regulations establishing, inter alia, common rules for direct support schemes under the common agricultural policy, COM(2003) 23 final. The memorandum laid down the “reinforcement of environmental, food safety, animal health and welfare and occupational safety standards” and proposed that compulsory cross-compliance should also be extended “to statutory European standards in the field of environment, food safety, animal health and welfare and occupational safety related to the farm level”. The same hypothesis was already established in the Communication from the Commission to the Council and the European Parliament “Mid-Term Review of the Common Agricultural Policy”, COM (2002) 394 final. On the following decision to exclude occupational safety from the cross-compliance framework, by the regulation entered into force on the basis of the initial Commission proposal (Reg 1782/2003), see the critical considerations of J Hunt, “Making the CAP Fit: responding to the Exploitation of Migrant Agricultural Workers in the EU” (2014) 30 no 2 in *International Journal of Comparative Labour Law and Industrial Relations*, pp 146ff.

<sup>18</sup> The hypothesis contemplated in the final part of recital 46 concerns the provisions of Art 7(1) of Regulation on freedom of movement for workers within the Union, pursuant to which “A worker who is a national of a

In turn, article 14(1), located in a Section of the regulation specifically dedicated to Social Conditionality, establishes that “Member States shall indicate in their CAP Strategic Plans that, at the latest as from 1 January 2025, farmers and other beneficiaries receiving direct payments under Chapter II or annual payments under articles 70, 71 and 72 are to be subject to an administrative penalty if they do not comply with the requirements related to applicable working and employment conditions or employer obligations arising from the legal acts referred to in Annex IV” (ie the directives referred to in the recital 46).

On a procedural level, then, article 14(2) provides that “When including a system of administrative penalties in their CAP Strategic Plans as referred in paragraph 1, Member States shall, in accordance with their institutional provisions, consult relevant national social partners representing management and labour in the agriculture sector and shall fully respect their autonomy, as well as their right to negotiate and conclude collective agreements. That system of administrative penalties shall not affect the rights and obligations of the social partners where they are, in accordance with national legal and collective bargaining frameworks, responsible for the implementation or enforcement of the legal acts referred to in Annex IV”.

The last reference provides the Member State with the right to entrust the implementation of directives relating to social policy to the collective bargaining system, provided that the collective agreements satisfy certain requirements, in particular general binding effects.<sup>19</sup>

With a provision aimed at ensuring that the instrument does not transform into a simple simulacrum of conditionality mechanisms, article 14(3) establishes that “The CAP Strategic Plan shall include rules on an effective and proportionate system of administrative penalties”.

The question of the extent of the sanctions is crucial for the maintenance of the instrument, as demonstrated also by the attention that workers’ trade union organisations at European level (and in particular EFFAT – European Federation of Food, Agriculture and Tourism Trade Unions) are paying to this topic,<sup>20</sup> with the ambitious objective of coordinating the process of implementation of social conditionality in member countries.

For a more in-depth evaluation of the real usefulness of social conditionality in the framework of the new CAP one must wait for the outcome of the adapting process of the current national legal framework, also observing the penalties that will weigh, in each Member State, on agricultural employers who violate labour protections, as well as, naturally, on the real effectiveness of the controls implemented by the subjects who, in various capacities, have the task of ensuring compliance.

Nonetheless, it is certainly possible now to propose some reading keys, useful to understand the scope of the Union’s choice regarding the other element which, as mentioned above, must be considered to concretely evaluate the instrument’s ability to impact the dynamics of employment relationships, namely the list of provisions to protect workers whose effective application is to be encouraged through conditionality mechanisms.

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Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.”

<sup>19</sup> At the moment this requirement is not satisfied in Italy, due to the failure to implement the second part of the art 39(2ff), of the Constitution.

<sup>20</sup> See EFFAT Executive Committee, “Position sur les sanctions à appliquer dans le cadre de la conditionnalité sociale de la PAC”, 21-22 November 2022 <[https://effat.org/wp-content/uploads/2023/01/EFFAT-position-on-sanctions-to-be-applied-in-the-context-of-CAP-Social-conditionality\\_FR.pdf](https://effat.org/wp-content/uploads/2023/01/EFFAT-position-on-sanctions-to-be-applied-in-the-context-of-CAP-Social-conditionality_FR.pdf)>.

### III. Social conditionality in regulation 2021/2115: an important step or a missed opportunity?

Observing the evolution of the legislative draft, the content of the final European regulation appears significantly different and less broad than expected. In any case, it does not respond to the readings that were given in some journalistic and trade union communications at the time and immediately following the approval of the regulation. In these communications we can read that the CAP reform would contain a clause on social conditionality according to which farmers who do not respect collective agreements and legislation on working conditions will no longer be able to receive Union aid.

First of all, it should be noted that the consequences of the employer's failure to comply with the rules are not so radical since, as we have seen, sanction mechanisms must consist in "an effective and proportionate system of administrative penalties".

Secondly, and above all, the content of those communications is incorrect as concern the scope of the obligations of employers considered in the final version of Regulation 2021/2115 (much broader obligations were instead considered in the amendments of the European Parliament adopted on 23 October 2020: see below).

We must recognise that the emphasis placed on those communications can be accepted if we want to highlight the symbolic significance of the innovation introduced in the European legislation on conditionality, namely its openness to social issues related to the protection of workers. It cannot be denied, in fact, that the outcome is, in itself, anything but irrelevant, precisely due to the fact that social conditionality has been recognised as having a role within the CAP; this justifies the satisfaction of those who, even at national and European trade union level, were committed to the introduction of the instrument in the new regulation.

However, the judgment must be more cautious if we observe the real scope of the forecast that interests us here.

As can be easily inferred from the list of directives referred to in Annex IV (two on workers' health and safety and one on transparent and predictable working conditions: supra, paragraph II), in the final text of the regulation a significant selection has been made of the numerous directives on social policy and, above all, no reference has been made to the safeguards deriving from national collective bargaining.

This choice justifies the question that, in reality, it was a missed opportunity for the enhancement of social conditionality in the Union's agricultural policies.

To understand the meaning of the question, and the underlying criticism, it must be clarified that the actual latitude of the provisions whose violation determines the sanctioning intervention is undersized compared to expectations, which had instead been strengthened by the position expressed by the European Parliament with the aforementioned amendments of 23 October 2020.

It will be sufficient to mention here, without claiming to be exhaustive, the amendments (728 and 785) which proposed to modify a recital (no 21 of the Commission text; but now see recitals no 41ff):

- on the one hand, clarifying that "the system of new conditionality links full receipt of CAP support to the compliance by beneficiaries of basic standards concerning the environment, climate change, public health, applicable working and employment conditions, animal health, plant health and animal welfare";
- on the other hand, and specifically, providing that "Moreover it is of particular importance that Member States take relevant measures to ensure employers' access to direct payments is conditional on the compliance with the applicable working and employment conditions and/or employer obligations resulting from all relevant collective agreements and social and labour law at national and Union



levels, *inter alia* in the field of “awareness of conditions of employment, remuneration, working time, health and safety, housing, gender equality, free movement of workers, equal treatment, posting of workers, conditions of stay of third-country nationals, temporary agency work, social protection and social security coordination among Member States.”<sup>21</sup>

These recitals should then have been translated, in the legislative framework, into an *ad hoc* provision (at the time, article 11-bis, provided for by Amendment 732), entitled, precisely, Principle and scope on the social conditionality: “1. Member States shall include in their CAP Strategic Plans a system of conditionality, under which beneficiaries receiving direct payments under Chapter II and Chapter III of this Title or the annual premia under articles 65, 66 and 67 shall be subject to an administrative penalty if they do not comply with the applicable working and employment conditions and/or employer obligations *resulting from all relevant collective agreements and social and labour law at national, Union and international levels.*”<sup>22</sup>

The model of social conditionality proposed by Parliament would therefore have had a very broad scope, both as regards the question of guarantees whose effective application was intended to favour and as regards their sources of discipline; a model which, *inter alia*, would strengthen the functional integration of the right and collective bargaining in labour protection.

It is therefore clear that there is a gap between this global perspective and the selective choice made in the text of Regulation 2021/2115. In the definitive text of article 14, not only was the reference to collective agreements and national legislation omitted, but also a selection of Union safeguards was made, since the principle of conditionality, as we have seen, is currently only used for Directives no 89/391, 2009/104 and 2019/1152.

The first omission is also explained by the differences in protection still existing between Member States: the sanction mechanism proposed by Parliament, if adopted, could have penalised companies operating in the most virtuous Member States (where more protective collective legislative and contractual rules apply). Nevertheless, this does not justify the exclusion of many Community directives on social policy, which are applied in all Member States.

However, the critical evaluation of mediation reached in Article 14 cannot make us forget its importance, not only symbolic.

Firstly, the social conditionality mechanism should be designed to penalise those who violate the provisions on safety at work, an essential area of protection for workers of the primary sector.

Secondly, if one takes into account the characteristics of that sector, where a large proportion of the infringements occur in the undeclared, unofficial work, often recruited by gangmasters, the inclusion in Annex IV of the Directive on transparent and predictable working conditions may be very useful.

In fact, the sanction for the violation of the provisions of Directive 2019/1152, which requires to provide written conditions of employment and to deliver the employment contract within seven working days, is certainly an interesting tool to contribute to the objective of reducing the use of irregular forms of work, again affecting the calculation of convenience of operators.

More generally, it should be stressed that the inclusion of Article 14 in the regulation avoided the risk that, because of the complexity of the negotiations and the economic interests during the approval of CAP 2023–2027, the extension of cross-compliance mechanism to the employment protection would be completely excluded.

<sup>21</sup> Emphasis added.

<sup>22</sup> Emphasis added.

However, the road is now open and, of course, the future extension of the rules covered by the mechanism is not in any way prejudiced, as suggested in recital 46 of the regulation (paragraph II above).

#### IV. Rethinking social measures in rural areas: the European framework and the member states responsibilities

In regard to the further issue concerning the social aspects of agricultural sector – ie the need to ensure the maintenance of farmers in rural areas – it should be noted that this is mentioned in Article 39 TFEU.

Thus, it can be stated that the new Regulations are consistent with the legal principles governing the agricultural policy,<sup>23</sup> affirming the essential role of support measures aimed at strengthening small farmers and rural fabric. Such measures shall be considered as a corrective tool for improving the functioning of the whole agrifood system, in addition to the direct payments provided by the CAP. Articles 5 and 6 Regulation no 2021/2115 define general objectives of the CAP payments, related to both environmental profiles, already strongly present in the agricultural policy regulation<sup>24</sup> since the 1990s, as well as socio economic ones, aimed at “strengthening of the socio-economic fabric of rural areas.”

In particular, Article 6 frames the new aspects of social sustainability in the European agriculture, and among them the objectives to: “improve the farmers’ position in the value chain” (lett c), “attract and sustain young farmers and new farmers and facilitate sustainable business development in rural areas” (lett g) and “promote employment, growth, gender equality, including the participation of women in farming, social inclusion and local development in rural areas, including the circular bio-economy and sustainable forestry” (lett h). The critical aspects of rural areas are furthermore identified in Annex I, defining “Impact, result, output and context indicators pursuant to article 7.” Among them, the attraction of young farmers, evolution of new farm manager, including gender breakdown, the evolution of the employment in rural areas, the promotion of rural inclusion and the fight against poverty can be found.

The result is a comprehensive framework, including and linking different aspects of sustainable rural development, as outlined by the Farm to Fork strategy. The tools aimed at competitiveness and resilience of agriculture ensure both its economic and social sustainability, as far as the maintenance of European agricultural production, that guarantee a “long-term food security.”

Within the European framework, Member States have to define the contents of national strategic plans, taking into account the specific actions and their territorial implications. As declared in the 3rd recital of Regulation 2021/2115 “Enhanced subsidiarity makes it possible to better take into account local conditions and needs and the particular nature of

<sup>23</sup> FG Snyder, *Law of the Common agricultural Policy* (London 1985), chapter 7 “Structural Policy. Prelude to a common policy,” 152 ff., 163. See also, in the Italian edition (Milan 1990), the essay of A Jannarelli, “Il diritto agrario comunitario alla fine degli anni ‘80”: in the final remarks, the Author outlines the attention of the European Institutions to the issues concerning rural development, taking into account the questions related to the rural development, by the provision of measures concerning agriculture as well as a wider context expressed by the Community Charter of Fundamental Social Rights. For a different opinion, see D Harvey, “What does the history of the Common Agricultural Policy tell us?” in JA MacMahon and MN Cardwell (eds), *Research Handbook on EU Agricultural Law* (Cheltenham 2015) pp 33–34: according to the Author, the intention of the CAP has not been (as frequently asserted) a “social policy,” as resulting from the two first objectives of Art 39 “which make it clear that incomes in agriculture can and should be increased through increasing agricultural productivity and promoting the rational development and optimum utilization of factors of production, in particular labour (in other words, structural adjustment and increased output per labour unit)”.

<sup>24</sup> See Recital 9 Reg 2021/2115. However, environmental issues are affected not only by EU internal policies, but also by international agreements, for the agricultural subsidy system, mainly in accordance with WTO rules.

agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions, tailoring the support to maximise the contribution to the achievement of Union objectives.”

The effectiveness of the national choices for the implementation of the CAP measures, although the decentralisation, is also strongly constrained by the result indicators, laid down in Annex I, aimed at measuring the achievement of the objectives and evaluating the effectiveness of the interventions national level, to check the consistency of national interventions with respect to the critical issues existing within Member States. This approach, undoubtedly increases the responsibility of Member States in implementing the objectives laid down in the CAP Regulations.

Moreover, the objectives of rural development in light of SDGs are specified by the Commission document “A long-term vision of rural areas,” defining the concerns of a “rural pact” to be implemented by an action plan involving business, public authorities and stakeholders.<sup>25</sup> The document is meaningful from two points of view, for a correct interpretation of social sustainability in the agricultural sector.

Firstly, it concretely clarifies the concept of development of rural communities. Compared to Green Deal principles, the type of interventions to be implemented by Member States is clearly pointed out.

Secondly, the Commission document identifies four complementary areas of intervention (for stronger, connected, resilient, prosperous rural areas within 2040). Furthermore, the typologies of rural communities are clearly distinguished in “resilient” and “prosperous,” to which a set of actions addressing national intervention measures is connected.

Notably, within the initiatives proposed to improve quality of life – ie achieving balanced territorial development and stimulating economic growth in “resilient rural areas,” social issues are expressly mentioned. The latter “should ensure the inclusion of EU citizens at risk of being deprived of their rights, the promotion of gender equality, the equality and inclusion of people with a minority ethnic or racial background living in rural areas or seasonal workers, and to give equal priority to economic and social advancement.” (paragraph 3.2)

On one hand, the provision of tailored actions aimed at facing situations of social vulnerability in rural areas has the undoubted advantage of addressing the social gaps existing in several areas of the European Union. On the other hand, the full distinction between goals provided for resilient areas and those aimed at the development of “prosperous rural areas” risks to create a rift, if referred to the specific measures to be implemented in each of them. The document stress the goal to foster economic actions, to implement green and digital transition and to strengthen value chains mainly in most developed rural areas; while social sustainability aspects as well as measures aimed at the protection of vulnerable population, refers primarily to the internal and less economic developed rural territories, described as “resilient rural areas.”

The rural action plan drafts two different models of rural development: his approach appears to be flawed by the assumption that criticalities at social level are limited to marginal areas.

Integration policies (eg actions concerning the integration of immigrants workers) should therefore not be limited to specific rural areas. At the same time, measures the fostering of farmers cooperation, as the provision of ecological and digital transition tools should be addressed also to improve the weakest rural areas. In this case, usefully, could be

<sup>25</sup> See the Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions empty “A long-term Vision for the EU’s Rural Areas – Towards stronger, connected, resilient and prosperous rural areas by 2040,” 30 June 2021 COM (2021) 345 final.

particularly relevant the involvement of public authorities (eg by the implementation and support of districts of productions, fostering the groups of producers, as well as supporting short supply chains).

Therefore, regardless to a schematic classification defined by the Commission, the role of Member States and public local authorities is crucial to define appropriate tasks tailored to the territorial specificities, as it emerges from the strategic plans laid down by Member States.

## V. Conclusions

The aspects most closely linked to the “social sustainability,” within the framework of the sustainable development goals laid down by the regulation on CAP strategic plans, represent a significant innovation in the panorama of European agricultural policy, implementing the sustainable agri-food system, that shall be considered a milestone in the European Green Deal for the agricultural sector.

In this direction, the new CAP revised the legal tools applied to the payment system, paying special attention to the social profiles of agriculture, considering both measures aimed at tackling the employers’ violations of labour protection rules and occupational safety in the agricultural sector, as well as the task to reduce inequalities in rural areas, in light of the socioeconomic characteristics of territories.

The social conditionality, intended to increase the tools to protect workers, as well as the new provisions concerning the rural development, aimed at promoting aspects of social policies of inclusion, gender equality and socioeconomic growth of rural territories, as defined by regulation 2021/2115, look forward to successful implementation at national level. As a matter of fact, in this framework, a wide field of actions and a relevant responsibility falls on Member States, as main actors of the achievement of social aspects for the implementation of the sustainable agri-food system.

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