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Commission I

National Report – Rapport national – Landesbericht

Italy

Legal incentives and legal obstacles to diversification for farmers – Incitations et obstactles juridiques de la diversification de l'agriculture – Rechtliche Fördermittel und Hindernisse für die bäuerliche Diversifikation

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Commission **I**

National Report for Italy

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Question 1

a) What is your national statutory definition of diversification

b) If there is no statutory definition, what is understood by the word 'diversification' in your country?

The Italian legal system has an old tradition of recognising and encouraging diversification in agriculture.

This favour has been expressed not trough the adoption of a legal definition of "*diversification*" as such, but along two lines:

I. one linked subjectively to the *agricultural entrepreneur* and objectively to the *agricultural holding*, trough the adoption of the peculiar definition of the "*connected activities*" ("*attività connesse*");

II. the other linked to specific territories, trough the adoption of tools of governance and development of underdeveloped areas.

a) Statutory definition and *connected activities*

Until the promulgation of the new Civil Code of 1942, legal issues involving agriculture have been largely considered as part of real property law. General regulations regarding business activities were not applicable to the sale of land products (art. 5 of the Commercial code of 1882). *Diversification* was not considered from a legal point of view, but – as a matter of fact – was largely practised in rural life.

The legal framework changed completely with the new Civil Code of 1942, which introduced, with art. 2135, an innovative definition of *agriculture entrepreneur*, according to which:

«*Art. 2135 (Agricultural Entrepreneur).*

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Agricultural Entrepreneur is who exercises activities directed to land cultivation, forestry, cattle-breeding, and ***connected activities***.

Are considered connected *the activities aimed to transformation or sale of agricultural products, when they are part of the* ***normal exercise of agriculture***».

With the introduction of this definitions of *agricultural entrepreneur* and of *connected activities*, open to the consideration of agriculture as a *living and changing reality* and capable to be adapted to new trends and new forms of organisation in the primary sector, the 1942 Italian Civil Code introduced an innovative rule, at that time unknown to other European legal systems.

Only some decades later, other European countries and EU recognised the opportunity to adopt a comprehensive and unitary definition of *agricultural entrepreneur* and of *agricultural activity*. It is sufficient here to remember art. L.311-1 of the French *Code rural*, introduced by L. No. 88-1202 of December 30, 1988 (*activités agricoles* and *exploitant agricole*), and art. 2, c), of Regulation (CE) No. 1782/2003 of September 29, 2003 (*agricultural activity*).

The definition of art. 2135 Italian Civil Code played (and plays) a fundamental systematic and theoretical role, and – in the same time – implies relevant consequences on the legal regime applicable to single activities.

The *agricultural entrepreneur* as such is exempt from the application of rules applicable to the *commercial entrepreneur*, in many decisive fields of law, among which:

- taxation
- social security contribution
- bankruptcy
- finance
- land planning.

It is therefore crucial to establish, in any specific situation, whether an entrepreneur and an activity may, or may not, be considered *agricultural*.

This is true for the s.c. "*activities agricultural* ex se*"* (*land cultivation, forestry, cattle-breeding*), and in Italy we had many judicial cases discussing whether a specific activity, e.g. cultivation or cattle-breeding without land, could be qualified as agricultural or not.

But it is true even with reference to the open category of the *connected activities*.

b) What is intended for *diversification*

It must be said – after more than 60 years of judicial and administrative experience – that art. 2135 of the Italian Civil Code, and the special legislation which followed the Code maintaining the same model, promoted a dynamic interpretation of the rule, and favoured innovation trough a progressive enlargement of the category of *connected activities*.

Within this process many activities, which otherwise would have been considered *commercial* and not *agricultural*, have been attracted to *agricultural legal regime*, in a growing area of what is legally considered to be *agricultural activity*.

The enlargement process went in two directions, distinct both theoretically and practically:

a) manipulation of land products, and

b) offer of services, of various nature.

a) in the first group, we may remember bottling of wine, long seasoning of cheese, preparation and sale of sausages, meat, and many operations of manipulation and transformation of agricultural products (primarily to obtain food);

b) in the second group are currently considered:

- services for other *agricultural entrepreneurs*, like ploughing or sowing, unified in the category of "*contoterzismo*" (i.e.: making agricultural works for thirds parties and for farms different from that of the operator);
- services for customers, first of all agritourism;
- services for public authorities, like activities finalized to the environment management.

The process of introducing new and innovative activities within the Code definition of *connected activities* was not a linear one.

Judicial and academic doctrine distinguished between first and second comma of art. 2135.

The first comma makes reference in general terms to "*connected activities"* without expressly establishing any parameter or condition, while the second comma considers in any case connected the activities of transformation and sale, "*when they are part of the **normal exercise of agriculture***».

Doctrine usually refers to

- the activities of first comma as "*atypical connected activities*", because their content and extension are not specified by the Code rule, and
- the activities of the second comma as "*typical connected activities*", because they are expressly mentioned and their content is limited to "*transformation or sale*".

The question was whether the condition of being "*part of the **normal exercise of agriculture***» was applicable only to the *typical* or even to the *atypical* connected activities, and whether this condition required – to be respected – that the activity under scrutiny was empirically and *de facto* practised by the majority of the farmers or was sufficient an abstract and only potential relation of "*normality*" even in absence of effective practice by the majority of farmers.

The first interpretation is an evident obstacle for the *innovator*, who wants to introduce new activities, unknown to other farmer in a certain area and a certain time; the second interpretation leaves a larger dimension to innovation, but is subject to uncertainties due to different possible visions of "*agriculture*".

The solutions followed by the Courts have not been uniform, and during the years the legislator adopted a number of special laws to qualify *agricultural ex lege* some activities, whose agricultural qualification had been denied or not fully recognised by the courts.

This happened both for *principal activities* (see, e.g., the special laws regarding horses, dogs, small animals, mushrooms) and for *connected activities* (see, e.g., specific regulation of direct sale of products by farmers or *agritourism*).

A common and essential element must in any case be present, according to judicial and administrative decisions on the *connected activities*:

- both the subjective link to the *agricultural entrepreneur* (*uni-soggettività*), and
- the objective link to the *agricultural holding* (*uni-aziendalità*)

must be present to obtain the qualification (and the favoured tax and legal regime) of the *agricultural connected activities*.

The nature of those criteria, linked to qualities of a specific *agricultural entrepreneur* or of a specific *agricultural holding*, locates *diversification* ex art. 2135 of the Civil Code in an individual dimension, originating obstacles to the legal acceptance within *diversification* of cases of cooperation and/or division of work among different holdings.

These obstacles have been reduced trough a judicial doctrine, which considered cooperatives and associations among farmers "*transparent*" with regard to the *connected activities*, even if these collective subjects are from all other points of view considered as an autonomous legal entity.

Services performed by a cooperative or association in favour of its members and *activities of transformation or sale* of their products have been considered *connected* and therefore *agricultural*, even if the link was not to the collective subject as such but (indirectly) to the members of the cooperative or association.

Another important tool used to broaden the application of the favoured regime of *connected activities* is the "*impresa familiare*" (*family holding*), regulated by art. *230-bis* of the Civil Code, introduced in 1975 by Law No. 151 of May 19, 1975 "*Reform of family law*"), which – among many other substantial reforms – recognised equal role to all the members of a family working in a family farm. A member of the family may perform a *connected activity* under the agricultural legal regime even if he does not perform personally any *agricultural activity ex se*, linking the *connected activity* to the *principal activity* performed by another member of the family (a significant example in this sense may be found in art. 2 of Law No. 730 of December 5, 1985, on agri-tourism).

The progressive enlargement of the boundaries of the *agricultural activities* (*per se* and *connected*) knew a re-ordination and systemisation in 2001 with legislative decree No. 228 of May 18, 2001, which after more than half a century modified art. 2135 of the Civil Code, translating in formal legislation most of the conclusions until then reached by interpretation (as we will see in question 2, *infra*).

c) Legislation on *Mountain and hill areas and less-favoured areas*

Together with the category of *connected activities*, a decisive role in the Italian legal system to promote *diversification* in agriculture has been played by rules regarding mountain and hill farming and farming in less-favoured areas.

A large part of Italian territory consists of mountains and hills, and the special legislation for those areas has largely recognized and encouraged the integration of incomes and of activities.

It is sufficient here to remember Law No. 991 of July 25, 1952 on Mountain areas, which provides the granting of financial aids to direct farmers and breeders, but even to small land or building owners, to promote farming and transformation of farming products in such areas, and to improve hygienic condition of private houses to be used for tourist accommodation (art. 2 of Law 991/1952).

This legislation, few years after 2nd World War, considered the local community of mountain areas as a whole, calling a multiplicity of subjects to a common development policy, and leaving aside differences among status and legal qualification of the subjects.

20 years later, the new Law for mountain areas, Law No. 1102 of December 3, 1971, introduced a pluri-annual development plan (which in some aspects anticipated the rural development plans introduced in Europe with Regulation No. 1257/1999), recognized the "*Mountain Communities*", adopted financial measures applicable to all the residing population and granted reduction of Registry Tax both for direct farmers buying agricultural land and for tourist or artisanal holdings.

The integrated approach was clear; *diversification* was a prominent part of a policy which recognized the need of a *plural* model to sustain development of areas where agriculture, artisan activities, and small industries still played a significant role.

It must be said that during the following years this integrated approach has been slowly abandoned (at least in fact, even if not completely in theory), due to the growing importance of the European model which, starting from Directive No. 72/159 of April 17, 1972, favoured farmers having agriculture as their principal activity.

The integrated approach re-emerged during the '80s, mainly in regional legislation (the rules of the Italian Constitution of 1948 for the recognition of ordinary regions, have been implemented only in 1970, e the ordinary regions began to operate effectively only after a Decree of 1977, which transferred them resources and competences).

d) <u>Diversification and pluri-activity</u>

On the basis of such laws and doctrines, *diversification*, even without an express definition, is largely considered within legal discipline of *agriculture*, under the two mentioned lines.

It must be added that in recent years many commentators adopted the distinction, largely known in France, between *diversification*, i.e. activities which are a prosecution of the traditional agricultural activities or use resources of the agricultural holding, and *pluri-activity*, i.e. activities performed by the farmer and giving an additional income, but not connected to the farming activity.

This distinction, largely mentioned in economic or social studies, appears not much relevant in legal studies, as long as Italian legislation recognises a special favourable regime only to *connected activities*, and therefore to *diversification* performed by the farmer (*unisoggettività*) in connection with farm holding (*uniaziendalità*), and not to *pluri-activity*.

Question 2

What are the legal rules governing diversification?

a) Are they based on national statutes or common law or case law or contract?

b) How do these rules differ when they are applied to landownership or tenancy?

c) Is there any conflict between EU law and state law?

a) <u>National legislation</u>

As anticipated, the fundamental legal rule governing *diversification* has been introduced by art. 2135 of the Civil Code of 1942, and is part of national legislation.

Under art. 117 of the Italian Constitution, Regions have legislative competence in the economic government of the agricultural sector (regional competences have been largely increased by the constitutional reform of 2001), but this competence does not cover issues of legal qualification, which remain exclusive competence of national State legislation, as clarified in some leading cases by the Constitutional Court.

Case law played a decisive role in interpreting art. 2135, but the judicial process of enlarging the area subject to agricultural rules under the *connected activities* category, has been accompanied by a large number of special laws, aimed to solve single problems or to answer to specific critical issues emerged within case law.

In this process, no significant role has been played by contract law, due to the circumstance that the privileged treatment to *connected activities* may be recognized only by public legislation and not by a private agreement.

The nature of this process, adding many pieces (not always consistent) to the 1942 model of *agricultural entrepreneur* and *agricultural holding*, and the challenges of EU laws, solicited academicians to the construction of a systemic model, unifying agricultural activities under the theory of "*care of the biological cycle*".

This model, enunciated by prof. Antonio Carrozza in the '80s, progressively acquired large consensus among legal researchers, being consistent both with traditional and new activities (like agritourism, which knew an impetuous grow in the '80s and in the '90s). The Carrozza model has been appreciated even in other countries, like France (definition introduced in the *Code rural* by L. No. 88-1202 of December 30, 1988 is largely inspired to Carrozza theory), and has been finally adopted in Italian legislation with the reform of 2001 (see *infra*).

b) <u>Landownership and tenancy</u>

Legal rules regarding *diversification* apply equally to landowner and tenant, with no difference among them.

The reference to the *agriculture entrepreneur* makes irrelevant the subjective quality of the farmer and the different titles to land.

Diversification (i.e., in Italian law, performing *connected activities*) may be relevant in the contractual relations among landowner and tenant (and in some cases gave place to conflicts and judicial litigation among them – see question 3 *infra*), but as to the application of the legal regime and of rules of public law (taxation, social security, administrative regulations, …) the title under which the farmer holds the land is not relevant.

c) <u>EU law and national legislation</u>

With reference to *diversification* and *new activities* of farmers, the impact of EU legislation became significant in the second half of the '80s and in the '90s.

The shift toward multifunctional agriculture, the focus of Regulation (CEE) No. 797/85 of March 12, 1985, on "*diversity of causes, nature and gravity*" of "*structural problems in agriculture*", the recognition that "*structural problems in agriculture may require solutions which vary according to region and are capable of adjustment over a period of time; whereas such solutions must contribute to the overall economic and social development of each region concerned"*, the importance assigned to environment, all this contributed to a new approach.

Even in terms of language, *diversification* was formally legitimated by Regulation (CEE) No. 787/85, where it says:

> «*Whereas, moreover, because of the existence of permanent natural handicaps, the efficiency of farm structures in these areas can be improved only if aids granted to investments are reinforced and can be granted for investments limited to tourism or crafts which permit <u>the **combining** of agriculture with these activities;</u>*».

This expression «*the combining of agriculture with these activities*» was interpreted in Italy as a sort of manifesto of *diversification* and *multifunctionality.*

Another significant impulse in this direction came by Regulation (CEE) No. 3808/89 of December 12, 1989, which admitted to the financial aids of the CAP not only the farmers "*practising farming as his main occupation.*", but even part-time farmers, introducing the following rule:

> «*Member States may, however, apply the aid scheme referred to in Articles 2 to 6 to farmers who, while they do not practise farming as their main occupation, derive at least 50 % of their total income from farming, forestry, tourism or craft activities or activities for maintaining the countryside which qualify for public aid, carried out on the holding,*

provided that the proportion of income deriving directly from farming on the holding is not less than 25 % of the farmer's total income and that off-farm activities do not account for more than half the farmer's total working time;».

In the European regional policy for less favoured areas, Regulation (CEE) No. 2088/85 of July 23, 1985, concerning the *IMP - Integrated Mediterranean programmes* offered a framework consistent with the model of integration among different activities and subjects on local dimension, which Italy already knew for mountain and hill farming (see question 1, *supra*).

Those suggestions have been largely reflected in regional legislation aimed to distribute financial aids on local basis, in some cases irrespective of the formal legal qualification of the activities and of the subjects involved.

At national level, the legislation on agritourism, Law No. 730 of December 5, 1985, expressly recognised *services* as part of *connected activities*, giving a formal legislative fundament to theories until then based only on interpretation.

As a consequence of all those innovation, at European, regional and national level, the definition of art. 2135 Civil Code, open and innovative when introduced in 1942, began to appear inadequate to reflect the multiplicity and variety of new options.

Finally, at the beginning of the new century, art. 2135 was modified by Legislative Decree No. 228 of May 18, 2001, which maintained the structure of the original model, but in several points introduced details and new provision of significant effect, to answer to the challenges of European and regional legislation and to many critical issues emerged in judicial and administrative experience.

The modified text of art. 2135 Civil Code, as today in force, says:

«*Art. 2135 (Agricultural Entrepreneur).*

Agricultural Entrepreneur is who exercises one of the following activities: land cultivation, forestry, animal-breeding, and connected activities.

Land cultivation, forestry and animal-breeding are intended to be the activities aimed to care and development of a biologic cycle or of a necessary phase of such cycle, vegetable or animal, which utilise or may utilise land, forest, or fresh, brackish, sea, waters.

Are in any case considered connected the activities, performed by the same agricultural entrepreneur, aimed to manipulation, preservation, transformation, sale or marketing, which concern for the prevalent part products obtained trough land cultivation, forestry or animal-breeding, and the activities aimed to offer goods or services trough the prevalent use of means or resources of the agricultural holding normally utilised in the agricultural activity performed, including the activities aimed to protect values of land and of rural and forestry patrimony, and activities of agri-tourism as defined by law».

It is clear, from the new text of art. 2135, that many of the suggestion of EU Law have been incorporated in Italian statute law, and that the enlargement of *connected activities* to comprehend any sort of services offered trough *means or resources of the agricultural holding* largely opened to original forms of *diversification*.

Even assigning agricultural qualification (as *connected activities*) to transformed products whose raw materials come from the agricultural holding only for 50,1 % , opens significant market opportunities to farmers.

Moreover, the cancellation of the requisite of "***normal exercise of agriculture***" which characterised the original text of art. 2135 (see question 1, *infra*), removes obstacles to innovators, while the introduction of the new requisite of "*normally utilised in the agricultural activity performed*", for services offered trough the utilisation of means and resources of the

holding, renders explicit the connection with the agricultural activity but in no way penalizes innovators.

We may therefore assume that, after the reform of 2001, only one main critical issue of possible conflict between European legislation and Italian statute law remains still open and unresolved: that of the enlargement of the definition of agricultural activity in Regulation No. 1782/2003 (and now in Regulation CE No. 73/2009) to include "*maintaining land in good agricultural and environment conditions"*.

Present text of art. 2135 largely admits and encourages environmental activities performed by farmers, but considers them within the *connected activities* category, and not as *agricultural activities* per se.

If "*maintaining land in good agricultural and environment conditions"* is part of a larger agricultural activity (e.g.: if it is part of a rotational system among different parcels of the holding), it appears to be part of the possible free decisions of the farmer under art. 2135 Civil Code, but if we imagine – by extreme hypothesis - an agricultural holding where the farmer limits his activity to maintaining the good conditions of land for a number of years, with no production whatsoever, just to qualify for receiving payments under the Single Payment Scheme, this could conflict with art. 2135, even in the new text.

We still do not have any judicial case discussing this hypothesis, but we may imagine that next years will show cases arising from this not full correspondence between the national and the European definition of agricultural activity (e.g., with reference to application of bankruptcy laws, or with reference to admissibility of *connected activities* when no *agricultural activity ex se* in the sense of art. 2135 Civil code is performed.

Question 3

In respect of diversification

a) Who allows farmers to diversify?

b) How far does freedom of contract feature in the negotiations between farmer and landowner?

c) How far can a farmer diversify without permission of the landowner or other authority?

d) Is there any need for a local authority involvement in respect of planning law?

a) Rights of the farmer

Connected activities are considered part of the ordinary agricultural activity. Therefore – as a matter of principle – farmer does not need any special leave to diversify, except in cases where the diversification implies a modification of the natural destination of the agricultural holding. In this case a specific procedure is provide by law to solve potential conflicts between farmer and landowner (see *infra*).

b) Freedom of contract regarding *diversification*

In Italy we have a detailed regulation of contracts regarding lease of agricultural land.

After many statutes adopted on a temporary and extraordinary basis for more than 30 years post 2nd World War, finally in 1982, Law No. 203 of May 3, 1982, introduced a general and systematic regulation of agricultural contracts.

Law No. 203/1982 (still in force) provides a legal model of agricultural contract, with a fixed term (15 years) and a fixed rent (established by law).

But the same Law No. 203/1982 recognises, in addition to the legal binding model, the full freedom of the parties to regulate freely the terms of their agreement subject only to the condition that the contract is stipulated with the assistance of the unions of both parties (art. 45 of Law No. 203/1982):

In this second hypothesis, freedom of contract may invest the term, the rent, and all contractual clauses, including those related to diversification.

It must be said that, after 1982, almost all the agricultural contracts are stipulated under the second model (i.e. that of freedom of clauses in contracts made with the assistance of the unions).

And it must be added that the Constitutional Court (dec. No. 318 of July 5, 2002) declared unconstitutional and cancelled art. 9 of Law No. 203/1982 fixing a rent officially established by law. Therefore at present time contracting parties may freely establish the amount of rent in all agricultural contracts; the determination of the rent on the basis of negotiation and market conditions usually takes into account the *connected activities* performed (or to be performed) in the farm.

c) <u>Limits to the free decision of the farmer – administrative procedure</u>

The farmer is free to diversify, but he must respect and maintain the productive destination of land (see art. 1615 of the Civil Code).

If *diversification* does not impact on this destination, the farmer needs no permission from the landlord.

If *diversification* involves new structures, innovations or modifications and/or transformation of land and/or of buildings, the farmer may operate in this sense, but he must previously obtain the consent of the landowner.

The previous consent of the landowner is requested, not only to guarantee that the natural destinations of land and buildings are respected, but also because at the end of the lease the landowner must indemnify the tenant with a sum correspondent to the increase in value at the time of the restitution of the land.

If no previous agreement is reached between landlord and farmer, the tenant may activate an administrative procedure with a competent local authority, to obtain an authorisation to the innovations (see *infra*).

Conflicts among parties may arise when the tenant argues that the new activity does not involve any relevant modification or transformation of land, structures and buildings, and the landlord – on the contrary – argues that the new activity, even without physical modification of structures or buildings, involves a modification of the productive destination and therefore requires the previous consent of the landlord or the administrative previous procedure of authorisation.

In some cases regarding agritourism, the Italian Supreme Court (la *Corte di Cassazione*) concluded that opening the land and the buildings to the access and hospitality of tourists, even without physical modification to the buildings, involves in any case a relevant modification of the productive destination, and therefore requires a previous consent. In this case, a farmer, who started the new activity of agritourism (selling and serving his own produced wine to tourists) without the previous consent of the landowner, was declared in breach of contract, and the contract was declared terminated by fault of the farmer (Cass., sez. III, 27 aprile 1994, n. 3975; see also Cass. sez. III, 3 marzo 1999, n. 1793).

Those decisions have been severely criticised by legal scholars, but at present time there has been no other decision of the Italian Corte di Cassazione on this specific issue. Therefore it is still unknown whether the judicial perspective of the Supreme Court will change as a result of the modification of ort. 2135Civil Code.

On the basis of such judicial doctrine, it appears to be prudent for the farmer, who does not obtain a previous express authorisation of the landlord to diversify, to activate the administrative procedure regulated by art. 16 of Law No. 203 of May 3, 1982. The farmer or the landlord (art. 16 considers both parties, but in fact the procedure is activated in the large majority of cases at farmer's request), who intends to introduce innovations, modifications or transformation of the land or of the buildings, when there is no previous agreement between the parties, may ask to the Provincial Office for Agriculture to authorise the works. The request must be accompanied by a written plan and this plan must respect the indication of the Regional plan for agriculture.

The Provincial Office for Agriculture tries to induce the parties to an agreement. When the agreement results impossible, the Office decides within 6o days. In case of favourable decision of the Office, the farmer may carry out the proposed innovations and works.

d) <u>Local authorities and planning law</u>

Rural development plans are relevant in the contractual relation between farmer and landlord, as pointed out above.

But even planning law, in the sense of urban planning law, may interfere with *diversification* in agriculture.

Italian planning legislation is the result of national and regional legislation. Most Regions have adopted laws, admitting new buildings in rural areas only for agricultural activity.

It is therefore decisive to ascertain whether a specific activity is qualified as *agricultural* or *commercial*.

Question 4

What are:

a) the incentives for a farmer diversifying?

b) the disincentives for a farmer diversifying e.g. tax laws?

c) the obstacles for a farmer diversifying e.g. refusal of landowner to agree to diversification ?

a) <u>Incentives</u>

Incentives may be classified in two groups:

- *regulatory incentives*: recognising *agricultural qualification* to the *connected activities* attracts these activities within the favoured regime of the agricultural activities (taxation of income on a cadastral basis with reference to the sale of products, and application of a special regime for agritourism; application of social security regime for agriculture with lower rates; no payment to obtain the administrative authorisation to new buildings; no need of commercial authorisation for the direct sale of products; simplified regime for treatment of waste),
- *financial incentives*: the new activities may benefit of the financial aid within rural development plans.

b) <u>Disincentives</u>

Tax law is not a disincentive as such, but when the new activities become important (in absolute or relative terms, compared to the *agricultural activity ex se*), the risk is that Tax or Social Security Authorities contest that the new activity is not a connected one, but an

autonomous, therefore subject to commercial regime with much heavier rates and with significant increase of administrative complications (books, documents, declarations, …).

Under this profile there is a sort of *paradox of diversification*: farmer is encouraged to diversify and to expand to new activities, but when the diversification is successful and the new activities (originated by a link with agricultural holding) grow, the risk is that those activities are separately considered and subject to the commercial regime.

This *paradox* was particularly evident in the field of agritourism, where Tax and Social Security Authorities denied in a number of cases the application of the special regime to activities of farmers duly authorised by Regions, assuming that the size or the characteristics of those activities were such to exceed the requisite of *connected activities*.

Consequently we had cases, in which the same activity was considered *agricultural activity* by the Regions with reference to the administrative authorisation, but *not agricultural* by tax and social security authorities, which assumed that those activities were not agri-touristic but touristic, and therefore subject to the ordinary commercial regime, and not to the special regime for agri-tourism.

To solve this conflict, the new law on agritourism, Law No. 96 of February 20, 2006, at art. 7 expressly stated:

> «*The offer of agritourist services, performed within the limits established by Regions, implies the enforcement of all State rules for agritourism, including those involving tax, social security, and other special sectors*.»

c) <u>Obstacles</u>

The most relevant obstacles are not in the landowner refusal (which can be overcome with the recourse to the Provincial Office for Agriculture above mentioned), but in the unclear qualification of some new initiatives.

Question 5

How is the role of diversification perceived in your country in the light of new considerations such as food shortages, renewable energy sources (bio-fuels, wind power, etc.) and so on?

How do you think the European Union should deal with these new circumstances ?

a) <u>Perception of diversification in Italy</u>

In Italy there is a largely positive attitude in favour of *diversification*.

Recently the annual tax law (Law No. 244, of December 24, 2007), introduced a new tax rule, according to which production and sale of bio-fuel and of electric and thermic energy obtained not only from vegetables, wood, and animal waste, but even from any source of renewable source, including sun and photo-voltaic, is considered *agricultural activity* and the resulting income is subject to no supplementary taxation, being considered included in the normal cadastral taxation of land.

b) <u>Possible role of EU</u>

The adoption of the Single Payment Scheme has been considered with favour by Italian farmers, but after some years of experience the definitions of *agricultural activity* and of *eligible hectares* introduced by Regulation No. 1782/2003 and confirmed by Regulation No. 73/2009, risk to create obstacles both to effective *diversification* and to environment protection.

The exclusion from payments of part of parcels not cultivated but used for new *connected activities*, or having environmental value (like hedges, ponds, ditches trees in line, in group or isolated and field margins) creates a contradiction with some basic goals of the SPS, both on the economic side of the freedom of choice of the farmer and on the environment side of protection of natural values.

An updating of those definitions to render them coherent with the goals of the reformed Common Agricultural Policy appears therefore highly appropriate and useful.

SUMMARY

The Italian legal system has an old tradition of recognising and encouraging diversification in agriculture.

This favour has been expressed not trough the adoption of a legal definition of "*diversification*" as such, but along two lines:

III. one linked subjectively to the *agricultural entrepreneur* and objectively to the *agricultural holding*, trough the adoption of the peculiar definition of the "*connected activities*" ("*attività connesse*");

IV. the other linked to specific territories, trough the adoption of tools of governance and development of underdeveloped areas.

The *agricultural entrepreneur* as such is exempt from the application of rules applicable to the *commercial entrepreneur*, in many decisive fields of law, among which:

- taxation
- social security contribution
- bankruptcy
- finance
- land planning.

It is therefore crucial to establish, in any specific situation, whether an entrepreneur and an activity may, or may not, be considered *agricultural*.

The modified text of art. 2135 Civil Code, as modified in 2001 and today in force, trough the enlargement of *connected activities* category, largely opened to original forms of *diversification*.

The farmer is free to diversify, but he must respect and maintain the productive destination of land (see art. 1615 of the Civil Code).

If *diversification* does not impact on productive destination of land, the farmer needs no permission from the landlord. If *diversification* involves new structures, innovations or modifications and/or transformation of land and/or of buildings, the farmer may operate in this sense, but he must previously obtain the consent of the landowner. The previous consent of the landowner is requested, not only to guarantee that the natural destinations of land and buildings are respected, but also because at the end of the lease the landowner must indemnify the tenant with a sum correspondent to the increase in value. If no previous agreement is reached between landlord and farmer, the tenant may activate an administrative procedure with a competent local authority, to obtain an authorisation to the innovations.

The most relevant obstacles to *diversification* are not in the landowner refusal (which can be overcome with the recourse to the administrative procedure above mentioned), but in the unclear qualification of some new initiatives (as in the case of the *paradox of diversification*).

In Italy there is a largely positive attitude in favour of *diversification*, which has been confirmed by recent tax laws, according to which production and sale of bio-fuel and of electric

and thermic energy obtained not only from vegetables, wood, and animal waste, but even from any source of renewable source, including sun and photo-voltaic, is considered *agricultural activity* and the resulting income is subject to no supplementary taxation, being considered included in the normal cadastral taxation of land.

CAP encouraged *diversification*, but the definitions of *agricultural activity* and of *eligible hectares* introduced by Regulation No. 1782/2003 and confirmed by Regulation No. 73/2009, risk to create obstacles both to effective *diversification* and to environment protection.

An updating of those definitions to render them coherent with the goals of the reformed Common Agricultural Policy appears therefore highly appropriate and useful.