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AGRICULTURAL LAND PROTECTION**

**CEILAND**

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## About project CEILAND

Central Europe is specific geographical region with significant influence share of agricultural land in Europe with a good quality and climate conditions. The proposal of the project “Central European Initiative on Agricultural Land Protection” (CEILAND) arises from the need to contribute to sustain quality of agricultural land and food security in the EU. Therefore, the main objective of the project is to foster a dialogue between the crucial stakeholders of agricultural land protection in Central Europe affecting the achieving the objectives of EU agri-environmental and EU food policy.

Specific objectives of the project are:

- to promote discussion about sustainability of the agricultural land quality and acreage in Central European countries and subsequently in the EU;
- to boost knowledge about the quality and acreage of agricultural land in Central European countries;
- to strengthen effectiveness of land-use governance in Central Europe and the EU.

Cross-fertilisation and spread content idea of the project is visible in the content of the activities which achieve the objective of the project; all activities respect multidisciplinary approach on the agricultural land protection (socio-economic, legal, political and environmental aspect). Discussion about Central Europe and the EU agricultural land protection will be lead in mutual synergy of stakeholders at different levels of competence (academics, managing and control authorities, practice) what may influence further dialogue on this issue in the whole EU.

Impact:

- sustaining the quality of agricultural land in Central Europe in the context of the EU;
- agri-environmental policy and the EU food policy;
- contribution to develop land footprint of the EU for Central Europe;
- harmonization of political tools and implementation measures related to agricultural land protection in Central Europe;
- increasing awareness of the land value for civil society, especially within the EU.

More information about the project is possible to find on the project webpage: <http://ceiland.uniag.sk/>

One of the project result is a conference proceeding which aims:

- to present the papers and results of research related to agricultural land protection in Central Europe countries in regards to the EU and worldwide agro-environmental policy;
- to evaluate impact and to describe possible future tendencies within the field;
- to provide overview about the research activities of another institutions.

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## **Foreword**

### **Foreword**

Agricultural land represents one of the most vulnerable types of land. In the EU, more than one thousand km<sup>2</sup> are subject to its withdrawal – either for housing, industry, roads, or recreational purposes. Competences in the field of agricultural land protection are in the hands of Member states because till now there are no policy efforts to adopt legally binding measures. In spite of this fact, European and international environmental documents encourage European states to set up action to maintain and protect agricultural land based on the sustainable principles. All relevant EU documents (7th Environment Action Programme to 2020, Strategy Europe 2020, Soil Thematic Strategy, etc.) reflect that the problem of land protection in the EU is solved insufficiently and non-complexly, and that there is a need to implement EU land law. One of the means to encourage more intensive debate on this issue is organization of a symposium/conference focused directly on agricultural land protection that will gather researchers, academics and experts within this field from various EU countries.

The proceeding volume from the international scientific conference introduces the effort to sustain acreage and quality of the agricultural land in the EU. Central European countries, as a geographical coherent territory, have a strong link to agriculture and to food self-sufficiency of Europe, including the EU. The proceeding volume promotes discussion and reflection on agricultural land protection in Central Europe and enhances knowledge about the EU from multidisciplinary aspects of the agricultural land protection (economic, legal, political and ecological) and by stakeholders at different competence levels (academics, managing authorities and professionals from practice).

The proceeding volume from the international scientific conference is intended for the target group of students of Bachelor and Master studies at study programmes related to agricultural land protection as well as experts in this field from both public and private sector.

Authors

**ITALY**

## **AGRICULTURAL LAND PROTECTION IN ITALY BETWEEN PLURALITY OF SOURCES, SUBJECTS AND PARTICIPATION**

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### **Abstract**

This article's objectives were to share the Italian experience in the comparative exercise of improving agricultural land in Central Europe, portray the regulatory setting of the topic in Italy, and give account to recent regulatory innovations fostering citizens and farmers participation in agricultural land management and protection. The application of the subsidiarity principle, in addition, makes the final regulatory framework vary considerably from Region to Region, making it difficult to appreciate the concrete features of land protection in Italy.

### **Key words**

agricultural land, landscape management, territory management and planning, Italy

### **Introduction**

Protection of agricultural land in its acreage and quality is dependent by a number of factors, and conversely has an impact on a variety of sectors. Together with agricultural production incentives, economic, social and cultural changes influence the patterns of use and state of agricultural land. Consequences of the state of agricultural land rebound on areas such as food security, the environment as well as culture<sup>1</sup>.

Rural land functions vary widely; they can be recreational and aesthetical, or instrumental for biodiversity protection, for the prevention of depopulation and abandonment of rural areas, and for the prevention of land erosion driven by hydrogeological disturbances.<sup>2</sup> As a consequence, regulatory actions pertaining to the protection of agricultural land span among a variety of sectors and governance levels.

Agricultural land has, in the last decades, been increasingly object of international attention under several perspectives. Under the viewpoint of landscape and culture, soil, tenure, biodiversity and food production, soft and hard law instruments have blossomed to protect the fundamental functions of land; a non-renewable, limited natural resource. Its global relevance for realising a number of global goals of environmental, economic and social nature – as demonstrated, for instance, by the multiple references to land in the Agenda 2030 Sustainable Development Goals -, has legitimized the intervention of international law and policy in this historically national domain. Most importantly, thanks to the adoption, in December 2018, of the United Nations Declaration on the Rights of Peasants and other people working in rural areas by the United Nation General Assembly, land, in its multiple dimensions, has officially

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<sup>1</sup> The recognition of the multiple functions of land and the need to design land governance in a holistic way was recently affirmed in a strategic communication publication released in the framework of the United Nations Convention for the Combat of Desertification (UNCCD) in 2017: the Global Land Outlook (GLO) 2017 Available online. <https://www.unccd.int/actions/global-land-outlook-glo>

<sup>2</sup> For an attempt of categorizing land functions and its indicators, see Piani, Taborra, Sigura (2013).

entered the sphere of relevance of human rights (United Nations General Assembly, 2018). The Declaration, with the right to land, the right to food and food sovereignty, the right to participation of rural communities in decision making and management of natural resources, the right to environmental protection and biodiversity, and the right to seeds, among others, has given human rights' relevance to agricultural land protection (Vezzani, Paoloni, 2019). Besides the human rights' conceptual framework, natural resources for agriculture (and within it, land) have been recently captured by the theory of the commons (Vivero-Pol et al., 2018). Both theoretical frameworks emphasize the importance of citizens' participation in the governance of natural resources, and the equitable access to them, with the focus on the most vulnerable social categories.

## Materials and methods

Stemming from the just described scenario, this article aims to give account to the most recent national and regional normative initiatives for protecting agricultural land in Italy. The objective is threefold. Firstly, the article aims at sharing the Italian normative approach and experience to agricultural land protection in view of a comparative effort and sharing of best practices. Secondly, it tries to portray the complexity of a subject whose regulation is fragmented across different levels of governance and different subjects. Thirdly, it endeavours to highlight the participatory dimension of the normative framework concerning agricultural land as to see to what extent the national regulatory context reflects the emerging international normative and conceptual framework.

The first part sets the Italian constitutional background for agricultural land protection and participation. The second part illustrates the specific laws on protection agricultural land, dividing it between regulation protecting the quality of soil, and regulation pertaining the protection of agricultural land access and use, and empathizing the participatory dimension of these measures. The third part draws conclusions.

## Results and Discussion

### *1. Constitutional framework for the protection of agricultural land in Italy*

From a conceptual perspective, land lays at the heart of four concepts and respective regulation: territory, landscape, environment, and property. On these regulatory layers, a fifth is added when land is used for agriculture. As each of these matters are touched by legal provision stemming from both international and intra-national institutions, untangling the normative framework of agricultural land protection requires the examination of principles and laws spanning from international treaties to local municipalities acts, and crossing several legal disciplines. Without the possibility of exhaustively treating the subject, the following paragraph will carve the main features of agricultural land protection in Italy.

The first references for a protection of agricultural land in the Italian legal system should be looked for in the Constitution.<sup>3</sup> In the first part, which sets out the fundamental principles, article 9 affirms that “the [Italian] Republic [...] protects landscape and the Nations' historical and artistic heritage”. For what concerns agricultural land, the Constitution, in the third Part called ‘*Rapporti Economici*’, sets out at article 44 that “[i]n order to achieve the rational exploitation of the land and to establish equitable social relations, the law imposes obligations and constraints on private land ownership, sets limits to its extension according to the regions and agrarian areas, promotes and requires land drainage, transformation the latifundium and the reconstitution of the productive units; helps small and the medium holdings. The law

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<sup>3</sup> Costituzione della Repubblica Italiana, entered into force on the 1st of January 1948.

provides for measures in favour of mountain areas”.<sup>4</sup> From the current version of Title V (*Le Regioni, le Province e i Comuni*), which has undergone a substantial reform in 2001<sup>5</sup>, the distribution of powers between State and Regions is subdivided according to three categories: subjects of exclusive competence of the State; subjects of shared competence; and subjects of residual attribution to Regions. Matters falling under the shared competence are regulated by Regions, whereas the power of setting fundamental principles is retained by the state. Article 117 attributes to the State the exclusive legislative competence on “environmental protection, the ecosystem and cultural heritage”.<sup>6</sup> Subjects of shared competence include food and administration of the territory.<sup>7</sup> As the legislator did not mention agriculture among the topics of shared competence, Regions have the full legislative power on it, as in all the matters non-expressly listed in article 117.<sup>8</sup> Article 117 Cost. also recalls that laws have to be in harmony with the Constitution, the European Union system, and international obligations.

As a consequence, whereas the protection of the landscape, conceived in its environmental and cultural dimension, has to be found in the national legislation unless the State directly delegates another body, the legislative competence on agriculture reseeds in regional laws, and territorial administration is object of shared competence.<sup>9</sup> Nevertheless, the interdisciplinary nature of agricultural land - expressing simultaneously economic, environmental, social and cultural interests - makes impossible to sharply draw the lines between national and regional legislative competence, leaving alone the fact that European Union progressively gained competence on several subjects related to the topic.<sup>10</sup>

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<sup>4</sup> Among the vast literature on article 44 of the Constitution and the social function of property, see: Marella (2013); Graziani (2005); Graziani (1982); Guadagnuolo (2015); Ferrari (2016).

<sup>5</sup> l. Cost. n. 3/2001.

<sup>6</sup> Even if not spelled out in the list, the regulation of property is of exclusive competence of the State by virtue of article 42, which states that “[...] Private property is recognized and guaranteed by law, which determines the methods of purchase, enjoyment and limits in order to ensure its social function and make it accessible to all. [...]”.

<sup>7</sup> “alimentazione, [...] governo del territorio” art. 117 paragraph 3 of the Constitution.

<sup>8</sup> On this point, see: Germano (2003); Losavio (2012).

<sup>9</sup> Carmignani in Costato, Germanò, Rook Basile (2011); Buoso (2015).

<sup>10</sup> The primary source of EU competence on agricultural land protection stems from the integrated reading of article 11 and article 39 of the Treaty on the Functioning of European Union, where the transversal nature of EU environmental policy (according to the principle of integration) meets the objectives of the common agricultural policy (On this point, see Carrozza, P., *Agricoltura tra Europa, Stati e Regioni. Quale futuro per una “non-materia”?* Rivista Di Diritto Agrario – anno XCVII – fasc. 1 – 2018). The greening measures contained in the Common Agricultural Policy 2014-2020, which subordinate the direct payment to the respect of three complementary environmental and climate measures (crop diversification, maintenance of permanent grassland, Ecological Focus Areas), together with the alternative practices allowed and other measures of Rural Development, constitute the main incentive for farmers to put in place practices that preserve soil quality, despite the overall efficacy of these measures has been evaluated as limited (Pe’er, Guy, et al. “Is the CAP Fit for purpose.” An Evidence-Based Fitness Check Assessment (2017)). See also: M. D’Addezio, *I vincoli ambientali di vecchia e nuova generazione* L. Costato; A. Germanò; E. Rook Basile. *Trattato di diritto agrario* (2011) vol. 2, p. 31 – 80. Frascarelli, A., *L’evoluzione della Pac e le imprese agricole: sessant’anni di adattamento*, *Agriregionieuropa* anno 13 n°50, Set 2017; L. Costato, *Per una storia della PAC (a sessant’anni dall’inserimento dell’agricoltura nel progetto di Trattato CEE)*, *Rivista di diritto agrario*, 2017, fasc. 1, pt. 1, pp. 64-84. Among the other European Union interventions on the topic, with regard to soil and land protection, there have to be recalled the 2011 Biodiversity Strategy Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions *Our Life Insurance, Our Natural Capital: an EU Biodiversity Strategy to 2020* (Com/2011/0244 Final), and the Communication ‘Roadmap to a resource efficient Europe’ with the 2012 Guidelines on best practice to limit, mitigate or compensate soil sealing, which fixed the zero-soil consumption goal by 2050 and set a series of measures for enhancing the limitation of natural resources consumption and sustainable use of soil (Final communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Roadmap to a resource efficient Europe*, COM(2011) 571, 20 September 2011). It has

Finally, the Italian Constitution recognizes, besides the principle of vertical subsidiarity – according to which services should be administered at the closest level possible to the citizen – the principle of horizontal subsidiarity.<sup>11</sup> According to this principle, the State, Regions, and other local institutions “favour citizens’ autonomous initiative, in single and associated forms, for carrying out activities of general interest” (art 118 c4 Cost).<sup>12</sup> From the constitutional framework and the nature of the subject it derives that normative interventions in favour of the protection of agricultural land will be found in the form of both State (setting the principles, or intervening also on the details, according to the subject) and Regional law, local administration regulations, and also in the form of citizens’ initiatives and activities.

## **2. Landscape and territory management and planning**

The three main areas where State regulation of land and soil protection in general is found are environmental protection, administration of the territory, and landscape management.

The protection of soil is a matter that falls between environmental protection and territorial administration. The objectives and the actions of soil protection have been defined by the Code of the Environment<sup>13</sup>, which attributes to Regions actions for the realization of these objectives.<sup>14</sup> Soil protection includes provisions concerning the management of watercourses, prevention and reduction of risks and mitigation of damages caused to economic goods and land by hydrogeological imbalances.<sup>15</sup>

Whereas the Code of the Environment deals with soil on the viewpoint of its preservation as a natural resource, and mainly in association with the prevention of hydrogeological imbalances, the subject of administration of the territory addresses land and soil in a broader way. Territorial administration (*governo del territorio*) is the intervention of governing agencies on their territories addressed to its harmonic development, where harmonic territorial development encompasses urban development connected to the effective community’s housing needs and suitability of the area; environmental and landscape value; protection of people’s health and safe lifestyles and the socio-economic needs of local community.<sup>16</sup> Originally conceived only in its urban dimension, territorial administration nowadays encompasses a broader range of functions and, despite a comprehensive national norm on the topic is missing, its principles can be nevertheless drawn by several normative interventions. In this sense, is to be recalled the law n. 10/2013 on urban green spaces which lists, at article 6, a set of measures that regions, provinces and municipalities can adopt in order to limit soil consumption and preserve non-urbanized municipal areas (De Lucia, 2017). In the further

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to be remarked on this aspect that an initiative was taken, and later withdrawn, to adopt a directive on soil consumption: Proposal for a Directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC COM(2006)0232 (withdrawn in 2014).

<sup>11</sup> The principle was inserted in occasion of the constitutional reform (l. Cost 3/2001) to comply with European Union treaties.

<sup>12</sup> cfr. Arena (2005); Donati (2012); Donati (2013).

<sup>13</sup> Decreto legislativo 3 aprile 2006, n. 152, art. 54, comma 1, letter (u): “difesa del suolo: il complesso delle azioni ed attività riferibili alla tutela e salvaguardia del territorio, dei fiumi, dei canali e collettori, degli specchi lacuali, delle lagune, della fascia costiera, delle acque sotterranee, nonché del territorio a questi connessi, aventi le finalità di ridurre il rischio idraulico, stabilizzare i fenomeni di dissesto geologico, ottimizzare l'uso e la gestione del patrimonio idrico, valorizzare le caratteristiche ambientali e paesaggistiche collegate”.

<sup>14</sup> Decreto legislativo 3 aprile 2006, n. 152, art. 61.

<sup>15</sup> Decreto 23 febbraio 2010, n. 49 Attuazione della direttiva 2007/60/CE relativa alla valutazione e alla gestione dei rischi di alluvioni. (10G0071). On the topic, see: S. Bognini, La carenza idrica nella politica agricola comunitaria, in Riv. dir. ag. (2012) p. 448 ss.

<sup>16</sup> Cons. Stato, sez. IV, 10 maggio 2012, n. 2710.

attempt of promoting a coordinated action and reducing the pace of soil consumption, a project for a national law was proposed and is currently under discussion in the Parliament.<sup>17</sup>

The inaction of the national legislator on this topic is paired by a certain activism by Regions which, in the ambit of their laws on administration of the territory, already have specific provisions on the subject, or at least include the principle of prevention of soil consumption.<sup>18</sup> In addition, whereas the national law does not encompass provisions on citizens' participation, many Regions have designed these laws in order to establish some form of participation of citizens and stakeholders (Cezzi, Portaluri, 2016). In this respect, Tuscany has set the example by adopting an unprecedented normative experiment in Italy: the Tuscany regional law n. 46/2013 on public debate and promotion of citizens' participation in the elaboration of regional and local policies (Vizioli, 2014). Taking inspiration from the French experience of a national law on *debàt public*, Tuscany has created a procedure for ensuring communities information and involvement before and during the realization of public projects.<sup>19</sup>

Territorial administration intertwines with, and it is subordinated to, the discipline governing landscape protection. Regulation of landscape stems from article 9 of the Constitution and it is found in the Code on cultural goods and the landscape.<sup>20</sup> The Code implements the European Landscape Convention of the Council of Europe, although it presents some relevant differences (Cartei, 2011; ). Article 1a of the Convention defines landscape as 'an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors', and places people's perception at the centre of the definition; article 5 consequently requires States to establish procedures for citizens' participation in landscape

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<sup>17</sup> Disegno di legge, Atto Senato n. 984 XVIII Legislatura, Disposizioni per la rigenerazione urbana e per il contrasto al consumo di suolo, dicembre 2018.

<sup>18</sup> The majority of Regions have an organic regulation on limitation of soil consumption is contained either in specific regional laws or in the laws on the governo del territorio (Calabria, Emilia Romagna, Liguria, Lazio, Lombardia, Piemonte, Toscana, Prov. Aut. Trento, Umbria, Veneto, Prov. Aut. Bolzano, Basilicata); some other Regions present some provisions (Friuli Venezia Giulia, Marche, Puglia, Sardegna); others only present the limitation of soil consumption as a principle (Campania, Valle d'Aosta, Abruzzo); whereas the rest lacks any provision on the subject (Sicilia, Molise). ANCE Dossier sul Consumo del Suolo 26 ottobre 2018 ([www.ance.it](http://www.ance.it)). Of particular relevance for its comprehensiveness and progressiveness is the Tuscany Regional law on territorial administration (Legge regionale 10 novembre 2014, n. 65).

<sup>19</sup> More generally on the *debàt public*, see: G. Pizzanelli, *La partecipazione dei privati alle decisioni pubbliche*, Milano, 2010; P. Marsocci, *Consultazioni pubbliche e partecipazione popolare*, in *Rassegna parlamentare*, n. 1/2016; Viviana Molaschi, *Le arene deliberative. Contributo allo studio delle nuove forme di partecipazione nei processi di decisione pubblica*, Editoriale Scientifica, Napoli, 2018. Very recently, the Italian Government has introduced a similar procedure to the French *debàt public*: the Dpcm n. 76/2018 «Regolamento recante modalità di svolgimento, tipologie e soglie dimensionali delle opere sottoposte a dibattito pubblico», which establishes that public consultations have to take place before the realization (in the project design phase) of large-scale projects. The act sets the criteria for activating the public consultation (object and size of the project); establishes the procedures and the National Commission for the Public Debate (Molaschi V., *Il dibattito pubblico sulle grandi opere. Prime riflessioni sul d.P.C.M. n. 76 del 2018*). Despite it has been pointed out that this instrument, as it has been designed, presents several criticisms, it nevertheless constitutes a tool for enhancing the participation of citizens in projects that potentially have a great social, environmental and economic impacts (Allegretti Umberto, *Un caso di attuazione del principio costituzionale di partecipazione: il regolamento del dibattito pubblico sulle grandi opere* *Rivista AIC*, 2018, fasc. 3, pp. 13) Stances as food security, soil consumption and protection of agricultural land could be brought and made more visible by citizens vis à vis the realization of large-scale development projects. It is unclear, however, to what extent the administration will have to take the outcome of the consultation into account. See also: Ufficio Valutazione Impatto del Senato della Repubblica *Le consultazioni dei cittadini e dei portatori di interesse*, Esperienze n 27 (2017); Ufficio Valutazione Impatto del Senato della Repubblica, a cura di Stefano Marci, *Una nuova forma di partecipazione: il dibattito pubblico sulle grandi opere infrastrutturali* *ESPERIENZE* N. 35 (2018).

<sup>20</sup> Decreto Legislativo 22 gennaio 2004, n. 42, Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 Legge 6 luglio 2002, n. 137.

policy design, together with local land regional authorities. The Code disciplines the landscape as a component of the national cultural heritage, defined by the identity-expressing character, which derives from the action of natural and human factors and its interrelations (art 131) but leaves out people's perception from the definition. This absence in the definition rebounds in the substantial discipline, as the Code does not refer to participatory measures for the general public (Cartei in Cezzi and Portaluri, 2011). In this regard, Regions, again, have proved able to innovate landscape governance and promoted several participatory projects for landscape protection (Brocca, 2016).

Rural landscape falls within the general landscape regulation. If it is true that, in many Italian regions, rural landscape has been conserved across history and has consolidated the Region's identity and culture, and it has been recognized as UNESCO cultural heritage with benefits that rebound also on the local economy, the absorption of rural landscape under the Code rises several criticisms. Rural landscape in fact is the fruit of agricultural activities carried on by farmers, and its maintenance is dependent on their continuation. The Code, that applies on landscape a conservative vision of restrictions and planning and does not take into consideration the need to valorise farmers participation in landscape policies, risks to constrain its management rather than enhancing it (Ferrucci, 2019). Support to farmers' stewarding and conservation activities is crucial in this sense. A move in that direction could be represented by the National Observatory for Rural Landscape, agricultural practices and traditional knowledge, instituted in 2012 by the Ministry of Agriculture with the tasks of collecting data on traditional rural landscapes, techniques and knowledge associated with them, for valorising its importance and preserving the knowledge for future generations, and coordinating the protection of rural landscape with the Rural Development pillar of the CAP.<sup>21</sup>

Moving on from a general land and soil management to a more specific discourse on agricultural land, we see that the normative framework is composed by a range of different interventions on agrobiodiversity, land distribution, protection of customary land use-rights.

### *2.3. Agrobiodiversity*

Biodiversity, and especially microbial diversity, is essential for soil quality conservation. Before the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture (2001) and long before interventions on the subject by the Italian State and European Union, several Italian Regions have showed interest in the protection and valorisation of the diversity of plant genetic varieties for food and agriculture.<sup>22</sup> Very recently, the Italian parliament evaluated that, to enhance the protection of agrobiodiversity, it was necessary to create a coordination at national level. The law 194/2015 has been drafted by building upon regional experience, and it establishes the National System for biodiversity relevant for food and agriculture, for the protection of plant, animal and microbial diversity. Similarly to regional laws' structure, the national law institutes the National Germplasm

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<sup>21</sup> Decreto n. 17070 del 19 novembre 2012.

<sup>22</sup> In 1997, Tuscany has adopted the first law on agrobiodiversity, instituting a system for preventing the loss of plant varieties and the traditional knowledge associated to it. (Legge Regionale n. 50 del 1979). Recognizing the central role that farmers play in the conservation and innovation of plant varieties, the status of "custodian farmer" has been attributed to those farmers that, thanks to their passion, sensitivity and knowledge, preserve traditional and local varieties. The law placed the Custodian farmer at the centre of a Network of stakeholders that support their work on the field (local administration), preserve and catalogue local plant varieties (Seed banks), and conduct research to improve the conservation of local varieties and support the work of the farmers (Universities). Along time, the model created by Tuscany spread in most of the other Regions, who adopted similar systems for the conservation and valorisation of local agrobiodiversity. (Sirsi E., Brunori M., Tutela e valorizzazione dell'agrobiodiversità: la legge 194/2015 e l'esperienza delle regioni italiane nel contesto europeo e internazionale. Forthcoming 2019)

Bank, the National Database, the National Network for agrobiodiversity and the National Committee on Agrobiodiversity. At the centre of the system the law places the custodian farmers and custodian animal breeders; farmers and breeders who preserve *in situ* the plant and animal variety thanks to their work and traditional knowledge. Three representatives of the custodian farmers sit in the National Committee on Agrobiodiversity, enabling their direct involvement and participation in decision-making affecting them.<sup>23</sup>

#### *2.4. Measures for land access and contrast to land abandonment*

Closely related to the protection of agricultural land is the recent wave of regional and national laws instituting land banks. In fact, the abandonment of lands in Italy, which is a country characterized by a high hydrogeological risk, is often a factor of soil erosion, land degradation and environmental damage (in case of fires, for example). The question of land redistribution occurred in several periods of the Italian history. A quite old law, still in force, which provides measures for the redistribution of agricultural land, is the law n. 440 of the 1978. The act passed in a period of economic crisis and sharp rise of unemployment. It is conceived for tackling the redistribution of land resources for increasing occupation and social and economic development, but in addition, by stating that its objectives are the safeguard of hydro-geological balance and environmental protection, it includes among the objectives also the protection of soil and the environment. The law delegates Regions with the task of checking all uncultivated or idle land and allocate it to those committed to cultivate it, under the submission of a project. The application of these directives by the Regional laws took different forms and it was generally incorporated into measures for land and environmental management (Strambi, 2018). These Regional laws have been repealed over time, but a new wave of attention on agriculture gave rise to a new activism by some Regions, which recently passed several laws instituting Regional Land Banks. The details of Regional Land Banks' object or functioning vary, but generally the system consists in a creation of a database that offers for the lease or allocation of agricultural land to young farmers, and the allocation is often accompanied by a supportive financial scheme. The land registered on the database can be both public and private (Strambi, 2018).

After the regional initiatives, law n. 154/2016 was passed by the Italian parliament, which established a national land bank. The Agricultural Land Bank, managed by ISMEA<sup>24</sup>, became operational in March 2017. The national Bank, conceptually similar to the regional ones, differentiates on some aspects that make the all potential and objective different. Land registered on the Bank database is exclusively public property, and the land is not leased, but sold. Furthermore, not only agricultural land is offered on the Bank website, but also urban or constructed land. As Strambi points out, these two elements combined insert the national land bank in a project of privatization of public resources rather than of environmental management, youth employment and promotion of agricultural production. In conclusion, regional and national land banks have very different potential, but none of the two can yet be evaluated for their effects, because they have just started functioning (Strambi, 2018).

#### *2.5. Protecting collective land rights and use rights*

According to article 118 of the Constitution, State and Regions shall favour the initiatives of citizens that contribute to the realization of activities of general interest. This could be the case for a particular form of land tenure that has historically helped in the preservation of rural land for agricultural, pastoral and silvicultural uses. These types of tenure rights are

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<sup>23</sup> Legge 1 dicembre 2015, n. 194 Disposizioni per la tutela e la valorizzazione della biodiversità di interesse agricolo e alimentare, art 8.

<sup>24</sup> Institute for agri-food market, [www.ismea.it](http://www.ismea.it)

called generally “usi civici” and “domini collettivi” (but their denomination varies according to the area), they are a customary and collective use rights held by rural and mountain communities for carrying on activities instrumental for their livelihoods. This kind of informal tenure was object of intervention during the fascist regime, when in 1927 a law was passed for registering all customary use rights with the aim of converting them in public land subject to the local administration (Legge 1766/1927). At the same time, the law established the inalienability of these collective lands and disposed that the communities’ rights on these lands will be maintained (Germano, Rook Basile, 2015; Bassi, 2016). In 1994, a new law recognized the private regime of these tenure rights in the context of the normative framework for the governance of mountain areas (legge quadro montagna 31 gennaio 1994 n. 97) and attributed to Regions the task of producing the detailed discipline. Finally, a very recent law (Legge 168/2017) aimed at re-organizing the heterogeneous phenomenon of the commons in Italy. The law, composed by three articles, has been seen useless by some commentators because it repeats in general terms what was already existing since the law 1766/1927 (Di Genio, 2018), and appreciated by others, who saw the adoption of the law as a renewed interest in the protection of the collective land rights in Italy (Gatto, 2017). The law takes into account the heterogeneous nature of these use rights; it recognises the right to use and manage collective lands and to set its own rules; it attributes the status of juridical person to all the bodies that administer the collective lands and it affirms that these rights are inalienable, indivisible, and cannot form object of adverse possession. The law affirms that these rights play a fundamental role for local development, for the valorisation of natural and cultural heritage and for the intergenerational management of natural resources.<sup>25</sup> A Recent judgement of the Italian Constitutional Court strengthens the connection between the protection of these collective rights and the environmental protection expressed through landscape conservation.<sup>26</sup>

## Conclusions

This article’s objectives were to share the Italian experience in the comparative exercise of improving agricultural land in central Europe,<sup>27</sup> portray the regulatory setting of the topic in Italy, and give account to recent regulatory innovations fostering citizens and farmers participation in agricultural land management and protection. This brief overview of the Italian regulatory framework for the protection of agricultural land and soil allows formulating several reflections. Firstly, the framework appears as a very intricate bundle of norms stemming from different regulatory sources, since the matter is of shared competence between the State and Regions, and because the interdisciplinary nature of the subject inevitably creates overlaps of competencies. The application of the subsidiarity principle, in addition, makes the final regulatory framework vary considerably from Region to Region, making it difficult to appreciate the concrete features of land protection in Italy, and rather requiring to consider the regulatory setting in each single Region and Municipality. However, in general terms, it is possible to draw remarks on the quality and scope of regional and national regulatory interventions, and it appears that regional initiatives have proved to be timelier and more progressive in promoting the social conditions that enable agricultural soil sustainable use and protection, that the national law. Some Regions have creatively filled the space left by the national law by autonomously setting the regulatory principles of several subjects (for example, for soil consumption, and agrobiodiversity, measures to contrast land abandonment, and participation) and gave the example for other Regions and the State. The

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<sup>25</sup> Legge 168/2017, art 1 c.

<sup>26</sup> Corte Cost, 31 maggio 2018, n.133. Jannarelli (2018).

<sup>27</sup> Central European Initiative Agricultural Land Protection: ceiland.uniag.sk

State's later intervention has then built upon regional initiatives and created a national coordination, which also pushes those Regions which did not adopt similar measure to comply with it. Participation emerges as an increasingly valued complement for agricultural land and soil protection. It is realized both by increasing information to citizens (landscape protection – agrobiodiversity), by facilitating farmers (especially youth) to have access to land, and by recognizing the value that some farmers and pastoralists have played in the conservation and biodiversity and the environment (agrobiodiversity law and customary rights), therefore promoting the realization of the principle of horizontal subsidiarity. In terms of what need to be monitored and improved, it surely has to be pointed out that where the national legislator will intervene for setting the general framework on matters already regulated by Regions, it should be guaranteed that the most ambitious regional norm is adopted as regulatory floor. Indeed, an unambitious national law that does not manage to efficiently reduce soil consumption could work as negative example, tempting regions to lower their standards. In addition, national laws on land banks will have to be carefully monitored and improved to avoid that they do more harm than good and that they truly serve their purpose. More generally, all recently approved (national and regional) laws have to be monitored and its outcomes evaluated in order to efficiently support farmers. A last consideration to rise is that, besides all regional and national laws on agricultural soil conservation, it has to be recalled that the Common Agricultural Policy is still the main incentive for maintaining sustainable agricultural activities and among that the quality of soil. Without a sound financial support to small and middle farmers and their activities for maintaining the multifunctionality of agricultural land, any other scheme will generate scant effects (Costato in Cristiani, Di Lauro, Sirsi, 2019).

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## **CENTRAL EUROPEAN INITIATIVE ON AGRICULTURAL LAND PROTECTION**

The Faculty of European Studies and Regional Development of the Slovak University of Agriculture in Nitra organized an international conference entitled Central European Initiative on Agricultural Land Protection (CEILAND) on 3 - 5 April as part of an international project supported by the European Union.

It was held under the auspices of the dean doc. Oľga Roháčiková and was attended by representatives of the Ministries of Agriculture, Chambers of Commerce and representatives of academia from ten countries (Germany, Austria, Italy, Slovenia, Slovakia, Hungary, Poland, Switzerland, Croatia and the Czech Republic).

The main objective of the event was to discuss, exchange experiences and valuable information on the possibilities to qualitatively improve the management of agricultural land protection in Central European countries - with consequent impact on other European regions, as well as on the possibilities to ensure the sustainability of agricultural land in the context of agri-environmental and food European policy and increase awareness of land value for civil society, especially within the EU.

The speeches and discussions showed that the issue of soil protection is increasingly not only a technical but also an economic, social, and environmental problem. Therefore, it has proved very useful to combine legal and technical views on the issue.

“The individual presentations showed that the problems of agricultural land protection, which concern all countries of Central Europe, are mainly of a legislative and technical nature. In case of technical reasons, focus should be on the scope. Considering soil protection, it can be a field or a farm, provided that the owner takes care of the land. However, this approach is very simplified as soil protection is closely related to water protection. Therefore, "water and soil protection" is often used as a single term. Last but not least, the protection of soil is also related to the protection of the environment and living conditions. The protection plan is thus more complex because it involves not only economic but also social legal and environmental aspects. The interests of communities as well as animals and nature should also be taken into account, which would be an integrated plan for the protection of rural areas. ”

Individual presentations as well as the discussion could be watched online, which was used by more than one hundred people.

The project coordinator was doc. JUDr. Lucia Palšová, PhD. from the Department of Law. In addition to the conference, the project will also include:

- a collection of posts,
- the report on the protection of agricultural land in Central Europe,
- didactic material for teaching on the protection of agricultural land,
- collect information on the conservation status of agricultural land in Central European countries and
- strengthening cooperation among stakeholders.

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