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Is the short food supply chain an efficient solution for sustainability in food market?

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Abstract

Short supply chain, as legally defined by Reg. 1305/13, is able to reach goals of “sustainable agriculture”, through the reduction of transportation costs and consequently of CO₂ emissions. In addition, it promotes biodiversity and implements periurban agriculture. The interest for short food chain is growing in EU and in national legislations, considering its role in achieving environmental goals. This approach has a major effect on the reinterpretation of market performing principles, considering the role of Member States in defining more flexible rules applicable to local markets, as well as in interpreting the principle of free movement of goods within the local markets.

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1. Special rules for sustainability of land and territory in the Common Agriculture Policy: the case of the short food supply

Sustainability of agriculture, maintenance of agricultural land and preservation of agricultural holdings in specific areas (i.e. farms in mountainous areas, and in less developed areas,) has always been considered a task within the competence of Common Agricultural Policy (CAP; see Cardwell, 2004). Besides EU rules oriented to achieve market regulation by price intervention and subsidies directed to single agricultural sectors

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(i.e., the first pillar of the CAP), a relevant part of EU agricultural policy, though traditionally less well funded in the EU budget, has been oriented to rural developmental measures (known as “second pillar” of the CAP). This funding is directed to financing holdings that present specific plans within the priorities outlined by the EU Regulations. Indeed, EU for the first time focused on the environmental activities of farms, within the Second Pillar of CAP, by recognizing their ability to produce environmental public goods. Indeed, the protection and improvement of the environment is one of the goals of Reg. 797/1985, as declared in art. 3 §.1. This trend was confirmed by the MacSherry Reform of 1992, when a whole Regulation was entirely devoted to the environmental measures (Reg. 2078/92).

Nowadays, legal instruments, directed to improve economic performances of farms, include both environmental programs and legal schemes supporting groups of producers. More recently, even within the framework of the rural development measures, EU also considered the pivotal role of small farms in building relationships within the agri- food chain. In this framework, it is recognized a “dynamic” role of agricultural businesses, as part of the food chain. The food chain considered by regulations has a territorial relevance, and, consequently, it is able to reach environmental goals (see below, § 3).

Within Reg. 1698/2005, the European legislation firstly took into consideration the “food chain” in the field of the rural development subsidies. Art. 32, dealing with the participation of farmers in “food quality schemes”, was mainly applied to support the participation at quality systems harmonized by EU regulation, in the national implementation. Nonetheless, Art. 32 does not exclude a financial support to holdings participating to quality schemes defined at national level. Therefore, this rule implements the participation of agricultural producers to a “structured” food chain, in which quality products are linked to the territory.

Nowadays, Regulation 1305/13, providing the Rural development policy scheme 2014-20, expressly reports measures for implementing food chain organization and, in particular, short supply chain, which is defined as “a supply chain involving a limited number of economic operators, committed to co-operation, local economic development, and close geographical and social relations between producers, processors and consumers” (art 2 §. 1, m).

The relevance of rural development measures for orienting agricultural markets in EU towards sustainability goals shall increase in the near future, also considering the revision of the first pillar measures, by reducing subsidies to agriculture and public intervention in the market. Importantly, the unification of the rules concerning financial support to agricultural productions and the reduction in the overall budget, itemized for agricultural productions, leads to the liberalization of agricultural markets as a consequence of the WTO Agreement extended to Agriculture in 1994 (Cardwell, 2004; Cardwell and Smith, 2013).

Indeed, Regulation 1307/13 (and previously Regulation no. 1782/2003) provides a single payment scheme, the value of which is independent of the kind of production, with the consequence that the farmer has to choose the cultivation, also taking into account the possibility to supply products on the market. Furthermore, Reg. 1308/13 strongly reduces measures fixing quotas in agricultural sectors (Blockx and Vandenberghe, 2014; Gadbin, 2014). In conclusion, the liberalization of agricultural markets results in a reduction of public intervention and of the overall budget for supporting agricultural producers. Therefore, the choice of the kinds of productions and procedures is oriented according to the market demand. For this reason, financial measures as well as legal instruments are pivotal in supporting small producers and agricultural holdings operating in local areas towards an environmental and social approach. However, financial measures must be considered as “complementary” to other legal tools supporting short supply chain. The settlement of financial measures for small producers is only one of the tools used to reach environmental sustainability. Indeed, in the presence of a free market approach, the definition of legal instruments for addressing the choice of agricultural producers within the competition framework appears to be the main way in which to give relevance to the short supply chain.

2. Organic farming as legislative model in market regulation of food chain

The fact that rural development subsidies are considered a complementary tool for implementing local markets is evident from the evolution of organic farming legislation in European law. Firstly, Reg. 1760/87 admitted organic farmers to receive environmental subsidies for extensive agriculture (Sanders et al., 2011).

Subsequently, in 1991 a specific Regulation (no. 2092/91) laid down an organic labeling scheme, based on harmonized production rules (see, actually Reg. 834/07). With respect to legal schemes addressing agricultural production towards an efficient market solution, the European experience shows that a legal approach, based only on subsidies, is inadequate considering the growing consumers' interest in a special market of products.

The growth of the organic food market, achieved since the introduction of legal rules for the labeling scheme, in the European market is overall due to: i) access to financial measures, ii) the provisions coming from Action Plans adopted by Member States (Sanders et al., 2011) and iii) the use of a European labeling system. Indeed, the legal certification of the products played a relevant role in orientating the consumers, by making it possible to identify the products characterized by a specific production procedure, otherwise not distinguishable from conventional products. Therefore, the labeling scheme identifies a separate market of food products (Canfora, 2006; 2012). Obviously, it does not exclude the presence of financial measures aimed to the development of this farming sector and legitimized using environmental reasons, admissible by European rules (now expressly provided by Reg. 1305/14, art. 29), as well as considered in the framework of national programs (EU Commission 2014).

3. Short food supply chain as instrument of sustainable agriculture in EU legislation on rural development measures.

The doubts about the economic relevance of the short food chain is related to the consideration of costs of small productions compared to intensive agriculture and large farms, in particular considering the cost advantages of economies of scale, as well as the costs if the geographical area is unsuitable for a specific production. However, a purely economic consideration must be balanced with an evaluation of the social and environmental benefits coming from the importance recognized of the maintenance of farm activities in local areas. The short food chain shall play an important role, not only for producers and consumers, but will also affect public interests. Indeed, the short supply chain (as legally defined by reg. 1305/13) is in accordance with the goals of "sustainable agriculture", through reduction of the costs of transport and consequently of CO₂ emissions, promotion of biodiversity (i.e. products recognized as "local" by consumers), and implementation of periurban agriculture. Therefore, the short supply chain has a positive effect on public goods, with overt environmental benefits, when compared to the long supply chain. Furthermore, as for as the markets, legal instruments implementing the direct sale of local products responds to the consumers demand for "green" production.

Therefore, the economic and social relevance of the short supply chain is clear when reading the definition laid down by art 2 § 1, m Reg. 1305/13 (see above, § 1). Firstly, it points out the specificity of this tool within rural development measures. Secondly, the short supply chain is associated with the idea of aggregation of small business involved in it, considering that it is included amongst measures aimed at restructuring agricultural sectors, which have a strong impact on the development of rural areas (see whereas n. 8). The legislative approach is characterized by the idea that farm and food businesses in local areas have to develop their activity within a "system", whereas individual farms or businesses are involved in a cooperative program. Indeed, the short supply chain is considered in relation to the role of cost reduction, achieving aggregation amongst farmers in a specific area (e.g. as provided by art. 35, promoting the formation of co-operations or networks, as "horizontal and vertical co-operation among supply chain actors for the establishment and the development of short supply chains and local markets"). So, businesses operating in short supply chain are considered to be in a network, and the implied goal is that a relationship connecting small businesses within a local area shall produce positive results from an economic, as well as environmental, point of view.

Rules laid down by Reg. 1305/13, considering the field of the Regulation, only concern strategies of budgetary allocation. A different issue is how EU law takes into consideration a promotion of the short food supply chain. From this point of view we need to analyze 2 aspects of European legislation: i) the provision of exception to general rules, e.g. the flexibility allowed for the short supply chain in the agri-food sector and ii) the presence of special competition tools for businesses operating in local areas.

4. Short food supply chain in EU Food law.

Similarly, a special regulation has been provided to the short food supply chain within the framework of food law. Since Reg. 178/02, EU adopted a model based on a food chain operating within the internal market, overtaking the boundaries of Member States and of the EU as well. The legal scheme provided for an interlinked production involving businesses located in different Member States could be extremely expensive and administratively complex, when the circulation of food is limited to local markets. Therefore, EU legislation laid down some exceptions for local markets and direct sales, in particular for agricultural products. For example, Reg. 854/04 exempts small farmers, who sell products directly to consumers, from the HACCP system. The flexibility of rules, defined, in this case, at the national level, is designed to guarantee adequate food safety levels, under the responsibility of the Member State. In this case, although indirectly, the provision of special rules for local markets, different from general EU trading rules lawful between Member States, is focused on safeguarding sustainability of rural areas. The reason for this choice is due to the need for acceptable management costs for small-size businesses, operating in local markets by direct sale or within a supply chain limited to local sellers. The flexibility of rules concerning safety trade conditions in the presence of the short food chain make it possible to reduce the costs for farms selling their products directly or operating in a local market, as well as the maintenance of agricultural activities in specific territories.

5. Legal instruments for promoting local markets.

In addition to the abovementioned exceptions in food safety law, UE recently admitted the relevance of short food chains introducing labelling systems indicating the local origin of products. Reg. 1151/12 introduces a provision promoting “local farming”, announcing a Report of EU Commission with the aim of considering the “new local farming and direct sales labelling scheme to assist producers in marketing their produce locally”. The report above was published on 13 December 2013 (European Commission 2013) and it outlines the importance of labelling schemes for local products “on condition that this would be a voluntary and simple tool, without additional costs for producers” (Santini, Gomez y Paloma, 2013). As labeling is useful for transmitting information to consumers in cases of a number of intermediaries within the food chain, the use of labeling seems more appropriate for food catering services. The Commission Report, at §. 5, also outlines the need to allow local farmers to participate in public tenders and to adapt, at the national level, hygiene rules which represent obstacles to this type of farming and sale. This suggestion confirms the approach, already followed by EU and Member States, in providing exceptions to general rules governing the food chain for intra-community trade, in cases of local food supply regulation.

This new approach of EU in providing local schemes is relevant for the introduction of a competitive strategy (i.e., labelling), directed to emphasize the characteristics of products, thus giving producers an economic advantage independent of access to financial measures (on the model of the development of organic farming legislation). In addition, rules admitting local labelling could be considered as exceptions to general rules of the free movement of goods, defended by the European Court of Justice in case of “national label” (see, e.g., the judgment of 5 November

2002, C-325/00). Consequently, local labelling must be considered differently from national labelling, because of the express provision of Reg. 1151/12, art 55.

6. National rules: some examples.

In answer to the question if the short food supply chain could be an efficient solution for sustainability of the food market, it is important to consider a provision recently introduced by Reg. 1151/12, admitting a labeling scheme referring to local farming and direct sales within a local market. This provision authorizes Member States interested in defining regional or local labels whilst transferring to consumer’s information about the origin of products from the local area. This aims to promote local markets and give economic opportunities to local producers through a legal qualification of marketing products locally. Indeed, it includes labeling schemes introduced at the Member State level in order to identify products sold at local markets.

Several provisions have been adopted at the national level with the aim to implement local markets.

This goal is expressly provided by French legislation modifying the rural Code, with the introduction of new purposes for food and agricultural legislation (L. 2014-1170). Art. L-1. III of the French rural Code actually suggests that the national food program encourages the development of the short supply chain, with special actions aimed at increasing the presence of local products in private and public catering services, promoting supply of seasonal products as well as promoting labeling signs of quality and origin as well as organic labels. Regarding Italian legislation, regional laws already introduced labeling signs and marketing tools referring to the short food supply chain.

They include:

1) Labelling rules introducing local goods identification: e.g. label referring to “zero km” on food provided within local markets shall be considered a relevant legal instrument of promotion.

Local food labelling schemes have been already implemented in the national legislation. The use of labeling is relevant for differentiating the origin of the farming area, when the food chain is local, but there is not a direct sale on the farm (e.g., retail supply, catering services). In this case, the occurrence of a label could emphasize the origin of the product from the neighboring territory. The main issue in the national legislation is related to a legal definition of “local markets”, to identify products with local origins and sold on local markets. Indeed, this concept shall be dealt with separately from the legal definition of “origin” protected by EU regulations and identifying products with distinctive qualities and characteristics. National experiences shows that labeling, without an indication of the geographical origin of products, as “zero km products”, does not conflict with the EU signs of origin protected by reg. 1151/12 as a designation of origin or geographical indication. At the same time, it supports the aim to implement supply chain within local areas, reducing CO₂ emissions and sustain local agriculture. Evidence of achieving this goal comes from the legal definition of “zero km products” laid down by regional laws in Italy, admitting the use of labels on the condition that the distance between the places of production and sale is calculated taking into account the km covered by transportation (see Law of Apulia Region, n. 43/2012).

2) Marketing channel regulation – In this category rules promoting local markets shall be included: implementing public spaces assigned to local markets (farmers’ markets) or promoting the trade directly organized by groups of consumers aimed at supplying local products (e.g., providing web platforms empowered for good exchange between local producers and groups of consumers).

As far as defining at the national level marketing channels areas of the “short food chain”, it is firstly to outline that this provision is less inhibitory than the definition of label. Indeed it regulates trade in a local area only within the framework of administrative regulation of markets, as it does not introduce a sign circulating with the goods themselves. This consideration reduces the risk of barriers affecting intra community trade, since the European Court of Justice, with her Keck jurisprudence (Reich, 1994), allows Member States to define the rules concerning selling arrangements, without having effects on products themselves. Consequently, a legal definition of “local market”, on which basis a national legislation provides incentives reserved to local farmers for direct selling in local markets, could be lawfully referred to an administrative regional area. Therefore, it represents another relevant tool to promote, at the national level, local trade and sustainability of territory.

7. Conclusions.

The interest for the short food chain is growing in EU and national legislation, considering its role in achieving environmental goals. This approach has a relevant effect on the reinterpretation of market performing principles, considering the role of Member States in defining flexible rules applicable to local markets, as well as considering a different interpretation of the principle of the free movement of goods, in front of local market dimensions.

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