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Social Sustainability in the CAP 2023–2027

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Abstract. This research examines agricultural labour through the lens of the sustainable development model set out in the UN 2030 Agenda. In this context, the Common Agricultural Policy (CAP) 2023–2027 introduced a new element: *social conditionality*, which aims to establish a fairer balance among environmental, economic, and social values. Although the measure carries significant symbolic weight, it also presents several critical issues, particularly in relation to its transposition by the Italian legislator.

Keywords: *Agriculture; Social Conditionality; Social sustainability.*

1. Social Sustainability and Agriculture in the UN 2030 Agenda

Any research aimed at analysing the relationship between agricultural labour and sustainability must begin with the identification of the fundamental pillars underpinning the framework of the sustainable development model, in order to assess its solidity and stability in terms of values and, subsequently, its translation into positive law¹. This methodological approach is supported by a substantial body of

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¹ See V. Speciale, *Il “diritto dei valori”, la tirannia dei valori economici e il lavoro nella Costituzione e nelle fonti europee*, in *Costituzionalismo.it*, 2019, n. 3, 98, especially 104, where the author highlights how, in the process of “positivisation”, the value acquires the typical effects of “juridicity”, understood in its prescriptive character as “what ought to be”, along with all the entailing legal consequences.

scientific literature that has already engaged in examining labour law institutions through the lens of sustainable development².

With reference to the cornerstone of the sustainable development model – the UN 2030 Agenda – one scholar³ captures its essence by invoking the metaphor of a ‘North Star for the first experiences of high-seas navigation’, guiding various stakeholders in the hope that its reference values will be transformed into the *primary* normative foundation for future centuries⁴.

Through its 17 Goals, the UN 2030 Agenda affirms not only that, on a scientific level, the need to move beyond an analytical approach based on compartmentalised disciplines has become increasingly recognised, but also that, on a broader level, sustainable development – as the integration of social, economic, and environmental objectives⁵ – is unattainable unless the various interlinked and complementary challenges of our time are effectively addressed and resolved.

By way of example, the goal of eradicating poverty (Goal 1) is closely interconnected with that of reducing inequalities (Goal 10), both of which are inextricably linked to the promotion of sustained economic growth and decent work (Goal 8).

At the normative level, Article 11 of the Treaty on the Functioning of the European Union (TFEU) promotes a commitment to *sustainable behaviour*, requiring the European Union to integrate the principle of sustainable development into the formulation and implementation of its policies and activities.

The Union has recognised the urgency of aligning economic policy with

² One can think, for instance, of the AIDLASS Congress held in Taranto in 2021. See Aa. Vv., *Il diritto del lavoro per una ripresa sostenibile. XX congresso nazionale AIDLASS, Taranto, 28-30 ottobre 2021*, La Tribuna, 2022. In particular, refer to the paper by M. Marazza, *Il diritto del lavoro per la sostenibilità del valore sociale dell'impresa*, 191, and the presentation by A. Riccardi, *Quale sostenibilità per Taranto*, 451. See also A. Lassandari, *Il lavoro nella crisi ambientale*, in *Lavoro & Diritto*, 2022, n. 1, 7; V. Cagnin, *Diritto del lavoro e sviluppo sostenibile*, Cedam, 2018; A. M. Battisti, *Lavoro sostenibile imperativo per il futuro*, Giappichelli, 2018. Moreover, this is the perspective adopted in the PRIN Liveable – Labour as a driver of sustainable development project. See <https://prinliveable.uniud.it/>.

³ D. Garofalo, *Diritto del lavoro e sostenibilità*, in *Diritto Lavoro Mercati*, 2021, n. 1, here 37.

⁴ E. K. Rakhyn K. Bosselmann, *Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law*, in *Review of European, Comparative & International Environmental Law*, 2015, vol. 24, n. 2, 194.

⁵ B. Caruso, R. Del Punta, T. Treu, *Manifesto per un diritto del lavoro sostenibile*, 2020, 15, where the authors note that the close relationship between labour law and the economy must necessarily “take into account” the environmental impacts of our production system.

environmental and social imperatives, particularly since the adoption of the Green Deal⁶ - although, more recently, some Member States have attempted to challenge or suspend its implementation.

Further reflections⁷ arise when considering the sustainability of agriculture, where the compass is not only Goal 8 of the UN 2030 Agenda but also Goal 2, which aims to end hunger, achieve food security, improve nutrition, and promote sustainable agriculture. Clearly, the emphasis here is primarily on the latter objective: the promotion of sustainable agriculture. Scholars⁸ have observed that this goal encompasses the protection of rural heritage (including landscape and soil fertility) as well as the promotion of quality employment in the agricultural sector.

The link between the agricultural system and decent work becomes particularly evident when considering that increasing agricultural productivity (Target 2.3) and implementing resilient agricultural practices (Target 2.4) also entail the elimination of practices that distort global agricultural markets (Target 2.b) – notably including the exploitation of labour through forms of *modern slavery* (Target 8.7).

2. Social Conditionality in the CAP 2023–2027

Turning to the normative translation of the “sustainable behaviour” outlined in the UN 2030 Agenda in relation to agriculture, it is important to note that Article 39 of the TFEU already lays the groundwork for a sustainable policy framework.

According to this provision, European agricultural policy must increase productivity by fostering technical progress and ensuring the rational development of agricultural production, alongside the more efficient use of production factors – “in particular labour” (point a). It must also guarantee a fair standard of living for the agricultural population, particularly through improvements in individual income for those employed in the sector (point b). These objectives have been taken up and further developed in the Common Agricultural Policy (CAP), reaffirming a long-standing economic principle: that progress and the achievement of economic goals do not automatically ensure improvements in the social

⁶ See https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_it.

⁷ See <https://tg24.sky.it/economia/approfondimenti/green-deal-ue-cosa-e?card=5>.

⁸ D. Garofalo, *Diritto del lavoro e sostenibilità*, cit., 57.

conditions of low-wage workers⁹. Progress must be accompanied by a “better use” of labour, ensuring a fair standard of living in all cases.

Article 39 TFEU thus serves as the legal foundation for EU agricultural policies, particularly as shaped by the Farm to Fork Strategy¹⁰, a key component of the European Green Deal, which has emphasised the core pillars of sustainable agriculture.

The Farm to Fork Strategy embodies the polysemic nature of sustainability, wherein environmental, social, and economic objectives converge towards establishing a food system that equitably distributes the wealth – both natural and economic – generated by the agricultural sector. This includes fair distribution among agricultural workers and the safeguarding of the rural environment¹¹.

In this context, the CAP 2023–2027 operates through Regulation (EU) 2021/2115, along with its accompanying Regulation (EU) 2021/2116 on sanctions. These regulations introduce a new layer to the pre-existing environmental, food, and agronomic conditionalities (Article 12) by adding a “social conditionality” mechanism¹². This seeks to remove labour conditions from pure market dynamics, positioning the cost of labour as

⁹ E. S. Phelps, *Rewarding Work: How to Restore Participation and Self-Support to Free Enterprise*, Harvard University Press, 2006, 40. More recently, in Italy, about the relationship between economic growth and the reduction of inequalities, see also L. Corazza *Verso un nuovo diritto internazionale del lavoro*, in *Giornale di diritto del lavoro e delle relazioni industriali*, 2019, vol. 163, n. 3, 487, especially 491.

¹⁰ As outlined in the Strategy: “the COVID-19 pandemic has also made us aware of the importance of critical staff, such as agri-food workers. This is why it will be particularly important to mitigate the socio-economic consequences impacting the food chain and ensure that the key principles enshrined in the European Pillar of Social Rights are respected, especially when it comes to precarious, seasonal and undeclared workers. The considerations of workers’ social protection, working and housing conditions as well as protection of health and safety will play a major role in building fair, strong and sustainable food systems”.

¹¹ I. Canfora, V. Leccese, *La condizionalità sociale nella nuova PAC (nel quadro dello sviluppo sostenibile dell’agricoltura)*, in WP CSDLE “Massimo D’Antona”.IT – 460/2022, 1.

¹² Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 Reference may be made to N. Deleonardis, *Lavoro in agricoltura e sostenibilità alla luce dei recenti indirizzi della Politica Agricola Comune 2023-2027*, in *Il diritto dell’agricoltura*, 2023, n. 3, 315; N. Deleonardis, *Salute e sicurezza dei lavoratori agricoli e posizione di garanzia del datore di lavoro nel meccanismo di condizionalità sociale*, in *Il diritto della sicurezza sul lavoro*, 2024, n. 1, 97.

an “independent variable”¹³.

Article 14(1) of Regulation 2021/2115 obliges Member States – unlike previous frameworks¹⁴ – to include, within their national CAP strategic plans, administrative penalties for farmers and other CAP beneficiaries who breach labour and employment standards or fail to comply with employer obligations outlined in Annex IV, which is attached to the regulation.

Paragraph 2 further mandates that Member States consult social partners in designing their strategic plans, while fully respecting their autonomy and their right to negotiate and conclude collective agreements. This appears to refer to the potential use of *erga omnes* collective bargaining to implement labour protections—an approach not currently guaranteed under Italian law¹⁵.

The administrative sanctioning system does not affect the rights and responsibilities of social partners where they are responsible for implementing the relevant legal acts listed in Annex IV, in accordance with national legal frameworks and collective bargaining provisions (Paragraph 3).

Focusing specifically on social conditionality, Annex IV is divided into two thematic areas: “employment” and “health and safety”. These refer to the Directive on transparent and predictable working conditions (Directive 2019/1152/EU) and two key health and safety directives: Directive 89/391/EEC and Directive 2009/104/EC.

The symbolic value of the social conditionality mechanism is widely acknowledged¹⁶. However, as has already been observed, the exclusion of collective bargaining from the legal acts listed in Annex IV significantly weakens the protective scope for agricultural workers – especially when compared to the amended proposal adopted by the European Parliament¹⁷. The absence of an explicit reference to trade union

¹³ I. Canfora-S. Leccese, *La condizionalità sociale*, cit., 10.

¹⁴ The CAP reform regulation No. 2017/2393 only provided Member States with the opportunity to exclude farmers not registered in national tax or social security registers from eligibility for direct payments (see recital No. 28). On this point, as well as in relation to other attempts by the European Commission, see I. Canfora, *La filiera agroalimentare tra politiche europee e disciplina dei rapporti contrattuali: i riflessi sul lavoro in agricoltura*, in *Giornale di diritto del lavoro e delle relazioni industriali*, 2018, vol. 158, n. 2, 261.

¹⁵ I. Canfora, V. Leccese, *La condizionalità sociale*, cit., 17-19.

¹⁶ *Ibidem*; F. De Michiel, *Prevenzione e contrasto dello sfruttamento lavorativo e del caporalato in agricoltura*, in *Lavoro Diritti Europa* 2023, n. 3, 16.

¹⁷ On 23 October 2020, the European Parliament approved amendments to the proposal for a Regulation of the European Parliament and of the Council laying down rules on

instruments effectively sidelines provisions found in collective agreements, limiting sanctionable conduct to employer violations of mandatory legal norms transposing EU acts (as detailed below)¹⁸.

More specifically, in the area of employment conditions, Annex IV reflects the principle that “knowledge is power”¹⁹, referencing Directive 2019/1152/EU²⁰. From a sustainability perspective—understood as an integrated model of social, economic, and environmental goals—the inclusion of provisions relating to labour transparency should be seen not only as a step towards improving agricultural workers’ conditions but also as a means to increase employers’ awareness of labour costs. This transparency can help reduce buyer power, which remains deeply entrenched in agri-food supply chains, and thereby contribute to fair competition across the EU and ensure the proper functioning of agri-food markets²¹. Two aspects of the provisions listed in Annex IV warrant

support for the strategic plans that Member States must draw up under the Common Agricultural Policy (CAP), funded by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), and repealing Regulation (EU) No. 1305/2013 and Regulation (EU) No. 1307/2013 of the European Parliament and of the Council; by way of example, Amendment Proposal No. 732 of Article 11-bis, now Article 14 of the final text, establishes the “Principle and scope of social conditionality” whereby the Parliament stated that “Member States shall include in their CAP strategic plan a system of conditionality, under which an administrative sanction is applied to beneficiaries receiving direct payments [...] if they fail to comply with the applicable labour and employment conditions and/or the employer’s obligations under all relevant collective agreements and social and labour legislation at the national, European Union and international levels”.

¹⁸ See also A. Marcianò, *Agricoltura e dinamiche sindacali nel diritto del lavoro della transizione ecologica*, in *Diritto delle relazioni industriali*, 2022, n. 3, 713, here 714; I. Canfora, V. Leccese, *La condizionalità sociale*, cit.

¹⁹ A. Zilli, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini giuridica, 2022, 112.

²⁰ See Articles 3-6, 8, 10, and 13, related to employment conditions. For an analysis of Directive No. 2019/1152 and its transposition into Italian law by Legislative Decree No. 104 of June 22, 2022, see, D. Garofalo, M. Tiraboschi, V. Filì, A. Trojsi (a cura di), *Trasparenza e attività di cura nei contratti di lavoro. Commentario ai decreti legislativi n. 104 e n. 105 del 2022*, Adapt University Press, 2022; G. Proia, *Trasparenza, prevedibilità e poteri dell’impresa*, in *Labor*, 2022, 6, 641 ss.; A. Tursi, *Decreto trasparenza: prime riflessioni*, in *Diritto delle relazioni industriali*, 2023, 1, 1.

²¹ On the need for “transparent” agri-food supply chains, see also I. Canfora, *La filiera agroalimentare*, cit. In the same vein, see also the “Three-Year Plan to Combat Labour Exploitation and Illegal Hiring 2020-22” p. 16, which lists among the “main challenges to improve the functioning of the supply chain [...] the prevention of unfair market practices; the fight against value leakage along the supply chain; transparency in the agricultural labour market and simplification of administrative procedures; the promotion

specific attention.

Article 4 of Directive 2019/1152 imposes an obligation on employers to “inform workers of the essential aspects of the employment relationship” (paragraph 1), which are itemised in paragraph 2. These constitute the minimum requirements for ensuring that the terms of employment are properly defined and protected²². However, in Annex IV of Regulation 2021/2115, the obligation is framed less as the duty to disclose contractual terms and more as an expectation that “employment in the agricultural sector shall be subject to a labour contract”. It is clear that this does not negate the employer’s obligation to communicate the essential elements – such duties are implicit in the formalisation of the contract itself²³. This wording reflects the view that the unsustainable nature of agricultural labour stems primarily from the widespread absence of formal employment contracts. The need, therefore, is to reinforce transparency requirements surrounding legally valid (often fixed-term) employment relationships – particularly relevant in the Italian context²⁴. Accordingly, Annex IV addresses both the transparency of contract terms and the transparency of the employment relationship itself, emphasising the formal (written) contract as a baseline requirement.

The inclusion of Article 13 of Directive 2019/1152 in Annex IV raises further points of analysis. This article obliges Member States to reduce CAP funding where employers fail to provide mandatory training²⁵. This reflects an attempt to align labour regulation with the evolving demands of multifunctional agriculture²⁶, as well as to meet the sector’s economic

of mechanisms such as joint responsibility, traceability, and product certification; and forms of producer aggregation, including cooperatives”.

²² See L. Mannarelli, G. Pigliarini, C. E. Schiavone, in D. Garofalo, M. Tiraboschi, V. Fili, A. Trojsi (a cura di), *Trasparenza*, cit., 154; G. Proia, *Trasparenza*, cit., 643-644.

²³ This must be provided in written mode. See Article 3 of Directive No. 2019/1152, as referenced in Annex IV of the Regulation 2021/2115.

²⁴ See C. Faleri, *Il lavoro agricolo. Modelli e strumenti di regolazione*, Giappichelli, 2020, 35.

²⁵ For an analysis of Article 13, as transposed into the Italian legal system by Article 11 of Legislative Decree No. 104 of 2022, see F. Stamerra, *La formazione obbligatoria ai sensi dell’art. 11 del d.lgs. n. 104/2022*, in D. Garofalo, M. Tiraboschi, V. Fili, A. Trojsi (a cura di), *Trasparenza*, cit., 341.

²⁶ According to C. Faleri, *Il lavoro agricolo*, cited, p. 2, to be considered multifunctional, “the sole production of primary goods is not recognised as the only function of agriculture”; rather, “to be regarded as a strategic sector to be modernised and made competitive, it must address the new challenges arising from climate change, food security, biodiversity, and the protection of natural resources”. See also A. Frascarelli, *L’evoluzione della Pac e le imprese agricole: sessant’anni di adattamento*, in *Agriregionieuropa*, 2017, n. 50, 1.

and productive challenges—rising costs, evolving distribution models, and technological innovation. In this way, the provision reinforces the objectives of Article 39 TFEU: promoting business competitiveness in a sustainable way, which necessarily includes a “better use” of labour through adequate training and the rational adoption of technology²⁷.

As noted earlier, Annex IV also references health and safety measures, specifically Directive 89/391/EEC on the general framework for worker protection and Directive 2009/104/EC on minimum safety requirements for the use of work equipment. These are especially relevant in a sector that is subject to natural cycles and climatic conditions, which not only affect the performance of labour obligations but also pose risks to worker health²⁸. Although similar health and safety measures were proposed in earlier iterations of the CAP, they were not enshrined in binding legislation²⁹. In contrast, Article 14 of the current regulation incorporates these aspects, thereby acknowledging the link between agricultural work and exposure to unsafe or unhealthy conditions.

Nonetheless, the scope remains limited. The directives cited address working conditions but do not refer to decent housing, an urgent issue for seasonal agricultural workers³⁰. This omission is significant, as many seasonal workers live in precarious and degrading conditions. An explicit reference to housing would have aligned more closely with recent EU policy trends, which recognise the strong correlation between indecent working conditions and substandard accommodation³¹.

²⁷ C. Faleri, *L'innovazione tecnologica nel settore agricolo tra vecchie criticità e nuove opportunità*, in Labor, 2019, n. 2, here 147.

²⁸ See N. Deleonardis, *Salute e sicurezza dei lavoratori agricoli*, cit., especially § 2.

²⁹ J. Hunt, *Making the CAP Fit: responding to the Exploitation of Migrant Agricultural Workers in the EU*, in *International Journal of Comparative Labour Law and Industrial Relations*, 2014, vol. 30, n. 2, 146 ss.

³⁰ See the study of M. Giovannetti, S. Miscioscia, A. Somai, *Le condizioni abitative dei migranti che lavorano nel settore agro-alimentare. Prima indagine nazionale*, 2022, www.integrazionemigranti.gov.it.

³¹ See the EU Strategic Framework on Health and Safety at Work 2021–2027, which notes that “mobile and cross-border workers, including seasonal workers from the EU and third countries, may be more exposed to unhealthy or unsafe living and working conditions, such as inadequate or overcrowded accommodation or a lack of information about their rights”.

3. The Sanctioning System in Regulation 2021/2116

Under Article 14 of Regulation No. 2021/2115, the administrative sanction must be “effective and proportionate”. while complying with the relevant provisions set out in Title IV, Chapter V of Regulation No. 2021/2116/EU (paragraph 3), “in the version that is applicable, and as implemented by the Member States” (paragraph 4). A key aspect for analysis concerns the deterrent effect of such sanctions. Article 14 provides for the imposition of a proportional and effective fine, as specified in Title IV, Chapter V of Regulation No. 2021/2116, which governs the financing, management, and monitoring of the Common Agricultural Policy (see Articles 87–89)³².

According to Article 89 of Regulation No. 2021/2016, for the specific calculation of sanctions, Member States must apply, *mutatis mutandis*, the provisions of Article 85, paragraphs 2, 5, and 6, which regulate sanctions in cases of violations of the conditionality under Article 12, paragraph 1, of Regulation No. 2021/2115. Article 85 explicitly provides for a reduction of 3% of the total payments if non-compliance does not have serious consequences for achieving the norm’s objective (paragraph 2), which may be increased if such consequences are deemed serious or constitute a direct risk to public or animal health (paragraph 5). Conversely, if non-compliance persists or recurs within three consecutive calendar years, the reduction increases to 10% of the funding. Further repetitions of the same non-compliance, without valid justification, are regarded as cases of “intentional non-compliance” resulting in a reduction of up to 15% of the total payments (paragraph 6). Member States may exempt sanctions if the amount is less than €100, while sanctions are excluded where violations are due to force majeure or result from a public authority order³³.

In conclusion, the European legislator entrusts Member States with the adjustment of regulatory obligations while establishing minimum and maximum sanction limits. The deterrent capacity of this provision will be further examined in the following section, where the Union’s framework will be compared with the version enacted by the national legislator. It is important to note that this sanctioning tool is already familiar to the Italian legal system, having been reflected notably in the National

³² See Regulation 2021/2116/UE of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013.

³³ See Article 88, paragraph 2, letter a) e b), Regulation no. 2021/2116.

Recovery and Resilience Plan (PNRR). Within the objectives of Mission 2 (Green Revolution and Ecological Transition), Component 1 (Sustainable Agriculture and Circular Economy), and in line with the Farm to Fork strategy, the Plan aims to achieve a sustainable agri-food chain, addressing both environmental and social dimensions. To support the modernisation of agricultural production structures, Ministerial Decree No. 22 of December 2021 provides for the revocation of economic aid – granted as capital contributions or loans³⁴ – if the “obligations established by labour legislation, social security and assistance law, or national collective labour agreements are not respected for employees” (Article 15, paragraph 3, letter a)³⁵.

Undoubtedly, the Italian and European measures are not perfectly equivalent: the PNRR targets national modernisation, specifically within the agricultural sector under Mission 2; the CAP pursues similar objectives but within a broader context, balancing economic interests with the general aims outlined in Article 39 TFEU. This nuance is significant. In a competitive agricultural market such as Europe’s—where enterprises are increasingly “far from the model of small and/or family-run businesses”³⁶ – it would have been bold to introduce a sanctioning system with a strong impact on the sector, particularly regarding minimum sanctions when non-compliance does not result in “serious consequences” for workers.

While it is essential, from the perspective of sustainable development, to elevate social objectives beyond their previous subordination to economic and environmental aims, a difference remains compared with the agricultural development programme outlined in the PNRR. This difference concerns not only the deterrent effect of the two measures but also the scope of applicable legal sources, with the 2021 Ministerial Decree extending to labour relations governed by national collective bargaining.

4. The Transposition of the Regulation into the Italian Legal System

At first glance, the Italian Strategic Plan for the implementation of the CAP appears to align with the Commission’s guidelines and Regulations Nos. 2021/2115 and 2021/2116. It emphasises that the sanctioning

³⁴ Analytically described in Annex A of Ministerial Decree of December 12, 2022.

³⁵ About this point, see also A. Marcianò; *Agricoltura e dinamiche sindacali*, cit.; I. Canfora, V. Leccese, *La condizionalità sociale*, cit.

³⁶ I. Canfora, *La filiera agroalimentare tra politiche europee*, cit.

system for social conditionality will be implemented “in accordance with the provisions of Article 88 of Regulation (EU) 2021/2116 and will take into account the principles established in Article 85 of the same regulation”. The system will be based on violations of labour law and workplace safety directives, adjusting the reduction of payments “based on the severity of the violated regulations, considering the specific articles of the individual directives involved; the duration or repetition of the infraction; the intentionality of the violation; and the principle of compliance”³⁷. Social conditionality was introduced in Italy from 1 January 2023³⁸ and subsequently operationalised through Chapter II, Articles 2 and 3, of Legislative Decree No. 42 of 2023, as amended by Articles 3 and 4 of Legislative Decree No. 188 of 2023, which outlines the sanctions³⁹.

The corrective decree, Legislative Decree No. 188 of 2023, introduced significant amendments. Initially, Article 2, paragraph 2, excluded the number of workers involved from the parameters for calculating penalties; however, this provision was repealed by the corrective decree⁴⁰, which introduced a new paragraph 1-bis. This new paragraph stipulates the suspension of economic aid if the beneficiary’s enterprise has been subjected to preventive seizure as part of a procedure concerning offences under Article 603-bis of the Penal Code, until such precautionary measure is revoked—unless the judge orders judicial control or appoints a judicial administrator to ensure the continuity of the business. Paragraph 1-bis

³⁷ See the CAP Strategic Plan (PSP) 2023-2027 for Italy, December 2022. In particular, the position of the legislator is derived from the 2021 Report on the CAP Strategic Plan of November 16, 2022, p. 3600. You can view it at https://www.reterurale.it/PAC_2023_27/PianoStrategicoNazionale.

³⁸ See the Ministerial Decree of November 11, 2022. It is noted that the payment system was regulated by Ministerial Decree No. 660087 of December 23, 2022, National Provisions for the Application of Regulation (EU) 2021/2115 of the European Parliament and of the Council of December 2, 2021, concerning direct payments, later amended by Ministerial Decree No. 185145 of March 30, 2023.

³⁹ About Legislative Decree No. 42 of 2023, N. Deleonardis, *Salute e sicurezza*, cit.; N. Deleonardis, *Lavoro in agricoltura*, cit.; M. D’Onghia, C. Faleri, *Regole e tecniche di tutela del lavoro agricolo tra vecchi «vizi» e nuove «virtù»*, in *Rivista giuridica del lavoro*, I, 2024, n. 2., 194-195; F. De Michiel, *Prevenzione e contrasto*, cit.; C. Valenti, *Riflessioni in tema di sostenibilità sociale nel diritto del lavoro tra tecniche di tutela e prove di regulatory compliance*, in *Diritti Lavori Mercati*, 2024, n. 3, 469. From a comparative perspective, see C. Valenti, *La régulation du travail agricole par la conditionnalité sociale en France et en Italie*, in *Revue de droit comparé du travail et de la sécurité sociale*, 2025, n. 1, 152.

⁴⁰ Contrary to what was advocated by EFFAT, which called for a gradual increase in the reduction depending on the number of workers involved. See EFFAT, *Position on sanctions to be applied in the context of CAP Social Conditionality*, November 22, 2022. Available at effatt.org.

should be read in conjunction with Article 603-ter of the Penal Code, which mandates exclusion from benefits, funding, contributions, or subsidies from the State, other public bodies, or the European Union for two years within the sector of activity where the exploitation occurred. It should also be read alongside Article 3 of Law No. 199 of 2016, which extends judicial control and administration specifically in cases of labour exploitation.

This provision appears inconsistent with Article 603-ter of the Penal Code, which does not provide exceptions to the exclusion from credit benefits. Thus, the legislator's priority seems to lie more in safeguarding business continuity than in reinforcing the deterrent effect of the rule, given that a company may continue to receive CAP funds as long as it is under judicial oversight or temporarily divested of its powers.

Regarding social conditionality's sanctioning system, the reduction of economic benefits, after the amendments introduced by the corrective decree, is set at 3%, 5%, or 10% of payment amounts, increasing to 20% in cases of repeated conduct and 30% where intentionality is proven. Initially, the national legislator applied regulatory percentages for funding reductions, except for the minimum reduction of 1% provided under Article 3, paragraph 2, of Legislative Decree No. 42 of 2023, which is lower than the minimum penalty of 3% prescribed in Article 85, paragraph 2, of Regulation No. 2021/2116. The new amendment, however, enhances deterrence, although a further ministerial decree appears necessary for coordination⁴¹. The reduction is at least 10% if more than eight workers are implicated, thus reinforcing the causal link between mass recruitment and labour exploitation, consistent with European Union directives.

Concerns arise regarding a provision (Article 3, paragraph 5) that allows for a reduction of the sanction – ranging from 25% up to 100%, depending on the initial reduction – if the employer rectifies the violation

⁴¹ Pursuant to Article 2 of Ministerial Decree No. 337220 of 28 June 2023, the percentage reduction of CAP funding is determined by a calculation based on the cumulative score of infringements identified and listed in the Annex, with each violation assigned a specific value according to its severity. Where the total score falls between 1 and 3, the funding reduction is set at 1%; if between 4 and 18, the reduction rises to 3%; and if between 19 and 111, it increases to 5%. As previously noted, following the amendments introduced by corrective Decree No. 188/2023, the minimum reduction percentage has been raised to 3%, subsequently increasing to 5% and 10%, while in cases of persistent or intentional non-compliance, reductions are set at 20% and 30%, respectively. Consequently, an additional decree appears necessary to harmonise the deduction mechanism.

within a timeframe prescribed by the competent authorities following notification. While Article 87, paragraph 1, of Regulation No. 2021/2116 requires Member States to use applicable enforcement systems to ensure compliance with obligations outlined in Annex IV of Regulation No. 2021/2115, doubts emerge about the consistency of the Italian transposition with the European conditionality mechanism. The Italian provision diverges from Regulation No. 2021/2116, which permits non-application of sanctions only in cases of force majeure or orders from public authorities (Article 88, paragraph 2, letter b), omitting provisions on sanction reductions.

Further reflection is warranted. Unlike doctrinal proposals advocating legislative support for regularisation before violations are detected⁴², or exceptional measures introduced during the Covid-19 pandemic encouraging spontaneous disclosure of undeclared work⁴³, this provision expedites compliance following an established violation. The legislator seems to have modelled this on the mandatory warning system under Article 13 of Legislative Decree No. 124 of 23 April 2004⁴⁴, introducing a partial or total “discount” on sanctions if the beneficiary complies within the prescribed period⁴⁵. The resemblance between these systems lies in the intent to promote the emergence and transparency of irregular labour, encouraging voluntary compliance rather than a purely punitive approach. However, a crucial distinction is that the mandatory warning system does not involve financial benefits, unlike the CAP framework. Both mechanisms aim to advance decent working conditions through formalised labour relations, but the provision here risks undermining the measure’s sanctioning power by effectively rewarding private employers with European funding. Furthermore, under the mandatory warning system, sanctions may be reduced to the minimum legal amount or to a quarter of the established sanction (Article 13, paragraph 3, Legislative

⁴² V. Pinto, *Rapporti lavorativi e legalità in agricoltura. Analisi e proposte*, in *Giornale di diritto del lavoro e delle relazioni industriali*, 2019, n.1, 31.

⁴³ The reference is to Article 103 of Decree-Law No. 34 of May 29, 2020, designed by the legislator primarily “to meet the unmet demand for labor in two sectors characterised by high rates of irregularity (agriculture and domestic work)”. V. D. Garofalo, *Lo sfruttamento del lavoro tra prevenzione e repressione nella prospettiva dello sviluppo sostenibile*, in *Argomenti di diritto del lavoro*, 2020, n. 6, here 1332.

⁴⁴ For an analysis see L. Nogler, C. Zoli (a cura di), *Commentario sulla razionalizzazione delle funzioni ispettive*, in *Nuove leggi civili commentate*, 2005, n. 4, 972.

⁴⁵ V. Ferrante, *Economia “informale” e politiche del lavoro: un nuovo inizio?*, in *WP CSDLE “Massimo D’Antona”.IT – 337/2017*, 5 and 28.

Decree No. 124/2004), whereas under social conditionality, the reduction can reach 100%.

The question remains whether the Italian measure will effectively encourage the formalisation of irregular work, given that sanctions may be fully waived if violations are remedied promptly, potentially weakening the mechanism introduced by the European legislator. When considering measures to combat irregular employment, the reduction of CAP structural funds could bolster the deterrent effect. It is important to note that such reductions would be in addition to fines under Legislative Decrees Nos. 104 of 2022 and 81 of 2008, as well as penalties applicable to irregular work (the so-called “maxi fine” under Article 3, paragraph 3 et seq., of Decree-Law No. 12 of 22 February 2002) or labour exploitation (regulated by Law No. 199 of 2016).

Ultimately, CAP beneficiaries may conduct a cost-benefit analysis, opting to violate the legal provisions in Annex IV of Regulation 2021/2115 and subsequently comply once detected, thereby potentially benefiting from a reduction – up to 100% – in sanctions.

5. Concluding Remarks

In conclusion, it is pertinent to consider whether the social conditionality mechanism aligns with a model of sustainable development. Sustainability may be understood as a growth paradigm that permeates all aspects of human existence, fundamentally characterised by the pursuit of balance between environmental, social, and economic objectives⁴⁶. The conditional granting of CAP funds thus represents an instrument aimed at achieving the objectives set forth in Article 39 of the TFEU. However, at a more practical level, while the mechanism holds significant symbolic value, it requires further development, not only regarding the deterrent efficacy of sanctions but also concerning the applicable reference sources, including collective bargaining agreements. On this latter point, it has been noted that the European Parliament’s amended proposal initially incorporated provisions derived from contractual sources but later removed such references to avoid undermining competition among

⁴⁶ The mere balancing of economic and environmental needs cannot be regarded as truly sustainable. For example, the Lombard agricultural company StraBerry, which was honoured with the “Oscar Green” award by Coldiretti for its commitment to environmental sustainability, was nevertheless found guilty of labour exploitation under Article 603-bis of the Italian Penal Code. See S. Battistelli, *Cittadinanze e sfruttamento nel caso di un’azienda agricola “innovativa”*, in *Lavoro & diritto*, 2021, n. 2, 321.

European agricultural enterprises, given the varying protective regimes across Member States⁴⁷. Yet, this approach would be familiar within the Italian legal system; for instance, Article 36 of Law No. 300 of 20 May 1970 (the Workers' Statute) mandates that public benefits, including contracts and concessions, include clauses obliging beneficiaries to apply conditions no less favourable than those stipulated in relevant collective labour agreements⁴⁸, with provisions for revocation of benefits and potential exclusion from public contracts in cases of serious or repeated violations. Similarly, eligibility for financial and credit benefits from the state is contingent upon possession of the Single Certification of Compliance and adherence to collective agreements signed by representative trade unions (Article 1, paragraph 1175, Law No. 296 of 27 December 2006). Extending Annex IV to encompass provisions from collective bargaining would therefore broaden the scope of social conditionality clauses, fostering a more integrated and mutually reinforcing system between external regulatory sources and collective agreements. The European measure, however, offers only partial coverage relative to the protections established for agricultural workers—for example, in the context of migrant worker rights or working time regulations⁴⁹. This legislative choice is reflected in the transposition of social conditionality into national strategic plans, such as Italy's, where the measure appears insufficiently effective, especially when supplemented by provisions that introduce potential “loopholes” for non-compliance (see Article 3, paragraph 5, Legislative Decree No. 42 of 2023). It is true that CAP funds constitute a vital source of income for agricultural operators and support the EU's agricultural and food supply; thus, wholly denying access to funds for violators⁵⁰ might have risked increasing production

⁴⁷ I. Canfora-V. Leccese, *La condizionalità sociale*, cit., 20. In this regard, it is worth recalling the observations of Gragnoli, who, while discussing a distinct issue concerning the so-called “social clauses” in subcontracting within a multi-tiered system, argues that “the crucial point is the realization of economic freedoms in the absence of complete harmonisation of national laws at the European level. It is no coincidence that a market aspiring to genuine competition cannot function effectively if labour is subject to excessively divergent regulations across the regions in which it operates”. See E. Gragnoli, *Il contratto nazionale nel lavoro privato italiano*, Giappichelli, 2021, 268.

⁴⁸ I. Alvino, *Clausole sociali, appalti e disgregazione della contrattazione collettiva nel 50° anniversario dello Statuto dei lavoratori*, in *Lavoro Diritti Europa*, 2020, n. 2; E. Gragnoli, *Il contratto nazionale nel lavoro privato italiano*, cit., 238.

⁴⁹ In this sense, see also F. De Michiel, *op. cit.*, 16.

⁵⁰ C. Inversì, *Un lavoro di qualità per filiere agricole sostenibili: strumenti contrattuali e di autoregolazione*, in O. Bonardi, L. Calafà, S. Elsen, R. Salomone (a cura di), *Lavoro sfruttato e caporalato: una road map per la prevenzione*, Il Mulino, 2023, here 212-213.

costs and, consequently, food prices, disproportionately affecting economically vulnerable populations and generating unintended consequences. Nonetheless, a more robust sanctioning regime—most critically, one without discretionary reductions—would better address the distortions that undermine the agricultural sector. Ultimately, the prevailing approach reflects the intent of both European and national legislators to preserve established economic and production systems, prioritising fair competition within the European market and the effective functioning of agri-food and agro-industrial sectors, with the guarantee of decent work remaining a secondary consideration.

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