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UNIVERSITÀ DEGLI STUDI DI ROMA "FORO ITALICO"

Rivista scientifica trimestrale di diritto amministrativo (Classe A)

Pubblicata in internet all'indirizzo www.amministrativamente.com

Rivista di Ateneo dell'Università degli Studi di Roma "Foro Italico"

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Carlo Rizzo

FASCICOLO N. 1/2025

Estratto

Iscritta nel registro della stampa del Tribunale di Roma al n. 16/2009

ISSN 2036-7821

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Administrative "official controls" of safety in the agri-food supply chain

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Sommario

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Abstract

In application of the principle of precaution and in light of EU policy, each country in the European Union must have an effective system of controls defined as "official", addressed to verify and, where necessary, impose, the compliance of activities and products with the european legislation, along the whole agri-food chain. Control power constitutes the most important phase of the exercise of national administrative action on the agri-food supply chain. Administrative assistance is the institute that guarantees, within the scope of specific agreements, the participation of the competent authorities of a member State in official controls carried out by the competent authorities of another State of the European Union, in a collaborative perspective. The technical-legal analysis so far carried out provides an overview of the complex multilevel system around which, between the european legislation and internal administrative action, the official control activities over the agri-food chain are structured, highlighting the relevance of strengthening a systemic approach of coordination, eventually supported by the development of an agri-food administratrive law.

* *Il presente lavoro è stato sottoposto al preventivo referaggio secondo i parametri della double blinde peer review*

ISSN 2036-7821

1. Introduction.

The multifunctional agri-food sector is relevant from a legal-administrative point of view, both in relation to the food production system with its natural interconnections with human health protection and its effects on territories, landscapes and productive systems[1]. In fact, the agri-food sector is closely connected to the development issues of local communities, the rational exploitation of the land, the sustainable management of resources[2] and, last but not least, the preservation of biodiversity[3].

Therefore, the intervention of public authorities in the matter, spanning from the care of health interests to the regulation of productive and commercial activities, also covers environmental law *tout court* and the policies of territorial government[4].

The doctrine[5] has highlighted the connection between food chain regulation and environmental law, noting how both the transversal sectors are related to the relationship between man and nature with its transformations. In the current time of rapid technical-scientific innovation, in which an increasing regulatory support is needed for the protection of health, ecosystems and factors of production, the food factor plays a crucial role to connect, through the action of Public Administration, individual human welfare with agro-industrial economic well-being and, especially, with the collective one of ecological and social balance, as a primary factor for the development of the link between environment and society. The establishment of a conflicting or synergic relationship between the environment and nutrition depends

* The work was supported by the Next Generation EU - Italian NRRP, Mission 4, Component 2, Investment 1.5, call for the creation and strengthening of Innovation Ecosystems, building "Territorial R&D Leaders" (Directorial Decree n. 2021/3277) - project *Tech4You - Technologies for climate change adaptation and quality of life improvement*, n. ECS0000009, Spoke 3 - PP 3.4.3 -Action 5.

[1] M. SOLLINI, *Il sistema della sicurezza alimentare. Profili di diritto amministrativo*, dicembre 2023, *Nuovi problemi di amministrazione pubblica*, 1-352, especially 1-19.

[2] C. FILICETTI, *Analisi dello sviluppo sostenibile all'interno della filiera vitivinicola*, in *Amministrativ@mente*, Rivista scientifica trimestrale di diritto amministrativo, fasc. n. 4/2024, in *www.amministrativamente.com*, 1769-1795.

[3] The protection of biodiversity is subjected to specific internal legal regulations within the Law 1 December 2015, n. 194, "Disposizioni per la tutela e la valorizzazione della biodiversità di interesse agricolo e alimentare" (*Provisions for the protection and valorization of biodiversity of agricultural and food interest*), introducing a series of innovative provisions for the protection and valorization of biodiversity of agricultural and food interest. As noted in the literature, the law n. 194/2015 represents a possible regulatory sphere of interaction between environmental law and food law; about it see C. NAPOLITANO, *Il bene alimentare: necessita` e sostenibilità*, in *Il diritto dell'economia*, 2021, 1, 173.

[4] A. FIORITTO, *Agricoltura*, in *Trattato di diritto amministrativo europeo*, a cura di M.P. CHITI e G. GRECO, Parte Speciale, Vol. I, Milano, 2007, 25 ss.

[5] Cfr. G. ROSSI, *Diritto dell'ambiente e diritto dell'alimentazione*, in *Riv. quad. dir. amb.*, 1/2015, 3 ss.; M. GNES, *Alimenti*, in *Trattato di diritto amministrativo europeo*, a cura di M.P. CHITI e G. GRECO, Parte speciale, Tomo I, Milano, 2007, 119 ss.

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entirely on the system's ability to actively respond to the dictates of sustainability[6] and integration. With respect to the environmental-ecological dimension in a sustainable perspective, the food system should guarantee a production compatible with the preservation of natural resources and biodiversity in the context of on-going climate change.

In this scenario, one of the most important objectives of public action concerns with "food safety"[7], which can be defined as the condition to which all people have access, economically and socially and materially, to foods that are safe, nutritious and sufficient to satisfy needs and preferences as well as to ensure an active and healthy human life[8]. The concept of food safety, which also permeates that of "food security"[9], referring to the need to have enough food and, therefore, safety of food availability, is precisely connected to the guarantee of hygiene and healthiness of foods, and therefore to the absence of risks for human health, and is understood both as toxicological and nutritional safety of food as well as information security[10] of the user regarding the characteristics of food and its traceability[11]. This more precise meaning of food safety involves the chain processes of food production, transformation, transportation and human consumption[12], which will be referred to

[6] Cfr. *funditus* F. FRACCHIA, *Il principio dello sviluppo sostenibile*, in AA.VV., *Studi sui principi del diritto amministrativo*, a cura di M. RENNA, F. SAITTA, Milano, 2012, 433 ss.; A. POLICE, *Il giudice amministrativo e l'ambiente: giurisdizione oggettiva o soggettiva?*, in vol. A.I.D.U n. 10., *Ambiente, attività amministrativa e codificazione*, Atti del primo colloquio di Diritto dell'ambiente - Teramo, aprile 2005 (a cura di D. DE CAROLIS, E. FERRARI E A. POLICE), Milano, 2005, 297 ss.; G. TERRACCIANO, *La tutela dei beni ambientali; la gestione dei vincoli paesaggistici*, in *Gazzetta ambiente*, n. 4/5, 1995, 239 ss.

[7] I. MARKLINDER, V. WERSÉN, K. JAMES, *Food safety and healthcare professionals: The need for education and research*, in *Food Control*, vol. 171, 2025, 111118, in *https://doi.org/10.1016/j.foodcont.2024.111118*, also in *https://www.sciencedirect.com/science/article/pii/S0956713524008351)*.

[8] Cfr. FOOD AND AGRICULTURE ORGANIZATION (FAO), *The state of food insecurity*, Roma, 2001.

[9] V. PARISIO, *Food safety and quality law: a transnational perspective*, Torino, 2015, *passim*; M. RAMAJOLI, *Dalla «food safety» alla «food security» e ritorno*, in *Amministrare*, 2015, 2-3, 271 ss.

[10] About the concept of security, in general, see G. TROPEA, *Sicurezza e sussidiarietà. Premesse per uno studio sui rapporti tra sicurezza pubblica e democrazia amministrativa*, Naples, 2010, especially 80 ss. The author distinguishes between "external security", referring to everything connected to protection from exogenous aggressions and dangers to a system, and "internal security", instead concerning with the endogenous risk factors to the community. The Author then specifies that security cannot only consist of defensive measures, but must also have a proactive character, in order to generate and guarantee the well-being of the community.

[11] P. OLSEN, M. BORIT, *The components of a food traceability system*, in *Trends in Food Science & Technology*, 2018, *passim*, *doi: 10.1016/j.tifs.2018.05.004.*

[12] About food safety, the implementation of Industry 4.0 technologies could lead to time and cost savings compared to traditional processes. The topic of digital transformation of the agri-food industry is of great interest nowadays. For example, various types of robots are used in the food industry to improve production and reduce labour. For instance, smart spectroscopic-based sensors have been developed to enhance food quality. The food processing sector is also becoming more familiar with the IoT and other associated technologies to reduce waste and costs. Furthermore, big data also offers many benefits, including food traceability and safety. Undoubtedly, there are still numerous challenges that companies need to face, but substantially the implementation of new Industry 4.0 technologies offer an interesting and sustainable approach to enhance food production from "farm to fork". This strategy, recently relaunched as a central element of the European Green Deal (see COMMUNICATION

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in this research work; all these processes have significant connections with human health protection functions.

Food safety[13] can be analyzed from different points of view. First of all, it can be seen according to the close connection with the sustainable development at global and local level. This connection runs in a twofold direction. On the one hand, there are the food production systems that take over for the polluting extent of certain intensive procedures and their impact on the environment and the animal world, i.e. the health crises caused by repeated spread of zoonoses; food production systems also stand out as causes of climate change, therefore requiring increasingly greater attention from the responsible authorities to ensure that food placed on the market is not unhealthy or contaminated. Conversely, the food sector also appears to be one of the most vulnerable by climate changes, extreme meteorological events[14], sea levels rise, progress of desertification, drought and land salinisation, with increasing disastrous impact on production, altering the normal regulatory cycle.

Within the National Recovery and Resilience Plan, the implementation of the principle of sustainable development[15] informs a number of objectives with positive impact on food safety[16], i.e. the strengthening of organic farming, the improvement of

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FROM THE COMMISSION OF 20 MAY 2020, *A Farm to Fork Strategy*, COM (2020) 381 def.), actually dates back to the end of the last century, having been inaugurated by the Green Paper of the Commission of 30 April 1997 (COM(97) 176 def.), entitled "General principles of food law in the European Union", and by the subsequent *White Paper on food safety*, also approved by the Commission on 12 January 2000 (COM (1999) 719 def.). Cfr. K. WÓJCICKI, J. GÓRNA, E. SIKORSKA, *Digitalisation in agri-food sector*, in K. PAWLAK-LEMAŃSKA, B. BORUSIAK & E. SIKORSKA (Eds.), *Sustainable food: Production and consumption perspectives*, Poznań University of Economics and Business Press, 2024, 41-53, in *https://doi.org/10.18559/978-83-8211-209-2/3*. Cfr. G. LOFARO, *The evolving regulation of blockchain smart contracts looking at public services resilience for the sustainability of the healthcare and agrifood sectors*, in *CERIDAP*, Rivista Interdisciplinare Sul Diritto Delle Amministrazioni Pubbliche, fasc. n. 2/2024, aprile - giugno 2024, 281-337, *doi:10.13130/2723-9195/2024-2-41.*

[13] C. NAPOLITANO, *Sicurezza alimentare ed etica della sostenibilità: profili di diritto amministrativo*, in *Federalismi*, 2018, *passim*.

[14] Cfr. recently REGOLAMENTO DI ESECUZIONE (UE) 2025/341 DELLA COMMISSIONE, 20 feb. 2025, laying down rules for the application of article 6 *bis* of Regulation (EU) 2020/2220 of the european Parliament and of the Council as regards controls and sanctions. See also about extreme meteorological events and administration of them, G. Lofaro, *L'amministrazione della difesa del suolo*, Collana *Ricerche Giuridiche*, Napoli, ottobre 2024, 1-370.

[15] In this sense, see the recent initiative of the EU Commission (*Sustainable food system framework*, available at the URL file:///C:/Users/Oem/Downloads/090166e5e29184db.pdf), which formulates a proposal of regulation for the Parliament and the Council, to deal, in particular, with the sustainability labelling of food products, the minimum criteria for sustainable public procurement of food products and the governance of the sector, with the consequent monitoring. About the relationship between food security and the war conflict in Ukraine, see the aforementioned Communication of the Commission of 23th March 2022, entitled "Safeguarding food security and strengthening the resilience of food systems". Likewise significant is the initiative announced by the Commission in its 2020 Communication "From Farm to Fork", whose action n. 2 provides for the development of an "Emergency Plan to ensure food supply and food security", leading to the subsequent Commission Decision of 12 November 2021 (2021/C 461 I/01) establishing the expert group on the European Food Security Crisis Preparedness and Response Mechanism (EFSC).

[16] M. RAMAJOLI, *Quale futuro per la regolazione alimentare?*, in *Milan Law Review*, 2021, 2, *passim*.

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animal welfare, the reducted use of pesticides and fertilizers, the protection of biodiversity.

Food safety guarantees cannot be ignored by the effectiveness of the rules that govern the safety of the production process. The topic is very broad and full of implications. In this work, attention will be paid on a specific aspect, that is the administrative power of regulatory control, in the different levels of government, of the supply food chain in order to guarantee the broadest safety of consumption and consumers.

2. Regulatory historical-reconstructive profiles of public intervention in agri-food matters.

From an evolutive point of view, the administrative intervention in the agri-food sector can be divided into three phases, through which, aiming at guaranteeing the mere hygiene factor, public food law has become a sector of organic and systematic administrative action[17].

Initially the legal issues inherent to the agri-food sector have been taken into consideration by the public authorities mainly with respect to the setting-up of legal rules aimed at targeting already existing situations of unsafe food[18], through an hygienic-sanitary police approach, progressively integrated by a system of civil sanctions and penalties. Therefore, in this phase the role of the administration was expressed in identifying hygienically inadequate situations and in repressive interventions[19].

In a subsequent historical phase, between the 19th and 20th centuries, the food policies of the italian liberal State expanded to the extent of enhancing the guarantee of supplies, to pursue the so-called food security[20]. In this crucial transition phase, issues related to nutrition, from a private perspective, have become of real public interest, legitimizing more direct and anticipated intervention by the State in the agri-food sector. Specifically, careful doctrine[21] has reconstructed that the competent administrative structure in the food sector found its first expression in Italy in 1917

[17] M. SOLLINI, *Il principio di precauzione nella disciplina comunitaria della sicurezza alimentare. Profili ricostruttivi*, Milano, 2006, *xx* - 222.

[18] F. CORSI, *Alimentazione*, in *Enc. dir.*, vol. II, Milano, 1958, 1 ss.

[19] Cfr. T.U. DELLE LEGGI SANITARIE (R.D. 27 luglio 1934, n. 1265); see F. CAMMEO, *Sanita` pubblica*, in *Primo trattato completo di diritto amministrativo italiano*, a cura di V.E. ORLANDO, Parte II, vol. IV, 1905, 213 ss.

[20] The definitional path of food security is briefly reconstructed in a policy address of the Food and Agricultural Organization (FAO), in *https://www.fao.org/fileadmin/templates/faoitaly/documents/pdf/pdf_Food_Security_Cocept_Note.pdf.*

[21] A. MORRONE, *Lineamenti di una Costituzione alimentare, in La regolazione della sicurezza alimentare tra diritto, tecnica e mercato: problemi e prospettive*, a cura di A. MORRONE e M. MOCCHEGIANI, Bologna, 2022, 10 ss.

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with the establishment of the Ministry for food supplies and consumption, which, suppressed in 1919, was then replaced by an undersecretariat at the Ministry of Industry. With r.d.l. n. 222/1939, a General Directorate for Food was then established at central level at the Ministry of Agriculture and, in the suburbs, the relevant provincial bodies, called Provincial Food Sections (SAPRAL). After the Second World War, the responsibilities passed to the High Commissioner for Food, placed under the Presidency of the Council *ex* legislative decrees n. 410/1944 and n. 411/1944. With law n. 199/1958, the responsibilities were delegated to the Ministry of Agriculture.

During the third phase[22], starting from the second half of the 20th century, food chain has taken, also thanks to the european integration process and, specifically, to the regulation of the common market, the role of a strategic production factor as well as an instrument for the development of the economy and the market. The intervention of the public authorities passed through the adoption of measures for the strict protection of health in relation to food and the preparation of "optimal" conditions for that protection *tout court*. The EC Regulation n. 882/2004[23], intended for uniform supervision of the agri-food sector[24], envisaged provisions for both the activity of routine surveillance and the extraordinary interventions, to be carried out in suspected cases, through inspections, checks, audits, sampling and analysis.

Careful doctrine on the "juridification" of the food sector[25] has outlined food safety

[22] The measures that marked the transition to this "third phase" are the EC Regulation n. 178 of 28th January 2002, which establishes the general principle and requirement rules of food law, the European Safety Food Authority, the procedures in the field of food safety in the light of the precautionary principle and the so-called "Hygiene package" of 2004, consisting of the EC Regulations n. 852/2004 on the hygiene of food products, n. 853/2004 on the hygiene of foods of animal origin, n. 854/2004 on official controls over products of animal origin intended for human consumption, n. 882/2004 on controls officials on feed, food and animal welfare. More fully see V. PARISIO, *Sicurezza alimentare, funzione amministrativa e giudice amministrativo interprete del diritto interno ed europeo*, in *La sicurezza alimentare. Profili normativi e giurisprudenziali tra diritto interno, internazionale ed europeo*, a cura di C. BOTTARI, Rimini, 2015, 75 ss.

[23] Since December 14th, 2019, the Regulation (EC) n. 882/2004 has been replaced by the Regulation (EU) n. 625/2017, which sets the activity of the official control on food safety, extending the scope of the previous regulation. The new regulation aims to ensure compliance across the European Member States in the Union in the fields of food, feed, animal health and welfare, plant health and plant protection products. The administrative measures that the competent Authorities adopt following the finding of a non-compliance regarding food hygiene, should consider not only the risk assessment, but a series of criteria dictated by both european and national legislation and comply with the generals principles governing administrative action. See A. ROSSI, G. ROSSI, A. ROSAMILIA, M. R. MICHELI, *Official controls on food safety: Competent Authority measures*, in *Italian Journal of Food Safety*, vol. 9:8607, 2020, 125-131. This study was completed by analysing recent legal cases on food safety, which in many cases have censured the work of the local competent Authority, and has brought to light a distorted and uneven application of the legislation on food safety, especially in cases in which drastic measures had been adopted, such as the closure of productive activities, with a heavy impact on the food business operators in the food sector concerned.

[24] F. AVERSANO, *Il sistema dei controlli ufficiali, in Trattato di diritto alimentare italiano e dell'Unione Europea*, a cura di P. BORGHI, I. CANFORA, A. DI LAURO, L. RUSSO, Milano, 2024, 924 ss.

[25] M. RAMAJOLI, *La giuridificazione del settore alimentare*, in *Diritto amministrativo*, 4/2015, 657 ss.

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as fundamental pillar of european policies and two conditions to be met: on one hand, the taking charge by public authorities not only of health interests, but also of all others heterogeneous interests at stake, namely the protection of agriculture, of the environment, land use, trade, consumers and worker safety; on the other hand, the expansion of institutional purposes must be accompanied by the spread of the field of regulatory intervention, to be extended to the whole food chain, including every aspect having an impact, even indirectly, i.e. labelling, advertising, materials packaging, traceability of food, of feed and animals intended for food production, the withdrawal of food and feed and, last but not least, research and technological development.

Currently the italian administrative system revolving around the agri-food chain is extremely articulated. The food safety descends by the art. 32 of the Constitution[26], as safe food clearly is a condition factor for human health protection. On the regulatory side, in the light of the prevention and precautionary principles, a substantial european legislation has been developed which mainly operates on a preventive-anticipatory level.

The precautionary principle[27] allows provisional management measures to be taken without waiting that the reality and severity of the risk are fully demonstrated, provided that they are non-discriminatory, objective and proportionate. Born in the environmental context, now at the art. 191, par. 2, TFEU, the precautionary principle is solemnly affirmed in the food sector by EC Regulation n. 178/2002. Unlike what happens in other areas of action, the precautionary principle in the food sector[28] is not binding, as it must always be balanced with other interests, especially those of an economic nature linked to the circulation of goods[29].

International agreements coexist alongside the european legislation, also with rules of a private nature in the form of contractual standards as well internal, state and regional laws *ad abundantiam*.

Pursuant to art. 117 of the Italian Constitution, the food sector falls within the the so-called concurrent legislative power, like health protection, but intersects other

[26] R. FERRARA, *Il diritto alla salute: i principi costituzionali*, Trattato di biodiritto, diretto da S. RODOTÀ e P. ZATTI Vol. V, *Salute e sanità*, a cura di R. FERRARA, 2010, 3 ss.

[27] COMMUNICATION FROM THE EUROPEAN COMMISSION OF 2 FEBRUARY 2000 ON THE PRINCIPLE OF PRECAUTION, which is applied whenever a preliminary assessment is made that objective scientific evidence indicates that there are reasonable grounds to fear harmful effects on the environment and health of humans, animals and plants. See for everyone F. DE LEONARDIS, *Il principio di precauzione nell'amministrazione di rischio*, Milano, 2005; ID., *Il principio di precauzione*, in *Studi sui principi del diritto amministrativo*, a cura di M. RENNA, F. SAITTA, Milano, 2012, 413 ss.

[28] L. MARINI, *Principio di precauzione, sicurezza alimentare e organismi geneticamente modificati nel diritto comunitario*, in *Dir. un. eur.*, 2004, fasc. 1, 7 ss., e fasc. 2, 281 ss.

[29] Cfr. M. SOLLINI, *Il principio di precauzione nella disciplina comunitaria della sicurezza alimentare. Profili ricostruttivi*, cit., *xx* - 222.

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matters devolved to the exclusive legislative power to the State, among which the protection of the environment and the ecosystems. This regulatory architecture inevitably causes governance complexity, which in turn determines the co-presence of different authorities holding regulatory and management power, i.e. the State, the Regions, other local and non-local public bodies, the european Commission, the EU Authority for Food Safety (EFSA), the World Trade Organisation, the Codex Alimentarius Commission, so that it is difficult to draw clear boundaries in the distribution of competences[30].

According to an organizative approach accepted in doctrine[31], the administrative action is divided into four levels reporting to different bodies: the european Commission, the independent european Authorities, firstly including the EFSA, the representative committees and national administrations.

Even with respect to the operational methods, the publicist toolkit is effectively very varied. Historically, as already mentioned, the role of public law in the food sector had exclusively repressive and sanctioning nature. Today, instead, the different public measures aim not only at the protection of the super-sensitive interest in human health, but also to promote all the actions necessary for the correct functioning of the agri-food chain, also to guarantee product traceability and transparency in information. Thus, from the records of programming and planning come on to regulatory and enabling measures, controls on the production and trade phases, the imposition of sanctions and the provision of bans[32].

3. The system of "official" administrative controls on the agri-food supply chain in the light of the european regulation.

The regulation of food safety is articulated into a network of actions, which shows the overlap between the State and supranational bodies as well as voluntary control tools adopted by economic operators. Firstly it was the european Regulation n. 178/2002 to complement the prevailing punitive-afflictive logic of the past with a different approach aimed at a "responsible operator" and establishing a preventive and active system[33], centered on the self-responsibility of the company and entrusted not only to public controls.

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[30] See D. BEVILACQUA, *La Codex alimentarius Commission e la sua influenza sulle politiche comunitarie e nazionali, in Agricoltura Istituzioni e Mercati, 2006, passim.*

[31] Cfr. S. GARDINI, *Il controllo amministrativo della filiera agroalimentare*, in *Il diritto dell'economia*, anno 70, n. 115, 3, 2024, 91-112.

[32] G. PRIMERANO, *Ambiente e diritto agroalimentare. organizzazione, regolazione e controlli*, in *Diritto amministrativo*, 2019, 3, 617 ss.

[33] F. ALBISINNI, *Sicurezze e controlli: chi garantisce cosa?*, in *Riv. dir. alim.*, 2011, 4, 5 ss.

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In application of the principle of precaution and in the light of EU policy[34], each country must have an effective system of controls defined as "official", which allow to verify and, where necessary, impose the compliance of activities and products with european legislation, along the whole agri-food chain.

Control power constitutes the most important phase of the exercise of national administrative action within the agri-food supply chain.

In Italian administrative law, control[35] is an extremely relevant function, both as an endoprocedural activity and an autonomous administrative procedure aimed at verifying legality-legitimacy of certain public and private activities.

Despite the heterogeneity of the notion, two macro-typologies can be distinguished in the Italian legal system of controls carried out by public entities: those on the administration and those on private individuals[36].

In agri-food matters, the control function can be framed as public control over the activities of private entities, intended mainly from a preventive perspective and with variable content, since it is related to all the aspects of food safety[37], i.e. the toxicological aspect, according to the product composition, or the nutritional aspect, according to the absence of disadvantages for the consumer, to deal with in terms of nutrition and safety information to guarantee adequate and complete communication to the consumer regarding the product characteristics.

Preventive and endoprocedural controls are carried out by the administrative authorities when issuing the certificates widening and authorizing measures that impact the agri-food system; however, within the scope of this research work, the analysis focuses on the aforementioned "official controls", starting from the

[34] EUROPEAN COMMISSION, 2017. Regulation of the european Parliament and of the Council of the 15th march 2017, on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending the Regulations (EC) n. 999/2001, (EC) n. 396/2005, (EC) n. 1069/2009, (EC) n. 1107/2009, (EU) n. 1151/2012, (EU) n. 652/2014, (EU) n. 2016/429 and (EU) n. 2016/2031 of the european Parliament and of the Council, Council Regulations (EC) n. 1/2005 and n. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) n. 854/2004 and n. 882/2004 of the european Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation), 2017/625 EU, OJ L 95.

[35] A. CROSETTI, *I controlli amministrativi*, in *Dig. disc. pubbl.*, Torino, 1989, *passim*; M.S. GIANNINI, *Controllo: nozione e problemi*, in *Riv. Trim. Dir. Pubbl.*, 1974, 4, 1263 ss.; G. BERTI, L. TUMIATI, *Controlli amministrativi*, in *Enc. dir.*, X, 1962, 298 ss.; G. BERTI, N. MARZONA, *Controlli Amministrativi*, in *Enc. dir.*, III agg., 1999; O. SEPE, *Controlli*, in *Enc. Giur. Treccani*, Roma, 1993; G. D'AURIA, *I controlli*, in *Trattato di diritto amministrativo: diritto amministrativo generale*, II, a cura di S. CASSESE, Milano, 2003, 1343 ss.; M. DE BENEDETTO, *Controlli, II) controlli amministrativi*, in *Enc. giur.*, 2007, 9 ss.; G. DE GIORGI CEZZI, *I controlli nell'amministrazione moderna: la funzione di controllo dal garantismo alla regolazione*, Roma-Bari, 1990, *passim*.

[36] M.S. GIANNINI, *Controllo: nozione e problemi*, in *Riv. Trim. Dir. Pubbl.*, 1974, 4, 1263 ss.; L. LORENZONI, *I controlli pubblici sull'attività dei privati e l'effettività della regolazione*, in *Dir. pub.*, 2017, 3, 779 ss.

[37] L. COSTATO, S. RIZZIOLI, *Sicurezza alimentare* (voce), in *Dig. disc. priv.*, Aggiornamento V, Torino, 2010, 912 ss.

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legislation that regulates them, such as the Regulation n. 625/2017 of the european Parliament and Council of the 15th March 2017, known as the "Regulation on official controls" (indicated by the acronym OCR), implemented in Italy with the legislative Decree 2 February 2021, n. 27.

The EU Regulation n. 625/2017 represents an impressive framework which, starting from the application experiences of the hygiene package, rationalised the control system in a single harmonizing legislative provision, extended to all phases of production, transformation and distribution of goods, animals and plants. With this measure the controls, for the first time, in addition to save the principles informing food safety, take on animal welfare and protection of plants from harmful organisms as an object relevant and worthy in itself of specific attention from public authorities. Thus, in the light of an evolved notion of risk, the dangers that must be considered during officials checks are not only those that can directly or indirectly affect human health, but also all those that can harm the animal or plant health, animal welfare or the environment. The Regulation n. 625/2017 aims to establish a harmonized framework at european level for the organisation of official controls and other official activities, throughout the whole agri-food chain, also considering the rules on official controls set by the Regulation (EC) n. 882/2004, the relevant legislation and the experience gained with the application of standards. The Regulation n. 625/2017 has the recognised fundamental function of realizing the systemic and institutional unification of control systems in the agri-food sector[38]. The european food safety model requires an investigation from experts and operators detailed about its complex organizational levels concretely implemented as well as a constant monitoring[39] from the perspective of living law, in the light of the Constitutional dictate. For "official controls", pursuant to art. 2 of the Regulation n. 625/2017, are understood the verification activities carried out by the competent authorities on the activities of the operators and on goods, in order to ascertain their consistency with current legislation. The Administration can delegate specific control tasks to other subjects, identified with a formal provision, through in which the existence of a series of conditions is certified by the delegate and the specific requirements *ex* artt. 28, 29 and 30 of the Regulation n. 625/2017.

In Italy competent authorities to plan, program, execute, monitor and report official controls in their respective spheres of competence are, a pursuant to article 2, paragraph 1 of Legislative Decree 2 February 2021, n. 27, the Ministry of health, the Regions, the autonomous Provinces and the local health authorities. The checks

[38] F. ALBISINNI, *Il Regolamento (UE) 2017/625: controlli ufficiali, ciclo della vita, impresa, e globalizzazione*, in *Rivista di diritto alimentare*, 2018, 1 ss.

[39] A. JANNARELLI, *La governance della sicurezza alimentare: l'esigenza di un monitoraggio costante del modello*, in *Rivista di diritto alimentare*, 2009, 4, 3 ss.

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concern with: foods and their safety (in all stages of production, processing and distribution); feed and its safety (at any stage of production, transformation, distribution and use, also with reference to feed consisting of, containing or derived from GMOs); animal health and well-being; animal by-products and derived products, for the purposes of prevention and reduction of health risks for humans and animals; requirements for the marketing and use of plant protection products. The same subjects have the task of proceeding with the adoption of the executive actions provided for by the articles 137 and 138 of the Regulation 2017/625 and to ascertain and apply the related administrative sanctions. The system of the attributions is, however, very fragmented, involving other public entities in a significant way. Official controls conducted in structures of the Armed Forces, including those relating to contingent activities employed in international missions, are, in fact, under the responsibility of the Ministry of Defense.

Further important and substantial control powers are delegated to the Ministry of Agriculture, Food Sovereignty and Forestry, who has competences over the legality of commercial practices and the protection of consumer interests and information - including labeling standards -, with regard to feed for the protection of qualitative and product aspects, including labelling, safety, correctness and transparency of commercial transactions, to protective measures against harmful organisms for plants, the production and labeling of organic products, the use and labeling of products with "denomination of protected origin" or "protected geographic indication" and guaranteed traditional specialties.

The Regulation 2017/625 provides for the establishment of a single body, institutionally responsible for coordinating all the other administrations involved in the controls and to maintain the cooperation with the european Commission and other Member States. In Italy this fundamental task is assigned to the Ministry of Health pursuant to art. 2 of the Legislative Decree n. 27/2021. Within the ministerial organisation, the Ministerial Decree of the 8th April 2015 attributed the specific competences to the DGISAN, subsequently organised as General Direction for Hygiene and Food Security, which is, therefore, formally qualified as the single body in the light of art. 109, comma 2 of the Regulation 2017/625[40] and art. 3 of the legislative Decree n. 27/2021.

4. The preventive planning phase of food safety: the multi-year national control plan.

[40] More recently see the COMMISSION NOTICE C/2024/6481 of the 8th november 2024 *on the implementation of the Regulation (EU) 2017/625 of the european Parliament and of the Council (Official Controls Regulation)*, 1-79, in *http://data.europa.eu/eli/C/2024/6481/oj.*

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In terms of controls, the provision of a planning phase, prior to the exercise of control, responds to several considerable needs. First of all, it allows to increase the effectiveness of the function since the early and clear definition of the objectives and criteria of the control allows to increase the compliance[41] of the activity and reduce the administrative burdens. Furthermore, the planning of the control supports the preparation of a risk analysis, in order to identify the activities in which the probability of violation of the obligations is higher and the impact of non-compliance with the rules is greater.

The planning action is a fundamental tool in the systemic framework of all the factors and actors being controlled.

With reference to food safety, the preventive planning allows to consider simultaneously all the elements that influence, directly or indirectly, the agro-zootechnical production, integrating the hygienic-sanitary aspects with the profiles inherent to the commercial discipline of the products as well as their merchandise quality.

In this regard, according to the Regulation 2017/625, member States are required to define a specific planning tool, the so-called Multi-Annual National Control Plan (PCNP), to frame the official controls system over the national territory. In Italy, the Control Plan[42] was prepared for the five-year period 2023-2027 based on the State-Regions Agreement established in the session of 22 March 2023 n. 55/CSR, which approved its structure and strategic objectives. In particular, the PCNP is structured around two different purposes, closely related to each other. The first is a descriptive purpose, which is expressed through the mapping of the system of official controls planned along the supply chain. In this sense, the act represents a fundamental information base both for the subjects in charge of verifying its implementation and for citizens interested in taking cognizance of the administrative activity carried out in this sector *ex* art. 111 of the EU Regulation 2017/625. The Control Plan has a strategic-managerial function, since the planning work is crucial in order to ensure the coordination of administrative functions both in the preparation and in the implementation of official controls, rationalizing and optimizing the use of available resources as well as intercepting the best distributive asset of responsibilities between the various administrations involved. A relevant peculiarity of the Control Plan concern with its non-static nature. The PCNP, once published, must be, pursuant to art. 111 of the EU Regulation 2017/625, constantly updated on the basis

[41] Cfr. IMPLEMENTING REGULATION (EU) *2019/1715* - rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation), *Information management system for official controls to ensure compliance with agri-food chain rules*, in *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4434265.*

[42] See reports and dossier in *www.salute.gov.it/portale/pianoControlloNazionalePluriennale2023/homePCNP2023.jsp.*

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of the results of the activities progressively carried out, the regulatory changes *in itinere* and the emerging scientific evidences. The updating of the Plan is functionally related to the preparation and publication of an annual report - pursuant to art. 113 of the Regulation 2017/625 - to be transmitted to the european Commission by the 31th of August of each year, in order to verify the activities carried out, by framing the level of implementation of control activities as well as to monitor the progressive achievement of the established objectives and guide the new measures to include in the Plan[43].

Responsible for the coordination of the planned activities is a "Permanent Coordination Unit", whose establishment - already foreseen in the previous Plan - was confirmed by the State-Regions Agreement no. 55/CSR of the 22th March 2023, the same agreement approving the Multi-year National Control Plan for the five-year period 2023/2027. The Unit is made up of managers of the central administrations involved in the PCNP, three representatives of the Regions and autonomous provinces identified by the Conference of the Regions and autonomous provinces, a representative of the Istituto Superiore di Sanità, a representative of the National Reference Center for Veterinary Epidemiology, Programming, Information and Risk Analysis (COVEPI) and by representatives of the police forces. The Unit also performs consultative functions with respect to the single Body[44].

Beyond the coordination activity, each Administration has competence in the specific sectors delegated within the area of interest of the PCNP and is therefore responsible for managing and carrying out the related control activities and preparing the related contributions for the drafting of the Plan and the annual report. Furthermore, in the light of the provisions of the State-Regions Agreement no. 55/CSR of the 22th March 2023, the Regions are recognized with the power to plan and start official control activities even outside of the national planning. In such cases, the regional bodies have the duty to prepare Plans consistent with the structure and founding criteria of the PCNP and to update the specific subsections of the same National Plan, called

[43] The process of modifying and adapting the Multi-Year National Control Plan is clearly based on the well-known Deming cycle (or PDCA cycle, from the acronym "Plan-Do-Check-Act"), used in the corporate environment for the control and continuous improvement of processes and products in a long-term perspective. Applying the system to the sector in question, the first process phase, which could be define as primary programming, coincides with the Plan drafting; the second phase concerns with the implementation and testing of the measures contained (Do); the third phase (Check) is grafted onto the verification of the system, through the critical analysis of the data collected in the annual report; the fourth and final phase provides for corrective actions, based on the data collected, for the improvement of the system (Act), both at a general and sectoral level. See W.E. DEMING, *Elementary Principles of the Statistical Control of Quality*, JUSE, 1950, *passim*.

[44] See the Agreement, *ex* art. 8, c. 6, of the law 5th june 2003, n. 131, between Government, Regions and autonomous Provinces of Trento and Bolzano about the "Piano di controllo nazionale pluriennale 2023-2027", *ex* art. 109 of the EU Regulation n. 625/2017 between the european Parliament and Council, 15th march 2017, in *www.statoregioni.it.*

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"regional activities", attaching the results of local controls, also through the establishment of permanent regional coordination units or working tables aimed at resolving specific problems. Some Regions have, therefore, provided for the preparation of specific Integrated Regional Control Plans (PRI), differently defined and named, but commonly understood as tools for implementing, at regional level, community and national policies on official controls[45].

5. Administrative procedures for the "official control" of the agri-food supply chain between the proportionality and precautionary principles.

Administrative control activities in sectors characterized by sensitive public interests, such as the environment and health, highlight the polysemic nature[46] of the function, which can be deployed according to rather variable modules and trend lines. In the sector under analysis, on the basis of the model described in the PCNP, controls over the agri-food supply chain provide for continuous monitoring action, with a sort of mixture between the powers of control properly understood and those of *ex ante* regulation, authorization, information, inspection, suspension and conformity. Official administrative control activities mainly take place through the execution of inspections, audits and sampling, prepared and carried out on the basis of the analysis of the context in which the controls themselves are placed and the connected categorization of the risk of non-compliance, in the light of the criteria established by art. 9, paragraph 1 of the EU Regulation 2017/625.

Every year the Central Inspectorate for the Protection of Quality and Repression of Fraud in Agri-food Products (ICQRF), a body of the Ministry of Agriculture, Food Sovereignty and Forests, prepares a document for the planning of control activities for the different supply chains of agri-food products, also providing for targeted verification actions for sectors or productions of particular relevance in the national sector. Some specific guidelines, called "General Guidelines for programming activities", are drawn up, in the light of the strategic objectives of the PCNP, the activities envisaged by the sector regulations and the risk analysis conducted at national level by specific focus groups. On the basis of this document, the Territorial Offices and laboratories of the Central Inspectorate for the Protection of Quality and Fraud Repression of Agri-food Products elaborate the operational plan to implement in the following year in the different sectors, also taking local specificities[47] into account.

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[45] Agreement State-Regions n. 55/CSR, 22th march 2023, in *https://www.statoregioni.it/it/conferenza-stato-regioni/sedute-2023/seduta-del-22032023/atti/repertorio-atto-n-55csr/*.

[46] R. FERRARA, *La protezione dell'ambiente e il procedimento amministrativo nella "società del rischio"*, in *Diritto e società*, 2006, 522 ss.

[47] See reports in *www.politicheagricole.it*.

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The Ministry of Health is responsible for the correct expression of controls. For this purpose, reference is made to the instructions contained in a management document called "Guidelines for the functioning and improvement of official control activities of the Ministry of Health, the Regions and autonomous Provinces and the AASSLL in matters of food safety and veterinary public health", approved with the Agreement n. 46/2013 by the State-Regions Conference in the session of the 7th February 2013 and reiterated in subsequent agreements. According to that agreement, each competent authority must adapt its control action to an operating standard, constantly updated, that defines, for each binding regulatory requirement, the elements of conformity or best practices and the objective evidence to be taken into consideration.

The system is generally based on the precautionary principle[48] which allows for the adoption of provisional management measures without waiting for the reality and severity of the risk to be fully demonstrated, provided that they are non-discriminatory, objective and proportionate. The precautionary principle is now considered a general interpretative criterion of the food legal system, in which the subsumption of risk, of its detection as well as its measurement and management materializes. The type of administrative assessment carried out for the purposes of initiating control procedures is therefore of a probabilistic nature and concerns, more specifically, the possibility that in a given segment of the supply chain a hypothesis of non-compliance with the law may occur.

Even at the european legal level, the control system is substantially structured in an administrative risk management procedure, divided into the phases of evaluation, management and communication, according to the artt. 3 and 6 of the EC Regulation n. 178 of 2002. The risk assessment and communication are under the responsibility of the European Food Safety Authority (EFSA)[49]. The actual risk management is attributed to the Commission, notwithstanding the difficulty of drawing a clear boundary between risk assessment and risk management[50].

The competent administrative authorities to carry out the official controls proceed, as a rule, precisely taking the risk category assigned to the controlled activity into account and with a non-predetermined frequency. Except in cases where the issuing

[48] Council of State, sect. IV, 27 march 2017, n. 1392, in *www.giustizia-amministrativa.it*: this general principle therefore assumes relevance - and, as such, is directly binding for all public administrations - especially in the health sector, with a value that is not only programmatic, but directly imperative within the framework of national systems, bound to apply in case of uncertainties regarding the existence or extent of risks to the health of people; it therefore integrates a general and broad guideline criterion to characterize not only the regulatory activities, but even before the administrative ones.

[49] N. BASSI, J ZILLER (edited by), *La formazione procedimentale della conoscenza scientifica ufficiale. Il caso dell'Agenzia europea per la sicurezza alimentare – EFSA*, Torino, 2017, *passim*.

[50] M. RAMAJOLI, *Quale futuro per la regolazione alimentare?*, cit., 64 ss.

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of an official certificate or attestation constitutes a preliminary requirement for the placing on the market or for the movement of animals or goods, the timing of the checks is concretely established *sub specie* by the competent authorities, so that the verification activities are proportionate to the risk and the level of compliance expected in the various situations, also in relation to any violations already committed. In cases where the issuing of an official certificate or attestation is a prerequisite for the placing on the market or movement of animals or goods, the legislation requires that official controls be carried out regardless of the risk level or the likelihood of non-compliance; in such cases, the frequency of official controls is dictated by the need for certification or attestation[51].

The frequency of official controls should be established by the competent authorities based on the need for the effort in controls to be proportionate to the risk and the level of compliance expected in different situations, including possible infringements of the EU legislation on the agri-food chain committed through deceptive or fraudulent practices[52].

The controls are carried out most of the time without prior notice, unless this is absolutely necessary for the purposes of their execution, as it happens, for example, when the control activity requires the continuous or periodic presence of the staff or representatives of the competent authorities at the operator's premises, but always according to formal and documented procedures, in order to guarantee the homogeneity and transparency of the operations[53]. A preventive probabilistic assessment in the internal articulation of the choices made by the public authorities, certainly allows for an increase in transparency and, above all, the effectiveness of the control actions. However, for the purposes of the substantial legality of the administrative action, this precautionary approach must always be harmonized in its concrete implementation with the principle of proportionality[54], identifying measures that are proportionate to the risk and not excessively burdensome for private individuals, ensuring a balance between food safety and economic freedom[55].

The concretization of the elastic concept of danger, which precedes the possible balancing with other values and needs, cannot ignore – in application of the

[51] See art. 32 of the UE Regulation n. 625/2017.

[52] *Ibidem*.

[53] See the legistative Decree 2nd february 2021 n. 32.

[54] A. ROSSI, G. ROSSI, A. ROSAMILIA, M. R. MICHELI, *Official controls on food safety: Competent Authority measures*, cit., 125 ss.: in addition to an incorrect application of the specific health legislation, there is also a violation of the principle of proportionality, of community origin. Indeed, the principle of proportionality is an essential factor in administrative review, which has been used as a leading criterion in the adoption of administrative measures by of the Health Authorities of the Competent Authority.

[55] See M. RAMAJOLI, *Dalla «food safety» alla «food security» e ritorno*, cit., 271 ss.

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precautionary principle[56] – the prior determination of an acceptable risk threshold. In this perspective, the principle of proportionality[57], as a general principle of Community law, is placed as a limit to the indiscriminate application of the precautionary principle and, therefore, to the discretionary action of the competent body.

The type of assessment that, following the checks, the competent administrative authorities are required to carry out to verify the conformity of what has been examined with the parameters of the law is different. The technical profile emerges predominantly, since the examination of the facts or situations ascertained must be carried out by resorting to specialist knowledge, which falls within the scope of the so-called technical discretion[58].

Downstream, depending on the case and the severity of the potential or concrete violation of the legislation, inhibitory, conforming and sanctioning powers are exercised.

In the event that a non-compliance is suspected, the measure to adopt is that of implementing the checks, accompanied, where necessary, by the temporary blocking of the activity. In cases where non-compliance is, however, concretely ascertained, it will be necessary to distinguish between minor non-conformities, which do not entail an immediate risk to human health or to the health and welfare of animals, and major non-conformities, which are immediately harmful. In both cases, in a manner proportionate to the seriousness of the conduct or circumstance concretely ascertained, the authorities are required to take all necessary action in order to determine the origin and extent of the non-compliance and to establish the responsibilities of the operator, as well as to adopt all the appropriate measures to ensure that the operator remedies the problem and prevents its recurrence, in the light of art. 5 of the Legislative Decree 2 February 2021, n. 27 and arts. 137-138 of the EU Regulation 2017/625, analysed in conjunction with each other.

Without prejudice to the possibility that the Administration may allow, where deemed pertinent and technically feasible, the performance - concurrent with the inspection - of a counter-assessment, in all cases in which the operator does not agree with the assessments carried out by the competent authority, the latter may activate, within the peremptory deadline of thirty days from receipt of the communication of the outcome of the inspection, a dispute procedure. This instrument allows the

[56] S. COGNETTI, *Principio di proporzionalità: profili di teoria generale e di analisi sistematica*, Torino, 2011, 78.

[57] S. DE NITTO, *La proporzionalità nel diritto amministrativo*, Studi del Dipartimento di Giurisprudenza Luiss Guido Carli, maggio 2023, 1-342.

[58] Cfr. F. LIGUORI, *La discrezionalità tecnica nel pensiero di Errico Presutti: una categoria «a tempo»*, in *Nomos*, Le attualità del diritto, 1, 2022, 1-13; F. VOLPE, *Discrezionalità tecnica e presupposti dell'atto amministrativo*, in *Dir. Amm.*, 4, 2008, 791-837.

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operator himself to request, at his own expenses, the re-examination of the documentation relating to the controversial analysis, test or diagnosis, by the Istituto Superiore di Sanità (ISS). In this case, the ISS will express its opinion within thirty days of receipt of the documentation, transmitting the outcome of the documentary assessment to the interested parties, to the competent Authority and, for information, to the official laboratory that carried out the first analysis, test or diagnosis[59].

The final measure issued by the Competent Authority represents the decisive step of the official control activity. The measures should be issued by a correct assessment of the risk connected to the case at hand and in compliance with the general legal principles that support official administrative activities. The analysis of cases scrutinized by the administrative judiciary[60] reveals a general criticism of the work of the local Competent Authorities, especially where the extreme measure of activity stopping is applied. The case law emphasizes the widespread incorrect application of the legislation on food hygiene and the violation of the principle of proportionality[61], which ought to regulate the wide discretion of the authority. From a technical and hygienic point of view, except for very few cases, the assessment of non-compliance, mainly of a structural nature, and therefore the related risk assessment, do not appear to be fully carried out by the control body.

6. The institution of "administrative assistance" in the light of the european framework.

As already noted, the single Body is institutionally responsible for the coordination of the deputy administrations for controls and the collaboration with the european Commission and member States, in the case of Italy through the General Directorate for Hygiene and Food Security of the Ministry of Health. A further important function within the task of supranational cooperation is delegated to the Ministry of Agriculture, Food Sovereignty and Forests, as the liaison body responsible for the exchange of communications with the competent authorities of other EU States for the purposes of the so-called "administrative assistance" governed by the art. 102

[59] F. AVERSANO, *Controperizia e blocco ufficiale: il "nuovo" ruolo dell'operatore del settore*, in *Rivista di diritto alimentare*, 2018, 1 ss.

[60] Case C-382/10, judgment of the Court (Section Eighth) 6 October 2011, point 22, in *curia.europa.eu*; Council of State, sentence n. 5714/2015, in *www.giustizia-amministrativa.it*; european Court of Justice n. 382/2011, in *curia.europa.eu*; Regional Administrative Court Sicily, sentence n. 1852/2018, in *www.giustizia-amministrativa.it*.; Regional Administrative Court Calabria, sentence N. 1118/2019, in *www.giustizia-amministrativa.it*; Regional Administrative Court Campania, sentence n. 504/2019, in *www.giustizia-amministrativa.it*. More recently, Council of State, sez. III, 26 ottobre 2023, n. 9265, in *www.giustizia-amministrativa.it*. See also R. FERRARA, *L'incertezza delle regole tra indirizzo politico e "funzione definitoria" della giurisprudenza*, in *Dir. amm.*, 2014, 651 ss.

[61] See A. ALBANESE, *Il ruolo del principio di proporzionalità nel rapporto fra amministrazione e amministrati*, in *Istituzioni del federalismo*, Rivista di studi giuridici e politici, 3, 2016, 697-723.

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and following of the EU Regulation 625/2017 and the art. 2, comma 4 of the legislative Decree 2 febbraio 2021, n. 27[62].

The Administrative assistance[63] is the institute that guarantees, within specific agreements, the participation of the competent authorities of a member State in official controls carried out by the competent authorities of another State of the European Union, in a collaborative perspective.

The assistance procedure may be initiated at the request of the authorities of a member State or spontaneously. In the first case, when the competent authorities consider that, in order to carry out official controls or to effectively follow up on them in their territory, data and information held by the competent authorities of another EU State are necessary, they send a reasoned written request to the latter on the basis of standard documents drawn up by the european Commission. The EU Regulation n. 625/2017 provides for an effective reaction procedure by the authority that has received the request, establishing that within ten working days from the date of notification, the estimated time necessary to provide an informed response must be indicated, which must in any case be provided without delay *ex* article 104 of the EU Regulation n. 625/2017. In the case that it is necessary to carry out checks or investigations to acquire the information or documents requested, it is foreseen that the activity may also be attended, subject to agreement between the competent authorities of the two States, by personnel designated by the applicant.

The rules on spontaneous assistance apply, however, when the competent authorities of a State autonomously transmit certain information to another EU country. This can occur in two cases:

- when the competent authorities become aware of a case of non-compliance with potential consequences for another EU country *ex* article 105 of the Regulation n. 625/2017;

- when, during official controls on animals or goods originating from another member State, the competent authorities find that such animals or goods do not conform to the law, causing a health risk for humans, animals or plants or, as regards GMOs and plant protection products, also for the environment, or a possible serious violation of the legislation in this area *ex* art. 106 of the Regulation n. 625/2017.

In both cases, the assessment carried out by the authority that initiates the assistance procedure is based on a judgment of mere possibility and therefore represents a

[62] The provisions on "administrative assistance" contained in articles 102 to 108 of the EU Regulation n. 625/2017 replace those on mutual assistance already provided for by the Directive 89/608/EEC introducing new obligations and procedures.

[63] L. SALZANO, *L'assistenza amministrativa e la collaborazione nel regolamento (UE) n. 625/2017 sui controlli ufficiali*, in *Diritto e giurisprudenza agraria e alimentare e dell'ambiente*, 6, 2018, 1-8.

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direct application of the precautionary principle.

Where the competent authorities of the member States are not able to agree about appropriate actions to address the situation, active intervention is foreseen by the european Commission, which is recognized with both coordination and operational powers, in order to correctly carry out the controls according to art. 108 of the Regulation n. 625/2017.

7. Final considerations.

The technical-legal analysis carried out provides a first overview of the complex multilevel[64] system structuring, between the european legislation and the internal administrative action, the official control activities within the agri-food chain.

Far away from any claim of completeness, given the vastness of the application field of the topics covered, the analysis herein conducted allows some brief remarks, identifying strategic aspects.

Economic globalization has certainly made difficult the stabilisation of rules at country level, favoring the predominant intervention of european institutions in regulatory strategies. This circumstance, however, does not eliminate the need to recognize the centrality of regulatory processes in which all individual actors in the food supply chain, whether public or private, are dynamic parts, even beyond the limited time span of the individual production and consumption line. It emerges sas essential to pay further attention to forms of regulation, aimed not at directly placing limits to the operators by the so-called command and control approach[65], but at incentivizing and orienting the market upstream towards environmental sustainability[66], through consensual tools, soft law interventions based on self-regulation, persuasion and nudging[67].

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[64] *Ex pluribus*: A. MALTONI, *Sicurezza alimentare*, in S. CASSESE (a cura di), *Dizionario di diritto pubblico*, VI, Milano, 2006, 5545 ss.; M. SAVINO, *Autorità e libertà nell'Unione Europea: la sicurezza alimentare*, in *Riv. trim. dir. pubbl.*, 2007, 413 ss.; S. VERNILE, *Food Safety between European and National Authorities*, in M. ALLENA, L. DONATO, M. TRIMARCHI (a cura di), *Eu Food Law Regulation: which opportunities for Italy?*, in *Dir. econ.*, vol. 29, n. 91 (3-2016), 33.

[65] R. VANNINI, *Command and Control*, 2012, in *https://www.treccani.it/enciclopedia/command-and-control_%28Dizionario-di-Economia-e-Finanza%29/*.

[66] C. MARICONDA, *La sfida della sostenibilità delle imprese tra nuovi modelli normativi e approcci regolatori in chiave comparatistica*, in *Amministrativ@mente*, Rivista scientifica trimestrale di diritto amministrativo, 3/2024, in *www.amministrativamente.com*, 986-1010.

[67] A. ZITO, *La nudge regulation nella teoria giuridica dell'agire amministrativo. Presupposti e limiti del suo utilizzo da parte delle pubbliche amministrazioni*, Editoriale Scientifica, Napoli, 2021, 1-123. See also G. LOFARO, *Innovación, digitalización y sostenibilidad de la salud pública entre el aprendizaje automático y el suave empujón (Innovation, digitalization and sustainability of public health between machine learning and nudging)*, in *Revista de la Facultad de Derecho de México*, 73(285), 31-60, Enero-Abril 2023, in *https://doi.org/10.22201/fder.24488933e.2023.285.85382*, G. TROPEA, *Spinte gentili per la pubblica amministrazione?*, in *Il diritto dell'economia*, 68, n. 107 (1 2022), 31-64.

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The agri-food chain represents a complex and multifactorial system[68], which involves, in a network of interrelations, the environment, health, businesses and institutions. A key concept is, therefore, that of interinstitutional and partnership cooperation, to increase the effectiveness of prevention and management of food risks and to guide as well as encourage virtuous behaviors on the part of businesses. This, even more so, in the perspective of the European Regulation 625/2017, which outlines a system in which the attention to the agri-food chain requires a more general observation to everything varioulsy connected to the environment and to the cycle of human, animal and plant life.

In this context and at the administrative action level, the principle of integration, in addition to the precautionary principle already widely referred to, takes on strategic importance, which departs from the rigid predetermination of the spaces of action of individual public entities, and therefore from the mechanical application of the principle of competence, privileging instead an holistic and shared approach. It is punctually noted that, while the principle of competence legitimises a segmented vision, the principle of integration requires continuous reference to the "overall picture". Rereading the institute of competence in the light of the principle of integration therefore allows to overcome the traditional approach of each administration to pursue its own specific interest, in favour of a systemic approach of coordination[69]. The integration of skills is at the basis of the One Health approach[70] born within the disciplines of medicine and biology, which, against the backdrop of the common objective of pursuing public health, requires a synergic effort between the different sectors, including food safety, economic disciplines, social and biological sciences.

The analysis so far carried out reflects a system in which the instruments of

[68] Although a substantial intervention has been made to adapt and simplify the whole food legislation, in the wake of the well-known Commission Program called "REFIT", the real knot to solve in the near future seems to be mainly represented by the persistent absence of a general discipline of the administrative procedure at european level; a discipline that, if launched, could probably lead to the harmonization of the many and different authorization regimes currently in force. An objective, this, which, however, appears increasingly far away, especially if compared with the poor follow-up recognized by the EU institutions to the intense research activity aimed at the codification of the european administrative procedure, carried out by the authoritative group of scholars called ReNEUAL (Research Network on EU Administrative Law). See G. DELLA CANANEA, D.U. GALETTA, H.C.H. HOFMANN, J.P. SCHNEIDER, J. ZILLER (edited by), *Codice ReNEUAL del procedimento amministrativo dell'Unione europea*, Napoli, 2016, *passim*.; E. CHITI, *Adelante con juicio: la prospettiva di una codificazione del procedimento europeo*, in *Giorn. dir. amm*., 7, 2014, 677 ss.

[69] See F. DE LEONARDIS, voce *Economia circolare* (diritto pubblico), in *Digesto delle discipline pubblicistiche*, diretto da R. SACCO, a cura di R. BIFULCO, A. CELOTTO, M. OLIVETTI, Torino, up-dated 2021, 181 ss.

[70] G. LOFARO, *Retos éticos y jurídicos de la restauración de la naturaleza: enfoque One Health y protección de la biodiversidad, Ethical and legal challenges of nature restoration: One Health approach and protection of biodiversity,* in *Bioderecho.es*, núm. 19, enero julio, Universidad de Murcia, 2024, doi: *https://doi.org/10.6018/bioderecho.622941.*

ISSN 2036-7821

administrative law[71] are assuming ever greater importance. Although food law has traditionally found a wider place in the agricultural and agro-industrial sector, due to the importance of the profiles relating to production, trade, distribution and consumer protection, the growing connections with primary public interests, such as those addressed to health protection, the environment and the territory, highlight the specific public relevance of agri-food matters for the administrative science, as also recognized at an international level[72]. The formulation of principles informing the matter and the identification of authorities responsible for guaranteeing, under various aspects, their implementation, allow to ascertain the potential usefulness and effectiveness of an agri-food administrative law[73].

[71] According to M. RAMAJOLI, *Dalla food safety alla food security e ritorno*, cit., 274, in this logic, administrative law is transformed into a universal toolkit, as a testimony to its perennial modernity. On the subject, see also L.R. PERFETTI, *Principi della disciplina pubblicistica dell'alimentazione. Premesse ad un diritto amministrativo dell'alimentazione*, in *Riv. dir. agr.*, 2014, 9 ss. According to this Author, we can discuss an administrative law of food, articulated on ordering principles such as: the protection of human health, the scientific measurement of risk, the protection of the agricultural products market, the guarantee of food supplies functional to food sustainability. Administrative food law would therefore be that branch of administrative law that studies the authoritative powers assigned to public bodies so that the food market takes place by ensuring, as a priority, the highest level of protection of human health, competition and the individual supply of the necessary foods at prices, if applicable, regulated.

[72] See *ex multis*, B. VAN DER MEULEN, *European Food Law handbook*, Wageningen Academic Publisher, 2014, *passim*: «much of food law is national and european administrative law, the rules safeguarding the relationships between public authorities and private persons, when authorities apply public power to limit or enable certain actions by private persons. So food law might be presented as a subdivision of administrative law».

[73] See G. PRIMERANO, *Ambiente e diritto agroalimentare. organizzazione, regolazione e controlli*, in *Diritto amministrativo*, 2019, 3, 617 ss.

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