

Approfondimenti

Eu Food Law Regulation: which opportunities for Italy?

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XII. Safety, risk, opportunity. A sociological framework from the point of view of social system theory

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1. *Selecting the theme.*

An investigation about interests and opportunities for Italy concerning the regulation of the food law in Europe means having to do with law, economy, politics, but also with science and technology, health and nutrition, ecology, culture; a sensitive matter of universal interest. Therefore, the interdisciplinary and manifold nature of the subject involves a wide spectrum of issues and obligates to take into account numerous requests from individuals and society as a whole. In this sense, elements for orientation can be provided by sociology, specifically from social systems theory.

2. *Sociological background.*

The starting point is here the concept of *differentiation*. Briefly, the main presupposition of General System Theory: we live in a society that is no longer, like those archaic, organized as segmental (clans and tribes), according to a center/periphery (like the empires), or hierarchically (in strata, with the nobility in a favored position compared to common people). The current form is the one of *functional differentiation*, which emerged in the Eighteenth century: now the society is structured by *functions* (not to be confused with purposes, consisting of goals temporally specified). Therefore, modern society is internally divided into subsystems, each one called upon to solve a specific problem. These are structural, unavoidable issues: economy has the task of managing the problem of access

to scarce resources (not everyone can have everything at the same time); law provides generalized normative expectations, effective even when they are violated (law does not prevent offence, but indicates what to do when it happens), science produces knowledge, and so on. Each *system* – which never occurs regardless of its *environment*, meaning what is external to its borders and represents a source of *irritation* for the system (distinction *system/environment*) – is thus characterized by a specific, irreducible perspective (even if conditioning between systems is not excluded), operating on the basis of their function and their *code* [BARALDI C., CORSI G., ESPOSITO E., 2002], which determine the internal logic followed by the system: for law it is right/wrong; for economy have/have-not and therefore pay/don't pay. From this necessarily follows conflict, which thus represents a physiological element, intrinsic to the contemporary reality, and that increasingly stands out in a more and more unified and global (in many fields: economic, legal, political, cultural, communicative, and so on) society, in which the territorial boundaries tend to lose importance.

Food, then, is an «object» which is «conceived» in different ways in the various subsystems of society: it is a commodity for the economy (and therefore regards trades, consumption, employment); law and ethic generally understood it as a fundamental right, a good for humanity to which everyone should have a broad, and according to many, indiscriminate access; it is a cultural product (taking into account culinary traditions, local history and identity) and a theme for mass media (just think about the impressive number of television broadcasts and websites dealing with gastronomy); it is central to the interests of science and technology (both as nourishment – now it is even possible to produce meat in a lab without killing animals – and for the effects that production, collection and distribution of food have on the ecosystem).

Conflicts originating from the irreducibility of the perspective of each system are particularly sharp in a sensitive area as the one of food: for example, not only the «fundamental right to food» clashes with the economic perspective and the liberalization of markets has repercussions over the individual dietary habits; today's ecological (land use, biodiversity protection, pollution problems, etc.) and health issues (and therefore safety) represent a permanent emergency, impossible to be solved once and for all. In a world increasingly interconnected and complex at the same time, on whose stage are acting increasingly multifaceted and less definable, always mutable [Bauman, 1998] identities, on the one hand it is difficult to harmonize the variety of values, norms and rights regionally recognized, despite the need for uniformity (perhaps claimed more by economic and law); on the other hand, claims of individuals about guarantees related to personal self-determination and integrity are becoming more and more urgent: it is

the so-called *claims inflation*, i.e. the request for increasing protection and performances [LUHMANN N., 2015].

Conflicts and quarrels, in order to be solved, require *decisions* to be made.

3. *Opportunities: analysis of a concept.*

The link between the concept of decision and the one of opportunity is already easily detectable. However, it is appropriate to analyze it more closely. At the same time, regarding the topic in question, it is sociologically interesting, besides the analysis of the content (*which* opportunities), the one of the conditions of their identification (*how* it is possible to identify certain opportunities rather than others). It is, in systemic-constructivist terms, the so-called *second-order observation* [BARALDI C., CORSI G., ESPOSITO E., 2002]. That is, the attempt to see *how* someone observes. To understand how (in other words, by virtue of which *distinction*) the (first order) observer addresses a specific theme, what he is able to see, and what remains precluded to him. This is possible since the second observer is located at a different level (he observes on the basis of a different distinction), meaning a different perspective that allows him to grasp what the first order observer can not see. For example: a first observer tries to determine whether an hypothesis is correct or not, and is able to do that thanks to the 'pattern' (distinction) right/wrong. A second order observer, who observes the first one, can in turn try to see if the distinction used by him (right/wrong) is right or not. Therefore, one wonders about the conditions of possibility of the first observer. Applying this to our case, the question is: *how* do we identify opportunities for Italy in the field of food law?

According to the dictionary Treccani, *opportunity* comes from the Latin *opportunitas*, meaning «being opportune; quality, condition of what is or is deemed appropriate» and therefore «being convenient, beneficial», an «opportune circumstance, a suitable, favorable situation». *Opportunus*, composed by *portus* (harbor) and the prefix *ob* (towards, to), refers to the wind «that leads towards the port», which is thus *favorable*. This term is also indicated in the English vocabulary Merriam-Webster under the heading *opportunity*: «a favorable juncture of circumstances», «a good chance for advancement or progress». Opportunity then indicates hypothetical gains, possible improvements, a variance that makes a difference.

A first consideration concerns the regionalist perspective (that of *a specific* country: Italy), inherent in the issue in question. It is necessary to consider that today's society is an increasingly global society: the German sociologist Niklas

Luhmann spoke in this sense of *world society* (*Weltgesellschaft*) [LUHMANN N., 1997], as a reality characterized, on a global level, by increasing interdependence of economic and financial, as much as socio-cultural processes, with the resulting emergence of a communication network of global dimensions. If the local/regional factor plays a predominant role in the subsystems of law and politics (sovereignty and national constitutions) [LUHMANN N., 2012], undoubtedly in other areas it tends to lose importance. This leads, in relation to a matter regulated at a European level (thus international or transnational), to relativize any perspective limited to a national context: would it perhaps make more sense to consider opportunities for Europe, rather than for Italy?

Anyway, considering the regionalist perspective, it is important to clarify from which specific point of view – in other words, from which system – we are observing. Functions and interests, and consequently purposes and programs will differ. If we follow the idea of functional differentiation, we can not consider Italy as an undifferentiated system: economic opportunities will be different from opportunities related to other areas, and may conflict with them. Politics, in particular, should take this into consideration, being called to plan and realize interventions. Remembering it to people who work in the political system, is a task for those who produce knowledge. If, let's say, on one hand guarantees of brand protection and local production could be an advantage for the promotion of local products, and produce a positive impact beyond the economic system (for example in the connection between a specific territory and its social and cultural traditions), on the other hand norms about the liberalization of the market could encourage exports, but also facilitate the introduction of low quality foods in our country, influencing consumer choices with negative effects for nutrition.

Within the system of science devoted to the production of knowledge, it is also important to reflect on disciplinary divisions: even if they are addressing the same issue, different disciplines have different perspectives, more directly related to a specific system (law for jurists, economy for economists, and so on). In addition to interdisciplinary evaluations, scientists from any field will wonder about the consequences of the distinctions they are using, and will ask what they preclude; whether they are able to consider different points of view, beyond the limits marked by the tradition of the discipline; whether, in addition to determining opportunities, they are able to take account of the critical issues that emerge from other points of view.

4. *The risk*

Opportunities mean *occasion* or possibility, not certainty, but *uncertainty*. In pursuing an opportunity, we can succeed or not. Sociology, in recent years, largely devoted itself to illustrate the concept of *risk* and the link between risk and modernity: especially Anthony Giddens [GIDDENS A., 1990], Ulrich Beck [BECK U., 2011; 2003a; 2001] and Niklas Luhmann [LUHMANN N., 2013; 1996; 1993].

Beck developed the concept of *risk society* where risk is depicted as an effect of modernization: we observe the enormous development of productive and, at the same time, destructive forces; we claim for more and more security, but science and technology, which make us hope to get it, open new, and sometimes disturbing, scenarios, generating dangers and disasters potentially irreparable. Moreover, the risks are now global, rather simultaneously global and local: they concern men, animals and plants, and affect not only limited portions of territories and populations, but the whole world. This, again, makes us doubt any regionalist perspective: if a catastrophic failure (possible epidemics, food contamination) has effects far beyond individual States, maybe – as Beck suggested – it is convenient to think more and more according to transnational perspective, calling into question the sovereignty and local governments and opening to a concrete cosmopolitan perspective [BECK U., 2003b].

Luhmann analyzed the evolution of the concept between premodern and modern times, and its impact on the structure of society. The term appeared at the turn of the Seventeenth century, when it was possible to observe a switch from thinking in terms of *fortune*, of prudence as «the capacity of humans [...] to choose between reasonable expectations» [LUHMANN N., 1996], to the idea that some benefits can not be achieved if one doesn't put something into play [LUHMANN N., 1993]. If, at first, the idea of *security* (*securitas*) switched from «freedom from care» to search of «a secure basis for the making of decisions», then it lost its strength: it is now clear that absolute security does not exist, because something unexpected can always happen. Security only exists in the present moment: only insecurity and uncertainty can be represented as something lasting. If one do not accept this, not only disasters don't disappear, but the agitation produces damages that could be avoided [LUHMANN N., 2013].

It is the *decision*, according to Luhmann, to mark the transition to the modern concept of risk, which is not opposed to security anymore, but to *danger*: assuming that future damages are always possible, we can distinguish between those that arise from chosen decisions (within any perspective, that is, any system) – in this case we talk about risks – and those arising from external, environ-

mental factors – these are called dangers. Dangers are unavoidable, they don't depend by men: there is always the danger that a tree falls due to lightning. Risks instead are selected: I risk to be hit by a tree fallen because of lightning, only if I decide to go out. One is always exposed to dangers, while risks are chosen, they are faced in view of certain possible advantages. Herein lies the connection with the opportunity, thanks to the concept of decision: if I want to try to seize an opportunity, I have to risk. By risking, I expose myself not only to the possibility of not having success and not improving my condition, but also to that of making it worse: in case of failure one does not necessarily go back to the starting point. For example, not seizing certain opportunities that the market offers may mean, in perspective, the failure of a company. This happens because, if an attempt was made or not, on one hand one can fall behind others, and this produces a difference that is hard or impossible to fill; on the other hand, because if one tried, he brought into play resources and energies that are now exhausted.

Decision, risk and opportunities therefore seem to form a single block in the semantics of contemporary society. They have to do with uncertainty, with a complex world, with the determination of the future. In fact, with the risk, and therefore through the decisions taken in the present, one tries to bind the future: to control, or at least to limit, the possible future, to prevent some of the damages already conceivable. The future remains unknown, but at least one has tried to direct it, to control it. This is an attempt to plan, to establish a connection between present and future: risk is one of these strategies. Another is *trust*, that is, the ability to rely on their own expectations, thus reducing complexity through decisions [LUHMANN N., 2002b].

Therefore, we are always called upon to decide. To risk. To realize prospects that a contingent world, seemingly full of opportunities, of possibilities for self-determination, offers to us. More decisions thus involve an increasing number of risks. We can not, indeed, avoid to make decisions: even not deciding is a decision; even not wanting to take a risk exposes to a risk: the one of not perceiving opportunities that may be advantageous. Any risk, then, leads to generate further risks: if I insure myself against an adverse event, I run the risk of paying unnecessarily, if that event does not occur (and it is exactly in the maritime field-trade that, in the Eighteenth century, insurance and the concept of risk were produced [CEVOLINI A., 2013]). Also the decisions taken will affect in a decisive way further decisions in the future, which in turn will produce other risks.

This undermines the idea of *progress* and, at the same time, raises the awareness of the limits of knowledge: the more our knowledge increases, the more we attempt a rational calculation, the more we know that we do not know. After all, how could we know that a communitarian regulation will improve the state of

affairs, both in general and according to various national perspectives? Indeed, we can be almost certain that pitfalls and problems that are currently invisible will emerge.

If we talk about *opportunities*, therefore is at stake much more than what may appear at first glance. We risk a secure present, for a future that is not secure at all. We implement strategies whose consequences, especially in the case of failure, are not always predictable. In other words: there's no turning back. If new rules are declared on a European scale, replacing or completing the national ones, maybe then it becomes necessary – and here the term is not chosen at random – to think about what we may lose before, or at least at the same time, that we think about the possible new benefits.

5. Decision makers and those affected.

Decisions are always taken from a partial point of view: important is thus to establish who decides and who is affected by these decisions. It is therefore necessary to distinguish between *decision makers* and *those affected* by the decision: between systems that decide and their observers in the environment of the system. Who assesses risks, and who, in addition, is affected? Depending on the point of view – the *decision maker* or *those affected* – we talk about risks or dangers. Who is affected, it is so in an unpredictable way, because the dangers are arising from the decisions of others [LUHMANN N., 1993]. In fact, we accept more easily damages caused by our behavior, than those who depend by external situations, over which we have no control (for example: we prefer to die due to a poor diet rather than due the effects of food chemistry [LUHMANN N., 2013]).

On the one hand it is necessary to consider that the distinction between decision makers and those affected by the decision is not always easy to notice [LUHMANN N., 1993]), taking into consideration that individuals are included (with different degrees of involvement and freedom of action) in a different way for each functional system (this situation is described by the concept of *inclusion* [BARALDI C., CORSI G., ESPOSITO E., 2002]). On the other hand, it is not possible to take part in all the decisions affecting ourselves (for this reason one should be cautious talking about participation, which means multiplication of decisions and then bureaucracy [LUHMANN N., 1996]): it is necessary to acknowledge that decisions are increasingly dependent by organizations (we could complain about the «decisions taken from the top»). Big financial groups, authorities of economic governance, political institutions are always embedded in organizations that hold shares of power and that are basically perceived by individuals as distant. In the

European context an example is the so-called «Troika» (European Central Bank, International Monetary Fund, European Commission). It is not less important the fact that more and more organizations are supranational entities: once again, a regionalist outlook displays its limits, especially from an economic perspective.

So, as Luhmann writes, the fact that decision-making processes with effects on a global scale depend by organizations, produces a situation where everyone feels excluded and at the same time involved in every decision [LUHMANN N., 2013]. This also affects the concept of «social solidarity»: if in the past the dangers used to hit indiscriminately and pushed individuals to cope collectively (thus encouraging solidarity), risks and the distinction between decision makers and those involved by decisions open the way to a loss of trust and the emergence of conflicts [LUHMANN N., 2013; 1993; CORSI G., 2015]. Therefore, looking at possible future benefits and damages and considering the perspective of those involved can make the difference.

6. *Food as a fundamental right: bind or opportunity?*

Article 25 of the *The Universal Declaration of Human Rights* of 1948 states that «Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food». In light of this proclaimed right the European institutions, in recent years, worked to produce documents and regulations as the *White Paper on Food Safety, Food Security*, and the *General Food Law Regulation* (Regulation (EC) No 178/2002) adopted by the European Parliament and the Council of Europe; also institutions were created such as the *European Food Safety Authority* (EFSA) and the *Rapid Alert System for Food and Feed* (RASFF). All in order to ensure – in addition to the protection of the market – rights to food and food security.

One might ask how the fact that food is considered a fundamental right influences the attempt to seize certain opportunities. From the point of view of ethics, there is an opportunity to strengthen and extend rights to a greater number of individuals who can claim in case of alleged violations.

In the terms of general systems theory [LUHMANN N., 2002a], fundamental rights are *institutions*, which protect individual autonomy from state interference, ensure the differentiation of the political system and its separation from other systems keep open communication possibilities and the individual's inclusion in functional systems. Fundamental rights are therefore not only *values*: unlike values, they have binding force. The right to a secure and quantitatively sufficient

nutrition constitutes an obligation – that’s the point – for all systems that have to do with food.

Obligation is synonymous for obstacle. This is clear in the market, whose players have to face the need to fulfill obligations that involve cost, safety procedures, etc. Even politics should consider that fundamental rights are important in the future possible reforms of regulations about that matter: it is thus necessary to produce norms that are compatible with the fundamental right to food, and that are effectively applicable. A significant commitment is imposed because we have to move between values (such as health and safety) designed to protect individuals (whether conceived as human beings, citizens or consumers), guaranteeing them «protection» (for example with laws that encourage the increase of standards of food quality and requiring a strengthening of controls) on the one hand, and values inspired by other principles (e.g.: free market, competition, right to doing business), on the other.

Food law, in other words, has to act between a series of principles and values that are hard to balance and are likely to contradict each other; concepts (which represent values, ideals, and sometimes rights) as nutrition, health, safety, are difficult to be implemented individually but trying to guarantee all of them at the same time could be problematic (it is hard, for example, to think about ordering them in a hierarchy; and it is also hard to design norms and find points of balance, e.g. between the need to ensure that a product meets a high standard of safety and, at the same time, guarantees an adequate nutritional supply).

7. Conclusions.

If one wonders about which opportunities Italy has in the light of the current law of the European food, it is necessary to:

- keep in mind the inevitability of conflicts imposed by the peculiarity of the object «food», because of the various meanings that it assumes and the different dimensions where it plays a central role (market, work, health, safety, environment, etc.);
- establish the perspective of the observer and of which system he defines limits and possibilities (scientists must ask which distinctions they use, and whether it is possible a dialogue between different disciplines);
- wonder whether is convenient to maintain a regionalist perspective and define the limits it imposes in an increasingly global world;

- once the opportunities are identified, accept the fact that pursuing them exposes to a potential damage (risk), which however is not always to be determined in advance:
 - take into account of the fact that risks expose to possible regressions in comparison with the starting positions (one not only risks to gain nothing, but also to lose what he has) and elaborate hypothesis in this direction;
 - identify case by case – in a scientific way– who are the decision-makers and the other individuals involved;
 - from a legal perspective: establish norms in order to prevent and neutralize conflicts; norms that are compatible with the fundamental right to food and that could ensure compliance with other rights and values considered essential; above all: norms and other forms, not strictly legal, for the protection of people involved;
 - recall politics its duty to decide, and provide it with traditional and new tools.

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