

Alberto Germanò

New challenges for agriculture law  
(innovating food – innovating law)

*Abstract*

The background of this contribution is the *Communication from the European Commission [Com(2010) 672]* entitled “The CAP towards 2020: Meeting the Food, Natural Resources and Territorial Challenges of the Future”, which recognises the primary role of European agriculture in producing foodstuffs to feed the entire world’s population. This aspect is linked to the broader background of the contribution by modern scientific research and technological development to the enhancement of food production. Not only have the breakthroughs achieved by crosses and hybridization led to new plant varieties, but new genetically engineered plants yield a greater quantity of fruits and thus of foodstuffs capable of feeding the constantly growing world population.

The fundamental issue that will be addressed here concerns society’s demand for *new law* as a response to the new agricultural framework. The *novel foods* “created by science” have raised a number of questions for which society is demanding that the political establishment, and consequently the legal system itself, should offer satisfactory answers, i.e. formulate *new laws*. In other words, in response to *new foods* as an object of scientific technology, society has voiced a strong call for *new law*.

The contribution thus focuses on action in the sphere of **political decision-making**, through which measures affecting agricultural production are introduced by **legal rulings**. The action aims, firstly, to regulate the food market so that it becomes more respectful of the dignity of man. Secondly, the objective is to enact measures that make it compulsory for the public authorities and entrepreneurs to provide the community with all the appropriate information on new technology in the food sector. Citizens will thereby be able to make informed decisions which will, if necessary, allow them to influence the work of scientists and draw attention to the social and ethical concerns of the community.

The body of the report is divided into two parts. The first part highlights some pathological aspects of the current legal system on the subject of the relation between agriculture and the market. This relation has been strongly influenced by **economic factors**, above all in the interaction with **science**. The report reviews the traditional set of rules governing intellectual property, which grant a patent to a researcher who has devised a “new” good – in the present hypothesis, a new seed, a new plant, a new fruit – even though in this case the researcher’s “work” consists in “extracting” the active ingredients from plants and seeds grown by human native communities. Here the non-applicability of the rules on derived inventions that were laid down in patent law has led to the need for a new law to protect the centuries-old contribution made by these indigenous communities to the conservation of biodiversity.

The second part of the report deals with the question of uncertain science, which arises in connection with the ‘novel foods’ obtained by genetic modification. The existence of conflicting scientific arguments on their safety or dangerousness is by now well documented: therefore on this aspect, science is uncertain. Furthermore, while in the past the legal rule “followed” science, so that science constituted the premises of the rule whenever it was necessary to provide a legal solution for technical problems, today the situation has been reversed. Uncertain science now directs its own questions to the community that is seeking answers, but the community obtains such answers only from the political framework, i.e. from law. Having formerly depended on science and acted as an amorphous mass, the community now plays the role of a critical mass and as such has the capacity to orient science, to the point of being able to bring the action of scientists to a halt. *New law* as expressed in the precautionary principle, which has elevated scientific uncertainty to the rank of an element of relevance in the legal context, has modified the very frame of reference of responsibility. The validity of the rule “if you make dangerous goods, you pay the damages” is no longer accepted, at least among European populations: rather, the rule now is “if there is a risk that you could make dangerous goods, you shall not make them”. The characteristic of this phenomenon is that the one rule which is raised to the status of *a new legal rule* in the legal system is a rule that the lawmakers choose from among different scientific opinions, for reasons that are partly also ethical and social.

In short, the role of community participation in the quest for answers that uncertain science is not in a position to provide is increasingly prominent. But if participation is to be effective, it requires information. The right to “know” and to acquire the right knowledge has now become a *citizens’ right*. Indeed, new law can be said to have promoted the citizen to the status of a parameter for evaluating how far entrepreneurs conform to the code of professional conduct, according to which it is the entrepreneur’s duty not to deceive. Finally, it is imperative to note that in the food market, information is an intrinsic element of food safety itself, because one can hardly conceive of a safe food that is not at the same time a food product for which the manufacturer makes available all the information that is

useful and necessary as a guarantee for the consumer's health. This observation underscores the food consumer's right to be informed "before" becoming a party to a specific and particular contract. In Italy, non-deceptive advertising and truth in labelling in presenting foodstuffs to the general public is now guaranteed by the *new rule* of appealing to the *Guarantor Authority for Competition and Market*, the *Italian Antitrust Authority*.