21 Commentary on variety registration regulation in Italy

Alejandro Mejías, Enrico Bertacchini and Riccardo Bocci

Italy provides an excellent case study of how different variety registration requirements can evolve in a country where authority to develop legislation is divided between national and regional levels. In Italy, the regions have played a leading role in developing alternative registration systems linked to nationally established standards in response to conservation-related concerns. An additional factor which makes Italy an interesting case study is that, ultimately, all of the various regional registration schemes and the national law will need to be brought into line with the recent European Union Directives 62/2008, 145/2009 and 60/2010 which derogate EU variety registration standards for “conservation varieties” of seed and seed potatoes, vegetables and fodder plant seed mixtures, respectively. Adding still more complexity to the situation is the fact that in 2013, the Commission (formerly DGSANCO and now DGSANTE) submitted a proposal to European Parliament after five years of negotiation trying to update the overall framework of the European seed legislation. In March 2014, the European Parliament rejected the initiative, and it is still difficult to say if or when it will be reintroduced. Nonetheless, given its potential relevance to the subject matter of this chapter, we include consideration of the rejected proposal.

Italy’s first seed regulation and the conditions of registration of varieties in the national register

The first law in Italy to regulate marketing of seed was Royal Decree of 1st July 1926, n. 1361 concerning seed fraud.1 This decree established some conditions for seed marketing, for examples, that seeds must be labelled indicating a common name, minimum levels of purity (over 95 percent) and germinability (at least 85 percent). It also required the inclusion of information about the origin of the variety.

Later, a law passed in 1938 established a national catalogue of wheat varieties for voluntary certification.2 This catalogue required three conditions for registration: constant botanical characteristics (caratteri botanici costanti), culturally and technically valuable seeds (accertati pregi colturali e tecnologici”) and ascertained high productivity seeds (elevata produttività dimostrata). The National Institute
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on Improved Seed (Ente Nazionale Sementi Elette) was founded in 1954 for voluntary seed control and certification.3

In 1971, Italian Parliament passed national legislation, Disciplina dell’attività sementiera (of 25th November 1971 n. 1096). This law established a system for compulsory seed control and plant varieties registration. Only plant varieties that are included in a national list, administered by the Department of Economic Rural Development of the Ministry of Agriculture, can be sold on the open market in Italy. According to the law, to be included on the list, varieties have to be distinct in at least one trait, sufficiently homogenous and stable in the essential traits.

Regional variety registration as part of diversity conservation strategies

Besides having a national variety registration system which regulates the commercialization of seeds, Italy is particularly interesting for having a range of internal regional laws which include various forms of registration linked to conserving, protecting, enhancing and, in some cases, limited commercializing of local and autochthonous varieties (see Table 21.1 on page 352).

Underlying these initiatives is the awareness that there are only a few remaining local or old varieties being grown in Italy today (FAO, 1998). The remaining agricultural species and varieties within each region, and Italy as a whole, are at risk of genetic erosion, requiring measures to encourage conservation and provide incentives for sustainable use of autochthonous genetic resources.

In 1997, Tuscany was the first region to develop a regional law (Regional Law 50/97) on “protection of indigenous genetic resources”4 (tutela delle risorse genetiche autoctone). The Tuscan experience created political and scientific interest in conservation of traditional varieties. Since then, seven regions have issued legislation5 on this matter and in another four regions draft laws are still under political discussion.6 Further, after the coming into force of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), Tuscany substituted Regional Law 50/97 with Regional Law 64/2004, “The Protection and Enhancement of Local Breeds and Varieties of Interest to Agriculture, Husbandry and Forestry.”

Despite the potential for a proliferation of very different approaches at regional levels, the regional initiatives are quite similar. Most of them include the following basic elements:

- Recognition of local communities as the stewards of the resources (e.g. Lazio and Umbria), or the Region itself (e.g. Tuscany, Emilia Romagna), on behalf of the local communities.
- Establishment of a voluntary, free-of-charge regional register for species, breeds, varieties, populations, cultivars, landraces and clones.
- Establishment of technical-scientific committees to evaluate the nomination proposals of varieties to be inscribed into the regional register.
- Establishment of an on-farm conservation network coordinated by the regional authority. These networks recognize and uphold the figure of the
“custodian farmer” as key actor in the in situ on-farm conservation process. Besides farmers, universities, agricultural organizations and research centres, among others, are eligible to join the network.

- Establishment of a regional gene bank for ex situ conservation of local and indigenous material.
- Intervention plans for conservation.

The establishment of a regional register is a key part of the Italian regions’ strategies for agrobiodiversity conservation. It is worth noting that many of these regional initiatives are not limited to plant varieties, but also extend to animal breeds and forest resources.

**Conditions for registration of varieties in regional registries**

The conditions for registration of traditional plant varieties tend be fairly similar across the regionally based registries.

Since the objective of these laws is the protection and enhancement of local varieties threatened by genetic erosion, the registers tend to refer to materials that have been in production systems for a long time. Many of the laws refer to indigenous or nonindigenous varieties that have been in production in the area for 50 years. What counts for acceptable documentation/proof of their indigenous nature or the fact that they have been used in an area is not generally defined, and the examination committees are left with considerable discretion in terms of what they can rely upon. Of course, one could argue that the time-length requirement is a kind of “built-in” stability requirement, but it is a potentially very loose requirement. Testimony from farmers – or a written record to the same effect – is deemed acceptable evidence that a variety with similar traits has been used in the area for 50 years or more.

None of the regional laws requires that the plant varieties be distinct, uniform and stable to be registered. Instead, most of the laws only require that the varieties should be identifiable or distinguishable through reference to phenotypic traits. In the case of Tuscany, the scientific commission has established mandatory and facultative characteristics that varieties must comply with in order to be registered. Furthermore, Tuscany requires that applicants establish a connection between the traditional variety in question and the region of origin, to identify the origin and the territory where the variety is being cultivated, the potential and real production of the traditional variety and the resistance to adverse environment of the variety.

All of the regions include risk of genetic erosion as a core prerequisite. However, because of the technical complexity of the matter and lack of scientific consensus on how to define and measure genetic erosion, it is likely that practice is actually varied in terms of how the assessments are made. Definitions of genetic erosion are not usually present in the regional laws; instead, they are left to be handled by the technical-scientific commission involved. At the regional level, Lazio and Emilia Romagna have provided a detailed proposal for defining
the basic criteria for considering a variety at risk of genetic erosion. The implementing regulation of the law identifies minimum levels of cultivated land which vary according to the species, and contemplates not only the ecological and agricultural characteristics of the varieties but also, indirectly, natural factors and the production capacity of the farms on the territory. In many instances, the risk of erosion or of disappearance is mainly due to the scarcity of farmers cultivating the crop. The definition of risk, therefore, must also take into account this human factor, which is indirectly linked to the ecological and agricultural properties of the variety.

Rights conferred with respect to registered varieties

The types of rights conferred through the regional registration schemes generally reflect an appreciation of indigenous varieties and breeds as being part of the collective heritage of local communities who are maintaining them.

As noted by Bertacchini (2009), the idea of collective heritage is embedded in the regional laws both in the way some of them refer back to Article 8(j) of the Convention on Biological Diversity,10 or in the way they state that the region as a collective unit is responsible for the indigenous varieties concerned. The regional laws do not contemplate the institution of any form of individual exclusive rights over registered varieties. The individual or legal person who proposes a variety be registered enjoys no exclusive right over the variety, just as no third party may make a claim for intellectual property rights to it. Rather, inscription in the register and access to the resource accrues first and foremost collective benefits for the community as a whole in terms of conservation and enhancement of the heritage of autochthonous genetic resources. Furthermore, some regional laws (Tuscany and Emilia Romagna) address this point more directly regulating the use of autochthonous genetic resources to create new varieties. Members of the conservation network who intend to apply for a plant breeder right, or a patent on a variety essentially derived from one registered, must request prior consensus to the region or to the responsible agency.

The establishment of on-farm conservation networks, comprised of steward farmers (coltivatori custody in Italian), is an innovative approach to dealing with the right to save, replant and exchange seeds for traditional and indigenous varieties which do not fit the requirements of the national registration system.

All of the regional laws allow the members of the network to make the material registered available for conservation or improvement purposes. The laws normally allow farmers within the network to save and to exchange locally, on a nonprofit basis, a small quantity of seed (modica quantità in Italian) of registered varieties. Some regional laws allow farmers to sell small quantities11 of seeds. Bertacchini (2009) notes that these norms, even to a limited extent, reflect the appreciation of the importance of farmers’ practices, which in the past have brought about varietal innovation and the continual adaptation of varieties to the territory. The right to save, replant and exchange seeds can be especially important in coping with the risk of extinction of local varieties by
putting them to use in agriculture. These activities are also ways of safeguarding and enhancing the cultural heritage and traditional knowledge which are tied in with indigenous varieties.

**Status of implementation**

This subsection section considers the state of implementation of the regional laws and related registration schemes. Their implementation strongly depends on the availability of financial and technical resources, as well as on the political commitment of the regional authorities. As a result, there are differences in their state of implementation, from region-to-region.

The most developed regulations are in place in Tuscany, Lazio, Emilia Romagna and Marche where registers are already working (there is an annual plan of activities and a budget for each region). For instance, in 2013, Tuscany’s register showed 463 arboreal and fruit tree species and 68 herbaceous species, of which 401 and 61 were at risk of genetic erosion, respectively. For the three regions this data is accessible online. Tuscany has also begun to select and register steward farmers as part of the process of supporting the development of networks for conservation and security. The Friuli Venezia Giulia legislation is partially operational, with the *ex situ* conservation-related section of the law being implemented; the *in situ*–related sections are not yet operational. Umbria is in the process of conducting a census prior to the establishment of the registry in the context of the Umbrian Rural Development Plan.

Lack of public funds or changes in the institutional contexts may also threaten the implementation of these laws. For example, in 2011, Tuscany formally abolished ARSIA, the public regional body responsible for the implementation of the law. For this reason, there is institutional uncertainty about whether the new responsible body will express the same commitment in continuing the implementation of the regional law provisions.

**The EU directives on conservation varieties and their implication for the Italian registration system**

In the late 1990s, the European Union became increasingly concerned about the erosion of genetic diversity related to agriculture. Among the many alleged causes for diversity erosion were the strict requirements of EU seed regulation, on the basis that it hindered the conservation through use of landraces and their further evolution/adaption to local and regional agroecological conditions. In December 1997, the EU passed Directive 98/95/CE which introduced a new type of variety called a “conservation variety” that could be marketed within Europe and introduced in the common catalogue. However, directive 98/95/CE could not be implemented as it was. It was still necessary, by way of a subsequent directive, to decide a number of issues, including the conditions of registration of such conservation varieties and the extent to which they could be commercialized.
It was not an easy task to address these outstanding issues. It took 10 years and 14 different draft texts being considered by the Standing Committee on Seeds and Propagating Material for Agriculture before the EU passed Directive 62/2008, which resolved the outstanding issues, attempting to strike a balance between protection of the current seed market and the conservation of agrobiodiversity. One of the most controversial issues was the derogation of the distinctness, uniformity and stability (DUS) requirements for “conservation varieties.” The directive establishes that “Member States may adopt their own provisions as regards DUS of conservation,” and at the same time, it marks limits to state action (see Table 21.1).

During these 10 years of legal uncertainty at the European level, the Italian legislation was modified to incorporate the new EU provisions concerning derogations to seed regulations registration of conservation varieties. After years of lobbying and pressing the government, an association called Rete Semi Rurali (www.semirurali.net), with the help from a green party parliamentarian, succeeded on convincing the national authorities on passing a decree related to conservation varieties. In 2001, legislative decree n. 212 introduced a section dedicated to conservation varieties in the Italian national register. Nevertheless, Italy had to wait another 6 years, until law 46/2007 was passed by the Italian Parliament, to have a more elaborate legal provision concerning the implementation of conservation varieties. That national law, passed by the Parliament to address several miscellaneous international obligations, addressed in one article the creation for a national register of conservation varieties with the intentional of implementing aspects of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) – in particular article 5 (regarding conservation, research, characterization and documentation of phytogenetic resources for food and agriculture), article 6 (regarding sustainable use of phytogenetic resources) and article 9 (regarding farmers’ rights). Application Decree of 18th April 2008 followed the law, providing details about the conservation varieties system, drawing both from the texts of the European directive being discussed at that time and from the regional laws’ experience. For example, for conservation varieties, the law completely derogated the DUS requirements, without any further reference to minimum conditions to be met for registration of conservation varieties.

A more detailed legal framework has been set out in the form of Legislative Decree D.Lgs. 149/2009, which was enacted to give application to the EU directive 62/2008. D.Lgs. 149/2009 provides for the acceptance of conservation varieties in the national catalogues of varieties, and the production and marketing of seed and seed potatoes of those varieties. In order to qualify, a variety must be of interest for the conservation of plant genetic resources. Further, such variety cannot be subject to plant variety protection rights; they must also have been deleted from the common catalogue for over two years (if they were ever registered). As a result, a variety is considered eligible for registration as a conservation variety if it is a landrace, an old commercial variety or an old modified commercial variety of interest for the conservation of plant
<table>
<thead>
<tr>
<th>Legislation</th>
<th>Denomination and requirements for registering a new variety in the European regulation</th>
<th>Rights conferred under the legislation (commercialization, nonprofit exchange of material . . .)</th>
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<tbody>
<tr>
<td>• Council Directive 98/95/EC of 14th December 1998</td>
<td>Denomination: Conservation variety. Conditions under which seed may be marketed and therefore included in the common catalogue in relation to conservation in situ and the sustainable use of PGR are associated with specific natural and semi-natural habitats and threatened by genetic erosion. Specific conditions shall be established taking into account: • Landraces and varieties which have been traditionally grown in particular regions and threatened by genetic erosion. • The results of unofficial tests and knowledge gained from practical experience during cultivation and the detailed description of varieties shall be taken into account and shall result in exemption from official examination. • Quantitative restrictions shall be established.</td>
<td>Right to market locally the seed. Right to include the variety in the common catalogue.</td>
</tr>
<tr>
<td>• Council Directive 2008/62/EC of 20th June 2008</td>
<td>Denomination: Conservation variety. Definition: Agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion. The varieties must comply with the following requirements:</td>
<td>Right to market locally the seed. Right to include the variety in the common catalogue.</td>
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DUS requirements:
Member States may adopt their own provisions as regards DUS requirements fulfilling at least the following requisites:
• The technical questionnaires of Community Plant Variety Office of the EU or the technical questionnaires of UPOV for stability and distinctness.
• For the assessment of uniformity, the directive 2003/90/EC which establishes the minimum conditions for certain agricultural plant species shall apply.

Genetic erosion:
Loss of genetic diversity between and within populations or varieties of the same species over time, or reduction of the genetic basis of a species due to human intervention or environmental change.

No official examination:
No official examination shall be required if the information is sufficient for the decision on the acceptance of the conservation varieties.

Identification of the region of origin:
The Member States shall ensure that the conservation variety must be maintained in that mentioned region.

Certification:
There is a derogation of the certification requirements in respect of minimum of varietal purity and the requirement of official examination if the seed descends from seed produced according to well-defined practices for maintenance of the variety and has sufficient varietal purity.

Marketing conditions:
Seed produced and marketed in its region of origin.

Quantitative restrictions:
Quantity does not exceed 0.5% of the seed of the same species used in that Member State in one season or a quantity necessary to sow 100 hectares, whichever is greater.
### Table 21.1 (Continued)

#### Italian National Legislation

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Denomination and requirements for registering a new variety in the national regulation</th>
<th>Rights conferred under the legislation (commercialization, nonprofit exchange of material . . .)</th>
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</table>
Definition:  
• Autochthonous and nonautochthonous plant varieties that have been integrated into the local agroecosystem for at least 50 years, but which do not appear in any other national register.  
• Plant varieties that are no longer registered and at risk of genetic erosion.  
• Plant varieties with some economic, scientific, cultural or landscape interest which are no longer cultivated in Italy, but conserved in national or international botanic gardens, research institutes and gene banks.  
Nonofficial testing:  
DUS requirements derogated.  
Genetic modified varieties are excluded.  
Common/local denomination and synonyms of the variety.  
Morphological characterization and genetic if it is available.  
Local area of growth.  
Historical and cultural evidences and documentation which show the bond between the variety and the area of growth.  
Quantitative restrictions:  
• The total quantity that each farmer can transfer as seed is the amount necessary to establish a crop of 1,000 square metres for vegetables and 1 hectare for the other agricultural species.  
• Labelling and identification as a conservation variety. | The right of direct sale is recognized and circumscribed to the local area of production. |
<table>
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<tr>
<th>Region/Regional agency managing the catalogue</th>
<th>Legislation</th>
<th>Denomination and requirements for registering a new variety in the regional regulation</th>
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<tr>
<td>Tuscany/Agenzia regionale per lo sviluppo e l’innovazione nel settore agricolo-forestale (ARSIA)</td>
<td>• Regional Law 16th November 2004 n.64 “Tutela e valorizzazione del patrimonio di razze e varietà locali di interesse agrario, zootecnico e forestale.”&lt;br&gt;• Regional Decree of 1st March 2007 di attuazione della legge regionale “Tutela e valorizzazione del patrimonio di razze e varietà locali di interesse agrario, zootecnico e forestale.”</td>
<td>Denomination: Local varieties and races.&lt;br&gt;Definition: Species, races varieties, cultivars, clones and populations.&lt;br&gt;Originated in the Tuscan territory.&lt;br&gt;Originated outside the region but they have been introduced and integrated in the traditional agriculture of the territory.&lt;br&gt;Species, races, varieties, cultivar, populations and ecotypes: Derived from phenotypic selection.&lt;br&gt;Originated in the Tuscan territory but no longer grew and conserved ex situ in Tuscany or in other regions or countries.&lt;br&gt;Genetic erosion risk.&lt;br&gt;Quantitative restrictions.&lt;br&gt;Technical link.&lt;br&gt;Historical bond.&lt;br&gt;Morphological and if possible genetic characterization according to international standards.&lt;br&gt;The Scientific Commission must approve the inscription.</td>
<td>The regional regulation allows the nonprofit exchange of modest quantities (established by the ARSIA) of plant genetic materials for recovering, maintaining and reproducing local varieties at risk of genetic erosion to whose are members of the conservation network. In addition, it allows the commercialization of the varieties inscribed in the section of conservation varieties of the register. The additional requirement is the existence of an economic interest in the variety.</td>
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Definition: \(^{19}\) Species, races, varieties, ecotypes, clones, spontaneous varieties related to the cultivated specie and populations:  
- Autochthonous and economically, scientific, environmentally and culturally interesting for the region and at genetic erosion risk.  
Species, races, varieties and cultivar:  
- Nonautochthonous but introduced at least 50 years ago.  
Species, races and varieties:  
- Autochthonous but no longer grown and conserved in botanic gardens, research institutes and gene banks whether in the country or outside and for which there is a reintroduction interest.  
Historical, scientific and technical documentation.  
The variety must be identifiable by a minimum number of traits defined for each variety.  
The Scientific Commission must approve the inscription.  
Genetic erosion risk. | The steward farmer member of the conservation network has the right to sell a modest quantity of material (established at the moment of inscription of the local variety) in the local area.  
The farmer member of the conservation network has the right to replant. |
Umbria/not identified yet


**Denomination:**
Autochthonous genetic resources of agricultural interest at genetic erosion risk.

**Definition:**
Species, races varieties, ecotypes, spontaneous varieties related to the cultivated specie, cultivar, clones and populations
- Autochthonous and economically, scientific, environmentally and culturally interesting for the region and at genetic erosion risk.
- Nonautochthonous but introduced at least 50 years ago and which evolved specific characteristics.

Species, races and varieties:
- Autochthonous but no longer grew and conserved in botanic gardens, research institutes and gene banks whether in the country or outside and for which there is a reintroduction interest.

Genetic erosion risk.
The variety must be identifiable by a number of traits defined per every single variety.
The Scientific Commission must approve the inscription.

The steward farmer member of the conservation network has the right to sell or exchange a modest quantity of material (established at the moment of inscription of the local variety) in the local area (province).

Friuli Venezia Giulia/Ente regionale per la promozione e lo sviluppo dell’agricoltura (ERSA)

- Regional Law 22nd April 2002 n.11 “Tutela delle risorse genetiche autoctone di interesse agrario e forestale.”

**Denomination:**
Autochthonous genetic resources of agricultural interest at genetic erosion risk.

**Definition:**
Species, races, varieties, cultivars, ecotypes, clones, populations and spontaneous related varieties:
- Autochthonous and economically, scientific, environmentally and culturally interesting for the region and at genetic erosion risk.

Species, races varieties and cultivars:
- Introduced at least 50 years ago and which evolved specific characteristics.

The steward farmer member of the conservation network has the right to sell a modest quantity of material (established at the moment of inscription of the local variety).

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Table 21.1 (Continued)

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</table>
| Marche/L’Agenzia per i servizi nel settore agroalimentare delle Marche (ASSAM) | Regional Decree 19th July 2004 n. 240 “Regolamento per la tenuta del Registro volontario regionale e per l’iscrizione in esso delle risorse genetiche autoctone della Regione Friuli Venezia Giulia.” | - Species, races and varieties:  
  - Autochthonous but no longer grew conserved in botanic gardens, research institutes and gene banks whether in the country or outside the country and for which there is a reintroduction interest.  
  - Genetic erosion risk defined by decree as permanent reduction in terms of number, uniformity and identification of important morphological traits in the local area.  
  - Historical, scientific and technical documentation is required.  
  - The variety must be identifiable by a number of traits defined per every single variety.  
  - The Scientific Commission must approve the inscription.  
  *Denomination:*  
  Conservation variety.  
  *Definition:*  
  Races varieties, ecotypes, clones, populations, cultivars and spontaneous related varieties:  
  - Autochthonous races, varieties, ecotypes, clones, populations and cultivars.  
  - Nonautochthonous introduced at least 50 years ago. | The steward farmer member of the conservation network has the right to replant and multiply the material on-farm. |
| | Regional Law 3rd June 2003 n.12 “Tutela delle risorse genetiche animali e vegetali del territorio marchigiano”. | | |
| | Regional Decree 28th October 2004 n. 116 | | The commercialization and exchange of plant genetic resources under the conditions of the national and European legislation. |
• Autochthonous but no longer cultivated and conserved in botanic gardens, research institutes and gene banks whether in the country or outside the country and for which there is a reintroduction interest.
• Nonautochthonous developed varieties for recovering the genetic diversity of cultivated species of the region which are at risk of disappearing.

Genetic erosion risk.

Agronomic and morphological distinctions.
The Scientific Commission must approve the inscription.

Campania/SETTORE Sperimentazione, Informazione Ricerca e Consulenza in Agricoltura (SESIRCA)

Regional Law 19th January 2007 n.1 “Disposizioni per la formazione del bilancio annuale e pluriennale della regione Campania.”

Regional Decree 15th September 2008 n.33 “Salvaguardia delle risorse genetiche agrarie a rischio di estinzione.”

Denomination:
Autochthonous genetic resources of agricultural interest at genetic erosion risk.

Definition:
Species, races, varieties, ecotypes, clones, populations.
• Autochthonous.
• Autochthonous but no longer cultivated and conserved in botanic gardens, research institutes and gene banks whether in the country or outside the country and for which there is a reintroduction interest.
• Nonautochthonous but introduced at least 50 years ago and which evolved specific characteristics.
• Derived from phenotypic selection.

Historical, scientific and technical documentation is required.
Genetic erosion risk.
The Scientific Commission must approve the inscription.

The steward farmer member of the conservation network can reproduce the material under the directives of the ASSAM.
The steward farmer member of the conservation network can only grow one variety of each specie.

The farmer is allowed to regionally exchange plant genetic resources in modest quantities in the local area. Commercialization is allowed under the terms of the European legislation.

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</table>
| Emilia-Romagna/Agricultural General Director Office of the Region | • Regional Law 29th January 2008 n.1 “Tutela del patrimonio di razze e varietà locali di interesse agrario del territorio Emiliano-Romagno.” | **Denomination:** Indigenous genetic resources of agricultural interest.  
**Definition:** Species, races, varieties, ecotypes, clones, populations.  
• Autochthonous.  
• Autochthonous but no longer cultivated and conserved in botanic gardens, research institutes and gene banks whether in the country or outside the country and for which there is a reintroduction interest.  
• Non-autochthonous introduced and traditionally integrated long time ago.  
Historical, scientific and technical documentation is required. The Scientific Commission must approve the inscription.  
Genetic erosion risk. | The members of the conservation network are allowed to regionally exchange plant genetic resources in modest quantities in the local area. |
| Basilicata | • Regional Law 14th October 2008, n.26 “Tutela delle risorse genetiche autoctone vegetali ed animali di interesse agrario.” | **Denomination:** Autochthonous genetic resources at genetic erosion risk.  
**Definition:** Species, races, varieties, biotypes, ecotypes, clones, populations:  
• Autochthonous.  
• Non-autochthonous introduced at least 50 years ago and which evolved specific characteristics.  
• Autochthonous but no longer cultivated and conserved in botanic gardens, research institutes and gene banks whether in the country or outside the country and for which there is a reintroduction interest.  
Historical, scientific and technical documentation is required. The variety must be identifiable by a number of traits defined per every single variety.  
Genetic erosion risk.  
The Scientific Commission must approve the inscription. | The members of the conservation network are requested to make available their registered material for the rest. |
Table 21.2 Online access to legislation

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<td>Decree of 18th April “Disposizioni applicative per la commercializzazione di sementi di varietà da conservazione.”</td>
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Basilicata
www.regione.basilicata.it/dipagricoltura/default.cfm?fuseaction=linkdoc&doc=4046&link=4047

Campania
Regolamento di attuazione dell’art. 33 della LR 19.01.07, n. 1.
www.sito.regione.campania.it/burc/pdf07/burc07or_07/lr01_07/lr01_07.pdf
genetic resources. D.Lgs 149/2009 reintroduced DUS requirements, but eased the standards for uniformity, allowing up to 10 percent off-types. Otherwise the standards are those set by the Community Plant Variety Office (CPVO) or UPOV testing guidelines. The official tests are not mandatory and can be replaced by the results of unofficial tests, knowledge gained from the cultivation of these varieties, and information from authorities or organizations carrying out conservation work.

As for procedural requirements, the ministerial decree implementing the law\textsuperscript{16} establishes that the registration process is free of charge.

One of the key characteristics of the conservation varieties system devised by the law is that seed production, selection and marketing must be limited to the region of origin as specified in the application. On the other hand, there is no geographical limitation for the cultivation of the conservation varieties.

Further, there is a derogation of the certification requirements in respect of minimum varietal purity and the requirement of official examination if the seed descends from seed produced according to well-defined practices for maintenance of the variety and has sufficient varietal purity.

Finally, the quantity of seed commercialized per conservation variety shall not exceed 0.5 percent of the seed of the same species used in the country in one season or a quantity necessary to sow 100 hectares, whichever is greater.

In June 2009, the first conservation variety (maize called Nostrano di Storo) was approved by the ministry (decree 11th June 2009) after a request from the Autonomous Province of Trento. By the end of 2011, 15 more conservation varieties were been registered. All these latter varieties have Piemonte as their centre of origin and production. Interestingly, so far, all the conservation varieties registered come from regions which have not enacted regional laws for the protection and enhancement of traditional and indigenous varieties. This result comes mainly from the fact that, even without a regional law, Piemonte and Trentino Alto Adige invested their regional agricultural departments’ resources in mapping local biodiversity of interest for agriculture.

**Outstanding issues regarding the compatibility of regional laws and the national law, including the derogation for conservation varieties**

The national, regional and European norms concerning varieties registration systems have all developed in fits and starts and somewhat out of sync with each other. Therefore it is a challenge to see how all legal provisions will be fully and harmoniously implemented and in particular how the registration systems devised by the different laws will be made complementary.

Of particular interest is to understand how the system devised by regional laws will interact with the system devised by the EU directive on Conservation Varieties and applied in Italy with D.Lgs 149/2009.

On one hand, the aims of the two systems seem to be quite different. On the other hand, they are complementary with regards to the mechanisms devised to
sustain the conservation of local and traditional varieties treated by genetic erosion. For instance, many of the regional laws do not establish a right for commercialization of traditional varieties, but instead have set up systems of both in situ and ex situ conservation at the regional level, and exchanges of seeds as part of those systems. The creation of on-farm conservation networks allows for a free exchange of seeds among registered custodian farmers for traditional varieties that are at risk of genetic erosion. Conversely, the EU Directive on Conservation Varieties, by allowing limited forms of commercialization, is meant to create an economic incentive to address the risk of genetic erosion and loss of conservation varieties in particular.

Further, even if the text of some of the regional laws (i.e. within the country, not the European region) anticipate the commercialization of seeds of traditional and autochthonous varieties, the national law implementing the conservation varieties system will supersede these provisions.

The experiences gained through the implementation of Italian regional laws, identifying and cataloguing traditional varieties and breeds, should provide a useful basis for registering conservation varieties and the legal commercialization of their seeds.

In the current legal framework it is unclear who is actually entitled to commercialize seeds of conservation varieties. For instance, article 19-bis of the Law 1096/1971 (concerning seed control and plant varieties registration) incorporates the derogations for the commercialization of seeds of conservation varieties and states that farmers in the region of origin of the conservation varieties are entitled to sell a small quantity (modica quantità) of seeds and propagating material, subject to the application of a ministerial decree. As of June 2013, no such ministerial decree has been drafted and as a result, there is an impasse impeding small farmers’ ability to take advantage of the right to sell seed of conservation varieties. In fact, in the current regulatory framework for seed commercialization, only authorized seed producers and seed companies may sell seeds. In many cases, small farmers are not able to comply with the requirements for becoming authorized seed producers. For this reason, unless the forthcoming ministerial decree derogates on the operational requirements for the commercialization of seeds of conservation varieties, the objective of the EU directive in Italy will not be completely achieved.

**A few observations regarding the recently rejected EU regulation “on the production and making available on the market of plant reproductive material (plant reproductive material law)”**

Being part of the European Union, the Italian scenario for registration requirements and derogations is still likely to change in the near future due to the process of revision of seed marketing directives at the EU level.

In May 2013, the EU parliament submitted to the EU Council a proposal for new EU regulation on plant reproductive material with the aim of
consolidating and updating the EU level rules concerning the marketing of plant reproductive material. In March 2014, it was rejected by the EU Parliament, and it is hard to know when or if it will be reintroduced, and in what form.\textsuperscript{20} Given that the proposed legislation addressed a number of issues we consider in this chapter, we review its main elements, despite the fact that it was rejected. The proposed legislation appeared to introduce more flexibility in variety registration requirements in four ways. First, the proposed legislation explicitly did not apply to plant reproductive material that was maintained and exchanged in networks of \textit{ex situ} and \textit{in situ} or on farm conservation of genetic resources following national strategies on conservation of genetic resources. Plant reproductive material exchanged in kind between two persons – other than professional operators – was also excluded from the scope of the regulation.

Second, it defined a new category of “nice market reproductive material,” that is, material which is made available on the market only in limited quantities by small professional operators. Such material would have been exempted from the requirement of belonging to a registered variety, with the idea that it could be freely commercialized following rules on labelling and packaging defined by the EU Commission.

Third, the proposed legislation provided for the recognition and registration of heterogeneous material (i.e. populations), which did not fulfil the DUS requirements, by empowering the EU Commission to adopt acts for its production and marketability.

Fourth, pursuant to the proposed regulation, the current legal framework for conservation varieties would have been revised to have more relaxed requirements. Old traditional varieties would have continued to be registered on the basis of an officially recognized description without an obligatory DUS examination. The officially recognized description would only need to describe the specific characteristics of the plants and parts of plants which are representative for the variety concerned and make the variety identifiable, including the region of origin.

The quantitative restrictions present in the previous EU Directive would have been abolished. The production of commercialized seed would be limited to regions of origin, but the reproduced material could have been marketed without geographical limitations.

These changes to the existing norms would have represented a step forward in creating a more flexible registration regime, taking into account different interests and needs. It is unfortunate that it was rejected. Regarding the possibilities of marketing seed of heterogeneous materials, the openings contained in the text of the Commission have been included in the Commission Implementing Decision of 18 March 2014, that allows a temporary experiment providing for certain derogations for the marketing of populations of the plant species wheat, barley, oats and maize pursuant to Council Directive 66/402/EEC (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:
Variety registration regulation in Italy

32014D0150&from=EN). It is still unclear the impact of the temporary experiment on the overall legislation, but at least it is a first opening to more diversity in seed marketing.

Notes

1 Regolamento per l’esecuzione del r.d. 15 ottobre 1925, n. 2033, conv. in legge con l. 18 marzo 1926, n. 562, concernente la repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari. URL: www.italgiure.giustizia.it/nir/1926/lexs_11614.html


3 Formally, ENSE has been abolished in 2010 through the D.L. 78/2010, whose aim has been to rationalize the Italian public agencies and organizations. The mission and activities of the ENSE are now conducted by the INRAN (Istituto Nazionale per la Ricerca Alimentare e la Nutrizione). In 2012 ENSE and INRAN have been merged to the Consiglio per la Ricerca in Agricoltura and now ENSE is named Centro di sperimentazione e certificazione delle sementi (CRA-SCS).

4 For the purposes of this publication we have translated autoctone as ‘indigenous.’ ‘Autochtonous’ would have been a closer translation, but it is not widely used in current English language. People working in the agriculture and genetic resources will tend to think of farmers’ varieties or landraces when they see either of the terms.


6 Regions of Sardegna, Abruzzo, Puglia and Sicilia.

7 This is the case of Friuli Venezia Giulia. The Tuscan register also holds a forest section.

8 For further information about the application forms, mandatory traits and facultative ones, see: http://germoplasma.arsia.toscana.it/Germo/modules.php?op=modload&name=MESI_Menu&file=Manager&act=D_2:@102

9 The regional laws name public regional agencies to manage regional catalogues. Moreover, they establish regional scientific–technical commissions in charge of the acceptance or rejection of potential varieties. Those commissions evaluate the eventual risk of erosion of a given variety and determine the area where the materials are allowed to be exchanged. The commissions are usually specialized in animals or plants and are normally composed by one public official from the regional department of agriculture competent in plant or animal genetic resources; one representative of the public regional agency which manages the catalogue; one representative of the farmers; and several scientific and academic experts on the field.

10 Article 8(j) of the CBD states:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

11 Tuscany, Lazio and Friuli Venezia Giulia., in these regions nonprofitable exchange is also recognized as a right.
The directive is entitled “Providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties.”

Attuazione delle direttive 98/95/CE e 98/96/CE concernenti la commercializzazione dei prodotti sementieri, il catalogo comune delle varietà delle specie di piante agricole e relativi controlli.


Ministry for Agricultural, Food and Forest Policy, Ministerial Decree 17th December 2010, Operational provisions for the implementation of the D.Lgs 149/2009.

Tuscany’s application form is available at: http://germoplasma.arsia.toscana.it/Germo_old/PN_GERMO/Download/Domanda%20b_n.doc

Lazio’s application form is available at: www.arsialweb.it/cms/index.php?option=com_docman&task=doc_download&gid=106&&Itemid=100