

THE EUROPEAN LEGISLATIVE CONSTRUCTION ON AGRICULTURAL COOPERATIVES AND ITS NATIONAL TRANSPOSING

Maria Claudia DIACONEASA¹, Raluca Emilia CHIRCULESCU²

¹ PhD Student, The Bucharest University of Economic Studies,
email: maria_preda1990@yahoo.com;

² PhD Student, The Bucharest University of Economic Studies,
email: raluca.chirculescu@yahoo.com

Abstract

The cooperative sector is regarded as relatively new despite its 200 years old history. It has been developing on its own no matter the political regime or the philosophical trends thorough the people who understood it as a help in their economic and social development. In recent years, the EU has been promoting it as a mean of achieving rural development. In order to do that, some regulations and strategies regarding the agricultural cooperative sector have been issued for both supporting and controlling it. These regulations are constantly analyzed and modified. The member states are supposed to transpose these regulations in order to suit their best interests and national specificities, and as it will be shown in this paper, Romania has done a poor job in this matter. Even so, the time is not lost, some new opportunities and approaches may be taken into consideration for further readjustments of the Romanian cooperative sector.

Key words: legislative construction; agricultural sector; national transposing; rural development.

Introduction

The choice of studying the European legislation was not random, but based on the following reasoning: Romania is an EU member with full rights and responsibilities towards EU citizens and the national legislation is going through a constant harmonisation process in order to follow the EU recommendations.

Studying the construction of EU regulatory documents, as the authorities' way of communicating with citizens, may be considered as a discourse analysis. This choice allows regarding the official discourse, through the analysed documents, as a variable dependent of the believes and concepts of document writers, and so the approaches regarding agricultural cooperatives can be traced. Also, it may be regarded as an independent variable, through the influence it has on national interpretations in this field.

The research question of the present study is if the EU legislation favors building agricultural cooperatives in the member states and if the way this legislation has been transposed at national level, in Romania is satisfactory.

The premises of the study states that for both EU and Romania, the interest for regulating the cooperative sector in agriculture is relatively new. The projections regarding the rural development opportunities this sector may offer are framed by the end of the twentieth century and the current period. Also, one of the significant factors that contribute to the poor development of the agricultural cooperatives, at national level, is the defective regulation of the sector, with vague expressions and not regarding the best interest of the local producers nor the rural economic development through cooperatives.

The methodological frame is based on a mixed method approach regarding discourse analysis. In this regard, the AntConc computer software has been used for finding the word appearance frequency, also as manual filtering of key words in the research corpus formed of four document categories: EU Parliament Regulations, EU Commision Communications, EU development Strategies, transposed in national regulations through National Rural

Development Programs, and their explanatory documents, and research articles that regard the regulations impact in this matter. The four categories of documents were chosen for an objective and holistic approach on the way agricultural cooperatives is regarded by them. The official Regulations, Communications and Decisions of the EU have been downloaded from the dedicated website <http://eur-lex.europa.eu>, they were selected to contain “agriculture” in the title and to address cooperation. Four Communications were selected, from the 2012-2016 time period and six Regulations and Decisions in the 1998-2016 time period. The selection of the five explanatory guides and reports followed the same key words in the publications of accessory or partner institutions to the EU. The Strategies were downloaded also from <http://eur-lex.europa.eu>, as they are also Commission Communications. The seven scientific articles were selected from the author’s personal data base, based on their relevance to the topic content.

1. Literature review

The fact that in 1869 the cooperatives were associations between the poorest people and they followed the principles of solidarity and mutual help by heart, as Ferreira da Costa (1980) observes, and today there is a minimum of contribution for entering a cooperative, of 5 000 000 lei (Law 566/2004) or approximately 1.1 million euro, is proof that evolution has pushed these structures from the grasp of the poor to the one of people with agricultural and economic potential, able to expand it through cooperatives. Shaffer (1999) presents in his cooperative movement dictionary that several international institutions such as FAO or the UN have included the agricultural cooperatives in their resolutions. Yet, the EU has recently started to channel much attention towards them.

In the current period, van der Sengen (2014) observes both a complexity of European regulatory documents, born out of the need of recovering the time when these structures haven’t got any attention, each country had its own regulation and understanding for them, and not from the wish to offer support for building new structures. With the understanding of the cooperatives potential in enhancing rural development came a rush for promoting and controlling them in that direction with such a fast pace that countries like Romania, which have been through a political regime that used them for controlling and suppressing the rural population as Popescu (2014) observes, cannot follow.

A state like Romania in which the authorities try their best to keep up with the western economies, some aspects may be overlooked, and agriculture was, unfortunately, one of them. Bijman (2012) and van der Sengen (2014) observe that in this country the agricultural cooperatives sector is mostly inexistent, the regulatory harmonisation was made fast, in order to respond positively to the EU request for a candidate country, but with no respect to the local economy, development potential or support. Considering that in 2004 the agricultural cooperatives Law came 14 years after the destruction of the communist cooperatives and with little explanatory actions regarding the capitalist cooperatives that were regulated by it, there is no great surprise in the stage of development this sector has in the current period.

2. European legislation

Between the Commission and the Parliament documents there are two similar aspects. First, the used vocabulary, the words are clear, with general valid implications. Second, although they are created to respond to a long term vision of the EU, these documents suggest immediate changes that the member countries must make.

There are also differences that are visible to the reader without using specialised software, the most important being the documents structure. While the Parliament uses documents with a numbered structure that resembles more to a national law and gives the reader the feeling of compulsion. These is easily seen in Regulation (EU) No 233/2014,

Regulation (EU) No 1305/2013, Decision No 2179/98/EC, Regulation (EU) No 1293/2013, Decision No 1386/2013/EU or Regulation (EU) No 1291/2013.

The Commission Communications, like COM (2012) 79 final, COM (2014) 130 final, COM (2016) 739 final and COM(2012) 72 final have the structure of an expanded scientific article and leave the reader with a motivational speech feeling rather than compulsoriness, although the practical importance of the two is not different.

The tense used in Parliament documents is present simple, suggesting actions that need to be done soon after the documents publication.

The involved actors and the actions that need to be done are clearly stated and so are the connections to other regulatory documents.

The objectives, the programs and actions for reaching an objective and the financial allocation is clearly mentioned in a Parliament Regulation.

The structure of a Commission Communication, is formed of a succession of statistical and historical data, pilot programs in the area of the issued document. This form of presenting a legislative change has the role of guiding the reader to accept the objectives without feeling restricted, but as a natural part of the future.

The constant variation of verbal tenses, even in the context of presenting clear objectives and measurement indicators for achieving the objectives in certain time frames, has the role of introducing the reader in the story and lifting the compulsoriness halo otherwise felt.

The Communications are addressed to the people while Regulations are addressed to the national authorities, the documents complement each other in order to address each actor in the agricultural sector in a characteristic way.

The Communications go through changes of approach, from the possibilities the cooperatives can offer to define them as knowledge transfer vectors. In recent documents their possibility of understanding and filtering the information and further passing it on to the members and the whole community in which a cooperative acts.

The Regulations and Decisions of the Parliament refer to the authorities' role in implementing the actions and achieving the objectives stated by the Commission. Since all resort authorities should be aware of their role, there is no need for telling stories.

Another analysed corpus is formed of Strategies and their explanatory documents, guides or reports. What can be noticed for this category is that the choice of presented facts and words used leave the reader with the feeling of a very dramatic text, with rather religious shades. Even so, these explanatory documents have an important value for researchers since they contain data otherwise difficult to access. The chosen documents for the analysis are COM (2000) 97 – Agenda 2000 and COM (2010) 2020 – Strategy 2020, but also guides and reports designed by Birchall, (2003): Rediscovering the cooperative advantage-Poverty reduction through self-help, Brief: Cooperatives and the Sustainable Development Goals, Halvorsen and Askvik: A new global partnership: Eradicating poverty and transform economies through sustainable development, Poppe, and Bijman (2012): Support for Farmers' Cooperatives, Roelants, Dovgan, Eum, and Terrasi (2012): The resilience of the cooperative model. How Worker Cooperatives, Social Cooperatives and other Worker-owned Enterprises Respond to the Crisis and it's Consequences

The general idea that can be extracted from the analysed set of documents is that the development of agricultural cooperatives is seen both as a necessity and an opportunity and the EU allots time and financial resources for developing this sector.

The member states may adapt the objectives considering their own stage of development, needs and specificities. This is a freedom exploited to its maximum by some countries and less by others.

These explanatory documents are the produce of several accessory institutions or committees that help the official institutions with additions and explanations in order for the local actors to understand the objectives of the official document. The forms of these

documents are guides, reports, evaluations or notes, all with the clear purpose of enhancing the importance of the strategy they speak about.

For a distinct note, a series of seven articles by Gutierrez, Atela and Dueñas (2005), Noakes (1967), Borzaga, Depedri, Bodini (2010), De los Ríos, Rivera and García (2016), Goel (2013), Simmons and Birchall (2008) and van Oorschot, de Hoog, van der Steen and van Twist (2013) approaching the legislation of the cooperatives topic have been analysed. The obvious difference between research articles and regulation documents, no matter their issuer, is that the first category has well defined objectives, delimited, that usually gravitate in the area of evaluating the impact of a document in a specific area, while the second category leaves room for national interpretations.

The general conclusion of these articles is that the evolution of the agricultural cooperatives concept and the expectations set for these structures leaves behind their birth as a form of expression of the poor and places them as positive influencers for developing the rural area. The form of survival through joint work of the poor has turned into potential growth of the already wealthy.

Their role as a knowledge transfer vector is not denied nor is their capacity of raising the living standards in the areas they function. Yet, their initial purpose, which helped with their worldwide popularity, has been somehow lost in context.

These articles also show that the strategies cannot have uniform effects and these has contributed to the regional disparities and to a new regional objective setting, approached by the EU in recent documents.

3. Romanian transposing or harmonization of the EU legislation

The legislation harmonization process regarding agricultural cooperatives in Romania is considered completed with the publication of Law 566/2004, two years before becoming a full EU member.

In this country, the national law did not need to regulate the agricultural cooperatives, the rural population feared them after the communist experience, and the EU was recently put together. In this case, what were the chances that Romania would build a favorable frame for the cooperative sector?

The answer is given by foreign researchers like van der Sangen (2014) and Bijman (2012), who evaluate Romania as one of the EU members in which the agricultural cooperatives sector is almost inexistent.

The harmonization was made on an inexistent base, without the authorities knowing what should or shouldn't be in the legislation, and so being unable to fight for the national interest.

The chronological order of the published documents that regulate the cooperative sector in Romania are: agricultural cooperatives Law 566/2004, the Law regarding organising and functioning of cooperation 1/2005 and, eleven years later, the Law for modifying and completion of the agricultural cooperatives Law 164/2016.

If Law 566/2004 specifies the purpose of an autonomous association of persons to be the promotion of members' interests, than Law 1/2005 states the same purpose to be the joint exploitation of commonly owned agricultural areas and joint field carrying out of agricultural work in order to obtain agricultural production.

The two documents are profoundly different. The second excludes specific activities of agricultural cooperatives mentioned in the first, like marketing and selling activities, financing or insurance activities.

The two are currently functioning together, with no priority and without one of them ruling out the other. This leads to misunderstandings, interpretations and, overall a feeling for the interested actors that it is too much of a mess to even try starting this kind of structure.

The 2016 Law sticks to its name, it only brings modifications and additions, not at all clarifications or settlements between the first two documents. According to it, a first degree cooperative may be started also by economic entities that did not exist eleven years ago.

A positive aspect is ruling out the activities restrictions for the agricultural cooperatives, so is introducing a probation period for new candidates. These leads to a better selection of members, only those who can prove their economic potential being accepted.

The purpose of agricultural cooperatives is modified to be more similar to the 2005 Law, as in joint owning and exploiting the agricultural areas and other resources.

The aspects regarding obtaining structural funds came almost nine years after the funding opportunities.

The harmonization of legislation, in a Romanian concept, has not prioritized the national interest nor the economic interest, as a general aspect, nor the local producers' interest. No, the main interest was diminishing the adherence time and accessing EU funds...it didn't matter that the grounds for this were not properly set. The local producers were put in the same pool of free market as the western producers without a lifeline and with many expectation which they could not meet.

The ambiguity that still defines the Romanian cooperative sector is one more factor that stands against producers interested of starting such a structure and be competitive in the EU market.

Conclusions

The present paper represents a summary of the analysis made on Laws, Regulations, Decisions, Communications, guides, reports and scientific articles regarding agricultural cooperation in the EU countries. The analysis confirms the premises of the study, the Romanian harmonization in this sector was made in a hurry, on wrong bases. Considering that after 1990, Romania had no cooperative sector, the authorities were unable to build a proper legislation for it, not knowing what to regulate on one side, and on the other not taking the time to learn from other countries. In this situation, the harmonisation meant mostly a translation of the EU regulation, which produced two separate documents, ambiguous and difficult to use.

More, the difference between the number and frequency of new documents regarding this field of interest in the EU and Romania shows a lack of attention for practically favoring a cooperative sector in agriculture for the Romanians.

The absence of a cooperative sector when issuing Law 566/2004 was not seen as an opportunity for building a prosper sector, the moment was lost, and today local producers are facing struggles that the polish ones, for example, do not. Poland showed an opposite attitude, their authorities negotiated every drop of advantage for their own people and now they have cooperatives in the top 100 turnover of CopaCogecas' last report (2014), the only one of the former communist block that managed this performance.

The solution for solving this problem might be a new law, build by experts in the field, considering the local actors needs and requests, regional specificities and possibilities of the country. A law that should rule out the former ones in order to start fresh, from the current stage.

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