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ADAM MICKIEWICZ UNIVERSITY LAW BOOKS

The legal and economic aspects of associations of agricultural producers in selected countries of the world

Edited by Aneta Suchoń

WYDAWNICTWO NAUKOWE UAM

THE LEGAL AND ECONOMIC ASPECTS OF ASSOCIATIONS OF AGRICULTURAL PRODUCERS IN SELECTED COUNTRIES OF THE WORLD

ADAM MICKIEWICZ UNIVERSITY IN POZNAN
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PREFACE AND ACKNOWLEDGEMENTS

People acting together as a group can accomplish things which no individual acting alone could ever hope to bring about

Franklin D. Roosevelt

The many challenges currently facing the world – the development of the agri-food industry, ensuring food supplies of sufficient quantity and quality, globalization, climate change, and environmental degradation – all entail that cooperation between agricultural producers has become absolutely essential. Hence, from the international perspective, cooperation is a wide-ranging topic of great contemporary relevance. This book focuses on selected legal issues which primarily concern agricultural co-operatives, agricultural producer organizations and groups, and other legal forms in which agricultural producers associate – in Argentina, France, Germany, Italy, Poland, Slovenia, Slovakia and Spain, as well as other selected countries throughout the world. The economic ramifications of agricultural producers associating in the form of co-operatives are also considered and presented from a global perspective. The book has been prepared by a talented international team, consisting of scholars from leading university departments whose research is focused on agricultural law or issues related to co-operatives.

I would like to express my gratitude to the authors for their participation in the project and for writing interesting chapters which are important in terms of theory and practice. I would also like to thank the reviewers, especially Prof. Dr. iur. Paul Richli (the University of Basel and the University of Lucerne, Switzerland), who prepared a detailed and extensive review, and whose valuable comments have been incorporated to the book.

This publication would not have been possible if the Faculty of Law and Administration of the Adam Mickiewicz University in Poznan had not announced competitions for financing projects carried out by research teams. Such projects foster scientific cooperation between universities from all over the world.

I very much hope that the research project and the book that resulted from it is just the beginning of a collaboration between scientists from Europe and the Americas, and that this cooperation will continue in the future in an even wider international team. Such cooperation would include joint publications, conferences, seminars and practical cooperation (with offices, agricultural producers, etc.).

Aneta Suchoń

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cooperatives in reducing waste of dairy products in the Lubelskie Voivodeship, *Journal of Agribusiness and Rural Development,* 2018, 1(47); Structural changes in the dairy industry and their impact on the efficiency of dairies – a Polish example. *Proceedings of the 2018 International Scientific Conference 'Economic Sciences for Agribusiness and Rural Economy'* No 2, Warsaw, 7–8 June 2018.

Chapter I

INTRODUCTORY REMARKS

Aneta Suchoń

Agriculture, which fulfils important economic, social and spatial functions, is a significant branch of the economy. Its chief aims focus on the production of food and raw resources for various branches of the industry[1], and more broadly speaking, on the supply of public goods.[2] At the same time, there is a high level of financial uncertainty for agricultural producers, due to, for example, the relatively high costs associated with agricultural activity, the price changes of agricultural products and the impact of weather conditions. In addition, agricultural producers, especially European ones, have to meet more and more requirements related to areas such as environmental protection, public health, and animal health. Taking into account the high degree of financial uncertainty experienced by agricultural producers, associated with the relatively high costs related to agricultural activities, the collective action of farmers is necessary to reduce the costs of agricultural production, achieve higher prices for agricultural products and increase their competitiveness in the market.[3]

A form of comprehensive joint action, which has been termed cooperation[4] among individual entities in agriculture, is therefore essential. It can take various forms: an agreement between agricultural producers, or a more permanent

[1] For more detailed discussion, see: A. Nowak, T. Kijek, A. Krukowski, *Polskie rolnictwo wobec wyzwań współczesności, Tom I Wymiar ekonomiczno-strukturalny,* Lublin, 2019: 24ff; A. Daniłowska, *Rolnictwo produkuje nie tylko żywność*, Available on-line at: <http://www.nowoczesnerolnictwo.info/technologie-rolnictwo/rolnictwo-produkuje-nie-tylko-zywnosc> [accessed 20.03.2020].

[2] Economic goods (food and energy security); environmental goods (biodiversity, agricultural landscape, soil protection, proper water relations); socio-cultural goods (economic and social vitality of villages, enrichment of national culture, shaping local, regional and cultural identity). Cf: A. Biernat-Jarka, Dobra publiczne w rolnictwie w nowej perspektywie finansowej Unii Europejskiej, *Zagadnienia Ekonomiki Rolnej* 2016, 1(346): 42–151; J. Wilkin, *Wielofunkcyjność rolnictwa. Kierunki badań, podstawy metodologiczne i implikacje praktyczne*, Warsaw, 2010: 12ff; D. Baldock, K. Hart, M. Scheele, *Dobra publiczne i interwencja publiczna w rolnictwie*, Available on-line at: <https://enrd.ec.europa.eu/enrd-static/fms/pdf/45227AED-EB65-0E88-C0FF-9D706AF6572C.pdf> [accessed 2.03.2020].

[3] Ibid.

[4] For more on cooperation, see A. Perzyna, Kooperacja w rolnictwie na tle ogólnego pojęcia kooperacji, *Studia Iuridica Agraria*, 2007, VI: 215ff.

structure (setting up a separate organisation). A co-operative is an appropriate form of cooperation for agricultural producers. The attribute that distinguishes a co-operative entity from other business entities is that it brings together not only financial means (capital), but above all people.[5] The essence of the co-operative movement is founded on mutual support and joint action by its members[6], including their work for the entity on a co-operative basis. Additionally, co-operatives have a long-term business perspective and a life span of generations, which is extremely important in agriculture.[7]

Cooperation between agricultural producers is needed at various stages of farming, from purchasing the means of production, through the use of agricultural machinery, the sale of crops and consultancy, to processing. Cooperation between agricultural producers in the form of co-operatives is an expression of horizontal and vertical integration in agriculture.[8] Horizontal integration involves the merging of operators at the same stage of production or distribution.[9] One example of this is a co-operative group of agricultural producers. Vertical integration, on the other hand, is a form of economic and production link between the units producing a given product from the raw material to its final form.[10] Such cooperation exists, for example, in a dairy co-operative. Co-operatives, as entities which in principle act not for their own benefit but for the benefit of their members, are perfectly suitable for implementing the principles of social economy.

As the French economist Charles Gide observed, "A cooperative is business, but if it is only business it is a bad deal".[11] Co-operatives follow cooperative principles, including the principle of voluntary and open membership, democratic member-

[5] M. Zuba, Spółdzielnie mleczarskie trwałą formą agrobiznesu, *Zeszyty Naukowe WSEI w Lublinie, Seria Ekonomia* 2009, 1: 167–175.

[6] See J. Pastuszka, E. Turkowski, Spółdzielczość jako ruch obywatelski na przełomie XIX/XX wieku w Europie i w Polsce – inspiracja dla przyszłości, in: T. Skoczek (ed.), *Spółdzielczość w budowie społeczeństwa obywatelskiego – historia i współczesność*, Warsaw, 2013: 29ff.

[7] Some dairy co-operatives are over 100 years old, or were established in the inter-war period. For more, see: A. Piechowski, *Spółdzielcze stulatki, Rzecz o wiekowych polskich spółdzielniach*, Warsaw, 2008: 3–4; A. Domagalski, Wyzwania stojące przed spółdzielczością w III RP, in: *Spółdzielczość w budowie społeczeństwa obywatelskiego – historia i współczesność*, Warsaw, 2013: 23ff.

[8] See also: E. Dulfer, The co-operative between member participation, the formation of vertical organizations and bureaucratic tendencies, in: E. Dulfer, W. Hamm (eds.), *Co-operatives in the Clash between Member Participation, Organizational Development and Bureaucratic Tendencies*, London 1985; P.V. Scheel, The legal problem of vertical organisation building in co-operation, in: ibid. See A. Bialek, *Perspektiven der Genossenschaft als Organisationsform*, Berlin 1995: 48ff.

[9] J. Małysz, Integracja pozioma, in: A. Woś. (ed.), *Encyklopedia Agrobiznesu*, Warsaw, 1998: 389ff.

[10] W. Szymański, Integracja pionowa w rolnictwie, in: A. Woś. (ed.), *Encyklopedia Agrobiznesu*, Warsaw, 1998: 383.

[11] Available on-line at: Kodeks Dobrych Praktyk Spółdzielczych, https://krs.org.pl/spoldzielczosc/kodeks-dobrych-praktyk-spodzielczych [accessed 2.04.2020]. See A. Fici, An Introduction to Cooperative Law, in: D. Cracogna, A. Fici, H. Hagen (eds.), *International Handbook of Cooperative Law*, Berlin, 2013: 10ff.

ship control, joint responsibility of the members, autonomy and independency, training, education and information, and concern for the local community.[12] Co-operatives use the values of self-help, self-responsibility, democracy, equality, justice and solidarity as the basis for their activity. According to the traditions of the founders of the co-operative movement, co-operative members promote the following ethical values: honesty, openness, social responsibility, and concern for others.[13]

Co-operatives (including agricultural co-operatives) are complex organisations that have significantly contributed to the economic and social development of farmers in many developed and developing countries in Africa, South America, and Asian regions.[14]

The majority of the 2 million farmers in the USA belong to one or more farmer co-operatives. Those entities handle, process and market almost every type of agricultural commodity; furnish farm supplies; and provide credit and related financial services.[15] They contribute significantly to the economic well-being of rural America. Farmer co-operatives also provide over 250,000 jobs, with a total payroll in excess of 8 billion dollars.[16] Approximately 30% of all agricultural products in the USA are sold by means of over 3000 manufacturing co- operatives.[17]

According to the Organisation of Brazilian Cooperatives (OBC), more than 1500 co-operatives account for 48% of the Brazilian agricultural production.[18] Co-operative Brazilian societies have developed in 13 branches of business activities, for example: agriculture, credit, consumption, and production. In Brazil, there are more than 6800 co-operatives in total. The Constitution of the Federative Republic of Brazil of 10 October 1988, assures, in Article 5, item XVIII, "the creation of associations and, in the form of the law, of co- operatives, which are independent of authorization, being prohibited state interference in their operation".[19]

The number of agricultural co-operatives is also growing in China. On 31 October 2006, the Act on Agricultural Cooperatives was adopted. It came into force

[12] Ibid.

[13] Krajowa Rada Spółdzielcza, *Karta etyki spółdzielczej*,Warsaw, 2003: 2–10.

[14] J. Bijman, The changing nature of farmer collective action: introduction to the book, in: J. Bijman, J. Schuurman, R. Muradian (eds.), Cooperatives, Economic Democratization and Rural Development, Cheltenham, 2016: 1–22. Available on-line at: <https://onlinelibrary.wiley.com/doi/full/10.1111/1467-8489.12208> [accessed 4.04.2020].

[15] Available on-line at: <http://ncfc.org/about-ncfc/> [accessed 2.03.2020].

[16] Available on-line at: <http://ncfc.org/about-ncfc/> [accessed 2.03.2020].

[17] B. Czachorska-Jones, J. Gary Finkelstein, B. Samsami, in: D. Cracogna, A. Fici, H. Hagen (eds.), *International Handbook of Cooperative Law*, Berlin, 2013: 758ff.

[18] A.M. Junior, *The cooperative market – case Brazil*, presentation and article in conference material at the ICA – CCR European Research Conference Berlin 21.08–23.08.2019, *Cooperatives and the transformation of Business and society.*

[19] E.A. Soares, *Analysis of the legal cooperative framework. Within the ICA-EU Alliance. National Report for BRAZIL*, Available on-line at: <https://coops4dev.coop/sites/default/files/2020-05/Legal%20Framework%20Analysis%20-%20Brazil.pdf> [accessed 5.04.2020].

on 1 July 2007, which was of a great practical importance, as it helped to promote the development of agricultural co-operatives. The development of agricultural co-operatives significantly contributes to the development of modern agriculture, the increase of farmers' income and the creation of new rural areas. At the end of 2010, there were 379,100 registered co-operatives in the economy, which is 9.3 times more than in 2007, where the number of actual members amounted to 29 million households, which accounts for approximately 10% of all the households in the country (8 million households more than at the end of 2009).[20]

In Nepal, there are more than 34.7 thousand co-operatives associating 6.5 million members. In that country, the Act on Cooperatives of 2017 gave rise to a new era in the co-operative movement. The legislation in Nepal is perceived as quite favourable for co-operatives and the main reason is that the Act has been enacted in collaboration with co-operative organisations.[21] Co-operatives, including agricultural ones, are also popular in Australia.[22] They significantly contribute to the Australian economy. In this country eight out of 10 Australians belong to at least one co-operative or a mutual insurance company and, at the same time, many Australians belong to more than one entity (there are 31.3 million members in Australia).[23]

According to statistical data, there are about 22,000 agricultural co-operatives in the European Union countries, and their total turnover exceeds EUR 347 billion. They have more than a 50% share in deliveries of the means of agricultural production, and over 60% in the purchasing, processing and marketing of agricultural products.[24] The type of co-operative and the organisational structure of the

[20] Available on-line at: <http://www.zgnmhzs.cn/english/co/201506/t20150617_4708691.htm> [accessed 5.04.2020]; L. Yu, J. Nilsson, *Social Capital and Financial Capital in Chinese Cooperatives*, Available on-line at: https://www.mdpi.com/journal/sustainability [accessed 5.04.2020].

[21] Available on-line at: <https://www.ica.coop/en/newsroom/news/legal-framework-analysis-diagnosis-cooperative-law-worldwide> [accessed 5.02.2020].

[22] Available on-line at: <https://coopfarming.coop/>. The Business Council of Co-operatives and Mutuals (BCCM) is working with the Australian Government to provide primary producers with the resources and advice they need to start or grow co-operatives. The project by Co-operative Farming provides the farmers, fishers and foresters with the information that is going to support them through the forming of co-operatives. That 18-month project is going to help the Australian agricultural producers to form new co-operatives and to boost the development of existing agricultural co-operatives. The project involves a number of actions, including setting up an advice and information hotline, financial support through educational bursaries programs and online instruments and courses. Due to the outbreak of COVID-19, a series of virtual sessions, interactive online fora and meetings have been designed and put in place until it is possible to plan outdoor activities. Available on-line at: <https://bccm.coop/what-we-do/co-operative-farming-program> [accessed 5.01.2020].

[23] T. Mazzarol, Australia's Leading Co-operative and Mutual Enterprises in 2019, *CEMI Discussion Paper Series 2019*, Available on-line at: <https://cemi.com.au/sites/all/publications/CEMI-DP1901-Mazzarol-2019.pdf>, <https://cemi.com.au/cemi-discussion-papers> [accessed 5.03.2020].

[24] The earlier report drafted by COGECA indicated 38,000 co-operatives. This difference is a result of the exclusion from the total number of co-operatives of the French CUMA (*Les Coopératives d'Utilisation de Matériel Agricole.* They are small co-operatives using agricultural machinery). Another reason is the decrease of the number of co-operatives in Greece due to changed registration

co-operative movement are also important. In some European countries, they are in good financial condition and largely support co-operative agricultural holdings thanks to the expansion of the scope of co-operative activity and its adaptation to the needs of agriculture and the requirements of the Common Agricultural Policy, as well as the extensive structure ensuring the development of co-operatives, agriculture producers groups, and co-operative entities.[25]

Alongside co-operatives set up by farmers, agricultural producer groups and organisations are also becoming increasingly important. EU legislation is contributing to this. In the light of EU Common Agricultural Policy legislation, producer organisations are obliged to contribute to the empowerment of farmers in the food supply chain, farm development and agricultural markets.[26] Section 131 of the Preamble of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007[27] stipulates that: "Producer organisations and their associations can play useful roles in concentrating supply, in improving the marketing, planning and adjusting of production to demand, optimizing production costs and stabilizing producer prices, carrying out research, promoting best practices and providing technical assistance, managing by-products and risk management tools available to their members, thereby contributing to strengthening the position of producers in the food chain." In some countries, the dynamic growth of these types of entities can be observed. For example**,** in early 2020, France had a total of 633 producer organisations and 25 associations of recognized producer organisations in all sectors.[28] In Germany there were already 904 agricultural producer organisations in 2012.[29] In turn, across the European Union, by mid-2017, there were 3434 agricultural producer organisations and 71 associations, 50% of which were co-operatives.[30]

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regulations and the consolidation of co-operatives: COGECA, *Development of Agricultural*: 6ff. See also COGECA, *Agricultural Co-operatives in Europe*: 5ff; W. Boguta, Z. Gumowski, K. Lachowski, *Organizacja mazowieckiego rynku rolnego poprzez tworzenie grup producentów rolnych na bazie prawa spółdzielczego*, Warsaw, 2007: 27.

[25] For more detailed discussion, see: A. Suchoń, *Prawna koncepcja spółdzielni*: 10ff.

[26] European Commission, *Study of the best ways for producer organisations to be formed, carry out their activities and be supported*, Available on-line at: <http://real.mtak.hu/105490/1/report-producer-organisations-study_en.pdf> [accessed 2.04.2020].

[27] O J EU L of 2013, No 347/671 as amended, hereinafter referred to as Regulation (EU), No 1308/2013 of the European Parliament and of the Council of 17 December 2013.

[28] C. Del Cont, A. Macé, *Les organisations de producteurs en France: état des lieux et réflexions*, in this book: 61-80.

[29] Cf Ch. Busse, Nowa niemiecka ustawa o strukturze rynku rolnego z 2013 r. – rolnicze organizacje producentów i związki branżowe w prawie niemieckim, *Przegląd Prawa Rolnego*, 2013, 1: 184ff.

[30] European Commission, *Study of the best ways for producer organisations to be formed, carry out their activities and be supported*, 2019, Available on-line at: <http://real.mtak.hu/105490/1/report-producer-organisations-study_en.pdf> [accessed 5.04.2020].

However, it should be stressed that in the literature on the subject the term producer organisations (POs) denotes a wider range of collective actions by farmers and does not only refer to those fulfilling the requirements of the EU Regulation. International organisations, such as the World Bank and the FAO also employ the concept of producer organisations. Their impact on the development of agricultural markets, members, local communities, societies and poverty reduction is highlighted.[31]

Various forms of cooperation between agricultural producers exist in different countries. It would seem that the development of agriculture and the economy requires discussion, with regard to different producer organisation structures and the challenges they face, associated with, for example, increasing the capacity of their holdings and producing more food of better quality. It is also important to enhance the competitiveness of agricultural producers and to increase their income, as well as to create workplaces in rural areas. The United Nations in its document[32] "Transforming our world: the 2030 Agenda for Sustainable Development" advises doubling by 2030 the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishermen, implementation of robust agricultural practices designed to increase productivity and production, in order to help maintain ecosystems and to strengthen capacity for adaptation to climate change.[33]

The need for research is also justified by cognitive, social and economic aspects, as well as practical, legal and theoretical ones. Associations of agricultural producers are enterprises that operate in the agricultural sector, hence they need to be analysed in the context of the basic concepts of agricultural law, namely the agricultural farm, agricultural activity, agricultural products, and the agricultural producer. It is worth noting that associations of agricultural producers provide jobs for the inhabitants of rural areas and small towns, among them the disabled and the unemployed, whose number in such areas is constantly growing. They therefore contribute to the development of civil society by providing opportunities for active participation in the labour market to many people.[34] Combining a wide range of values, a co-operative pursues the key objectives of the European Union, in such areas as social policy and employment, regional development and agriculture. There are opinions in the doctrine that the co-operative movement

[31] J. Bijman, The changing nature of farmer collective action: introduction to the book, in: J. Bijman, J. Schuurman, R. Muradian (eds.), *Cooperatives, Economic Democratization and Rural Development,* Cheltenham, UK: Edward Elgar, 2016: 1–22.

[32] ONZ, *Transforming our world: the 2030 Agenda for Sustainable Development*, Available on-line at: <http://www.unic.un.org.pl/files/164/Agenda%202030_pl_2016_ostateczna.pdf > [accessed 5.02.2020].

[33] Ibid.

[34] Available on-line at: <http://krs.org.pl> [accessed 5.05.2020]. J. Bijman, R. Muradian, A. Cechin, *Agricultural co-operatives*.

is a positive response to the threats posed by the modern system of the global economy.[35] Agricultural co-operatives operate in the field of agriculture, which has various functions. Social and economic changes, environmental degradation and civilisation development present new challenges for agriculture.

Moreover, one current topic for the European Union is the implementation of the European Commission's "farm to fork" strategy for a fair, healthy and environmentally friendly food system (F2F) of 20 May 2020.[36] The aim of this document is to bring about a holistic change in the approach to food production. It indicates that the food chain, including the production, transport, distribution, marketing and consumption of food, should have a neutral or positive impact on the environment, and it also focuses on ensuring food safety, nutrition safety and public health, as well as preserving the affordability of food. The strategy underlines that the COVID-19 pandemic, the increasing incidence of droughts, floods, forest fires and new pests, is a reminder that the food system is under threat and must become more sustainable and resilient.[37]

The activities of agricultural producer associations may contribute to the achievement of these objectives. Their cooperation is needed at various stages of conducting agricultural activity, starting from the purchase of the means of production, through the use of agricultural machinery, the sale and transport of crops, consultancy, to processing. Associated producers may produce agricultural products with limited use of pesticides, breed or rear animals with the use of fewer veterinary medications, and engage in processing which will result in unadulterated, healthy and cheaper agri-food products for consumers, or may engage in renewable energy sources. The farm-to-fork strategy is a key element of the EU's Green Deal, which includes a sustainable and inclusive growth strategy to boost the economy, improve people's health and quality of life and care for nature.[38]

The aim of this book is, firstly, to assess whether the legal regulations concerning agricultural producers associations in Argentina, France, Germany, Italy, Poland, Slovakia, Slovenia and Spain, as well as in other countries, encourage or hinder their collaboration; and secondly, to identify legal instruments that make it easier for organisations, cooperatives or other forms of association of agricultural producers to influence the development of farms and agriculture (agri-food

[35] See A. Czyżewski, *Procesy globalizacji a spółdzielczość*, First Cooperative Economic Forum, paper presented at a conference in Kielce on 16 September 2005.

[36] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'From farm to fork' strategy for a fair, healthy and environmentally friendly food system [online]. European Commission Webpage [accessed 4.04.2020]. Available on-line at: <https://eur-lex.europa.eu/resource.html?uri=cellar:ea0f9f73-9ab2-11ea-9d2d-01aa75ed71a1.0015. 02/DOC_1&format=PDF> [accessed 4.03.2020].

[37] Ibid.

[38] Ibid.

management). The publication also tries to pinpoint the ways and directions of development of various forms of agricultural producer associations and to identify the factors affecting the process.

The following research hypothesis will be tested: The assessment of legal regulations concerning cooperation between agricultural producers is diversified. On the one hand, legal instruments encouraging farmers to cooperate in the national legal regulations of many countries in the world and, for example, at the EU level, should be noted. In the latter case, this concerns regulations regarding the possibility of using EU funds or additional privileges by producer groups or organizations. On the other hand, there are no general EU rules on co-operatives and other forms of association, and the regulations on European co-operatives are not popular in practice. Each country has its own internal regulations regarding the legal forms of cooperation between farmers, and some of them have introduced many instruments of both of both civil law and those of an administrative and legal nature which encourage association. There is a need to strengthen the legal position and role of farmers' associations, so that they can contribute even more to the development of agriculture and the agri-food industry.

The structure of the considerations is as follows. The first chapter is an introduction containing, among other things, an explanation of the title, a justification of the choice of research subject, the aims of the book, the structure of the book, and the research methods. The second chapter traces the genesis and development of legal regulations concerning the association of agricultural producers in the world, with particular focus on co-operatives in Europe. The third to eleventh chapters present the legal solutions for the associations of agricultural producers especially in Argentina, France, Germany, Italy, Poland, Slovakia, Slovenia and Spain.

The choice of Argentina was not accidental, but was rather related to the character of agriculture in this country. Agriculture is one of the basic pillars of its economy. It should be emphasized that its vast area and climatic diversity allow for the wide cultivation of various crops, which are often grown in Europe in different countries. In other words, some regions of Argentina are favorable for the cultivation of cereals, oilseeds and fodder plants, and fruit and vegetables. Some other parts of the country have favorable conditions for the cultivation of tropical plants, fruit and vegetables, rice, sunflower, flax, tea, tobacco, sugarcane, olives, and grapevines.[39] It is worth noting that soybean and coffee cultivation is becoming increasingly extensive. There are also large areas where agriculture is only possible through artificial water irrigation. It is worth finding out how, in such a diversified country in terms of agricultural crops as Argentina is, agricultural producers associate, and how this is regulated by law. Another key factor is scientific collaboration with the academics dealing with agricultural law in Argentina.

[39] Available on-line at: <https://argentina.trade.gov.pl/pl/argentyna/analizy-rynkowe/187681,sektor-rolniczy-w-argentynie.html> [accessed 2.04.2020].

The choice of European countries was also not accidental. Germany and France are the two countries in which agriculture is a significant branch of the economy (according to the COGECA study, in Germany the contribution of agriculture to the economy in 2014 was over EUR 54 billion, and in France over EUR 77 billion), agricultural activity is conducted by a large number of agricultural producers (in 2010, there were over 299,000 farms in Germany, and over 489,000 in France),[40] and there is a significant number of agricultural cooperatives. Agriculture is also an important branch of the economy in Spain and Italy. In the latter, the area of farms is not as high as in Poland. When it comes to Slovenia and Slovakia, it is worth analysing whether or not similar historical conditions related to the functioning of the socialist system have an impact on the processes of association of agricultural producers, and to what extent. Scientific cooperation with academics who specialize in agricultural law in Germany, France, Italy, Spain, Slovenia and Slovakia should also be noted. In the analyzed countries, various legal regulations concerning association should be distinguished. At the same time, the publication refers, to a smaller extent, to legal regulations and statistics in other countries as well. In other words, the first chapter refers briefly to Australia, Asian countries, and the US, and section two, discussing the law-making process, mentions, apart from Germany, France, Italy and Poland, such countries as the Netherlands, the United Kingdom, Australia, the US and Brazil. The economic comments, relating mostly to cooperativeness, refer to the whole world, including Europe, the Americas and other parts of the world. Compared with other forms of agricultural producer associations, there is little statistical data. Moreover, a group or an organisation of agricultural producers is not a legal entity, and to have it registered it is necessary to create a legal person and it is usually a cooperative which serves as one.

There is no doubt that the subject matter is very broad and therefore only selected issues will be addressed. Considerations focus mainly on co-operatives, agricultural producer groups and agricultural producer organisations. The twelfth chapter presents economic and statistical data on the development of co-operatives worldwide. The last chapter consists of final considerations and has been prepared by all the authors. The names and surnames of the authors appear at the end of each paragraph (or small section), in brackets.

The basic research method involved the dogmatic analysis of normative texts, which is a characteristic feature of a lawyer's work. In the first place, the legislative acts concerning agricultural law and co-operative law were examined. The analysis of legislative acts in the field of civil, administrative and financial law accounted for the agricultural aspect. It is undisputed that research on agricultural co-operatives also requires reference to the historical method. This part is not very extensive, but it nonetheless remains necessary. The tasks and operating con-

[40] COGECA, *Development of Agricultural Cooperatives*: 6–10.

ditions of co-operatives often depend on the economic structure of the relevant society; its development and socio-economic situation.[41] The subject matter of the book also requires an analysis of the financial situation and efficiency of co-operatives, and of statistical data (from World Cooperative Monitors and Cooperatives Europe) on regions and economic activity, therefore the meso-economic approach was adopted. The methods of economic analysis were used, i.e. ratio analysis, comparative analysis, graphic method.

[41] See K. Boczar, *Spółdzielczość*, Warsaw, 1979: 13ff.

Chapter II

THE ORIGINS AND THE DEVELOPMENT OF LEGAL REGULATIONS GOVERNING ASSOCIATIONS OF AGRICULTURAL PRODUCERS IN THE WORLD, WITH PARTICULAR EMPHASIS ON CO-OPERATIVES IN EUROPE

Aneta Suchoń

I. The development of legal regulations governing associations of agricultural producers in selected countries of the world

Most studies consider the first co-operative in the world to have been the Rochdale Society of Equitable Pioneers, founded in England in 1844.[42] Around the same time, in many countries in the world there emerged numerous similar pre-co-operative initiatives as well.[43] This was the time when Poland was partitioned and deprived of sovereignty.[44] And yet the co-operative movement also started to develop here, the precursor on Polish territory being Stanisław Staszic, the founder of the Hrubieszów Farmers' Rescue Society (Towarzystwo Rolniczego Ratowania się Wspólnie w Nieszczęściach) in 1816.[45] Members of the Society, peasants who cultivated their land individually, paid rent and a fixed fee for the Society's common purposes, which were mainly focused on providing mutual assistance to those in need, and

[42] The literature emphasises that the earliest forms of cooperation involving mutual assistance existed as early as in antiquity. Examples include Egyptian associations of leaseholders and craftsmen, Jewish shepherd's associations and Dead Sea communities, Greek associations of craftsmen, miners and fishermen, Roman carpentry colleges, blacksmiths, shoemakers, potters, doctors and musicians. See K. Boczar, *Spółdzielczość. Problematyka społeczna i ekonomiczna*, Warsaw, 1986: 27–28; E. Pudełkiewicz, *Spółdzielcze formy*: 259–295.

[43] See, for example, K. Boczar, *Spółdzielczość. Problematyka społeczna i ekonomiczna*, Warsaw, 1986: 28ff.

[44] F. Stefczyk, *Początki i ogólne warunki rozwoju spółdzielczości w Polsce*, Cracow, 1925: 9ff.

[45] Available on-line at: <httpp://krs.org.pl/index.php?option=com_content&view=article&id=27&Itemid=283> [accessed 4.05.2020]; S. Staszic, *Przestrogi dla Polski*, Warsaw, 1960: 25ff.

thus, for example, were involved with the reconstruction of a building or household after a fire, with aid and assistance, and with taking care of the victims of natural disasters, and of the elderly, the disabled or orphans.

The first co-operative in New Zealand was the Otago Peninsula Cheese Factory, founded in 1871.[46] In the late nineteenth and early twentieth centuries, co-operatives began to spread on New Zealand's milk market. In 1920-1930 there were over 500 dairy co- operatives.[47] Cooperativeness in the US dates back a long time, since it was as early as in the nineteenth century that the first cooperatives were created.[48] Nevertheless, American co-operative law does not stem from a uniform legal act that regulates all aspects pertaining to the creation of co-operatives and the way they functioned in the country. From the very beginning, the regulations related to particular states. Co-operative law is a multifaceted and complex legislative area composed of both state and federal law. State provisions, regulating the setting up of co-operatives, are not uniform either, and allow for a large degree of flexibility in terms of co-operative restructuring.[49] The attempts to unify the approach failed. It was as early as in 1865 that the states began to adopt co-operative statutes, and the first founding statute was enacted in the state of Michigan.[50] It was the Act adopted by the state of Wisconsin of 1911 that was the first commonly applied statute. The first bill of the uniform act for the whole of the United States was drafted by the National Conference of Commissioners on Uniform Laws in 1936 and approved by the American Bar Association.

The uniform act, however, was adopted only in three states and the lack of approval from other states resulted in the act being withdrawn in 1943. Co-operatives in the US are typically of an agricultural or non-agricultural character (for example childcare and kindergartens, cooperative loan schemes, financial services, healthcare system, housing, insurance, technology). The co-operatives are set up on the basis of state statutes that vary depending on the state. Fifty states had about 85 statutes designed specifically to set up co-operatives.[51] Additionally, there are also federal regulations covering all co-operatives in such areas as, for instance, taxes. Non-stock co-operatives emerged as an alternative to stock co-operatives. In 1909, California adopted a non-stock cooperative law. This law provided for a membership association on a nonprofit basis, and allowed equal or

[46] Available on-line at: <https://www.fonterra.com/nz/en/campaign/nzdairytimeline.html> [accessed 4.04.2020].

[47] Ibid.

[48] A. Horsthemke: *Die Genossenschaften in den USA unter besonderer Berücksichtigung der New Generation Cooperatives*, Stuttgart, 1998: 3ff.

[49] See B. Czachorska-Jones, J. Gary Finkelstein, B. Samsami, United States in: D. Cracogna, A. Fici, H. Hagen (eds.), *International Handbook of Cooperative Law*, Berlin, 2013: 758ff.

[50] For more detailed discussion see: J.R. Baarda, *Statutes and cooperatives*. University of Arkansas, 2007, LLM, 1, 103ff.

[51] See e,g. J.R. Baarda, State cooperative incorporation statutes for farmer cooperatives, USDA., *Agric. Coop. Service, Information Rept*., 1982, 30 (October 1982).

unequal voting. The Capper Volstead Act of 1922 provided an exemption from antitrust enforcement for narrowly defined farmer stock or non-stock co-operatives whose membership was limited to agricultural producers.[52]

Based on the applicable provisions in some states of the Midwest, a co-operative does not always have to have a legal personality. It may take the form of an entity which does not have a legal personality, making it possible for co-operatives to collaborate on running an agricultural activity in a limited area. Wyoming, for instance, adopted the statute of a "manufacturing co-operative"[53] which applied to cooperatives not having a legal personality operating for such purposes as marketing, processing, changing the form or selling agricultural products.[54]

Then the establishment of the Pellervo Foundation in 1899 by Hannes Pellervo (1864/1933) is considered to be the beginning of the co-operative movement in Finland. Its objective was to foster cooperation primarily among people connected with agriculture. Poverty was particularly acute in rural areas. Thanks to the cooperation with Pellervo, this movement quickly spread throughout the country. Ten years later there were already dairy co-operatives, consumer co-operatives and co-operative banks in almost every industry.[55] The success resulted from the method of operation employed by Pellervo, who sent his representatives throughout the whole country. Moreover, there was a strong social demand for cooperation, especially in rural areas. They were afflicted by a shortage of services, poor quality goods, low competition, the lack of a credit system and an agricultural goods market. Cooperation was thus a favourable solution. The co-operative model was developed within just a few years. The first co-operative law in Finland was passed in 1901; the second one in 1954 and the third in 2001 (subsequently repealed by the law of 2014).[56]

It is a widely held in the scholarly literature that the concept of co-operatives developed in nineteenth-century Germany as a result of the industrial revolution. As regards the legal frameworks, they were based on the medieval model. After 1847, the first initiatives of self-managed cooperation with specific economic objectives started to emerge. They aimed to provide small farmers, craftsmen and traders with an opportunity to influence the market. At the same time, the concept of co-operatives stood out for its social and ethical objectives,[57] which H. Paulick

[52] See B. Czachorska-Jones, J. Gary Finkelstein, B. Samsami, United States in: D. Cracogna, A. Fici, H. Hagen (eds.), *International Handbook*: 766ff.

[53] Ibid.

[54] See more M.A. Abrahamsen, *Cooperative Business Enterprise*. McGraw-Hill Book Co., New York 1976.

[55] *Pellervo Confederation of Finnish Cooperatives*. Available on-line at: <http://www.slideshare.net/pellervo/ pellervo-confederation-of-finnish-cooperatives> [accessed 4.05.2020].

[56] Ibid.

[57] M. Helios, Rechtsgeschichtliche Entwicklung des Genossenschaftswesens, in: M. Helios, Th. Strieder (eds.), *Beck'sches Handbuch der Genossenschaft*, München 2009: 3ff; H. Paulick, *Das Recht der Genossenschafts, Lehr-und Handbuch*, Karlsruhe 1956: 2ff. See: A. Suchoń, Spółdzielnie w Niemczech wobec wyzwań współczesnego rolnictwa – wybrane aspekty prawne, *Prawo i Więź*, 2019, 4: 74–99.

aptly summarized in the following words: "Co-operative management is not an end in itself. The co-operative aims to support an individual person, his or her separate personality in terms of management within the co-operative, so that he or she retains his or her function in social life. The co-operative is therefore the opposite of a collective that rejects the free development of personality."[58]

The establishment of German agricultural co-operatives is undoubtedly linked to the activities of Hermann Schulze-Delitzsch and Friedrich Wilhem Raiffeisen.[59] Importantly, they saw the co-operative not only as a special form of management created to meet the urgent material needs of economically weaker sections of the population, but were also convinced that if co-operatives were to take on social-political tasks, such as education or development, this would contribute to fostering social governance and local development. Rural co-operatives were also supported by Wilhelm Haas. While Raiffeisen focused on the creation of first-degree co-operatives, i.e. local co-operatives, Haas initiated the process of organizing co-operatives into associations, which was to strengthen the effectiveness of the co-operative system as a whole. It was Haas who founded the union of industrial and commercial co-operatives in Wiesbaden in May 1862.[60]

On 20 May 1889, the Second Reich passed a law on economic and purchasing co- operatives (Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften (GenG)).[61] Besides organisational changes and mergers of co-operatives, this legal act remains in force to this day, largely unchanged. Of course, a few important amendments were made. After World War II, by virtue of the law of 18 July 1950,[62] the vast majority of regulations passed during the war period were abolished. Further changes were introduced by another act amending the provisions of the Law on Purchasing and Economic Co-operatives and by the so-called Discount Law of 21 July 1954.[63] The amendment removed, among others, § 8 section 4 of the law, for example the ban on transactions with a co-operative by persons who are not members of consumer co-operatives, and the related provisions of § 31, 152 and 153 of the law.[64] Since 1973, credit co-operatives have also had the right to carry out transactions with non-members, if the statutes so provide.

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[58] W. Wygodzinski, A. Müller, *Genossenschaftswesen in Deutschland*, Leipzig-Berlin 1929: 10ff.

[59] See more in: J. Zinke, *Die Entwicklung der landwirtschaftlichen Genossenschaften in der Weimarer Republik*, Berlin 1999: 1ff; G. Asschhoff, E. Hennigsen, *Das deutche Genossenschaftswessen. Entwicklung, Struktur, wirtchaftliches Potential,* Frankfurt 1995.

[60] Ibid.

[61] Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften (GenG) vom 1. Mai 1889 (BGBl. S. 369, 810; BGBl. 111 S. 4125-1), referred to as GenG.

[62] BGBl. I 90. Handelsrechtliche Bereinigungsgesetz vom 18. April 1950.

[63] Gesetz zur Änderung von Vorschriften des Gesetzes betreffend die Erwerbs- und Wirtschaftsgenossenschaften, des Rabattgesetzes und des Körperschaftssteuergesetzes von 21. Juli 1954, BGBl. I 212.

[64] Ibid. See also: V. Beuthien, *Genossenschaftsgesetz: mit Umwandlungs- und Kartellrecht sowie Statut der Europäischen Genossenschaft*, Munich 2004, 37ff (Einleitung). For more on the reform of

The situation with regard to legislation and the development of co-operatives was quite different in the German Democratic Republic. After World War II, this country, which remained in the sphere of Soviet influence, had to adopt the socialist ideology. For this reason, production co-operatives were of great practical importance there. Initially, the Cooperative Law of 1889 was in force in the German Democratic Republic. In 1959, following the introduction of the Boden reform in 1952 and the entry into force of the Law on Agricultural Production Cooperatives (LPG), East Germany adopted different regulations on the functioning of these entities. In the subsequent years, further legal acts concerning agricultural production co-operatives were passed, for example the law of 2 July 1982.[65] On 3 October 1990, Germany was reunified, which also led to changes in agriculture. When the former territory of East German lands was incorporated into the Federal Republic of Germany, the period of collectivism finally came to an end and the inhabitants of what used to be the GDR were able to start running individual farms or to run an agricultural business in the form of a co-operative or of a company. However, the problem of the continued functioning of agricultural production co-operatives (LPG) had to be resolved first. Therefore, on 29 June 1990, the Law on the Adaptation of Agriculture[66] was adopted as the basis for the conversion of the assets of these LPG co-operatives. By virtue of this law, every co-operative established under the socialist law of the former GDR had to be transformed into one of the following legal forms: a co-operative registered under the Law of 1 April 1889 on co-operatives (applicable in Germany), a partnership (civil law, limited partnership), or a capital company (joint-stock company or limited liability company).[67]

Following the reunification of Germany, the subsequent amendments of Genossenschaftsgesetz have been effective both in old and new lands. Most importantly, as of 18 August 2006 the law on the introduction of the European Co-operative Society, and amending the Co-operative Law, took effect.[68] The amendment introduced changes to the German Co-operative Law regarding, among other things, the minimum number of members (from seven to three, § 3), solutions for members' ability to invest, and the setting of minimum share capital. These modifications had two aims: facilitating the establishment of co-operatives and the acquisition and maintenance of their capital.[69]

Genossenschaftsgesetz, related drafts and discussions, see: H. Westermann, *Rechtsprobleme der Genossenschaften,* Karlsruhe, 1969: 7ff.

[65] Ibid.

[66] Landwirtschaftsanpassungsgesetz (GBl. I S. 642). This law has been amended a number of times.

[67] After Ch. Grimm, *Agrarrecht*, Munich, 2004, 297.

[68] Gesetz zur Einführung der Europäischen Genossenschaft und zur Änderung Genossenschaftsrechts, BGBl. I 2006: 1911–1957.

[69] A wealth of literature has been written in connection with the 2006 amendment of the Cooperative Law, e.g.: M. Geschwandtner, M. Helios, *Genossenschaftsrecht, Das neue Genossenschaftsgesetz*

In Austria, the co-operative movement and related legislation began to develop in the nineteenth century. Initially, co-operatives were established on the basis of the Associations Act of 1852.[70] Then, on 9 April 1873, the Co-operative Act was passed.[71] This legislation has, of course, been amended several times to account for changing economic and social conditions,[72] but is still in force today. Given Austria's historical links with Germany, Raiffeisen, who formed agricultural co-operatives in nineteenth century Germany, had a major influence on the development of organisations that enabled farmers to associate. This co-operative model was based on mutual self-help and cooperation, as well as on the creation of credit unions, the aim of which was to provide rural residents with sufficient financial resources to purchase seeds, crop protection products, fertilisers, machinery, etc.[73] It is also worth mentioning the activities of Schulze-Delitzsch, who created the first credit co-operatives, later transformed into Raiffeisen banks, and who influenced the process of creating the law of 1873. Of particular importance was its amendment of 2006.[74] This provided the foundations for the introduction of legislation on the European Co-operative Society (ECC), as well as for changes that aimed, inter alia, to simplify the establishment and operation of co-operatives.

In France, the first pre-co-operative forms emerged as early as the beginning of the twelfth century, while the development of modern co-operative societies dates back to the early nineteenth century. In this country, co-operatives were initially treated as commercial companies. Nevertheless, efforts were made to create separate regulations for co-operative associations.[75] The proposals of 1849 or 1866 are an example of this. Finally, the law on companies of 24 July 1867[76] already indicates "companies with variable capital", which shows that co-operative associations were governed by separate regulations.[77] Philippe Buchez, considered one of the first French theorists of co-operatives, especially production co-operatives, was active at that time.[78]

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und die Einführung der Europäischen Genossenschaft, Freiburg-Berlin-Munich 2006; M. Degl'Innocenti (ed.), *Il Movimento cooperativo nella storia d'Europa*, Milano, 1988.

[70] G. Miribung, E. Reiner, Austria, in: D. Cracogna, A. Fici, H. Hagen (eds.), *International Handbook of Cooperative Law*, London, 2013: 231.

[71] Gesetz vom 9. April 1873, über Erwerbs- und Wirthschaftsgenossenschaften RGBl. No. 70/1873 as amended.

[72] M. Dellinger, Aktuelle Aenderungen im Genossenschaftsrecht, *Raiffeisenblat*, 2006, 10.

[73] M. Helios, Rechtsgeschichtliche Entwicklung: 8ff.

[74] BGBI I no. 104/2006.

[75] R. Bierzanek, *Prawo spółdzielcze*: 22; F.M. Bruggemann, *Genossenschaften in Frankreich. Die Rechtsstellung von Agrargenossenschaften und Crédit Agricole*, Munster, 1985: 19–20ff.

[76] Loi du 24 Juillet 1867 sur les societes, Bulletin officiel, no. 1513, no. 15328; A. Nast, *Code de la cooperation*, Paris, 1928: 217ff.

[77] R. Bierzanek, *Prawo spółdzielcze*: 22f.

[78] F.M. Bruggemann, *Genossenschaften in Frankreich. Die Rechtsstellung von Agrargenossenschaften und Crédit Agricole*, Munster,1985: 19–20ff.

The first rules on agricultural co-operatives are provided in the Crédit Agricole[79] regulations. The Bank supported the development of such co-operatives, notably by granting them special loans. More than ten laws affecting the functioning of co-operatives[80] entered into force between the law of 5 November 1894[81] and the decree of 11 February 1939. For example, in 1894–95 laws were passed on savings and loan co-operatives; in 1900 – the law on agricultural insurance co-operatives; in 1906–the law on agricultural co-operatives,[82] in 1913 – on credit unions for fisheries; in 1915 – on co-operatives of production workers and credit co-operatives; in 1917 – on co-operatives of food producers and consumers; and in 1923 – on co-operatives of craftsmen. On the other hand, the Labour Code adopted in 1927 contained legal regulations on workers' manufacturing co-operatives.[83] The extensive legal regulation and taking into account the specificities of different types of co-operatives are characteristic features of the French approach to co-operatives.

As far as agricultural co-operatives in France are concerned, cooperation between agricultural producers was a response to the various crises that had afflicted the agricultural economy since the end of the nineteenth century. Farmers' associations organized into trade unions contributed to the development of agricultural co-operatives. In 1880 they became involved in economic operations for the first time and their importance grew. They began to oppose the strong position of merchants, for example by buying fertilizers on behalf of their members. In 1884, a new law on trade unions made it clear[84] that their purpose could be to defend agricultural interests. A law passed in 1920 stated that trade unions, the so-called syndicates, could purchase machinery, fertilizers, seeds, plants, cattle and animal feed for redistribution among their members. These farmers' unions[85] later became agricultural co-operatives, especially for supplies.[86] In general, two main reasons for the creation and development of co-operatives in France can be identified: they responded to the economic needs of the members of the co-operative which they were unable to meet and, in addition, they defended the co-operatives against the strong position of the merchants on the market.[87]

[79] Cf., e.g. L. Coutant, *L'Evolution du droit cooperatif de ses origines à 1950*: *La double tendance vers son unification et son autonomie, la loi du 10 sept. 1947, la codification en cours, Matot-Braine*, 1950: 45ff.

[80] C. Chômel, Le cadre juridique et la gouvernance des coopératives agricoles, in: C. Chômel, F. Declerck, M. Filippi, R. Mauget, O. Frey (eds.), *Les coopératives agricoles. Identité, gouvernance et stratégies*, Paris 2013: 66ff.

[81] Bulletin officiel, no. 28758.

[82] Bulletin officiel, no. 2798, no. 48562.

[83] F.M. Bruggemann, *Genossenschaften in Frankreich*: 21ff; R. Bierzanek, *Prawo spółdzielcze*: 23f.

[84] Bulletin official: 14353.

[85] The Regulation of 8 August 1945 limited the economic activities of syndicates.

[86] B. Kocznur, *Spółdzielczość we Francji*, Warsaw, 1968: 71ff.

[87] C. Chômel, *France*: 519–545. French Ministry of Agriculture and Fisheries, *Agricultural Cooperation in France*, Paris, updated version translated from French into English by Coop de France, July 2005.

Following World War II, agricultural co-operatives largely contributed to the economic development of the country. CUMAs (*Coopérative d'Utilisation de Matériel Agricole* or co- operative for the use of farm implements) were developing in rural areas. They enjoyed priority when farming machinery was being distributed as part of the Marshall Plan.[88] In addition, they benefited from a number of advantages, notably the exemption from business tax and access to state-guaranteed loans at lower interest rates.

On 10 September 1947, the law on the legal statute of the co-operative was passed.[89] It brought together in one piece of legislation all the principles common to the different types of co-operatives and introduced the ways and conditions for their operation. It is worth mentioning here the changes introduced by the law of 27 June 1972, defining, among other things, the possibility of conducting business activity with non-members, the departure from the "one-member one vote" rule, the revaluation of co-operatives' capital, and allowing an investor to join the co-operative. Laws passed in January 1991 and on 13 July 1992, which gave the investors the right to participate in the co-operatives' capital, should also be mentioned here.

In France, besides the general law no. 47-1775 of 10 September 1947, there also exist detailed provisions governing selected co-operative industries. For example, matters relating to agricultural co-operatives are covered by *Code Rural* (The Rural Code, Book V, Title II), retail trade co-operatives–by the Commercial Code, co-operatives of production workers – by Law no. 78-763 of 19 July 1978. This Code was modified and supplemented, inter alia, by decrees no. 59-286 of 4 February 1959 and no. 61-867 of 5 August 1961 relating to the legal status of agricultural co-operatives. In those years, co-operatives were deemed civil partnerships with variable capital. The discussion on their legal form was re-launched in connection with Regulation of 26 September 1967. Two categories of agricultural co-operatives were introduced in this regulation: "small" ones, classified as civil partnerships, and "large" ones, classified as commercial companies. Such a solution, strongly criticized by representatives of the agricultural professions, was never actually applied in practice. Work was quickly undertaken in the Parliament to draft a project that would give agricultural co-operatives a unique status.[90]

In the following years, amendments were introduced into the Rural Code concerning agricultural co-operatives with a view to adapting the legal regulations to

[88] For more detailed discussion, see J. Gide, N. Loyrette, J.G. de Villeneuve, S. Mansholt, *Les Coopératives agricoles dans le Marché commun: Études comparées. Régime juridique, fiscal, social et financier*, Paris 1969: 35ff.

[89] Loi n° 47-1775 du 10 septembre 1947 portant statut de la coopération**;** JORF n°0214 du 11 septembre 1947 p. 9088 as amended; referred to as Lawno. 47-1775 of 10 September 1947; L. Coutant, *L'Evolution*: 169ff.

[90] C. Chômel, *Le cadre juridique*: 83ff., B. Kocznur, *Spółdzielczość we Francji*, Warsaw, 1968: 71ff.

the socio-economic needs of the country and of contributing to the development of co-operatives.

In Italy, the first provisions of co-operative law were laid down in the Commercial Code of 1882 (Articles 219-228). At that time, co-operatives were not treated as a separate type of enterprise, but as a type of company. Any type of commercial company could be turned into a co-operative by subjecting it to special rules, such as, for example, a limitation on the number of shares that a member can hold; equal voting rights for everyone, regardless of the amount of capital (shares); and a prohibition on transferring rights from shares without the consent of the management[91]. Yet the issue of co-operatives was covered in other pieces of legislation with increasing frequency. For example, in the law of 12 May 1904 no. 178.[92]

At the beginning of the twentieth century, the phenomenon of agricultural co-operatives was an important force in Italy; a fact which was also taken into account by the legislator. Agricultural co-operatives started to be popular at all stages of agricultural activity, for example in the process of the storage, sale and processing of agricultural products and livestock, but also in the cultivation of the land or granting loans to farmers. The Law of 7 July 1907 no. 526 on measures for small agricultural co-operatives and small mutual agricultural insurance associations introduced special relief for these entities.[93] Of great relevance for agricultural co-operatives was the decree of 12 February 1911 no. 278, laying down provisions for the implementation of the regulation on the award of contracts to production and labour co-operatives and on the formation of co-operative consortia for public works contracts.[94] The cited regulation, Article 1 of which contains a section part entitled 'categories of co- operatives', lists examples of co-operatives allowed to enter into contracts indicated in the laws of 12 May 1904 no. 178, 16 April 1906 no. 126 and of 25 June 1909 no. 422: 1) production and labour co-operatives; 2) agricultural co-operatives such as collective tenant co-operatives, dairy co-operatives, co-operative vineyards, co-operative distilleries, agricultural consortia, co-operative granaries and any other co-operative enterprise with agricultural production objectives; and 3) mixed co-operatives which combine the aims and characteristics of different co-operatives belonging to different categories above, or which set for themselves, by way of mergers, other co-operative objectives.

[91] A. Fici, Italy, in: *International Handbook of Cooperative*: 479ff. A. Suchoń, Spółdzielnie w rolnictwie i na terenach wiejskich we Włoszech, *Kwartalnik Prawa Prywatnego*, 2013, 4: 891–919.

[92] Delle leggi 12 maggio 1904, n.178; G. Giuffrida, *Le cooperative*: 21ff.

[93] Legge 7 luglio 1907, n. 526 portante disposizioni a favore delle piccole società cooperative agricole e delle piccole associazioni agricole di mutua assicurazione, Gazzetta Ufficiale del 26 luglio 1907, n. 177.

[94] Regio Decreto 12 febbraio 1911, n. 278 approvazione del regolamento relativo alla concessione di appalti a Società cooperative di produzione e lavoro e alla costituzione dei Consorzi di cooperative per appalti di lavori pubblici, *Gazzetta Ufficiale* del 12 aprile 1911, n. 86.

After World War II the principal regulations concerning co-operatives were included in the Civil Code.[95] Meanwhile, detailed provisions related to selected co-operative industries, including agriculture, were stipulated in separate pieces of legislation.[96] Italian co-operatives significantly contribute to the modernization of agriculture. For example, in Southern Italy in the 1950s there were a lot of small agricultural holdings. Farmers' co-operatives, whose members jointly sold their produce, for example wheat, who introduced modernized farming methods and new types of seeds, were a response to the difficulties caused by such a structure. Agricultural products constitute the raw material for bakeries, confectioneries and dairies. In Campania, for example, the number of agricultural co-operatives increased from just 34 in 1951 to 430 in twenty years, and in Sardinia from 86 to 686. This upward trend continued also throughout the 1980s and 1990s.[97]

The scholarly literature on the subject frequently refers to the development of co-operatives in Italy as "as a transformation of the local community through collaboration and cooperation".[98] Agricultural co-operatives function within a well-organized network, which concentrates especially on market needs, especially on the needs of the local market. This strong regional identity is expressed especially through the production of fruit, wine and cheese. Local production systems are present especially in small-scale production sectors. This makes it possible to maintain limited production, semi-subsistence farming, and to strengthen integration through numerous forms of cooperation. The success of Italian co-operatives is not only that they support local initiatives and social responsibility, but also that they employ the principles of efficient management that allow them to adapt to rapidly changing business and institutional conditions.[99]

In the United Kingdom, co-operatives initially operated as mutual relief societies, subject to the Act for encouragement and relief of friendly societies of 1793. The 1834 amendment defined broadly the objectives of the entities mentioned, allowing commercial co-operatives to be registered as mutual relief societies. However, functioning as mutual relief societies caused a number of inconveniences.[100] In 1852 the Industrial and Provident Societies Act was passed. It improved the legal situation of food and manufacturing co-operatives. These entities benefited from many tax reliefs and exemptions. New Industrial and Provident Societies Acts were issued in the following years, for example in 1862, 1893 (with amend-

[95] Gazzetta Ufficiale n. 79 del 4 aprile 1942.

[96] R. Bierzanek, *Prawo spółdzielcze*: 22.

[97] S. Di Falco, M. Smale, C. Perrings, *The role of agricultural cooperatives in sustaining the wheat diversity and productivity: the case of southern Italy, Environmental and Resource Economists*, 2007, 39: 6ff.

[98] D. Zaimova, Measuring the economic efficiency of Italian agricultural enterprises, *Euricse Working Papers* 2011, 18: 5ff.

[99] Ibid.

[100] R. Bierzanek, *Prawo spółdzielcze*: 22.

ments from 1894, 1913, 1928 and 1952). It is also worth mentioning the Agriculture Credit Acts of 1923 and 1928 and the Agriculture Marketing Acts of 1931 and 1949 as important legal acts for agricultural development, including agricultural co-operatives.[101]

Co-operatives in the Netherlands have a long tradition and play an important role in economic life, especially in agriculture.[102] In the Netherlands, the first co-operative law was issued in 1876.[103] It was replaced in 1925. Later on, provisions concerning co-operatives were included in the Civil Code. These entities are popular on the milk, fruit and vegetable markets, in meat processing, agricultural services, and in banking and insurance. Co-operatives also operate in the construction industry, health care and education. However, the number of co-operatives in the Netherlands is currently decreasing. The co-operative sector in agriculture and banking has a strong tendency to merge. However, the merging of entities and the expansion of their scope of activity entails that co-operatives in this country are demonstrating stable revenue growth.

Goods auctions, often operated as co-operatives, are also popular in the Netherlands. In 1996, nine fruit and vegetable auctions decided to join forces and formed The Greenery B.V. as a centre for sales and marketing.[104] The merger, as well as changes in the structure of the fruit and vegetable market, were mainly prompted by changes in the Common Agricultural Policy and by the economic situation in Europe and in the world.[105]

Agriculture is one of the most important economic sectors of Denmark and a significant provider of employment. It was the well-organized cooperation between agricultural producers associated in co-operatives that propelled the development of Danish agriculture. Co-operatives are involved in processing: over 90% of dairies and pig processing plants (slaughterhouses) belong to co-operatives whose members are farmers. The co-operatives also provide a system of professional advisory services for farmers, both in terms of law and the running of operations involving plants and animals. They take action to protect the interests of co-operatives at local, national and EU levels.[106]

One of the characteristic features of Danish co-operatives is strong consolidation, which is occurring not only within the territory of this country, but also in-

[101] Ibid.

[102] See: C. Lucas, *Das Genossenschaftsrecht der Niederlande,* Band 47, Aachen 2011: 16ff.

[103] Gesetz zur Regelung der genossenschaftlichen Vereine of 12 November 1876. See: C. Lucas, *Das Genossenschaftsrecht der Niederlande*, Band 47, Aachen 2011: 16ff.

[104] The VTN Cooperative is a 100% shareholder in The Greenery BV.

[105] For more about the fruit and vegetable market and cooperatives in the Netherlands, see: J. Bijman, *Essays*, op. cit.

[106] Federation of Danish Cooperatives, *The Agricultural Cooperatives in Denmark*, available on-line at: http://uwcc.wisc.edu/icic/orgs/ica/mem/country/denmark [accessed 04.05.2020]; A. Suchoń, *Spółdzielnie w rolnictwie w wybranych*: 93–103.

cludes entities from other countries. One example is Arla Foods – a Swedish-Danish co-operative based in Aarhus, Denmark. It is the largest dairy producer in Scandinavia and the seventh largest dairy company in the world in terms of annual turnover. Arla Foods was created by the merger of the Swedish dairy co-operative (Arla Ekonomisk Förening) and the Danish dairy co- operative (Danish MD Foods) in April 2000. The merged entities had a similar history. They were both established in the nineteenth century. Over the following years, their names changed, and a number of mergers took place. Each of these co-operatives consistently strengthened their position on the national market and then on the European and world markets.[107]

The legal principles underlying the establishment and operation of co-operatives in the nineteenth century on Polish lands were determined by the legislation of the partitioning states, and the directions in which co-operatives developed depended on the socio-economic situation in those states. Undoubtedly, the fastest development took place in Wielkopolska, where the level of economic development was relatively high, and the social structure more modern than in the other two partitioned areas, with a middle class starting to emerge and form, initiating the ideas of "organic work". As is rightly emphasised in the literature, the specific characteristic of the Wielkopolska system was its far-reaching social solidarity, connected with the effort to maintain Polish identity.[108]

A characteristic feature of the Wielkopolska model of a "liberal" co-operative movement was the participation of many representatives of the clergy.[109] Immediately after the establishment of the Polish state at the end of the First World War, work began on the preparation of the Act on co-operatives. The co-operatives throughout the whole of the Polish territory were functioning well but, having been formerly organised in areas under three different partitions, they operated within three different legal frameworks.[110] On 29 October 1920 the Act on co-operatives[111] was passed, which at that time was a very modern and progressive law. It constituted a kind of co-operative constitution in Poland, as is rightly emphasised in the literature, based on a wealth of historical experience drawn from various legal systems (especially the Austrian and German, where the conditions for the development of this form of activity were favourable).[112]

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[107] Ibid.

[108] A. Piechowski, Historyczny kontekst uchwalenia ustawy z 29 października 1920 r., in: *90 lat prawa spółdzielczego, materiały pokonferencyjne Krajowej Rady Spółdzielczej*, Warsaw, 2010: 7ff.

[109] See A. Piechowski, Historyczny kontekst, p. 11ff; S. Wojciechowski, *Historia Spółdzielczości Polskiej do 1914 r.*, Warsaw, 1939: 44; J. Pastuszka, E. Turkowski, *Spółdzielczość jako ruch obywatelski na przełomie*, p. 40ff; W. Jakóbczyk, *Ks. Piotr Wawrzyniak (1849-1910)*, in: *Wielkopolski Słownik Biograficzny*, Warsaw, 1981: 801–802.

[110] A. Jedliński, Ustawa z 1920 r. na tle ówczesnych regulacji europejskich, in: *90 lat prawa spółdzielczego, materiały pokonferencyjne Krajowej Rady Spółdzielczej*, Warsaw, 2010: 21ff.

[111] Journal of Laws of 111, item. 733 as amended.

[112] See A. Piechowski, *Historyczny kontekst*: 17ff.

The adopted Act from 1920 contained only general provisions and did not regulate individual types of co-operatives, thus leaving greater freedom when it came to creating different types of co-operatives.[113] After 1945, there were many co-operatives operating in rural areas in Poland, but they were used to implement the policy of command and control. Co-operatives lost their self-governing and social character at that time. What is more, their members started losing influence on the operation of the co-operative, they stopped identifying with it and began to treat it as an element of the party and state apparatus.[114] After regaining independence in 1945, the people's authorities began to implement a new political and social programme and introduced numerous reforms: the nationalisation of industry and banks, agricultural reform, planning of the entire national economy.[115]

The political changes introduced after the Second World War resulted in major changes in the co-operative sector. Clashing political views, as well as the inclusion of co-operatives in the system of the planned economy, contributed to the weakening of their self-government activity to the benefit of central and administrative management. The independence of these entities was reduced, and they were made dependent on the State.[116] After the Second World War, the co-operative movement in Poland did nevertheless develop, but only in quantitative terms.

During the socialist period, co-operatives developed mainly in rural areas, but group interests were subordinated to the general social interest.[117] After the Second World War, the country's agricultural policy changed and the collectivisation of agriculture began to play an increasingly important role. The intention was to create large agricultural enterprises, i.e. agricultural production co-operatives and public agricultural holdings.[118] On 17 February 1961 the Act on co-operatives and their associations was adopted.[119] In Article 1 it was stated that a co-operative is a voluntary and self-governing association with an unlimited number of members and a variable share fund; its aim is to conduct economic activity within the framework of the national economic plan, as well as social and educational activity for the permanent improvement of the financial and cultural wellbeing and social awareness of its members, and for the benefit of the Polish People's Republic.[120]

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[113] Ibid.

[114] J. Mroczek, Początki rozwoju spółdzielczości w Polsce, *Przegląd Prawniczy, Ekonomiczny i Społeczny*, 2012, 1: 37ff.

[115] Ibid.

[116] See also available on-line at <http://krs.org.pl> [accessed 4.05.2020].

[117] Ibid.

[118] J. Bański, Historia rozwoju gospodarki rolnej na ziemiach polskich, in: Z. Górka, A. Zborowski (eds.), *Człowiek i Rolnictwo*, Cracow, 2009: 33–34.

[119] Journal of Laws of 12, item 61.

[120] A. Suchoń, *Prawna koncepcja spółdzielni*: 148ff.

Another legislative act on co-operatives was the Act of 16 September 1982 (Co-operative law).[121] Despite many amendments, it is still in force.[122] After 1989, i.e. after the political transformation, many co-operatives were abolished and their role in servicing rural areas and agriculture was weakened. Farmers saw the co-operative movement as a relic of the previous era. In 1994 the Act on the Co-operative law was amended one more time,[123] this amendment corrected certain defects of the previously binding regulation.

II. The impact of the European Union on the development of associations of agricultural producers

The creation of the European Economic Community (now the European Union)[124] in 1957 contributed to the definition of specific EU policies[125] including *inter alia* agricultural, social, regional and environmental protection, and energy. There is no doubt that their implementation is highly dependent on the involvement of agricultural producers and such actions as the joint sale of agricultural products, purchase of the means of production, involvement in processing, projects in the field of renewable energy sources, support for organic farming, and providing employment for the unemployed or people with disabilities.[126]

The operation of agricultural co-operatives is most affected by the Common Agricultural Policy (CAP).[127] Agricultural co-operatives are important players in the agricultural sector, helping to increase the incomes of agricultural producers and to strengthen their position in the food supply chain.[128] According to the Treaty of Rome of 1957 (now The Treaty on the functioning/operation of the European Union[129]), the main goals of the CAP are: to increase agricultural productivity

[121] Journal of Laws of 30, item 210 (hereinafter referred to as Co-operative law or Act of 1982).

[122] A. Suchoń, *Prawna koncepcja spółdzielni*: 149ff.

[123] Act amending the Act on co-operative law and amending some other acts, entered into force on 26 September 1994 (Journal of Laws of 90, item 419).

[124] The Treaty of Rome concluded on 25 March 1957 (in force as of 1 January 1958), Journal of Laws of 2004 No 90, item 864/2.

[125] A. Wróbel (ed.), *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom I (art. 1-89)*, ff., SIP LEX 2012.

[126] COPA, COGECA, *Promowanie pozycji rolników i spółdzielni w łańcuchu dostaw żywności* [online]. COPA-COGECA, Available on-line at: <http://www.copa-cogeca.be/img/user/file/902 _v_P.pdf> [accessed 1.05.2020].

[127] A. Jurcewicz, P. Popardowski, J. Zięba, Prawne podstawy wspólnej polityki rolnej, in: A. Jurcewicz (ed.), *Prawo i polityka rolna Unii Europejskiej*, Warsaw, 2010: 14–15; A. Jurcewicz, *Traktatowe podstawy unijnego prawa rolnego w świetle orzecznictwa. Zagadnienia wybrane*, Warsaw, 2012.

[128] COPA, COGECA, *Promowanie pozycji*.

[129] Consolidated version of 26 October 2012 (Official Journal of the European Union, C 326, 26.10.2012: 47–390). Pursuant to the Lisbon Treaty (Article 2) the Treaty establishing the European Community was updated to the Treaty on the functioning of the European Union.

by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour; to ensure a fair standard of living for farmers; to stabilise markets; to ensure the availability of supplies; and to ensure reasonable prices for consumers (Article 39).[130]

It should be noted that the objective of increasing profitability in agriculture is extremely difficult to achieve. Undoubtedly, income and price volatility and natural risks are more significant in agriculture, and farmers' incomes are on average lower than those of other sectors of the economy.[131] It is worth noting that the agricultural sector is highly fragmented compared to other stages of the food supply chain, which are better organised and therefore more powerful. Moreover, European farmers must cope with competition from global markets. At the same time, they are obliged to respect high environmental standards, the need to ensure food safety and quality, and safeguard the welfare of animals as demanded by the people of Europe.[132]

One of the objectives of the CAP is that the basic unit of production in the agriculture of the European Union is the family farm.[133] EU legislation encourages agricultural producers to cooperate and build a stable organisational structure. First of all, there are regulations concerning agricultural markets, particularly milk, and fruit and vegetables. In the milk market, co-operatives act as purchasers, agricultural producers and organisations of agricultural producers; while in the fruit and vegetables market they act as organisations of producers, and in the new EU Member States as producer organisations for fruit and vegetables they are granted preliminary recognition. Farmers are encouraged to associate by EU regulations, which concern not only agricultural markets but also the financing and development of rural areas.[134]

The Communication from the Commission. Europe 2020: "A strategy for smart, sustainable and inclusive growth"[135] stressed that three priorities should underpin Europe 2020: smart growth (developing an economy based on knowledge and innovation), sustainable growth (promoting a more resource efficient, greener and

[130] A. Jurcewicz, P. Popardowski, J. Zięba, *Prawne podstawy wspólnej*: 14–15. For more on CAP see E. Tomkiewicz, *Limitowanie produkcji w ustawodawstwie rolnym Wspólnoty Europejskiej*, Warsaw, 2000: 28ff; M. Szewczyk, *Administracyjno-prawne aspekty realizacji Wspólnej Polityki Rolnej w Polsce*, Lublin, 2009: 19ff.

[131] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions CAP until 2020 - Meeting the food, natural resources and territorial challenges of the future, Available on-line at <http://webapi.cor.europa.eu/> [accessed 15.02.2019].

[132] Ibid.

[133] See A. Jurcewicz, P. Popardowski, J. Zięba, *Prawne podstawy wspólnej*: 10ff.

[134] A. Suchoń, *Prawna koncepcja spółdzielni*: 43ff.

[135] The European Commission, *EUROPA 2020. Strategia na rzecz inteligentnego i zrównoważonego rozwoju sprzyjającego włączeniu społecznemu,* Available on-line at: <http://ec.europa.eu/eu2020/pdf/1_PL_ACT_part1_v1.pdf> [accessed 4.03.2020].

more competitive economy) and inclusive growth (promoting an economy delivering high levels of employment and economic, social and economic cohesion).[136] It is also important that the benefits of economic growth are spread evenly throughout the Union, including in the outermost regions, thereby enhancing territorial cohesion.[137] The idea behind the European social model is that the individual should not be left alone, dependent only on market forces when it comes to meeting his or her needs. This applies in particular to situations in which people are unable to work owing to illness, disability, accident, unemployment or old age.[138] It can therefore be concluded that the social economy supported by the European Union has contributed to the development of social co-operatives in the Member States or to legislative changes concerning co-operatives.[139] EU funds are a particularly effective instrument for the development of social co-operatives.[140] The activity of co-operatives is also part of the implementation of the EU's regional[141] and energy policy.[142]

It is also worth adding that agricultural producer groups have their origins in EU legislation. The second Mansholt Plan already emphasised the need for legislation on producer associations. Such associations were to have significant powers to determine the volume of production of individual agricultural products, guaranteed prices and negotiations with food processing entities.[143] On the issue of the normative foundations of groups and associations,[144] it is also worth remembering the Council Regulation EEC No 1360/78 of 19 June 1978 on producers' groups and their associations. As is emphasised in the literature, the scope of the Regulation was limited to a small area of regions with a structural deficit.[145] This Regulation was replaced by Regulation (EC) No 952/97 of 20 May 1997 on producer groups and associations thereof,[146] subsequently repealed by Regulation (EC) No 1257/1999 on the support of the development of rural areas from the European Agriculture Guidance and Guarantee Funds (EAGGF) and amending and repealing some regulations.[147]

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[136] Ibid.

[137] Ibid.

[138] D. Jarre, Europejski model społeczny i usługi socjalne użyteczności publicznej. Możliwości dla sektora gospodarki społecznej, in: E. Leś, M. Ołdak (eds.), *Przedsiębiorstwo społeczne w rozwoju lokalnym*, Warsaw, 2007: 61–71.

[139] An example of this may be the French Act of 31 July 2014. More on this later in this work.

[140] A. Suchoń, *Prawna koncepcja spółdzielni*: 46ff.

[141] See e.g. K. Kokocińska, *Polityka regionalna w Polsce i w Unii Europejskiej*, Poznań 2010: 14ff; S. Pastuszka, *Polityka regionalna Unii Europejskiej. Cele, narzędzia, efekty*, Warsaw, 2012.

[142] A. Suchoń, Wpływ polityki i prawa Unii Europejskiej na rozwój spółdzielni rolniczych w wybranych krajach członkowskich, *Przegląd Prawa Rolnego*, 2015, 1: 95–120.

[143] Ibid.

[144] Ibid.

[145] Ibid.

[146] O.J. EU 1997, L 142: 30.

[147] O.J. EU 1999, L 160, 26.6.1999: 80.

The subsequent Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty on State aid to small and medium-sized enterprises active in the production of agricultural products[148] provided that 'producer group' means a group which is set up for the purpose of jointly adapting, within the objectives of the common organisation of the markets, the production and output of its members to market conditions, in particular by the concentration of supplies.

The new Commission Regulation (EU) No 702/2014 of 25 June 2014, declaring certain categories of aid in the agriculture and forestry sectors and in rural areas to be compatible with the internal market in the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, points out that 'producer group and producer organisation' means a group or organisation set up with the aim of adapting to market requirements the production and production process of producers who are members of such a group or organisation, or of jointly marketing goods, including preparation(s) for their sale, the centralisation of sales and delivery to bulk buyers; and other activities which may be carried out by producer groups or organisations.

EU legislation does not specify the legal form of a group. It should also be added that Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)[149] points out in the preamble that producer groups and producer organisations help farmers to face together the challenges of increasing competition and consolidating downstream markets in relation to the marketing of their products, also in local markets. Therefore, in the view of the EU legislator, the formation of producer groups and organisations should be encouraged. Member States can give priority to producer groups and organisations of quality products covered by the measure on quality schemes for agricultural products and foodstuffs provided for in the Regulation.

The European Union, being aware of the beneficial impact of co-operatives on the financial situation of agricultural producers and on the development of agriculture, puts more emphasis on organisations when making legal regulations. This is exemplified by Article 122 Council Regulation (EC), of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation). According to the Article, Member States shall recognise producer organisations, which: (a) are constituted by producers of one of the following sectors: (i) the hops sector, (ii) the olive oil and table olives sector, and (iii) the silkworm sector; (b) are formed on the initiative of the producers; and (c) pursue a specific aim, which may in particular relate to: (i) concentrating supply and marketing the produce of the members; (ii)

[148] R. Mögele, F. Erlbacher, *Single Common Market Organisation*, Munich, 2011: 20 ff.

[149] O.J. EU 2013, L 347, 20.12.2013: 487.

adapting production jointly to the requirements of the market and improving the product; or (iii) promoting the rationalisation and mechanisation of production.

While withdrawing the milk quotas, the European Union introduced some security instruments for agricultural producers. One of them was to give more significance to the organisations of producers in the milk and milk products sector. The organisations are supposed to negotiate the contracts for supplying milk to milk processors and to make sure that milk producers get fair payments that cover growing production costs. In general, it needs to be said that, according to the European Commission, this is cooperation among farmers and membership in some associations that is key for the development of agricultural farms and European agriculture.

The issues relating to the activity of organisations of producers were taken into account in Regulation (EU) No 261/2012 of the European Parliament and of the Council of 14 March 2012 amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector. The Regulation stipulated that Member States may recognise interbranch organisations in the milk and milk products sector, provided that such organisations: (a) meet the requirements laid down in Article 123(4); (b) carry out their activities in one or more regions in the territory concerned; (c) account for a significant share of the economic activities referred to in Article 123(4)(a); and (d) do not themselves engage in the production of processing of or the trade in products in the milk and milk products sector (Article 126b).

The new Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 gives the organisations of the producers on the milk market even more importance than previous ones.

III. Examples of organisations throughout the world that associate agricultural producers and co-operatives

There is no doubt that the development of agricultural co-operatives is also influenced by the organisations. As early as 1895, the International Co-operative Alliance (ICA) was established, which came to be the largest and one of the oldest non-governmental international organisations in the world. Currently, its headquarters are in Brussels and it associates more than 284 co-operative organisations active in all sectors of the economy, from 95 countries, representing over 1 billion co-operative members.[150]

[150] National Co-operative Council, Available on-line at: <https://www.krs.org.pl/index.php/dziaalno-miedzynarodowa/wiatowy-ruch-spodzielczy>. For more see A. Suchoń, Co-operatives in

Co-operatives are also popular in the USA. Since 1929, the National Council of Farmer Co-operatives (NCFC) has represented farmer co-operatives.[151] The members of this institution are regional and national farmer co-operatives (consisting of nearly 2500 local farmer co-operatives across the country). NCFC members also include 18 state and regional councils of co-operatives.[152]

On 6 September 1958, the first European representative of agricultural organisations, COPA (Committee of Professional Agricultural Organisations), was created in Brussels.[153] When it first started out it had 13 member organisations from the then six Member States. One of COPA's basic ideas is to support representatives of the European Union from the various agricultural production sectors. Today COPA consists of 60 organisations from the countries of the European Union, and 36 partner organisations from other European countries (e.g. Iceland, Norway, Switzerland Turkey).[154]

As far back as September 1959, national agricultural co-operative organisations set up the General Committee for Agricultural Co-operatives of the European Union (COGECA), based in Brussels. The Committee represents the interests of agricultural, forestry and fisheries co-operatives in the public institutions of the European Union, as well as in European and international organisations.[155] The organisation brings together around 40,000 agricultural co-operatives which employ around 660,000 people and generate an annual turnover of more than 300 billion EUR. At the time of its creation, the COGECA Committee was composed of only six members, while at present it has 35 full members and four associates from across the European Union. There are also 36 partner organisations in the COGECA Committee.[156] COPA's Secretariat merged with that of COGECA on 1 December 1962. The CCACE is the Coordinating Committee of European Co-operative Societies, associating various European sectoral co-operative organisations (COGECA agricultural co-operatives, CECOP – labour co-operatives, CECODHAS – housing co-operatives, etc.). It was established in 1983 (initially as the CCACC) and has an official consultative status *vis-à-vis* the EU authorities.

In order to deepen integration further, in February 2006, 11 member organisations of the International Co-operative Alliance (ICA-Europe) and the Coordinating Committee of European Co-operative Societies represented in the European

the face of challenges of contemporary agriculture in the example of Poland, in: R. Budzinowski (ed.), *Contemporary challenges of Agriculture Law: among Globalization, Regionalisation and Locality*, Poznań, 2018: 303–310.

[151] Available on-line at: <http://ncfc.org/about-ncfc/> [accessed 7.04.2020].

[152] Available on-line at: <http://ncfc.org/about-ncfc/> [accessed 7.04.2020].

[153] Available on-line at: <https://copa-cogeca.eu/CopaHistory.aspx> [accessed 7.04.2020].

[154] Available on-line at: <https://copa-cogeca.eu/CopaHistory.aspx> [accessed 7.04.2020].

[155] E. Tomkiewicz, Legitymizacja organizacji rolników w UE i ich wpływ na regulacje unijnego prawa rolnego, *Studia Iuridica Agraria* 2011, Vol. IX.: 272ff; idem, *Prawne formy zrzeszania się rolników i ich rola w reprezentowaniu interesów zawodowych*, in: *Prawo rolne*, (ed.) P. Czechowski, Warsaw, 2019: 453–455.

[156] Available on-line at: <http://copa-cogeca.be/CogecaHistory.aspx> [accessed 4.05.2020].

Council of the ICA (including the Polish National Co-operative Council) decided to establish a new organisation common to the whole co-operative movement, under the name Co-operatives Europe.[157]

The International Labour Organisation attaches great importance to co-operatives, particularly in terms of job creation, the mobilisation of resources, the stimulation of investment and their contribution to the economy.[158] An example of this is Recommendation 193 of 2002 on promoting co-operatives, which stresses, among others, that governments should implement a policy and legal framework that is favourable to co-operatives, in line with the nature and function of co-operatives, and takes into account co-operative values and principles. This should include: creating an institutional framework in order to enable co- operatives to be registered quickly, easily, inexpensively and efficiently; promoting policies to enable co-operatives to build up adequate reserves; facilitating the entry of co-operatives into co-operative structures that meet the needs of their members; and supporting the development of co-operatives as autonomous and self-governing enterprises.[159] Governments should facilitate the access of co-operatives to services that support them in strengthening their economic efficiency and their ability to create employment and income.[160] Recommendation 193 also stresses that governments should introduce (where appropriate) measures to support the activities of co-operatives which pursue specific social and public policy objectives. Their main aim is to promote employment and to pursue activities that benefit disadvantaged groups or regions. Such measures should include, among others, tax privileges, and a system of loans and grants, as well as easier access to public works programmes and special provisions for public markets.[161]

IV. Conclusion

The reflections on the subject matter have shown that associations of agricultural producers are of a long history and the entities in question are an effective instrument of the development of agriculture and rural areas. It was as early as in the nineteenth century when numerous co-operatives were created, for instance in Europe, both Americas and New Zealand, and legal regulations on how to establish them and the way they operated were enacted. They contributed to the develop-

[157] Available on-line at: <https://coopseurope.coop/> [accessed 9.05.2020].

[158] Recommendation No 193 on promoting co-operatives. See Krajowa Rada Spółdzielcza, *Oficjalny tekst Zalecenia nr 193 Międzynarodowej Organizacji Pracy dotyczące promowania spółdzielni. Materiały z 90. Sesji Międzynarodowej Konferencji Pracy w Genewie*, Warsaw, 2002: 45ff.

[159] Ibid.

[160] Ibid.

[161] Point 7.2 (II Outline of the policies and the role of governments), Recommendation 193 of 20 June 2002 of the International Labour Organisation concerning promoting co-operatives.

ment of agricultural areas of many continents, helped to integrate rural environments and to enhance the economic situation of agricultural producers.

In the US, France, Germany, Italy or many other countries mentioned in the chapter, agricultural co-operativeness and other types of co-operatives have existed since the nineteenth century. Some of them are 100 years old and it is a certain kind of a family tradition for agricultural producers to become members of those entities (first it was a grandfather, then a father and now a son, the current owner of an agricultural farm). The development of agricultural co-operativeness, not only in Germany but also in Austria and some other countries, was supported by the activity of Friedrich Wilhelm Raiffeisen, who in the nineteenth century set up organisations that associated farmers. The co-operativeness was based on mutual help and collaboration as well as on establishing credit unions designed to provide the rural dwellers with sufficient funds to buy seeds, pesticides, fertilizers, machines, etc.[162] Even though Raiffeisen lived in the nineteenth century, his ideas are still alive in German rural areas. The Italian co-operative movement is of a diverse nature, which helps it to respond to social needs. There are also rich co-operative roots in France, which has been reflected in this book. In Poland, where the co-operativeness of agricultural producers dynamically developed in the interwar period, the situation looks different. As a result of political changes and the introduction of socialism, co-operatives were wound up and production co-operatives started to develop instead. Even though the political transformation allowed private agricultural farms to grow and gave more opportunities for agricultural producers to associate, the co-operative movement does not evoke enthusiasm in some parts of our country. The region of Wielkopolska, where co-operativeness has gained popularity, is one of the exceptions.

The associations of agricultural producers have grown in popularity thanks to the activity of the EEC, and then, the European Union. The EU legal regulations incentivize agricultural producers to collaborate and build a stable organisational structure, by means of setting up groups and agricultural producer organisations and regulations on agricultural markets, especially the markets of milk and fruit and vegetables as well as the regulations on financing and development of rural areas. The growth of associations of agricultural producers, especially the agricultural community, has been boosted by the activity of COPA/COGECA, which has its headquarters in Brussels. Not only does it act in the interests of cooperative members before the European Commission or European Parliament but it also makes attempts to incentivize co-operatives to grow. In the US it is the National Council of Farmer Co-operatives (NCFC) that has contributed to the development of agricultural producers.

[162] See e.g. M. Helios, Rechtsgeschichtliche Entwicklung des Genossenschaftswesens, in: *Beck'sches Handbuch der Genossenschaft*, (eds.) M. Helios, Th. Strieder, Munich, 2009: 2ff.

Chapter III

FORMAS ASOCIATIVAS PARA LA ACTIVIDAD AGRARIA EN LA REPÚBLICA ARGENTINA

Alfredo Gustavo Diloreto

I. Introducción

El actual contexto global caracterizado por exigencias decompetitividad, escala, profesionalidad y eficiencia, hace que la actividad agraria tenga más dificultades para desenvolverse aisladamente, cambiando de esta manera la visión clásica de la República Argentina donde el trabajo rural, como señala el Prof. Vivanco, impone una cierta forma de vida que tiene peculiares características: el individualismo acentuado por la soledad, el conocimiento directo de hombres y cosas debido al contacto permanente por razón del trabajo y de la vecindad, el tradicionalismo originado en el aislamiento y la independencia propia de una actividad condicionada por las exigencias de la naturaleza y sólo en forma limitada por las relaciones humanas, imprimen al hombre y la familia agraria un estilo de vida y de trabajo que presenta diferencias notables.[163]

A raíz de ello los sujetos intervinientes en la actividad agraria adoptan diversas formas asociativas para su desarrollo, entre las que se destacan principalmente las sociedades y los contratos que posibilitan una mayor escala y un mejor acceso a los mercados de productos agropecuarios.

II. Sociedades

1. Cooperativas

Como consecuencia de las corrientes inmigratorias europeas llegadas a partir de las últimas décadas del siglo XIX a finales de ese siglo y primeros años del siglo XX comenzaron a constituirse algunas sociedades en forma de cooperativas de conformidad a lo prescripto por el Código de Comercio que, en su artículo 392

[163] A.C. Vivanco, *Teoría de derecho Agrario*, La Plata, 1967.

preveía que "las sociedades cooperativas deberán adoptar alguna de las formas establecidas en los capítulos anteriores (colectivas, anónimas, en comandita, de capital e industrial), debiendo siempre acompañar su firma o denominación social con las palabras sociedad cooperativa, limitada o ilimitada, según fuere"[164].

Esta insuficiencia normativa dio lugar a la sanción en 1926 de la primera ley de cooperativas y en la actualidad son reguladas por la Ley 20.337 y sus modificatorias, que fuerasancionada en 1973, yque si bien no posee una especial referencia a las cooperativas agropecuarias se le aplican las mismas normas genéricas, siendo supletoriamente aplicables las disposicionesde la Ley 19.550 respecto a las Sociedades Anónimas, en cuando se concilien con las de esa ley y la naturaleza de aquéllas.

Ahora bien, las cooperativas agrarias, pueden ser definidas como aquellas organizadas por productores agropecuarios que tienen la finalidad de abaratar costos, lograr una mejor inserción en el mercado, compartir la asistencia técnica y profesional, comercializar en conjunto, iniciar procesos de transformación de la producción primaria incorporando valor agregado, etc.[165] Entre los principales aspectos de la ley, las cooperativas se definen como entidades fundadas en el esfuerzo propio y la ayuda mutua para organizar y prestar servicios, que reúnen los siguientes caracteres, tienen capital variable y duración ilimitada, no ponen límite estatutario al número de asociados ni al capital, conceden un solo voto a cada asociado y no otorgan ventaja ni privilegio alguno a los iniciadores, fundadores y consejeros, ni preferencia a parte alguna del capital, reconocen un interés limitado a las cuotas sociales, no tienen como fin principal ni accesorio la propaganda de ideas políticas, religiosas, de nacionalidad, región o raza, ni imponen condiciones de admisión vinculadas con sus asociados, limitan la responsabilidad de los asociados al monto de las cuotas sociales suscriptas y son sujeto de derecho;en cuanto a su denominaciónsocial debe incluir los términos "cooperativa" y "limitada" o sus abreviaturas.

Cuentan con un número mínimo de diez asociados, salvo las excepciones que expresamente admitiera la autoridad de aplicación y lo previsto para las cooperativas de grado superior. Como excepción a esa norma, mediante la Resolución N° 302/94 del entonces Instituto Nacional de Acción Cooperativa, se autoriza la constitución de Cooperativas de Provisión de Servicios Rurales con el mínimo de seis integrantes, teniendo en cuenta que la organización en esa forma de las actuales agrupaciones de colaboración, formadas por grupos de productores rurales linderos o vecinos, contribuía a otorgarles a dichos productores mayor certeza jurídica, y fundamentalmente los beneficios de una personalidad que favorezca la obtención de créditos para la compra de maquinarias, herramientas e insumos con la finalidad de que la inserción en la actividad agropecuaria y cooperativa de

[164] E.A. Pérez Llana, *DerechoAgrario*, Santa Fé, 1959.

[165] S.N. Formento, *Empresa Agraria y sus Contratos de Negocios*, Buenos Aires, 2005.

pequeños grupos cooperativizados integrados por las propias bases productivas rurales, atendiendo sus propias necesidades en forma directa, genereun reordenamiento e innovación de las estructuras de servicios existentes exigidos por la realidad económica promoviendo la obtención de créditos bancarios para pequeños grupos organizados, lo que contribuye a la formación de un capital social y un capital de trabajo.

Esas cooperativas tienen por objeto en la agricultura la provisión de servicios de labranza, semillas y siembra, recolección; almacenamiento, acondicionamiento y transporte de la producción agrícola; servicios de desmonte, desmalezamiento, aplicación de herbicidas, insecticidas, fertilizantes u otros afines propios de la actividad agraria y en lo pecuario prestar servicios de alambrado, parcelamiento y limpieza de campos, provisión de forrajes o productos veterinarios, vacunación, aparatos de refrigeración, de generación de electricidad, de extracción de agua y riego, de ordeñe mecánico, de acondicionamiento de los productos de inseminación artificial, transporte de la producción y toda otra propia de la actividad pecuaria.

Su constitución es por acto único y por instrumento público o privado, labrándose acta que debe ser suscripta por todos los fundadores, debiendo contener el estatuto la denominación y el domicilio, la designación precisa del objeto social, el valor de las cuotas sociales y del derecho de ingreso si lo hubiera expresado en moneda argentina; la organización de la administración, la fiscalización y el régimen de las asambleas; las reglas para distribuir los excedentes y soportar las pérdidas; las condiciones de ingreso, retiro y exclusión de los asociados;las cláusulas necesarias para establecer los derechos y obligaciones de los asociadosy atinentes a la disolución y liquidación.

Pueden ser asociados las personas físicas mayores de dieciocho años y el capital se constituye por cuotas sociales indivisibles y de igual valor, que deben constar en acciones representativas de una o más, que revisten el carácter de nominativas, pudiendo transferirse sólo entre asociados y con acuerdo del consejo de administración en las condiciones que determine el estatuto.

Las cooperativas se organizan con una asamblea que puede ser ordinaria o extraordinaria; la primera debe realizarse para considerar el balance general y el estado de resultados, juntamente con la memoria y acompañados de los informes del síndico y del auditor; las segundas,toda vez que lo disponga el consejo de administración, el síndico o cuando lo soliciten asociados cuyo número equivalga por lo menos al diez por ciento del total.

Asimismo la integra un Consejo de Administración elegido por la asamblea en el que los consejeros deben ser asociados y no menos de tres, que tiene a su cargo la dirección de las operaciones socialesdentro de los límites que fije el estatuto, con aplicación supletoria de las normas del mandato;corresponde la representación al presidente del Consejo de Administración. También éste Consejo

puede designar gerentes, a quienes encomienda las funciones ejecutivas de la administración. Responden ante la cooperativa y los terceros por el desempeño de su cargo en la misma extensión y forma que los consejeros. Su designación no excluye la responsabilidad de aquellos.

Las cooperativas pueden asociarse entre sí para el mejor cumplimiento de sus fines y por resolución de la asamblea, o del consejo de administración ad-referendum de ella; pueden integrarse en cooperativas de grado superior para el cumplimiento de objetivos económicos, culturales o sociales debiendo tener un mínimo de siete asociados. En el primer caso se trata de cooperativas de segundo grado que son cooperativas de cooperativas- como por ejemplo la Asociación de Cooperativas Argentinas (ACA), que está formada por 147 Cooperativas agropecuarias que agrupa a 50.000 productores consolidando una parte fundamental de la cadena agroindustrial argentina, siendo su ámbito de trabajo en las provincias de Buenos Aires, Córdoba, Chaco, Entre Ríos, La Pampa, Río Negro, Santa Fe y Santiago del Estero y C.A.B.A., siendo la comercialización de productos agrícolas su principal actividad, en la que es el mayor operador de granos del país con una participación del 17% sobre el total que se produce en Argentina[166].

En cuanto a las cooperativas de tercer grado que reúne a las de segundo grado son las confederaciones, ejemplo de ello es la Confederación Intercooperativa Agropecuaria Coop. Ltda. (ConInAgro) quese crea en 1956 y que agrupa al sector cooperativo agrario de Argentina y se trata de una organización de tercer grado que reúne a diez federaciones que, a su vez reúnen a 120 000 empresas cooperativas agrarias que representa y defiende los intereses de los productores asociados, federaciones y a toda la agroindustria; gestionando soluciones a los problemas de sus asociados y del sector agropecuario en general, en pos de construir desde el cooperativismo, capital social para el desarrollo local[167].

A la actividad principal de las cooperativas agropecuarias de comercialización de la producción de sus asociados se agregó el abastecimiento de mercaderías de uso y consumo, artículos rurales y maquinarías agrícolas, luego incorporó puertos cooperativos dando otra impronta a la comercialización externa de los cereales, oleaginosas y subproductos y ha emplazado sus propios criaderos de cereales y semillas híbridas.

Los principales tipos de cooperativas que ofrece el movimiento cooperativo son tamberas, de productores de cereales y oleaginosas, algodoneras, vitícolas, yerbateras, tabacaleras, frutícolas y hortícolas. Tal es la importancia de estas instituciones que el tema elegidopor la FAO para el Día Mundial de la Alimentación de 2012 es “Las cooperativas agrícolas alimentan al mundo”, en reconocimiento de la función que estas desempeñan al mejorar la seguridad alimentaria y contribuir a la erradicación del hambre.

[166] Available on-line at: <www.acacoop.com.ar> [accessed 20.10.2019].

[167] Available on-line at: <www.coninagro.org.ar> [accessed 20.10.2019].

El organismo de aplicación nacional en materia de cooperativas es el Instituto Nacional de Asociativismo y Economía Social (INAES) organismo descentralizado dependiente del Ministerio de Desarrollo Social, que ejerce las funciones que le competen al Estado en materia de promoción, desarrollo y control de la acción cooperativa y mutual y tiene por objetivos fomentar el desarrollo, educación y promoción de la acción cooperativa y mutual en todo el territorio nacional, reconocer a las Asociaciones Mutuales y Cooperativas efectuando el otorgamiento, denegatoria o retiro de la personería jurídica para su funcionamiento, como así también su superintendencia y control público, fiscalizar su organización, funcionamiento, solvencia, calidad y naturaleza de las prestaciones y servicios, su disolución y/o liquidación, apoyar, a través de la asistencia técnica, económica y financiera a las entidades y la formulación de programas y planes.

2. Sociedades

Según la Ley de Sociedades 19.550 texto ordenado en 1984 y sus modificatorias posteriores, habrá sociedad cuando una o más personas en forma organizada conforme a uno de los tipos previstos en esta ley, se obligan a realizar aportes para aplicarlos a la producción o intercambio de bienes o servicios, participando de los beneficios y soportando las pérdidas; la sociedad unipersonal sólo se podrá constituir como sociedad anónima, siendoun sujeto de derecho. La ley no adopta una forma especial para la constitución de una sociedad cuyo objeto es la actividad agraria por lo que se podrá optar por alguna de las figuras allí establecidas, destacando Pastorino, que descuella la preferencia por la sociedad de responsabilidad limitada en las empresas familiares y por la sociedad anónima para las otras[168].

2.A. Sociedad de Responsabilidad Limitada

En esta, según la Ley 19.550 el capital se divide en cuotas y los socios limitan su responsabilidad de la integración de las que suscriban o adquieran, sin perjuicio de la garantía solidaria e ilimitada a los terceros por la integración de los aportes, no pudiendo el número de socios exceder los cincuenta; la denominación social puede incluir el nombre de uno o más socios y debe contener la indicación "sociedad de responsabilidad limitada", su abreviatura o la sigla S.R.L. y su omisión hará responsable ilimitada y solidariamente al gerente por los actos que celebre en esas condiciones.

La administración y representación de la sociedad corresponde a uno o más gerentes, socios o no, designados por tiempo determinado o indeterminado en

[168] L. Pastorino, *Derecho agrarios argentino*, Buenos Aires, 2011.

el contrato constitutivo o posteriormente, los que tienen los mismos derechos, obligaciones, prohibiciones e incompatibilidades que los directores de la sociedad anónima. No pueden participar por cuenta propia o ajena, en actos que importen competir con la sociedad, salvo autorización expresa y unánime de los socios y serán responsables individual o solidariamente, según la organización de la gerencia y la reglamentación de su funcionamiento establecidas en el contrato. También puede establecerse un órgano de fiscalización, sindicatura o consejo de vigilancia, que se regirá por las disposiciones del contratosiendo obligatorios en la sociedad cuyo capital conforme a la Resolución N° 529/19 se fije en cincuenta millones de pesos.

2.B. Sociedad anónima

Para la Ley 19.550, el capital se representa por acciones y los socios limitan su responsabilidad a la integración de las acciones suscriptas, la denominación social puede incluir el nombre de una o más personas de existencia visible y debe contener la expresión 'sociedad anónima', su abreviatura o la sigla S.A. En caso de sociedad anónima unipersonal deberá contener la expresión 'sociedad anónima unipersonal', su abreviatura o la sigla S.A.U. y su omisión hará responsables ilimitada y solidariamente a los representantes de la sociedad juntamente con ésta, por los actos que celebren en esas condiciones. Se constituye por instrumento público y por acto único o por suscripción pública, y todos los firmantes del contrato constitutivo se consideran fundadores, el contratoconstitutivo será presentado a la autoridad de contralor para verificar el cumplimiento de los requisitos legales y fiscales.

El capital debe suscribirse totalmente al tiempo de la celebración del contrato constitutivo y no podrá ser inferior a cien mil pesos, siendo "capital social" y "capital suscripto" empleado indistintamente en la ley. Las acciones serán siempre de igual valor, expresado en moneda argentina, y el estatuto puede prever diversas clases con derechos diferentes; dentro de cada clase conferirán los mismos derechos, los títulos pueden representar una o más acciones y ser al portador o nominativos; en este último caso, endosables o no, siendo las acciones son indivisibles y si existe copropiedad se aplican las reglas del condominio. La transmisión de las acciones es libre y el estatuto puede limitar la transmisibilidad de las acciones nominativas o escriturales, sin que pueda importar la prohibición de su transferencia.

Las asambleas tienen competencia exclusiva para tratar los asuntos referidos a balance general, estado de los resultados, distribución de ganancias, memoria e informe del síndico y toda otra medida relativa a la gestión de la sociedad que le competa resolver conforme a la ley y el estatuto o que sometan a su decisión el directorio, el consejo de vigilancia o los síndicos, designación y remoción de

directores y síndicos miembros del consejo de vigilancia y fijación de su retribución y la responsabilidad de los directores y síndicos y miembros del consejo de vigilancia y sus resoluciones conformes con la ley y el estatuto,son obligatorias para todos los accionistas salvo lo dispuesto en el artículo 245 y deben ser cumplidas por el directorio.

La administración está a cargo de un directorio compuesto de uno o más directores designados por la asamblea de accionistas o el consejo de vigilancia en su caso; el director es reelegible y su designación revocable exclusivamente por la asamblea y la representación de la sociedad corresponde al presidente del directorio. El directorio puede designar gerentes generales o especiales, sean directores o no, revocables libremente, en quienes puede delegar las funciones ejecutivas de la administración. Responden ante la sociedad y los terceros por el desempeño de su cargo en la misma extensión y forma que los directores. Su designación no excluye la responsabilidad de los directores, respondiendo ilimitada y solidariamente hacia la sociedad, los accionistas y los terceros, por el mal desempeño de su cargo, por la violación de la ley, el estatuto o el reglamento y por cualquier otro daño producido por dolo, abuso de facultades o culpa grave.

El estatuto podrá organizar un consejo de vigilancia, integrado por tres a quince accionistas designados por la asamblea, reelegibles y libremente revocables, también reglamentará su organización y funcionamiento, que tendrá a su cargo fiscalizar la gestión del directorio, podrá examinar la contabilidad social, los bienes sociales, realizar arqueos de caja, sea directamente o por peritos que designe, recabar informes sobre contratos celebrados o en trámite de celebración, aun cuando no excedan de las atribuciones del directorio. La fiscalización privada está a cargo de uno o más síndicos designados por la asamblea de accionistas. Se elegirá igual número de síndicos suplentes y además del control de constitución, quedan sujetas a la fiscalización de la autoridad de contralor de su domicilio, durante su funcionamiento, disolución y liquidación.

3. Agrupaciones de colaboración

Según el Código Civil y Comercial aprobado en 2014 por la Ley 26.994 y que entrara en vigencia en 2015, hay contrato de agrupación de colaboración cuando las partes establecen una organización común con la finalidad de facilitar o desarrollar determinadas fases de la actividad de sus miembros o de perfeccionar o incrementar el resultado de tales actividades.

Esta agrupación, en cuanto tal, no puede perseguir fines de lucro y las ventajas económicas que genere su actividad deben recaer directamente en el patrimonio de las partes agrupadas o consorciadas, no pudiendo ejercer funciones de dirección sobre la actividad de sus miembros.

El contrato debe otorgarse por instrumento público o privado con firma certificada notarialmente e inscribirse en el Registro Público que corresponda. Una copia certificada con los datos de su correspondiente inscripción debe ser remitida por el registro al organismo de aplicación del régimen de defensa de la competencia.

El contrato entre otros requisitos debe contener el objeto de la agrupación, la duración, que no puede exceder de diez años y si se establece por más tiempo, queda reducida a dicho plazo, la denominación, que se forma con un nombre de fantasía integrado con la palabra "agrupación", el nombre, razón social o denominación, el domicilio y los datos de inscripción registral del contrato o estatuto o de la matriculación e individualización y en su caso, de cada uno de los participantes, la constitución de un domicilio especial para todos los efectos que deriven del contrato de agrupación, tanto entre las partes como respecto de terceros, las obligaciones asumidas por los participantes, las contribuciones debidas al fondo común operativo y los modos de financiar las actividades comunes, la participación que cada contratante ha de tener en las actividades comunes y en sus resultados, los medios, atribuciones y poderes que se establecen para dirigir la organización y actividad común, administrar el fondo operativo, representar individual y colectivamente a los participantes y controlar su actividad, los casos de separación y exclusión, los requisitos de admisión de nuevos participantes, las sanciones por incumplimiento de obligaciones, los libros habilitados a nombre de la agrupación que requiera la naturaleza e importancia de la actividad común.

La dirección y administración debe estar a cargo de una o más personas humanas designadas en el contrato, o posteriormente por resolución de los participantes y le son aplicables las reglas del mandato y para el caso de ser varios los administradores, si nada se dice en el contrato pueden actuar indistintamente. Los participantes responden ilimitada y solidariamente respecto de terceros por las obligaciones que sus representantes asuman en nombre de la agrupación. La acción queda expedita después de haberse interpelado infructuosamente al administrador de la agrupación. El demandado por cumplimiento de la obligación tiene derecho a oponer las defensas personales y las comunes que correspondan a la agrupación.

Este contrato de agrupación se extingue, por la decisión de los participantes, por expiración del plazo por el cual se constituye; por la consecución del objeto para el que se forma o por la imposibilidad sobreviniente de lograrlo, por reducción a uno del número de participantes, por incapacidad, muerte, disolución o quiebra de un participante, a menos que el contrato prevea su continuación o que los demás participantes lo decidan por unanimidad, por decisión firme de la autoridad competente que considere que la agrupación, por su objeto o por su actividad, persigue la realización de prácticas restrictivas de la competencia o por causas específicamente previstas en el contrato.

4. Uniones transitorias

Conforme al artículo 1463 del Código Civil y Comercial hay contrato de unión transitoria cuando las partes se reúnen para el desarrollo o ejecución de obras, servicios o suministros concretos, dentro o fuera de la República. Pueden desarrollar o ejecutar las obras y servicios complementarios y accesorios al objeto principal. El contrato se debe otorgar por instrumento público o privado con firma certificada notarialmente, que debe contener entre otros requisitos, el objeto, con determinación concreta de las actividades y los medios para su realización, la duración, que debe ser igual a la de la obra, servicio o suministro que constituye el objeto, la denominación, que debe ser la de alguno, algunos o todos los miembros, seguida de la expresión "unión transitoria", el nombre, razón social o denominación, el domicilio y, si los tiene, los datos de la inscripción registral del contrato o estatuto o de la matriculación o individualización que corresponde a cada uno de los miembros, la constitución de un domicilio especial para todos los efectos que deriven del contrato, tanto entre partes como respecto de terceros, las obligaciones asumidas, las contribuciones debidas al fondo común operativo y los modos de financiar las actividades comunes en su caso, el nombre y el domicilio del representante, que puede ser persona humana o jurídica, el método para determinar la participación de las partes en la distribución de los ingresos y la asunción de los gastos de la unión, los supuestos de separación y exclusión de los miembros y las causales de extinción del contrato. Tanto el contrato y la designación del representante deben ser inscriptos en el Registro Público que corresponda.

El representante tiene los poderes suficientes de todos y cada uno de los miembros para ejercer los derechos y contraer las obligaciones que hacen al desarrollo o ejecución de la obra, servicio o suministro.

En este contrato, excepto disposición en contrario del contrato, no se presume la solidaridad de los miembros por los actos y operaciones que realicen en la unión transitoria, ni por las obligaciones contraídas frente a los terceros.

5. Consorcios de cooperación

Según el artículo 1470 del Código Civil y Comercial hay contrato de consorcio de cooperación cuando las partes establecen una organización común para facilitar, desarrollar, incrementar o concretar operaciones relacionadas con la actividad económica de sus miembros a fin de mejorar o acrecentar sus resultados. En él, los resultados que genera la actividad desarrollada por el consorcio de cooperación se distribuyen entre sus miembros en la proporción que fija el contrato y, en su defecto, por partes iguales.

El contrato debe otorgarse por instrumento público o privado con firma certificada notarialmente, e inscribirse conjuntamente con la designación de sus representantes en el Registro Público que corresponda y debe contener, entre otros requisitos el nombre y datos personales de los miembros individuales, y en el caso de personas jurídicas, el nombre, denominación, domicilio y, si los tiene, datos de inscripción del contrato o estatuto social de cada uno de los participantes, el objeto del consorcio, el plazo de duración del contrato, la denominación que se forma con un nombre de fantasía integrado con la leyenda "Consorcio de cooperación" – la constitución de un domicilio especial para todos los efectos que deriven del contrato, la determinación del número de representantes del consorcio, nombre, domicilio y demás datos personales, forma de elección y de sustitución, así como sus facultades y poderes.

III. Contratos Agrarios de naturaleza asociativa

El concepto tradicional de los contratos agrarios en principio giraba en torno a la tierra con fines agropecuarios como objeto de esta categoría, ampliándose en la actualidad no sólo a ellos sino también a los que recaen sobre otros bienes tales como animales en el contrato de feed lot o el empleo de maquinaria agrícola o actividades humanas como el de trabajo agrario, en este sentido, siguiendo a Vivanco, se puede definir como aquel acuerdo de voluntad común destinado a regir los derechos de los sujetos intervinientes en la actividad agraria con relación a cosas o servicios agrarios, en la que se destaca como elemento caracterizante no el uso y goce del fundo rural sino la finalidad productive.[169] Los contratos agrarios tradicionalmente han sido clasificados en dos grandes categorías: conmutativos o de cambio y asociativos. Los primeros son aquellos en los cuales una de las partes concede un fundo rural u otro bien a cambio de una contraprestación sin tomar participación en la actividad ni asumir los riesgos propios de su desarrollo, los que son afrontados en su totalidad por quien la efectúa, tales como el contrato de arrendamiento o el de pastoreo.

En los segundos, en cambio, ambas partes se unen a fin de lograr un objetivo común, asumiendo los riesgos propios que conlleva el desarrollo de la actividad con la finalidad de distribuirse los frutos o productos que se obtengan conforme al porcentaje pactado de acuerdo a los aportes efectuados por cada parte, tales como el contrato de aparcería o el contrato asociativo de explotación tambera.

1. Contratos de aparcerías

Con la sanción de la Ley 13.246 y sus modificatorias, que los reglan con disposiciones de orden público inderogables por las partes, estos contratos adquieren

[169] A.C. Vivanco, *Teoría de derecho Agrario*, La Plata, 1967.

autonomía, diferenciándolos del contrato de arrendamiento, ya que si bien en ambos existe la cesión del uso y goce del predio o de un semoviente, la finalidad de las partes es repartirse los frutos, productos o utilidades.Teniendo en cuenta esta característica que los enmarca dentro de los contratos de naturaleza asociativa, el artículo 21 los describe como aquellos en que una de las partes se obliga a entregar a otra animales o un predio rural con o sin plantaciones, sembrados, animales enseres o elementos de trabajo, para la explotación agropecuaria en cualesquiera de sus especializaciones, con el objeto de repartirse los frutos y agrega que los contratos de mediería se regirán por las normas relativas a las aparcerías.

Por ello, con la sanción de la ley surge que es un contrato de colaboración y de estructura asociativa, donde tanto el aparcero dador como el aparcero tomador se encuentran vinculados con el resultado de la explotación, y las utilidades que pueda recibir el primero lo serán en relación con éste, ya que si la cosecha se pierde nada recibirá; por ello, el artículo 24 de la ley establece que la pérdida de los frutos por caso fortuito o fuerza mayor será soportado por las partes en la misma proporción convenida para el reparto de aquellos. En consecuencia, el contrato de aparcería es una figura intermedia entre el contrato de sociedad y el de arrendamiento, ya que no surge la aparición de una persona jurídica distinta de las personas físicas que la integran, dotada de capital propio y capaz de contraer obligaciones y adquirir derechos. A partir de la conceptualización que efectúa la ley, se desprenden las diferentes figuras jurídicas contenidas en el concepto genérico arriba transcripto y que son: aparcería agrícola o propiamente dicha, aparcería pecuaria y el de mediería.

1.A. Aparcería agrícola o propiamente dicha

De conformidad con el artículo 21, este contrato se configura cuando una de las partes denominada aparcero dador, se obliga a entregar a otra denominada aparcero tomador o aparcero, un predio rural con o sin plantaciones, sembrados, animales, enseres o elementos de trabajo, para la explotación agropecuaria en cualquiera de sus especializaciones, con el objeto de repartirse los frutos. En consecuencia, el objeto del contrato es la cesión de un predio rural, que se encuentre fuera de la planta urbana de las ciudades o pueblos, y debe tratarse de una explotación agraria. La ley no establece ningún principio, por lo que como consecuencia propia de la naturaleza del contrato es que se reparten en la proporción en que las partes convengan libremente, en la forma, tiempo y lugar establecidos y ninguna de las partes podrá disponer de los frutos sin que previamente se haya realizado la distribución según la calidad media de los frutos o productos, asumiendo el aparcero tomador la obligación de hacer saber al aparcero dador la fecha en que se iniciará la percepción de los frutos y la separación de los productos a dividir.

Asimismo, y de acuerdo con el artículo 32 se prohíbe convenir como retribución el pago de una cantidad fija de frutos o su equivalente en dinero, denominado a kilaje fijo y que al igual que los llamados contratos canadienses previstos en el artículo 42, constituyen una cláusula prohibida, y que de incluirse en el contrato, determinará que el mismo se integre judicialmente, estableciéndose una nueva forma de pago y el encuadre del contrato dentro del régimen correspondiente en orden a la intención que tuvieron las partes al momento de contratar.

La pérdida de los frutos por caso fortuito o fuerza mayor tal como antes se señalara, será soportada por las partes en el porcentaje establecido para su distribución. El plazo de estos contratos conforme al artículo 4 aplicable al presente, es de un mínimo de tres años, en consideración al ciclo biológico que rige todo el proceso productivo y al ciclo económico que debe garantizar al arrendatario su progreso. Este mismo plazo conforme lo establece el mismo artículo también rige para los contratos sucesivos que puedan celebrar las mismas partes por el mismo predio, en caso que no se estableciese o se pactare uno inferior conforme al principio de orden público que impera en la ley; se entiende por éstos a los que inmediatamente de vencido un contrato de arrendamiento o aparcería, celebran las mismas partes sobre idéntico inmueble.

Por ello al vencimiento del plazo legal o el pactado por las partes si fuera mayor, conforme al artículo 20 de la Ley 13.246, el arrendatario debe restituir el predio sin derecho a ningún plazo suplementario para el desalojo y entrega libre de ocupantes al haber sido suprimido por la Ley 21.452 la tácita reconducción originariamente regulada en la ley.

En consecuencia, para el supuesto en que el arrendador no requiera la devolución del predio y el arrendatario continúa con la tenencia del mismo, será de aplicación supletoria el artículo 1218 del Código Civil y Comercial que estatuye que no se juzgará que hay reconducción tácita sino la continuación de la locación concluida y bajo sus mismos términos hasta que cualquiera de las partes de por concluido el contrato mediante comunicación fehaciente. En cuanto al plazo máximo por aplicación supletoria del Código Civil y Comercial, es el de cincuenta años que establece el art. 1197. El contrato de aparcería agrícola, se resuelve por el vencimiento del término legal o el pactado si fuere mayor, si se ha concedido el uso y goce de un predio rural, debiendo el aparcero restituir el predio sin derecho a ningún plazo suplementario para el desalojo y entrega libre de ocupantes (arts. 20 y 26 de la Ley 13.246).

También se resuelve en caso de muerte, de incapacidad o imposibilidad física del aparcero, teniendo en cuenta el carácter *intuitu personae* de estos contratos y que a diferencia del contrato de arrendamiento, la ley no posibilita su continuación con sus herederos ya que es una consecuencia de la obligación del aparcero establecida en el inciso a) del artículo 23 de realizar personalmente la explotación, hallándose prohibido ceder su interés en la misma, arrendar o dar en aparcería la

cosa o cosas objeto del contrato, distinto es el caso de muerte del aparcero dador o de enajenación del predio, en los que el contrato de aparcería continuará, salvo opción en contrario del aparcero conforme al art. 27 "in fine".

1.B. Aparcería pecuaria

Habrá contrato de aparcería pecuaria cuando una de las partes llamada dador se obligue a entregar animales y la otra denominada tomador, se obligue a cuidarlos, criarlos y engordarlos en un predio rural, con la finalidad de repartirse los frutos, productos o utilidades. El objeto del contrato entonces será ganado, o lo que es lo mismo, semovientes. La diferencia con el contrato de aparcería propiamente dicha o agrícola es que impera el principio de autonomía de la voluntad consagrado en el art. 958 del Código Civil y Comercial. Este contrato, puede asumir dos modalidades, aparcería pecuaria en la que la finalidad es repartirse las crías de los animales que se entregan o capitalización de hacienda, donde la finalidad es repartirse el mayor valor que adquiera la hacienda durante el engorde a campo. En cuanto al reparto de los frutos o utilidades, si bien se rige por el principio de la autonomía de la voluntad, si las partes no establecieron el porcentaje para su distribución o conforme a usos y costumbres en contrario, se repartirán por mitades. En la aparcería pecuaria pura, la distribución de las crías es generalmente anual, teniendo en cuenta el ciclo biológico que concluye con la separación de la cría de su madre (destete), efectuándose a favor de una parte por vez o formando lotes y sorteándolos, concediendo las hembras a una parte y los machos a la otra.

En cambio, en el contrato de capitalización de hacienda, el mayor peso ganado desde la entrega y hasta alcanzar el peso o plazo pactados, se distribuye entre las partes previo descontar el peso o el valor de los kilos iniciales del rodeo en el porcentaje establecido.

En estos contratos al no concederse un predio no están alcanzados por el plazo mínimo legal, toda vez que sólo se ceden animales y por ende, quedan sometidos al que las partes convengan o en su defectoel que determinen los usos y costumbres.

1.C. Mediería

La ley no tipifica a este contrato, limitándose únicamente a declarar en el artículo 21 que le serán aplicables las disposiciones de la aparcería. Para que exista contrato de mediería, los elementos caracterizantes son: que los aportes realizados por el dador y el mediero sean equivalentes, es decir, iguales; que los gastos de explotación sean afrontados por partes iguales, que la dirección y administración de la explotación sea compartida entre las partes, que los frutos, productos o utilidades de la explotación, como corolario de los caracteres anteriores, se

dividan por mitades. En consecuencia, podría definirse al contrato de mediería como aquel en que una de las partes denominada dador concede un predio rural ubicado fuera de la planta urbana, y la otra denominada mediero lo destine a la actividad agraria, aportando ambas en partes iguales el capital y los gastos de explotación necesarios, compartiendo la dirección y la administración de dicha explotación, con el objeto de repartirse por mitades los frutos, los productos o las utilidades obtenidas.

2. Contrato asociativo de explotación tambera

La Ley 25.169 regula actualmente este contrato, la que si bien no contiene una definición del mismo, podría definirse como el acuerdo de voluntad entre una persona física o jurídica llamada empresario titular, que en calidad de poseedor, arrendador o tenedor por cualquier título legítimo, dispone del predio rural, instalaciones, bienes o hacienda que se afecten a la explotación tambera, y otra persona física llamada tambero asociado, que es la que ejecuta las tareas necesarias para la producción de leche fluida, con la finalidad de distribuirse las utilidades obtenidas en el porcentaje convenido.[170]

En relación a su naturaleza jurídica, el artículo 2 de la ley establece que es contrato agrario, constituyendo una particular relación participativa, superando así la distinta caracterización dada por la doctrina y la jurisprudencia que bajo el régimen anterior lo ha considerado como un contrato de trabajo, de sociedad, de aparcería o sui generis de forma asociativa; pero no obstante su calificación de agrario, la ley establece que supletoriamente se le aplicarán las disposiciones del Código Civil y Comercial a las cuestiones que se susciten entre las partes serán dirimidas ante el fuero civil. A los sujetos, la ley los nomina empresario – titular y tambero – asociado, siendo el primero la persona física o jurídica que dispone por cualquier título legítimo del predio rural, instalaciones, bienes o hacienda destinada a la actividad y el segundo, la persona física que en forma personal e indelegable ejecuta las tareas necesarias para la explotación del tambo – lo que denota el carácter de intuitu personae de este contrato, quien también puede aportar equipos, maquinarias, tecnología, enseres y personal a su cargo.

El objeto exclusivo de la explotación es la producción de leche fluida proveniente de un rodeo de ganado mayor o menor, cualquiera fuere la raza, comprendiendo entonces no sólo el tambo de bovinos, sino también de caprinos u ovinos, incorporando también como objeto el traslado, distribución y destino de la leche, a los que convencionalmente se puede incorporar como una actividad adicional a la cría y recría de hembras de origen tambero con destino a reposición o venta,

[170] A.G. Diloreto, Contratos agrarios más característicos, in: L. Pastorio (ed.), *Derecho agrario argentino*, Buenos Aires, 2011.

correspondiendo en este caso determinarse en el contrato la forma de distribución de las utilidades en atención a la labor que debe desarrollar el tambero asociado en relación a los aspectos sanitarios, alimento y de custodia de los animales, que en la mayor parte de los casos pertenecen al empresario titular y la venta de las crías machos reproductores que reemplacen, y despojos de animales muertos, tales como cueros, pezuñas y demás subproductos aprovechables.

El plazo según lo dispone el artículo 5 será el que estipulen las partes y en el caso que no lo establezcan, la ley lo considera celebrado por dos años contados a partir de la primera venta obtenida con la intervención del tambero asociado. No se trata de un plazo mínimo ni máximo, sino presumido por la ley ante el silencio de las partes. Si al vencimiento del plazo acordado o el plazo de dos años se continuare con la explotación tambera, la ley no admite la tácita reconducción, por lo que no se considerará renovado ni prorrogado el contrato, sino se entenderá que es la continuación de un contrato concluido a tenor de lo prescripto por el artículo 1218 del Código Civil y Comercial que estatuye que no se juzgará que hay reconducción tácita sino la continuación de la locación concluida y bajo sus mismos términos hasta que cualquiera de las partes de por concluido el contrato mediante comunicación fehaciente.

Entre las obligaciones del empresario titular, se enuncianla de ejercer la dirección y administración del tambo, la de proporcionar una vivienda para uso exclusivo del tambero asociado y de su familia, siendo ésta una norma de orden público e irrenunciableley la de requerir la conformidad del tambero asociado en la elección de la empresa o receptores donde se efectúe la venta de leche o el producido de las actividades conexas de así haberse pactado, y ante la falta de acuerdo, éste asumirá los riegos derivados de la falta de pago en tiempo y forma. Respecto a las obligaciones del tambero asociado, el artículo 7 le asigna entre otras las de tener a su cargo las tareas necesarias para la explotación principal y conexas de existir, la de ser responsable del cuidado de todos los bienes para la explotación del tambo; la de observar las normas de higiene de las instalaciones del tambo, implementos de ordeñe y de los animales; la de aceptar las nuevas técnicas racionales que se incorporen a la empresa.

Este contrato, y salvo estipulaciones expresas en contrario, se resuelve por la muerte o la incapacidad del tambero y por el vencimiento del plazo, ya sea el convenido por las partes o el legal, la muerte de la persona física que como empresario titular o como miembro de una sociedad que actúe como empresario titular no resuelve el contrato, el que continuará con los causahabientes o con la empresa hasta su extinción por cualquiera de las causas previstas en la ley.

Asimismo, el contrato podrá ser rescindido con o sin causa, en el primero de los casos, cualquiera de las partes podrá solicitar la rescisión del contrato cuando la otra parte incumpliera sus obligaciones, violase las disposiciones de la ley o de las normas reglamentarias, o lo pactado entre ambas, considerándose res-

cindido por culpa de la parte incumplidora. Entre las causas de rescisión la ley enuncia daños intencionales en los que medie culpa grave o negligencia reiterada en el ejercicio de las funciones que cada parte desempeñe, incumplimiento de las obligaciones inherentes a la explotación tambera contenidas tanto en la ley como en el contrato o en otras disposiciones vinculadas a la actividad, como por ejemplo aquellas referidas al control sanitario o mala conducta reiterada para con la otra parte o con los terceros que perjudiquen el normal desenvolvimiento de la empresa.

3. Contrato de maquila

La ley 25.113 establece que habrá contrato de maquila o de depósito de maquila cuando el productor agropecuario se obligue a suministrar al procesador o industrial materia prima con el derecho de participar, en las proporciones que convengan, sobre el o los productos finales resultantes, los que deberán ser de idénticas calidades a los que el industrial o procesador retengan para sí, donde el productor agropecuario mantiene en todo el proceso de transformación la propiedad sobre la materia prima y luego sobre la porción de producto final que le corresponde, asumiendo el procesador o industrial la condición de depositario de los productos finales de propiedad del productor agropecuario debiéndolos identificar adecuadamente; estos productos estarán a disposición plena de sus titulares, siendo éste un contrato de integración.

Chapter IV

LES ORGANISATIONS DE PRODUCTEURS EN FRANCE: ÉTAT DES LIEUX ET RÉFLEXIONS

Catherine Del Cont et Allison Macé

En France, l'associationisme agricole a toujours été un outil de lutte contre la fragmentation et la faiblesse structurelle des agriculteurs face à leurs contreparties, comme instrument de concentration de l'offre. Aujourd'hui, dans le cadre du modèle d'agriculture « market-oriented » caractérisé par une forte concentration des acterurs en aval, transformateurs et distributeurs, les organisations de producteurs sont appelées à jouer un rôle déterminant dans les relations commerciales agricoles. Ces organisations professionnelles agricoles sont perçues comme des acteurs centraux et nécessaires de la réalisation des objectifs de la PAC, essentiellement de l'objectif de rémunération équitable des producteurs. Elles visent en effet à rationaliser l'offre agricole et à sécuriser les revenus des agriculteurs sur un marché caractérisé par sa volatilité et la concentration de l'industrie agro-alimentaire.[171] Elles empruntent différentes formes juridiques mais l'une des plus utilisées est la coopérative agricole. Une société coopérative agricole, une union de coopératives agricoles, une société d'intérêt collectif agricole, une association régie par la loi du 1er juillet 1901, une société commerciale ou un groupement d'intérêt économique peut ainsi être reconnu organisation de producteurs.

En 2020, on dénombrerait ainsi 633 organisations de producteurs et 25 associations d'organisations de producteurs reconnues en France, tous secteurs confondus[172]. Mais que recouvre exactement la notion d' « organisation de producteurs »?

Si l'organisation de producteurs ne bénéficie pas d'une définition légale à proprement parler, elle se caractérise, comme nous le verrons par la suite dans les textes nationaux et européens, par son rôle, ses missions, son fonctionnement, et les conditions de sa reconnaissance en tant que telle.

[171] H. Bosse-Platière, F. Collard, B. Grimonprez, T. Tauran, B. Travely, *Droit rural*, Paris 2013: 663.

[172] Le Ministère de l'agriculture et de l'alimentation recense en effet la liste de toutes les organisations de producteurs reconnues en février 2020. Les chiffres sont néanmoins à relativiser car certaines organisations sont comptabilisées plusieurs fois selon les secteurs dans lesquels elles interviennent. C'est notamment le cas des coopératives agricoles, souvent superstructures, questionnant ainsi la réalité de leurs missions et soulevant l'ambiguïté de leur statut.

Le site du Ministère de l'agriculture et de l'alimentation indique ainsi qu'une organisation de producteurs « est constituée à l'initiative d'un ensemble d'agriculteurs qui se regroupent dans l'objectif de mutualiser leurs moyens afin de rééquilibrer les relations commerciales qu'ils entretiennent avec les acteurs économiques de l'aval de leur filière »[173].

Une autre définition, conséquente, est proposée par Marie Rakotovahiny, laquelle montre bien les différents enjeux attachés à la notion « d'organisation de producteurs ». Selon elle, il s'agit d'un « regroupement de personnes physiques et/ou morales intervenant dans le secteur de la production agricole et sur un territoire géographiquement déterminé. Ce regroupement d'agriculteurs participe d'une mutualisation des moyens pour assurer au groupement une certaine compétitivité et une visibilité à l'égard des différents acteurs économiques avec lesquels il est en relation ou avec lesquels il est amené à négocier, traiter. Une organisation de producteurs poursuit une mission collective au bénéfice de ses membres »[174].

Il sera ainsi question de voir comment les organisations de producteurs se sont développées en France au travers des différentes réglementations (I) pour s'imposer dans les politiques agricoles comme un outil collectif au service du bon fonctionnement du marché. Les développements récents viendront néanmoins pointer du doigt les difficultés subsistantes en matière de concurrence et la vulnérabilité persistante des organisations de producteurs dans le processus de contractualisation (II).

I. Un encadrement strict au service du bon fonctionnement du marché agricole

Constat doit être fait que les organisations de producteurs sont aujourd'hui des acteurs clés de la régulation et de la mise en œuvre des objectifs des politiques agricoles, qu'elles soient française ou européenne. On observe d'ailleurs un effet miroir entre la France et l'Union européenne quant à leur encadrement, dans une approche dialectique et didactique où chacune s'inspirerait des réussites et échecs de l'autre pour construire une réglementation à la hauteur des ambitions affichées. Ainsi, si l'histoire des organisations de producteurs n'est pas nouvelle, leur appréhension par le droit s'est faite petit à petit au gré de règlementations nombreuses (1). Il en découle la mise en place d'un régime légal de reconnaissance, basé tant sur des règles de fond que sur une procédure spécifique (2), et

[173] Available on-line at: <https://agriculture.gouv.fr/organisation-economique-les-organisations-de-producteurs> [accessed 20.03.2020].

[174] M. Rakotovahiny, Organisations de Producteurs. Présentation Générale, *J.-Cl. Sociétés Formulaire, Fasc. S-1215*, janv. 2019: 1.

aux effets non négligeables pour la structure ayant obtenu l'accréditation « d'organisation de producteurs » (3).

1. Les organisations de producteurs : perspectives historique et législative

Le marché agricole, tel qu'envisagé de nos jours, a très vite montré une faiblesse structurelle de taille : l'absence d'organisation de la production et de la commercialisation des produits agricoles. L'avènement du libéralisme dans ce domaine d'activité et le rejet de l'interventionnisme étatique ont en effet montré leurs limites, notamment lors de la crise agricole du XIXème en exposant siècle, où l'inadéquation de l'offre à la demande a conduit à une surproduction agricole dès les années 50. Une forme de régulation est intervenue avec la création d'offices publics d'intervention dans le secteur agricole[175], mais les exploitants n'avaient quant à eux pas attendu pour comprendre les bienfaits de l'action collective. Ces derniers ont en effet compris l'intérêt de se regrouper afin d'optimiser leur production et d'augmenter leur position de force à l'égard des distributeurs, le tout pour se garantir des revenus décents, mais également afin de mettre en place une déontologie professionnelle entre les différents membres de l'organisation constituée.

L'Etat fit un premier pas vers la reconnaissance de ces structures, permettant aux producteurs de se rassembler au sein d'entités ayant désormais pleine existence juridique (D. n°61-829, 29 juillet 1961; puis L. n°62-933, 8 août 1962 complémentaire à la loi d'orientation agricole, L. 60-808, 5 août 1960). La loi du 8 août 1962 crée ainsi les groupements de producteurs et les comités économiques agricoles. « Les organisations de producteurs correspondent à une forme d'associations entre les producteurs agricoles, développée et encouragée depuis les premières lois agricoles des années 60. Le principe guidant ces regroupements d'agriculteurs parmi d'autres, était qu'associés les agriculteurs seraient mieux à même de se défendre face à leur premier client de l'aval, transformation et commerce »[176].

Des modifications substantielles seront apportées par la loi n° 99-574 du 9 juillet 1999, laquelle rebaptisera ces groupements « organisations de producteurs ». Suivront notamment la loi d'orientation agricole n°2006-11 du 5 janvier 2006 et la loi n° 2010-874 du 27 juillet 2010 portant réforme des organisations de producteurs, des associations de producteurs, des comités économiques agricoles et des organisa-

[175] Loi n°82-847 du 6 octobre 1982 relative à la création d'offices d'intervention dans le secteur agricole et le secteur des produits de la mer et à l'organisation des marchés.

[176] G-P. Malpel, A. Cointat, P. Fouillade, P. Devos, F. Amans, Conseil général de l'alimentation, de l'agriculture et des espaces ruraux, *Rapport Mission sur l'organisation économique de la production agricole*, mars 2012, 11104: 3ff.

tions interprofessionnelles, en fixant des conditions de reconnaissance plus strictes. L'ordonnance n°2015-1247 du 7 octobre 2015 viendra quant à elle adapter le Code rural afin de mettre ses dispositions en accord avec le droit européen en la matière, lequel introduit une distinction de facto de régime juridique de la reconnaissance en droit français selon que l'organisation soit couverte ou non au niveau européen. Cette ordonnance sera enfin modifiée par le décret n°2018-313 du 27 avril 2018.

Aujourd'hui, les organisations de producteurs sont régies par les articles L. 551-1 et suivants du Code rural pour la partie législative, et par les articles D. 551-1 et suivants pour la partie réglementaire. La loi du 30 octobre 2018 n°2018-938 pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine et durable et accessible à tous (dite loi « EGALIM ») assoit encore plus le rôle de ces organisations dans les négociations commerciales.

En parallèle, les instances européennes se sont également saisies de la question, faisant des organisations de producteurs un levier de la réalisation des objectifs de la politique agricole commune. La réforme de 2007 à l'origine du règlement OCM unique fait ainsi valoir que les Etats membres doivent reconnaître les organisations de producteurs dans un certain nombre de secteurs, si celles-ci ont un but précis et notamment la concentration de l'offre et la commercialisation des produits des producteurs membres, l'adaptation conjointe et l'amélioration de la production aux exigences du marché, et la promotion d'une production rationalisée et mécanisée[177].

Ces organisations contribuent à la valorisation et à la hausse de la consommation des produits agricoles, tout en faisant cas de considérations environnementales. Elles permettent également une plus grande compétitivité des exploitations sur le marché agricole, de par une meilleure optimisation des coûts de production[178]. Pour faire face à la fin des quotas laitiers, les organisations de producteurs dans la filière lait ont été reconnues au travers du règlement (UE) n°261/2012, reconnaissance qui concernera par la suite l'ensemble des filières agricoles avec le règlement (UE) n°1308/2013. Enfin, la règlementation *Omnibus* de décembre 2017 consacre le rôle de ces organisations et les valorise comme outil d'amélioration du fonctionnement des marchés agricoles. Les organisations de producteurs peuvent dès lors « intervenir dans la concentration de l'offre agricole, l'amélioration de la commercialisation, la planification et l'ajustement de la production à la demande, l'optimisation des coûts de production, la promotion des meilleures pratiques et l'offre d'un conseil technique, ainsi que dans la mise à disposition d'outils de gestion des risques et des coproduits »[179].

[177] Règl. (CE) n° 1234/2007, 22 oct. 2007, portant sur l'organisation commune des marchés dans le secteur agricole, art. 122.

[178] M. Rakotovahiny, Organisations de Producteurs. Présentation Générale, *J.-Cl. Sociétés Formulaire, Fasc. S-1215,* janv. 2019: 5.

[179] L. Le Clerc, Z. Bouamra-Mechemache, S. Duvaleix-Treguer, P. Magdelaine, C. Roguet, G. You, Rôles des organisations de producteurs dans les filières animales : négociation, conseil, commercialisation et création de valeur, *Notes et études socio-économiques*, Décembre 2019, 46: 61.

Il est à noter que l'intérêt porté aux organisations de producteurs par les pouvoirs publics français et européen se fait l'écho d'une réalité solidement ancrée chez les exploitants. Depuis longtemps, cette « collectivisation » avait montré ses avantages en France, comme dans les filières porcine et avicole. La principale nouveauté réside en leur reconnaissance et en les conditions qui y sont attachées (2).

2. Reconnaissance des organisations de producteurs : conditions de fond et procédure

Comme mentionné précédemment, le Code rural, dans ses articles L. 551-1 et suivants, opère, sur la base de la réglementation européenne, une distinction entre les organisations de producteurs et associations d'organisations de producteurs reconnues dans les secteurs couverts par l'organisation commune des marchés agricoles, et celles agissant dans des secteurs non couverts[180].

Dans le premier cas, l'article L. 551-1 renvoie aux conditions de reconnaissance déterminées par le règlement portant organisation commune des marchés des produits agricoles. En l'occurrence, le règlement (UE) n°1308/2013 énumère dans ses articles 152 et 153, l'ensemble des conditions nécessaires à la reconnaissance. Il consacre d'ailleurs une différence entre les organisations qui peuvent être reconnues et celles qui doivent être reconnues, sur demande, par les Etats membres[181].

Dans le second cas, l'article L. 552-1 se fait plus détaillé quant aux conditions de reconnaissance des organisations œuvrant dans des secteurs non couverts par le règlement de 2013. On relève ainsi des critères stricts tant sur le fond que sur la procédure à suivre, la reconnaissance entraînant des effets importants.

Si les organisations de producteurs ne sont pas des entités juridiques autonomes, elles doivent néanmoins, préalablement à leur reconnaissance, prendre la forme de personnes morales de droit privé pour pouvoir prétendre à ce statut. Une liste de personnes morales est d'ailleurs établie de manière exhaustive et limitative à l'article L. 552-1[182].

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[180] Les secteurs non couverts sont à déduire au regard de la liste de produits énumérés à l'article 1 du règlement (UE) n°1308/2013 qui évoque, par exemple, les fruits et légumes, la viande bovine, le lait et produits laitiers.

[181] Cette obligation de reconnaissance s'apparente à une dérogation au régime général de reconnaissance et ne concerne que les organisations de producteurs dans le secteur du lait et des produits laitiers (Règl. (UE) n°1308/2013, art. 152).

[182] Seuls les sociétés coopératives agricoles et leurs unions, les sociétés d'intérêt collectif agricole, les associations entre producteurs agricoles régies par les dispositions de la loi du 1er juillet 1901 relative au contrat d'association, les sociétés commerciales et les groupements d'intérêt économique régis par les dispositions du livre II du Code de commerce, peuvent être reconnus en tant qu'organisations de producteurs.

Cette liste a évolué au fil des règlementations, le législateur ayant souhaité mettre finalement l'accent sur la dimension économique des organisations citées, et ce afin de permettre contrôle de la production et commercialisation des produits agricoles[183].

À noter qu'une organisation de producteurs « horizontale » ou « transversale » désignera un groupement ayant plusieurs partenaires aval, et sera dite « verticale » dans le cas contraire.

Une organisation de producteurs se compose de personnes morales et/ou physiques ayant la qualité de producteurs. Une exception existe néanmoins dans le secteur des fruits et légumes. Les personnes physiques ou morales n'ayant pas la qualité de producteurs peuvent être membres d'une organisation de producteurs, sous réserve que les membres producteurs détiennent au moins 75% des voix à l'assemblée générale et, lorsque l'organisation de producteurs est constituée sous forme de société, 75% des parts sociales. Ces membres non producteurs ne prennent pas part au vote pour les décisions ayant trait aux fonds opérationnels (C. rur., art. D. 551-14).

L'article L. 552-4 indique que des organisations de producteurs peuvent se rassembler en « associations de producteurs », lesquelles pourront exercer les mêmes missions et offrir les avantages d'un réseau plus étendu : une représentativité accrue, un plus grand partage d'informations entre les membres, et une position renforcée dans le cadre de négociations avec l'aval de la filière. Au-delà de la forme juridique, d'autres critères doivent être pris en compte pour la reconnaissance d'une organisation de producteurs : son objet, son activité, le secteur couvert, et sa puissance économique.

Les personnes morales candidates doivent tout d'abord avoir pour objet de « maîtriser durablement la valorisation de la production agricole ou forestière de leurs membres, associés ou actionnaires, de renforcer l'organisation commerciale des producteurs, d'organiser et de pérenniser la production sur un territoire déterminé ». Ces éléments sont cumulatifs et impératifs. Ils répondent à une logique certaine : comment valoriser la production des exploitants membres et renforcer leur position dans une filière, sans mettre en place des mécanismes concrets pour assurer l'organisation pérenne de la production ? Les aléas et risques sont en effet trop nombreux lorsqu'il est question du monde agricole pour ne pas être pris en compte.

Le groupement doit ensuite, antérieurement à la demande d'agrément, exercer une activité « normative » et édicter des règles dans un but précis :

- Adapter la production à la demande des marchés, en quantité et en qualité, en respectant des cahiers des charges et en établissant des relations contractuelles avec leurs partenaires de la filière ;

[183] L'ancien article L. 551-1 incluait initialement par exemple « les syndicats agricoles autres que ceux à vocation générale ».

- Instaurer une transparence des transactions et régulariser les cours ;
- Mettre en œuvre la traçabilité ;
- Promouvoir des méthodes de production respectueuses de l'environnement.

Cette activité est très encadrée et ne peut être utilisée que dans le cadre de sa compétence et de ses pouvoirs légaux, soit dans le respect des règlementations européennes et nationales en la matière.

Un autre critère d'éligibilité concerne le secteur couvert par l'entité candidate. Il s'agit de sa zone d'influence. En effet, celle-ci doit couvrir un secteur ou des secteurs complémentaires de produits agricoles ou forestiers précisés par décret. Parmi les secteurs complémentaires, on pourra citer les fruits et légumes, les produits transformés à base de fruits et légumes, certaines productions comme l'apiculture, la production laitière… On constate ainsi une réelle circonscription, tant sur le secteur en lui-même, et sur la zone géographique d'exercice de l'activité[184], que sur la reconnaissance par voie réglementaire de ce même secteur. Une entité sollicitant le statut d'organisation de producteurs ne pourra obtenir la reconnaissance nécessaire si un décret n'a pas été publié pour réglementer un secteur spécifique. Ces conditions sont nécessaires et permettent d'avoir une meilleure compréhension de la production des membres de l'organisation.

Autre critère déterminant à la qualification « d'organisation de producteurs », la puissance économique. Le groupement doit justifier au moment de la demande « d'une activité économique suffisante au regard de la concentration des opérateurs sur les marchés ». L'objectif de cette règle est de faire en sorte que l'entité sollicitante justifie d'une taille suffisante pour bénéficier d'un pouvoir réel sur le marché. L'article L. 553-1 II précise qu'un décret détermine les seuils, en nombre minimal de membres et/ou en valeur minimale de production commercialisable, au-delà desquels l'activité de l'organisation est considérée comme suffisante dans sa zone d'activité. Ces seuils sont révisés tous les cinq ans et dépendent beaucoup de la filière de production concernée. L'entité devra s'assurer de respecter ces seuils même après l'obtention de l'accréditation sous peine de se la voir retirer par la suite.

Il est à noter que la notion « d'activité suffisante » concerne également les organisations de producteurs agissant dans des secteurs couverts par l'organisation commune des marchés agricoles. L'autorité administrative devra donc également se référer aux seuils fixés par la règlementation européenne pour l'apprécier.

La dernière condition à remplir dans le cadre d'une demande de reconnaissance est celle de la cession de la production à l'organisation dans le but de la commercialiser.

Bien que cette distinction n'existe plus légalement depuis le décret n°2018-313, on notera que certaines organisations de producteurs dans le secteur de l'élevage

[184] L'article L. 552-1 précise en effet que les groupements candidats à la reconnaissance doivent agir dans une zone déterminée.

bovin et ovin se sont construites selon une différenciation claire de leurs prérogatives. Une organisation était dite « commerciale », si celle-ci vendait la production de ses membres dont elle avait acquis la propriété, et « non-commerciale » si l'adhérent restait propriétaire de sa production. Il s'agissait alors de donner à l'organisation un mandat de négociation ou de commercialisation pour traiter avec les autres acteurs de la filière[185].

Si ces dénominations ont disparu, l'idée persiste néanmoins de manière générale dans les textes actuels. Ainsi, l'article L. 552-1 4° dispose que les statuts des organisations candidates « prévoient que tout ou partie de la production de leurs membres, associés ou actionnaires leur est cédé en vue de sa commercialisation ». Le transfert de propriété, partiel ou total de la production, est donc érigé en règle, et ce préalablement à la demande de reconnaissance. Il doit dès lors faire l'objet d'une clause spécifique dans les statuts, laquelle sera opposable aux adhérents qui ne pourront que s'y soumettre.

Certaines structures dont le fonctionnement est inadapté à cette règle (cf. l'élevage), peuvent bénéficier d'une dérogation. Elles pourront obtenir la qualification « d'organisations de producteurs » à condition de mettre à disposition de leurs membres les moyens humains, matériels ou techniques nécessaires à la commercialisation de la production de ceux-ci.

Coexistent ainsi deux formes de structures : celles devenues propriétaires de la production, agissant comme une entité unique dans le cadre des négociations avec l'aval, et celles ne bénéficiant que d'un mandat de représentation (C. rur., art. L. 553-5), les conditions de commercialisation étant fixées par les producteurs eux-mêmes (notamment concernant le prix).

On soulignera que la question des statuts des organisations de producteurs a été abordée de manière sensiblement différente ces dernières années. L'ancien article D. 551-2 du Code rural énumérait ainsi un certain nombre de clauses obligatoires à faire figurer dans les statuts. Ces dispositions ont disparu avec le décret n°2018-313. Seule subsiste la mention de la clause de cession de production. Des lignes directrices sont néanmoins fixées par l'article 153 du règlement (UE) n°1308/2013, qui établit le contenu obligatoire des statuts pour les organisations de producteurs régies par cette règlementation[186].

Au-delà du respect des conditions de fond évoquées ci-dessus, la structure devra également suivre une procédure strictement encadrée.

La reconnaissance des organisations de producteurs revient au Ministre de l'agriculture, souvent désigné comme « l'autorité administrative » dans le Code

[185] L. Le Clerc, Z. Bouamra-Mechemache, S. Duvaleix-Treguer, P. Magdelaine, C. Roguet, G. You, Rôles des organisations de producteurs dans les filières animales : négociation, conseil, commercialisation et création de valeur, *Notes et études socio-économiques*, Décembre 2019, 46 : 63.

[186] M. Rakotovahiny, Organisations de Producteurs. Présentation Générale, *J.-Cl. Sociétés Formulaire, Fasc. S-1215*, janv. 2019 : 10–12.

rural (C. rur., art. D. 553-1), et ce quel que soit le régime auquel elles sont soumises (européen ou national). Il existe en effet un parallélisme de forme dans la procédure, qu'il s'agisse de groupements œuvrant dans des secteurs couverts par le règlement (UE) n°1308/2013 ou par l'article L. 552-1 du Code rural.

Le groupement candidat doit déposer une demande en vue de sa reconnaissance, laquelle doit être accompagnée d'un dossier avec un certain nombre de pièces justificatives (C. rur., art. D. 553-4)[187]. Cette demande sera instruite par la direction départementale de l'agriculture placée sous l'autorité du préfet. Elle est ensuite transmise au Ministère de l'agriculture, lequel se positionnera après consultation du Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire (C. rur., art. L. 553-1). Le ministre peut tout à fait refuser la qualification[188]. Sa décision doit intervenir dans les 4 mois après l'introduction de la demande. Elle fait l'objet d'un arrêté, acte administratif unilatéral publié au Journal officiel et pouvant être contesté devant le tribunal administratif[189].

L'accréditation obtenue, l'organisation de producteurs sera soumise à des contrôles réguliers par *FranceAgriMer* pour vérifier le bon respect des conditions de reconnaissance dans le temps. Dans le cas où des manquements seraient mis en exergue, l'organisation concernée se verra l'opportunité de mettre en place des mesures correctrices sous un certain délai (12 mois maximum à partir de la notification du manquement). En cas d'irrespect prolongé, la structure pourra se voir retirer ou suspendre sa reconnaissance en tant qu'organisation de producteurs.

L'encadrement strict des conditions de reconnaissance et de procédure ne relève pas d'une démarche anodine, et se justifie par les effets de cette reconnaissance (3).

3. Effets de la reconnaissance

La reconnaissance entraine droits et obligations pour l'organisation de producteurs. Trois points peuvent ainsi être soulevés : mise en place et respect d'une discipline professionnelle, possibilité de recevoir des aides financières et défense de ses membres.

[187] Exemples : les statuts de l'organisation et son procès-verbal d'approbation ; nombre des membres de l'organisation ou des adhérents de ses membres et la valeur annuelle de leur production commercialisée ou le volume annuel de production mis en marché ou commercialisé, par produit, pour chaque membre; les mandats de commercialisation ou de négociation le cas échéant.

[188] Le respect des conditions de reconnaissance n'entraîne pas de facto l'accréditation. Cela doit néanmoins être nuancé en ce qui concerne le secteur du lait et des produits laitiers, où l'Etat membre a une obligation de reconnaissance.

[189] La procédure est la même dans le cas d'une association d'organisations de producteurs. Les pièces requises sont énumérées à l'article D. 553-5 du Code rural.

La discipline professionnelle est sous-tendue au travers des critères de reconnaissance préexistant à la qualification d'organisation de producteurs. Il revient ainsi à l'organisation, au regard de l'article L. 552-1 1° du Code rural, d'agir sur la production et la commercialisation, soit en étant elle-même en charge de la production et de la vente, soit en fournissant un appui à ses membres. Elle conserve ainsi sa fonction « normative » en édictant des règles s'imposant à ses membres, en considération des règlementations nationales et européennes[190]. Ces règles, ayant trait au respect du cahier des charges et de l'environnement ou à la transparence des transactions, sont nécessaires à l'existence d'une discipline professionnelle et doivent d'ailleurs figurer dans les statuts de l'entité. Un contrôle sera effectué par des agents relevant du Ministère de l'agriculture (C. rur., art. L. 553-6).

De par son statut, l'organisation de producteurs peut obtenir des aides financières nationales ou européennes afin de l'aider dans ses missions (C. rur., art. L. 553-4). Ces aides ont pour objectif de faciliter les regroupements d'exploitants et leur développement, et sont modulées en fonction du degré d'organisation et des engagements des producteurs. Elles permettent un allègement des charges lorsque l'organisation n'est pas encore en mesure d'assurer son propre financement. Les organisations de producteurs reconnues bénéficient également, à soumission égale, d'un droit de préférence dans les marchés par adjudication ou appel d'offres de l'Etat, des collectivités locales ou de leurs établissements publics. Les producteurs organisés peuvent aussi bénéficier de majorations dans l'attribution des aides publiques à l'investissement dont les objectifs correspondent à ceux poursuivis par l'organisation. Enfin, une organisation de producteurs pourra prélever des droits d'inscription et des cotisations sur ses membres.

L'organisation reconnue a également compétence pour défendre ses membres en justice ou lors d'une médiation, dans le cas d'un litige portant sur un contrat de vente de produits agricoles. Elle devra néanmoins avoir préalablement obtenu un mandat à cette fin (C. rur., art. L. 553-3).

Les organisations de producteurs doivent ainsi respecter un certain nombre d'obligations, tant légales que statutaires. Une difficulté apparait néanmoins quant au fonctionnement et aux missions mêmes de ces groupements relatives à la commercialisation de la production agricole. En effet, la concentration de l'offre souhaitée questionne sur les pratiques mises en place au titre de la contractualisation et de leur articulation avec les règles de concurrence (II).

[190] Il est d'ailleurs à noter que les règles édictées peuvent, sous certaines conditions, être étendues et rendues obligatoires pour d'autres opérateurs ne faisant pas partie de la structure. (Voir Code Rural art. L. 551-2 et D. 551-17 ; Règl. (UE) n° 1308/2013, 17 déc. 2013, art. 164).

II. Contractualisation et réalité du rôle des organisations de producteurs

En réaction au recul de l'interventionnisme agricole, et après constat de l'impossibilité pour le marché à s'auto-réguler de manière équilibrée et pérenne, il est apparu nécessaire de réévaluer les mécanismes contractuels en vigueur. Cela se formalisera au travers de la notion de « contractualisation », perçue comme « un outil de régulation des marchés, fondé sur l'idée d'un partenariat gagnant-gagnant » au service d'une « certaine équité contractuelle dans une logique pro-concurrentielle »[191]. Il s'agirait ainsi, au travers de contrats écrits, de mettre en place un mécanisme de partage des risques entre amont et aval, permettant une plus grande prévisibilité économique et sécurité juridique.

La contractualisation sera développée au travers de différentes réglementations en France et en Europe, dès les années 60 (1). Les organisations de producteurs seront alors érigées en acteurs clés du processus, questionnant par là-même l'articulation de leurs missions avec le droit de la concurrence (2). Enfin, alors que la contractualisation a souvent été envisagée à l'aune du renforcement du pouvoir de négociation de l'amont, la législation française a récemment souhaité la voir appliquée à l'ensemble de la filière, au travers de la loi dite EGALIM (3).

1. Une histoire de la contractualisation

Comme mentionné précédemment, la loi d'orientation du 5 août 1960 et la loi complémentaire du 8 août 1962 ont introduit la négociation collective dans le Code rural. L'idée sous-jacente était de s'inspirer du régime applicable aux activités économiques autres qu'agricoles, afin d'en faire bénéficier les exploitants, notamment d'un point de vue social. Le gouvernement avait ainsi le pouvoir de déterminer les principes contractuels qui régiraient les relations entre producteurs, transformateurs et distributeurs. L'objectif de la démarche s'incarnait au travers de la mise en place de contrats écrits établis sur la durée.

La loi du 6 juillet 1964 va chercher à mettre en place un nouveau paradigme contractuel en agriculture en déléguant aux professionnels la possibilité de faire des contrats types et d'élaborer des règles pouvant s'imposer de manière étendue. Cette loi connaît cependant des limites de par un champ d'application restreint, l'absence d'encadrement des négociations et le défaut de garanties quant à la mise en œuvre des accords. Les lois des 12 juillet 1974 relative à l'économie laitière et

[191] Autorité de la concurrence, *Rapport annuel, Étude thématique : Agriculture et concurrence*, 2012 : 127.

10 juillet 1975 sur l'organisation interprofessionnelle en agriculture vont tenter de remédier à ces difficultés mais avec une efficacité limitée[192].

La contractualisation de la relation commerciale agricole trouve réellement son origine dans la loi n° 2010-874 du 27 juillet 2010 de modernisation de l'agriculture et de la pêche (dite LMA). Celle-ci introduit dans le Code rural l'article L. 631-24, lequel a pour vocation d'encadrer les relations commerciales entre agriculteurs et acheteurs de produits agricoles. Il instaure ainsi le principe d'obligatoriété du contrat écrit et de certaines clauses (de fond et de durée), dans le cadre de contrats de vente portant sur des produits agricoles préalablement déterminés[193]. Dans ces filières, il s'agissait alors pour le premier acheteur de présenter une proposition de contrat écrit conforme aux règles établies. Malheureusement, ce dispositif connaît un succès très mitigé, la liste des produits concernés étant très limitée[194]. Les dispositions de l'article L. 631-24 seront ensuite modifiées par la loi n° 2014-1170 du 13 octobre 2014 d'avenir pour l'agriculture, l'alimentation et la forêt et par la loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique.

C'est finalement la loi n° 2018-938 du 30 octobre 2018 pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous, qui opère une refonte de la section 2 du chapitre I[er] du titre III du livre VI (C. rur., art. L. 631-24 à L. 631-24-9) du Code rural. Cette loi dite EGALIM entend favoriser une meilleure répartition de la valeur tout au long de la filière agroalimentaire en mettant en place de nouveaux dispositifs contractuels.

Ces différentes législations nationales ont été adoptées en parallèle de règlementations européennes sur le sujet, et sont le fruit d'une réflexion souvent ambiguë sur le rôle que doivent jouer les organisations de producteurs. La spécificité de la filière agricole au regard des règles de concurrence a en effet fait l'objet de beaucoup de questionnements, questionnements qui furent rendus manifestes lors de l'affaire Endives (2).

2. Organisations de producteurs et règles de concurrence : l'exemple de l'affaire « Endives »

Les organisations de producteurs sont le fruit d'un associationisme agricole, dont le législateur a souhaité encadrer les contours pour répondre à des objectifs spéci-

[192] B. Voir Néouze, Les contrats de vente de produits agricoles après la loi du 30 octobre 2018, *Droit rural*, avril 2019, 472 : 2.

[193] Les produits concernés par cette contractualisation obligatoire étaient en effet déterminés par l'organisation interprofessionnelle de la filière ou, à défaut, par un décret ministériel.

[194] La contractualisation ne fut imposée par voie de l'interprofession que dans le secteur caprin, et par voie de décret, que pour la vente de lait de vache et de fruits et légumes. Pour une analyse de la loi du 27 juillet 2010, C. Del Cont, Filières agroalimentaires et contrat : l'expérience française de contractualisation des relations commerciales agricoles, *Rivista di diritto alimentare*, octobre-décembre 2012, 4: 1–28.

fiques de rééquilibrage des relations commerciales agricoles. La réalisation de ces objectifs ne se fait néanmoins pas sans difficulté, notamment lorsqu'il est question d'articuler les missions de ces structures avec les règles de concurrence. La libre concurrence incite en effet à faire prévaloir une atomicité du marché, quand les politiques agricoles cherchent à rééquilibrer les pouvoirs dans la filière agricole, au travers de la concentration de l'offre et donc des acteurs de l'amont.

Deux points de tension peuvent notamment être soulevés : l'abus de position dominante et les pratiques concertées comme les ententes.

Cette tension n'est pas nouvelle et s'incarne particulièrement au travers de l'affaire « Endives » du 6 mars 2012 et de ses développements judiciaires[195]. Celle-ci montre en effet l'ambivalence d'interprétation lorsqu'il est question d'appréhender les objectifs de la PAC et ceux du droit de la concurrence.

Pour rappel, le Traité sur le fonctionnement de l'Union européenne (TFUE) fait état des particularités de la politique agricole commune, au travers des articles 38 et suivants. L'article 39 énonce ainsi les objectifs à atteindre, dont la rationalisation de la production agricole et la garantie d'un niveau de vie équitable pour les agriculteurs. L'article 42 vient quant à lui préciser l'application du droit de la concurrence au secteur agricole : « Les dispositions du chapitre relatif aux règles de concurrence ne sont applicables à la production et au commerce des produits agricoles que dans la mesure déterminée par le Parlement européen et le Conseil (…), compte tenu des objectifs énoncés à l'article 39 ».

Des règlements seront ainsi adoptés en ce sens, avec pour objet spécifique l'application du droit de la concurrence au secteur agricole[196]. Ces textes rappellent que cette application est de principe, sauf décision contraire du législateur ou dans le cas où les accords et pratiques contestés seraient indispensables à la bonne réalisation des objectifs de la PAC. Ainsi les organisations de producteurs, bien que considérées comme des acteurs clés de cette politique, ne sont pas exemptées du respect des règles de concurrence.

[195] Décision de l'Autorité de la concurrence (ADLC) 12-D- 08 du 6 mars 2012, Secteur de la production et de la commercialisation des endives ; Arrêt du 15 mai 2014, Cour d'appel de Paris, Pôle 5 – Chambre 5-7 ; Arrêt n°1056 du 8 décembre 2015, Chambre commerciale ; Conclusions de l'Avocat général N.Wahl dans l'affaire C-671/15 du 6 avril 2017 ; Arrêt de la Cour de Justice aff. C-671/15 du 14 novembre 2017. C. Del Cont, « Affaire Endives » suite et bientôt fin : la Cour de cassation saisit la Cour de Justice de l'Union européenne, Réflexions sur l'arrêt du 8 décembre 2015, *Rivista di diritto agrario*, 2016, 2 ; L'arrêt de la Cour d'appel de Paris du 14 mai 2014, « l'affaire endives » : quels enseignements pour l'avenir de la relation spéciale entre agriculture et concurrence ?, *Rivista di diritto agrario*, 2015, 2 ; A. Iannarelli et C. Del Cont, Il caso « indivia » alla Corte di giustizia. Atto primo : le conclusioni dell'avv. generale tra diritto regolativo europeo e diritto privato comune, *Rivista di diritto agrario*, 2017, I, 366 ; C. Del Cont, *La contractualisation des relations commerciales agricoles : brèves réflexions sur la prise en considération de la spécificité agricole, in Mélanges en l'honneur de François Collart Dutilleul*, France 2017.

[196] On pourra citer le règlement (CE) n°1184/2006 du Conseil du 24 juillet 2006 portant application de certaines règles de concurrence à la production et au commerce des produits agricoles ou le règlement n°1234/2007 du 22 octobre 2007 dit OCM unique, applicable au moment de la survenance de l'affaire.

En l'occurrence, dans l'affaires « Endives », plusieurs organisations et associations d'organisations de producteurs s'étaient concertées, pendant 14 ans, sur les quantités et les prix de leur produit, et ce au travers de différents mécanismes. Un prix minimum avait ainsi été décidé collectivement et les pratiques de chaque membre étaient surveillées grâce à un logiciel informatique, afin de les inciter à la discipline.

Ces organisations arguèrent qu'il s'agissait d'une mise en œuvre des missions qui leur étaient dévolues au titre de la réalisation des objectifs de la PAC, dans le respect des règlements relatifs à l'organisation du marché. L'Autorité française de la concurrence rejettera cette argumentation et les condamnera pour entente anticoncurrentielle.

Cette décision fut accueillie avec une forte incompréhension et sera à l'origine de nouveaux développements législatifs au niveau national et européen afin de mieux appréhender les problématiques de concentration de l'offre et de régulation de la filière agricole.

Il est à noter que cette affaire survient dans un contexte bien spécifique, à savoir, détresse de certains secteurs comme celui du lait et faiblesse structurelle renforcée de la filière agroalimentaire au profit des acteurs de l'aval, de par la transition vers une agriculture de marché. Il devient alors nécessaire de clarifier l'application des règles de concurrence aux organisations de producteurs et de renforcer leurs prérogatives.

L'Union européenne va ainsi adopter le « Paquet lait » et le règlement (UE) n°261/2012 autorisant les organisations professionnelles à négocier collectivement y compris en matière de détermination du prix. On constate que ces initiatives européennes vont plus loin que la législation alors en vigueur en France (loi LMA de 2010), laquelle ne permet pas aux organisations de producteurs de négocier le prix.

En mai 2014, la Cour d'appel de Paris adopte un raisonnement inverse et réforme la décision de l'Autorité de la concurrence en tous points. Elle rejette la qualification de pratiques anticoncurrentielles, considérant que les organisations concernées avaient agi dans le cadre de missions légalement reconnues, et réaffirme la primauté des objectifs de la PAC et l'existence d'une exception agricole en matière de concurrence. La cour souligne enfin le manque de clarté de l'OCM unique quant au rôle exact des organisations de producteurs en matière de régularisation des prix[197].

L'Autorité formera un pourvoi en cassation, jointe par la Commission européenne. Le 8 décembre 2015, la Cour de cassation sursoit à statuer et saisit la CJUE aux fins de savoir si les pratiques, accords ou décisions des organisations et associations d'organisations de producteurs, exercés dans le cadre de leurs missions légales, devaient se voir appliquer les règles de concurrence et, selon, bénéficier de dérogations.

[197] J. Bombardier, Entente dans le secteur agricole : la CJUE ne blanchit que partiellement les endiviers s'agissant des pratiques mises en œuvre au sein des OP et AOP dans le cadre de la politique agricole commune, *Droit rural*, février 2018, 460 : 3–4.

En parallèle de cette saisine, la Commission européenne publie un rapport « Enhancing the position of farmers in the supply chain » en novembre 2016, lequel met en évidence le flou existant quant à la teneur et l'étendue exacte des missions des organisations de producteurs. La commission travaille également à une directive sur les pratiques commerciales déloyales entre professionnels dans la chaine alimentaire. La France n'est quant à elle pas en reste avec la loi n°2016-1691 du 9 décembre 2016 dite « Sapin 2», qui rend obligatoire pour les acheteurs industriels et les distributeurs la conclusion d'un accord-cadre avec les organisations de producteurs, et la référence à des indices de coûts de production et de vente[198].

La CJUE rendra finalement son arrêt le 14 novembre 2017. Celui-ci est très attendu car, pour la première fois, la Cour doit se prononcer sur l'articulation des règles de concurrence et des dérogations spécifiques propres à la mission de régularisation des prix dévolue aux organisations de producteurs[199].

La position de la CJUE fera très fortement écho aux conclusions de l'avocat général *Wahl* du 6 avril 2017, en réaffirmant à la fois la primauté de la PAC sur les règles de concurrence et l'inapplicabilité du droit de la concurrence aux mesures prises par les organisations et associations d'organisations de producteurs, nécessaires à la bonne réalisation de leurs missions[200].

Cette décision a eu un impact considérable sur les règles adoptées par la suite tant au niveau européen que français. Le règlement *Omnibus* consacrera pour tous les secteurs la négociation collective des contrats de cession, y compris sur les questions de prix. En France, c'est la loi EGALIM qui tentera de renforcer les prérogatives des organisations de producteurs au travers d'une contractualisation accrue (3).

3. La contractualisation à la française : la loi EGALIM et les organisations de producteurs

Les règles de contractualisation sont le fruit de nombreux développements législatifs en France. Devant les échecs des règlementations successives et face à la faiblesse toujours plus grande des producteurs, « price takers » de la chaine agroali-

[198] Ces règles ne furent cependant pas appliquées et feront l'objet de nouveaux développements dans la loi EGALIM.

[199] La décision est d'autant plus d'importance qu'elle concerne le secteur des fruits et légumes, secteur précurseur dont les avancées ont ensuite bénéficié aux autres filières.

[200] Selon la cour, l'inapplicabilité des règles de concurrence de l'article 101 TFUE concerne aussi bien les dérogations générales (art. 176 du règlement n° 1234/2007, alors applicable) que spécifiques (art. 122). Ces dérogations sont cependant d'application stricte et doivent répondre à un certain nombre de conditions. Les pratiques en cause devront ainsi être proportionnelles et répondre rigoureusement aux objectifs assignés aux organisations et associations d'organisations de producteurs.

mentaire, le législateur français en 2018 a entendu s'appuyer sur les organisations et associations d'organisations de producteurs pour contrebalancer la puissance d'achat des industriels et distributeurs et ainsi permettre une meilleure rémunération des agriculteurs.

Produit des Etats généraux de l'alimentation qui se sont tenus en 2017, la loi EGALIM du 30 octobre 2018, complétée par l'ordonnance n°2019-359 du 24 avril 2019, entend mettre en place de nouveaux mécanismes contractuels censés remédier au déséquilibre significatif existant entre l'amont et l'aval. Le dossier de presse publié à l'issue de la journée de clôture précise ainsi les différents objectifs visés :

- Relancer la création de valeur et en assurer l'équitable répartition ;
- Permettre aux agriculteurs de vivre dignement de leur travail par le paiement de prix justes ;
- Accompagner la transformation des modèles de production afin de répondre davantage aux attentes et aux besoins des consommateurs ;
- Promouvoir les choix de consommation privilégiant une alimentation saine, sûre et durable.

La répartition de la valeur tout au long de la chaîne et la recherche de revenus suffisamment rémunérateurs pour les agriculteurs sont ainsi au cœur de la nouvelle loi EGALIM. Il n'est dès lors pas question du seul renforcement du pouvoir de négociation des organisations de producteurs, mais bien d'une réévaluation des relations contractuelles tout au long de la filière.

La contractualisation ne doit donc plus être seulement envisagée comme la conclusion d'un contrat écrit stipulant les droits et obligations de chacun, mais bien comme une procédure de négociation commerciale à part entière, impliquant respect de certaines clauses contractuelles et d'une chronologie spécifique[201], lesquelles auront un impact sur l'ensemble des opérateurs. La loi EGALIM procède à une refonte en profondeur des articles L. 631-24 à L. 631-31-24-9 du Code rural relatifs à la contractualisation, ainsi que des articles L. 440-1 et suivants du Code de commerce portant sur le droit des négociations commerciales. Mais c'est le premier point qui nous intéressera tout particulièrement, au regard de ses conséquences pour les organisations de producteurs.

Le législateur a voulu renforcer le rôle des organisations de producteurs dans la contractualisation, et plus encore dans la formation du prix tout au long de la chaine agroalimentaire; c'est au moins l'objectif affiché lors des débats parlementaires. Les changements apportés au droit de la contractualisation portent sur différents éléments : le champ d'application, la procédure contractuelle et les clauses obligatoires, et la détermination du prix des produits agricoles. L'article L. 631-24 I

[201] M. Malaurie-Vignal, N. Mathey, Actualité : L'équilibre des relations commerciales dans le secteur agricole et alimentaire. – Loi n°2018-938 du 30 octobre 2018, *J.-Cl. Contrats-Distribution, Fasc. 12*, fév. 2019 : 3.

indique que les nouvelles dispositions d'ordre public relatives à la contractualisation s'appliquent désormais aux secteurs déjà soumis à la contractualisation obligatoire, mais aussi de manière générale à « *tout contrat de vente de produits agricoles livrés sur le territoire français* » *lorsque celui-ci est* « *conclu sous forme écrite* »[202]. L'article L. 631-24-3 II prévoit que ces dispositions ne sont pas applicables aux relations des coopératives avec leurs adhérents, ni aux relations entre les organisations ou associations d'organisations de producteurs avec leurs membres si celles-ci bénéficient d'un transfert de propriété pour les produits qu'elles commercialisent. Enfin, cette contractualisation renforcée concerne tous les produits visés à l'annexe I du règlement n°1308/2013 sur l'organisation commune des marchés.

On assiste en conséquence à une véritable généralisation puisque la conclusion d'un contrat de vente par écrit entraîne application obligatoire des règles de contractualisation. Il est à noter que l'obligation de contractualisation s'incarne au travers tant de la procédure contractuelle que du contenu du contrat.

Ainsi, il est réaffirmé l'importance des organisations et associations d'organisations de producteurs dans la négociation commerciale. Leur développement avait notamment été remis en question de par l'incertitude attachée à leurs missions, incertitude confortée un temps par l'affaire « Endives ». En effet, alors que les organisations jouissant d'un transfert de propriété ne voyaient pas leurs pratiques pointées du doigt, étant elles-mêmes considérées comme des entités uniques, il n'en était pas de même des organisations ne bénéficiant que d'un simple mandat de commercialisation. Celles-ci pouvaient alors potentiellement être accusées d'ententes dans la mise en œuvre de leurs prérogatives.

Sur la base de la décision de la CJUE commentée précédemment, la loi EGALIM entend redéfinir le rôle des parties prenantes et ainsi remodeler la procédure contractuelle. On assiste ainsi à une inversion de la proposition contractuelle. L'initiative de cette proposition revient désormais au producteur, qui devra transmettre ses conditions générales de vente à son acheteur préalablement à la conclusion du contrat.

Une exception subsiste conformément au § 1bis des articles 148 et 168 du règlement n°1308/2013 : dans le cas où la conclusion d'un contrat écrit ne serait pas obligatoire, le producteur pourra exiger de l'acheteur une offre de contrat écrit.

L'objectif est clair : renforcer le pouvoir de négociation du producteur et garantir une plus grande transparence en amont, dans le cas où des abus seraient constatés lors de la négociation ou l'exécution du contrat. Ajoutons que ce renversement des prérogatives est étendu aux organisations ou associations d'organisations de producteurs[203], qui ont à présent la possibilité de proposer des

[202] Sont néanmoins exclus les ventes directes au consommateur, les dons alimentaires aux organisations caritatives, et les produits destinés aux marchés de gros.

[203] Il est question ici des organisations ne bénéficiant que d'un mandat de négociation.

accords-cadres écrits préalablement au contrat entre le producteur et l'acheteur. Un contrat-cadre écrit sera cependant obligatoire dans les cas où la contractualisation l'est aussi.

La proposition transmise devra figurer en annexe du contrat, représentant ainsi le socle unique de la négociation, au sens de l'article L. 441-1 du Code de commerce. Tout refus de la proposition de contrat ou d'accord-cadre écrit par l'acheteur ainsi que toute réserve sur un ou plusieurs éléments de cette proposition doivent être motivés et transmis au producteur ou à l'organisation de producteurs dans un délai raisonnable au regard de la production concernée.

On assiste ainsi à la promotion et au renforcement visibles du rôle des organisations ou associations d'organisations de producteurs. Sur la base du mandat qui leur est donné, celles-ci sont désormais en mesure de négocier l'ensemble des clauses contractuelles définies par la loi, y compris celles relatives au prix comme nous allons le voir.

Au-delà d'une procédure contractuelle renouvelée, l'article L. 631-24 III entend fixer un certain nombre de clauses obligatoires devant figurer dans la proposition de contrat ou d'accord-cadre, ainsi que dans le contrat ou l'accord-cadre lui-même. Ces clauses concernent le prix ou les modalités de sa détermination, la quantité et la qualité des produits, les conditions de livraison et de paiement, la durée de l'accord, les règles applicables en cas de force majeure, et les délais de préavis et modalités de cessation du contrat.

Rappelons que l'objectif de la loi EGALIM est de construire une relation commerciale qui corrigerait la faiblesse structurelle de la filière agricole. En parallèle de la procédure contractuelle, il était ainsi nécessaire d'aborder le contenu du contrat ou de l'accord-cadre et ce afin de donner plus de poids aux agriculteurs. Il ne s'agit pas d'imposer des contrats-types, mais bien d'encadrer *a minima* le contenu contractuel pour renforcer la proposition amont, base des négociations à venir.

L'accent est d'ailleurs mis sur la construction du prix de vente, sujet inévitable lorsqu'il est question d'assurer une juste répartition de la valeur de l'amont à l'aval. C'est l'idée du « ruissellement vers le haut », un prix juste devant pouvoir rémunérer chaque opérateur de manière équitable et ce, du distributeur vers le producteur. Le prix doit donc être construit sur la base des coûts de production et de leur évolution.

Pour ce faire, l'article L. 631-24 III alinéa 2 impose que les critères et modalités de détermination du prix prennent en compte :

- un ou plusieurs indicateurs relatifs aux coûts pertinents de production en agriculture et à l'évolution de ces coûts ;
- un ou plusieurs indicateurs relatifs aux prix des produits agricoles et alimentaires constatés sur le ou les marchés sur lesquels opère l'acheteur et à l'évolution de ces prix ;

- un ou plusieurs indicateurs relatifs aux quantités, à la composition, à la qualité, à l'origine et à la traçabilité des produits ou au respect d'un cahier des charges.

Plusieurs points sont à souligner ici. Le premier concerne la formulation de cette disposition. Il y est question de « prendre en compte » les indicateurs énumérés, alors qu'avant il s'agissait d'une simple référence. On pourra s'interroger sur la teneur de cette formule et son impact. Les indicateurs et leur élaboration questionnent également. L'ancienne version de l'article L. 631-24 évoquait ainsi la référence à des indices publics de coûts de production en agriculture. Désormais, il revient aux organisations interprofessionnelles, dans le cadre de leurs missions et conformément au règlement OCM, d'élaborer et diffuser des indicateurs qui serviront de référence. Elles peuvent, le cas échéant, s'appuyer sur l'Observatoire de la formation des prix et des marges ou sur FranceAgriMer.

Cette prérogative est loin d'être anodine en ce qu'il a été décidé de renvoyer à des indicateurs construits par des entités privées, les organisations interprofessionnelles, plutôt que par une institution publique. Or, l'interprofession, de par sa supposée représentativité de l'ensemble des acteurs de la filière, ne garantit pas pour autant la consécration d'indicateurs « justes ». En effet, ces indicateurs servent à la détermination et la sécurisation du prix dans le cas d'une première cession, mais feront également office de référence pour les contrats avec les autres opérateurs de la chaîne (C. rur., art. L. 631-24-1). On pourra alors s'interroger sur la place réelle des producteurs et organisations de producteurs au sein des interprofessions et leur pouvoir de négociation face à des opérateurs très concentrés. Les intérêts sont de plus sensiblement différents selon qu'il s'agisse d'un producteur, d'un transformateur ou bien d'un distributeur. Comment dès lors considérer que les organisations de producteurs puissent véritablement faire porter leur voix dans ce processus ?

Soulignons enfin que ces indicateurs ne peuvent se baser que sur des coûts moyens de production dans une filière. Ces coûts peuvent pourtant varier très fortement selon que le producteur est une grande exploitation ou une petite structure familiale. Comment un prix moyenné pourrait-il être représentatif de la diversité des productions existantes ?

III. Conclusion

Si la volonté affichée est de renforcer la position des organisations et associations d'organisations de producteurs dans la filière agro-alimentaire, force est de remarquer qu'il s'agit d'un renforcement plus formel que substantiel. Ces structures, dont on attend qu'elles se plient à de nombreuses obligations légales, tant du point de vue de leur reconnaissance que dans l'exercice de leurs missions, n'ont

finalement qu'une marge de manœuvre limitée. Leurs nouvelles prérogatives ne portent que sur le formalisme de la procédure contractuelle. En aucun cas, elles ne se voient octroyer un plus grand pouvoir économique les rendant aptes à négocier de manière plus équilibrée avec l'aval de la filière. Au contraire, le régime actuel accentue leur dépendance en les soumettant à l'interprofession sur la question essentielle de la détermination du prix.

De plus, les organisations de producteurs restent à ce jour encore très atomisées. Le modèle d'organisation reconnue ne correspond en effet pas toujours aux nouveaux schémas d'agriculture, ni même aux aspirations des exploitants. Certains souhaitent alors revenir aux origines de ces organisations : mutualisation des moyens, absence d'intermédiaire, indépendance vis-à-vis de coopératives dont le fonctionnement est régulièrement pointé du doigt sur les questions de transparence et de rémunération. L'organisation de producteurs reconnue peut n'être vue que comme un rouage administratif, et plus comme l'incarnation de l'associationnisme agricole.

La concentration de l'offre, et donc le rééquilibrage des relations commerciales, est ainsi d'autant plus difficile à atteindre que les outils structurels et contractuels mis en place ne répondent pas aux besoins de l'amont de la filière.

Espérons que la réforme à venir de la politique agricole commune puisse mettre en œuvre des initiatives nouvelles et pourquoi pas affirmer le pouvoir économique des organisations de producteurs en leur reconnaissant, une fois pour toutes, la possibilité de négocier entre elles un prix commun applicable dans leurs relations contractuelles avec l'aval. L'espoir est grand, l'avenir incertain mais à construire. Rêvons un peu et formons le vœu qu'en 2020 les réformes de la PAC et de la loi EGALIM (prévue en décembre) confortent les organisations de producteurs dans leur rôle de piliers essentiels de la politique agricole.

Chapter V

DAS RECHT DER KOOPERATION DER LANDWIRTSCHAFTLICHEN ERZEUGER IN DEUTSCHLAND

José Martinez

I. Bedeutung landwirtschaftlicher Kooperationen

Landwirtschaftliche Kooperationen sind als freiwillige, vertragliche Zusammenarbeit von landwirtschaftlichen Unternehmen zu verstehen. Kooperationen sind in der Landwirtschaft in Deutschland sehr verbreitet[204]. Auslöser sind starke Veränderungen die Marktbedingungen für Agrarprodukte in den letzten 20 Jahren auf regionaler, nationaler und globaler Ebene[205]. Die Agrarwirtschaft ist seit einigen Jahren einem rasanten Strukturwandel unterworfen[206]. Agrarunternehmen sehen sich zunehmend einem internationalen Wettbewerb ausgesetzt. Zudem verringert sich das verfügbare Einkommen durch eine Veränderung der wirtschaftspolitischen Rahmenbedingungen. Die politischen, rechtlichen und wirtschaftlichen Rahmenbedingungen sowie verschärfte Wettbewerbsbedingungen im Agrarsektor haben zu einem erheblichen Preis- und Kostendruck für die Betriebe geführt. Dieses führt zum Anstieg der finanziellen Risiken für den Einzelbetrieb[207]. Zu diesen finanziellen Unsicherheiten kommen noch erhöhte ökonomische Belastungen hinzu, die aus höheren Anforderungen durch den Tierschutz, den Umweltschutz und das Lebensmittelrecht stammen.

Diesen Aufgaben ist der Landwirt nur gewachsen, wenn er entweder über einen ausreichend großen Betrieb mit Finanzreserven verfügt oder er sich speziali-

[204] B. Bode, Kooperationen, Gesellschaften, Genossenschaften (Kapitel 41), in: I. Härtel (ed.), *Handbuch des Fachanwalts für Agrarrecht*, Cologne, 2012: 1715.

[205] T. Bremer, *Die rechtliche Gestaltung des Agrarstrukturwandels*, Baden-Baden 2018: 15ff.

[206] Ibid.

[207] J. Martinez, Risikomanagement im Agrarsektor – der völker- und europarechtliche Rahmen, in: Frentrup, Theuvsen, Emman (eds.), *Risikomanagement in Agrarhandel und Lebensmittelindustrie*, Clenze 2012: 75–96.

sieren kann[208]. Im Blick auf den ersten Aspekt ist festzustellen, dass in Deutschland die Agrarstruktur durch kleine und mittlere Betriebe geprägt ist, die als Familienbetrieb bewirtschaftet werden. Hinsichtlich der Spezialisierung ist eine ausreichende Rendite durch die Spezialisierung nur bei spezifischen Sonderkulturen möglich. Eine dritte Möglichkeit der betrieblichen Entwicklung ist daher die Zusammenarbeit von mehreren Landwirten in Form von Kooperationen, um damit zügiger auch größere Wachstumsschritte vollziehen zu können.

Die Kooperation soll aus betriebswirtschaftlicher Sicht die Wettbewerbsfähigkeit der Betriebe durch eine verbesserte Möglichkeit zum günstigen Wareneinund-verkauf ermöglichen. Zudem hilft die Kooperation, finanzielle Engpässe zu überbrücken und Maschinen sowie Gebäuden bestmöglich auszunutzen. Zugleich kann durch Kooperationsformen der altersbedingte Generationswechsel individuell spezifisch geklärt werden[209].

II. Nicht gesellschaftsrechtliche (traditionelle) Kooperationsformen in der Landwirtschaft

Das Spektrum der landwirtschaftlichen Kooperationen reicht von den rechtlichen Gestaltungen der losen Zusammenarbeit bis zu festen gesellschaftsrechtlichen Verbindungen und Beteiligung i. R. v. Genossenschaften und Erzeugerorganisationen. Fast immer geht es um die Zusammenarbeit mit anderen, meist ebenfalls im Bereich der Landwirtschaft Tätigen.

Als Ausgangsform einer losen Kooperation besteht die Zusammenarbeit, bei der die gemeinschaftliche Nutzung einzelner Wirtschaftsgüter oder Betriebsmittel im Mittelpunkt steht. Diese hat im Bereich der Landwirtschaft eine lange Tradition: Bis ins 19.Jahrhundert bestand die Allmende fort[210]. Die Allmende ist jener Teil des Gemeindevermögens, der nicht unmittelbar im Interesse der Gemeindeverwaltung zur Bestreitung ihrer Ausgaben verwendet wird, sondern an dem alle Gemeindemitglieder das Recht zur Nutzung haben. Die Allmende besteht meist aus unbeweglichem Gut wie Wegen, dem Wald, Gewässern zur Löschwasserversorgung oder Weideland wie der Gemeindewiese, einem Hutewald oder Sömmerungsgebieten der Alpen (Alm/Alp), auf der jeder Berechtigte eine nach einem vereinbarten Schlüssel vorgegebene Anzahl von Nutztieren weiden lassen kann. Die gemeinsame Anschaffung und Unterhaltung von Bullen und Ebern im Bereich der Tierproduktion war

[208] B. Bode, Kooperationen, Gesellschaften, in: I. Härtel (ed.), *Handbuch des Fachanwalts für Agrarrecht*, Cologne, 2012: 1715ff.

[209] I. Glas, § 7 Kooperationsformen, in: M. Dombert, K. Witt (eds.), *Münchener Anwaltshandbuch Agrarrecht*, 2. Aufl., Munich, 2016: 164ff.

[210] Zur Allmende de Moor, Shaw-Taylor, Warde (eds.), *The Management of Common Land in North West Europe*, Brepols, 2002: 1500–1850.

bis vor wenigen Jahrzehnten üblich. Heute übrig geblieben sind eine große Zahl von Maschinengemeinschaften, in denen Landwirte gemeinsam eine oder mehrere Maschinen oder Geräte anschaffen, die jeder für sich im eigenen Betrieb nutzt[211].

Eine Blüte erleben Kooperationen unterhalb der Bildung einer Gesellschaft zurzeit in Form von kleineren Einkaufs- oder Verkaufsgemeinschaften[212]. Hier wird häufig ohne feste Absprache eine Mengenbündelung versucht, um Preisvorteile zu erlangen. Die Praxis zeigt, dass dies beim Einkauf von Betriebsmitteln auch im gewissen Umfang gelingt. Demgegenüber sind Bündelungen im Bereich des Absatzes der Ernteerzeugnisse wegen der hohen Vertriebskosten und der festgefügten Abnehmerstruktur für landwirtschaftliche Produkte selten erfolgreich. Hier hat sich die Kooperation im Rahmen größerer Unternehmenseinheiten, zum beispiel der Raiffeisengenossenschaften bewährt.

Viele Landwirte übernehmen für Berufskollegen im Bedarfsfall Feld-oder Fütterungsarbeiten, die auf der Grundlage normaler Dienstverträge ausgestaltet werden[213]. Derartige Tätigkeiten gehören nicht mehr ohne Weiteres zum Betrieb der eigenen Landwirtschaft, so dass Art und Umfang gerade auch unter steuerlichen Aspekten genau zu beobachten sind, um die Einordnung als gewerblicher Betrieb mit der negativen Folge der Veranlagung zur Gewerbesteuer zu vermeiden.

Auf einer ähnlichen Ebene liegt die punktuelle Zusammenarbeit bei der Bewirtschaftung von Flächen. Im Rahmen des traditionsreichen Pflugtausches[214] werden etwa für eine Erntesaison Flächen zur Optimierung der Fruchtfolge oder des technischen Maschineneinsatzes zwischen benachbarten landwirtschaftlichen Betrieben gerauscht[215]. Ähnlich auf Dauer angelegt sind Verträge zur Gülleausbringung, in denen z.T. über mehrere Jahre Flächen an tierhaltende Landwirte zur Verfügung gestellt werden. Hier existieren auch Vermittlungsbüros, die Flächen bündeln und beschaffen[216].

Eine weitere Formen dieser Zusammenarbeit ist das sog. crop sharing[217]. Es handelt sich um eine finanzielle Unterstützung bei den Bewirtschaftungskosten gegen eine anteilige Beteiligung an den Ernteerlösen. Das Leasing von Tieren[218]

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[211] B. Bode, Kooperationen, Gesellschaften, in: I. Härtel (ed.), *Handbuch des Fachanwalts für Agrarrecht*, Cologne, 2012: 1715.

[212] I. Glas, § 7 Kooperationsformen, in: M. Dombert, K. Witt (eds.), *Münchener Anwaltshandbuch Agrarrecht*, 2. Aufl., Munich, 2016: 164f.

[213] B. Bode, Kooperationen, Gesellschaften, in: I. Härtel (ed.), *Handbuch des Fachanwalts für Agrarrecht*, Cologne, 2012: 1715.

[214] Vgl. BGH, Urt. v. 13. Juli 2007 - V ZR 189/06.

[215] B. Bode, Kooperationen, Gesellschaften: 1716.

[216] I. Glas, § 7 Kooperationsformen, in: M. Dombert, K. Witt (eds.), *Münchener Anwaltshandbuch Agrarrecht*, 2. Aufl., Munich, 2016: 164.

[217] B. Bode, Kooperationen, Gesellschaften, in: I. Härtel (ed.), *Handbuch des Fachanwalts für Agrarrecht*, Cologne 2012: 1715–1716; vgl. Ch. Chiarolla, *Intellectual Property, Agriculture and Global Food Security: The Privatisation of Crop Diversity*, Cheltenham 2011.

[218] B. Bode, Kooperationen, Gesellschaften: 1715ff.

ist Haltung von Zuchttieren und zunehmend als Marketingmaßnahme von ökologisch wirtschaftenden Betrieben bei den dort gesuchten direkten Kontakten zu Verbrauchern etabliert. Hier erwirbt ein Kunde das vom Landwirt zu mästende Tier, um es später zu einem von ihm bestimmten Termin der Schachtung zuzuführen. Hierzu gehört auch die Lohnmast[219]: Dabei geht es um vertragliche Abreden, nach denen ein Landwirt einem Mastbetrieb oder Futtermittelhersteller lediglich gegen Entgelt Stallflächen zur Verfügung stellen und Dienstleistungen bei der Mästung der Tiere erbringt, wie etwa die Fütterung , Ein- und Aufstallung. Eigentümer der Tiere bleibt dabei z.B. der Futtermittelhersteller, sie stehen beim beteiligten Landwirt lediglich als Pensionstiere ein.

III. System der landwirtschaftlichen Kooperationsformen

1. Horizontale Kooperation

Dieses Spektrum der Zusammenarbeit lässt sich nach dem Grad der gegenseitigen Bindung innerhalb der Kooperation gliedern. Dabei betrachten wir zunächst die horizontale Kooperation, d.h. die Zusammenarbeit mit Partnern der gleichen Produktionsstufe, also zwischen Landwirten[220]:

1. Dienstleistungen, wie gemeinsame Einlagerung von Ernteprodukten oder Bewirtschaftungsarbeiten. Dies geschieht in einer Regelung mit zwei Vertragspartnern, die dazu untereinander schuldrechtliche Verträge abschließen[221].

2. Lose Verbindungen zum gemeinsamen Einkauf von Betriebsmittel, bei denen i.d. R. keine schriftlichen Abreden vorhanden sind, sondern ein gebündelter Abschluss von mehreren gleichartigen Verträgen mit einem Anbieter etwa zum Düngerkauf oder dem Kauf von Pflanzenschutzmitteln. Dies kann rechtlich als Gesellschaft bürgerlichen Rechtes eingeordnet werden, und zu einer gesamtschuldnerischen Haftung aller Teilnehmer führen[222].

3. Gemeinsamer Erwerb von Maschinen oder sonstigen Wirtschaftsgütern. So können Maschinen gemeinschaftlich angeschafft und genutzt werden. Bei den sog. Maschinengemeinschaften erwerben zwei oder mehr Landwirte gemeinsam eine Maschine und nutzen sie gemeinschaftlich in ihren Betrieben. Ein anderes Modell sind die sog. Maschinenringe. Dabei erwirbt jeder Landwirt Maschinen für sich allein. Da aber die Maschinenkapazitäten oftmals durch die geringe Größe landwirtschaftlicher Betriebe nicht genügend ausgelastet sind, vermittelt der Ge-

[219] Ibid: 1717ff.

[220] B. Bode, Kooperationen, Gesellschaften: 1717ff.

[221] I. Glas, § 7 Kooperationsformen, in: M. Dombert, K. Witt (eds.), *Münchener Anwaltshandbuch Agrarrecht*, 2. Edition., Munich, 2016: 164.

[222] B. Bode, Kooperationen, Gesellschaften: 1717ff.

schäftsführer eines Maschinenringes den Maschineneinsatz in anderen Mitgliedsbetrieben, die selbst über solche Maschinen nicht verfügen. Ein drittes Modell sind die Maschinengenossenschaften. Die Maschinengenossenschaft erwirbt Eigentum an bestimmten landwirtschaftlichen Maschinen, die dann den Mitgliedern zur Nutzung in ihren Betrieben zur Verfügung gestellt werden[223].

4. Als weitergehende Kooperation ist dann die Bildung von Betriebzweiggemeinschaften verbreitet. Hier wird ein ganzer Betriebszweig, wie z.B. die Milchproduktion, von zwei oder drei Landwirten zusammengelegt. Dies geschieht durch Gründung einer Gesellschaft, oft mit Vermögenseinbringung (Viehbestände, Stallungen, Milchreferenzmengen). Es findet dabei eine gewisse rechtlich Verselbständigung dieses Betriebsteiles im Verhältnis zum Landwirt statt, der sein e übrig e Landwirtschaft unverändert fortführt[224].

5. Eine noch engere Form der Kooperation ist die vollständige Zusammenlegung mehrerer landwirtschaftlicher Betriebe. Hierzu ist die Gründung einer Gesellschaft unumgänglich mir klaren Regelungen des Vermögensausgleiches, der Arbeitspflichten und der Überlassung von Betriebsmitteln. Der Gesellschafter gibt seine eigene Landwirtschaft mit Ausnahme etwa eines geringfügigen Nebenerwerbs auf und wirkt an der rechtlich verselbständigten Gesellschaft mit.

2. Vertikale Kooperationen

Eine große Bedeutung haben neben diesen horizontalen Zusammenschlüssen auch vertikale Kooperationen, die ein ganz wesentlicher Wettbewerbsfaktor für die deutsche Landwirtschaft sind.

1. Eine solche Form der Kooperation ist die Beteiligung an größeren Unternehmen zur Sicherung des Absatzes, die für fast alle landwirtschaftlichen Produkte üblich ist. Dies können Zuckerfabriken in der Rechtsform der AG, Molkereien, Weinkeller, Viehvermarktungen oder Brennereien in der Rechtsform der Genossenschaft sein. Hier bestehen häufig neben der Abwicklung schuldrechtlicher Verkaufsgeschäfte gesellschaftsrechtliche Bindungen und Lieferrechte, die ein typischer Regelungsbereich im Landwirtschaftssektor sind[225].

2. In diesen Rahmen gehören auch Erzeugerorganisationen, die oft durch staatliche Förderungen auf der Grundlage des Marktstrukturgesetzes unterstützt werden. Diese Zusammenschlüsse genießen kartellrechtliche Privilegierungen, um die Absatzsituation der darin organisierten Landwirte zu verbessern[226].

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[223] Ibid.

[224] F. Klein-Blenkers, § 589 BGB, in: B. Dauner-Lieb, W. Langen (eds.), *BGB – Schuldrecht*, 3. Edition, Munich, 2016.

[225] B. Bode, Kooperationen, Gesellschaften: 1717ff.

[226] Siehe unten unter Kapitel IV. 7.

IV. Das Recht der Agrarorganisationen

Agrarorganisationen im Sinne des deutschen Agrarmarktstrukturgesetzes[227] sind Zusammenschlüsse von Inhabern landwirtschaftlicher Betriebe, die gemeinsam den Zweck verfolgen, die Erzeugung und den Absatz den Erfordernissen des Marktes anzupassen und staatlich anerkannt worden sind. Um die Wettbewerbsfähigkeit ihrer Erzeugnisse zu verbessern, können sich Landwirte einer bestimmten Erzeugerorganisation anschließen. Diese können Vereinigungen von Erzeugerorganisationen bilden. Zudem ist die Errichtung von Branchenverbänden denkbar. Erzeugerorganisation, Vereinigungen von Erzeugerorganisationen und Branchenverbände werden unter den Oberbegriff der Agrarorganisation zusammengefasst[228].

Die Erzeugerorganisationen können eine höhere Marktdurchdringung und eine größere Verhandlungsmacht mit anderen Akteuren der Lebensmittelversorgungskette sicherstellen. Sie können auch dazu beitragen, wirtschaftliche Risiken und Kosten zu mindern, indem sie beispielsweise die Sicherheit von Zahlungen oder die Aufteilung von Investitionen gewährleisten. Im Hinblick auf technische Anreize erhöhen die POs den Wert der Geschäftstätigkeiten, indem sie die Infrastruktur für Produktion, Lagerung oder Verarbeitung bereitstellen.

Mit dem Agrarmarktstrukturgesetz (AgrarMSG) wird die staatliche Anerkennung von Erzeugerorganisationen und Branchenverbänden sowie deren Freistellung vom Kartellverbot geregelt. Daneben finden Agrarorganisationen ihre Rechtsgrundlage in der Agrarmarktstrukturverordnung (AgrarMSV)[229] und in verschiedenen Landesgesetzen, die jedoch im Wesentlichen nur Zuständigkeitsvorschriften enthalten. Das Gesetz hat zum Ziel, die Schaffung von Erzeugerorganisationen und Vereinigungen von Erzeugerorganisationen zu fördern, um dadurch die Marktposition der deutschen Landwirtschaft zu verbessern.

Erzeugerorganisationen und Verbände von Erzeugerorganisationen tragen dazu bei, die Position der Landwirte in der Lebensmittelversorgungskette zu stärken und ihren Mitgliedern technische Hilfe zu leisten. Diese Organisationen kommen auch anderen Akteuren der Lebensmittelversorgungskette sowie den lokalen Gemeinschaften, in denen sie tätig sind, zugute.

Frankreich (759 anerkannte Organisationen), Deutschland (658) und Spanien (588) sind die drei Mitgliedstaaten der EU mit den am meisten anerkannten Erzeugerorganisationen und Vereinigungen von Erzeugerorganisationen. Zusammen machen sie etwa 60% der Gesamtmenge auf EU-Ebene aus. Was die Sektoren betrifft, so gehören mehr als 50% der anerkannten Organisationen dem Obst- und Gemüsesektor an.

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[227] Agrarmarktstrukturgesetz vom 20. April 2013 (BGBl. I S. 917), das zuletzt durch Artikel 2 des Gesetzes vom 26. Juni 2017 (BGBl. I S. 1942) geändert worden ist.

[228] Ch. Busse, *Agrarmarktstrukturgesetz, Agrarmarktstrukturverordnung*, Berlin, 2014: 46ff.

[229] Agrarmarktstrukturverordnung vom 15. November 2013 (BGBl. I S. 3998), die zuletzt durch Artikel 1 des Gesetzes vom 4. Juli 2017 (BGBl. I S. 2199) geändert worden ist.

1. Erzeugerorganisationen

Erzeugerorganisationen und deren Vereinigungen sollen nach Ansicht des deutschen Gesetzgebers folgende Ziele verfolgen:

- Die landwirtschaftliche Produktion qualitativ verbessern.
- Zusammenschlüsse land- und fischwirtschaftlicher Betriebe als Gegengewicht zu der bereits erfolgten Konzentration auf der Nachfrageseite zu bewirken und die Marktstellung der Landwirte verbessern.
- Für eine kontinuierliche Belieferung des Marktes mit einheitlichen Partien hoher Qualität Sorge tragen.

Verwirklicht werden sollen die oben genannten Ziele durch:

- Zusammenschlüsse land- und forstwirtschaftlicher Betriebe zu Erzeugerorganisationen
- Zusammenschlüsse von Erzeugerorganisationen zu Vereinigungen
- Schaffung von längerfristigen partnerschaftlichen Beziehungen zwischen Erzeugerorganisationen und Unternehmen des Handels sowie der Be- und Verarbeitung.

Die Anpassung der Erzeugung an die Erfordernisse des Marktes kann in Erzeugerorganisationen nur durch eine Spezialisierung auf ein einzelnes Erzeugnis oder auf eine Gruppe von verwandten Erzeugnissen erreicht werden.

Eine Agrarorganisation muss eine juristische Person des Privatrechts oder des öffentlichen Rechts oder eine Personenvereinigung des Privatrechts sein[230]. Die Rechte und Pflichten, die einer Agrarorganisation zugewiesen sind, dürfen nur von den Personen wahrgenommen werden, die zur Vertretung im Rechtsverkehr bestellt sind. Die Gründung muss auf die Initiative ihrer Mitglieder zurückführbar sein. Der Hauptsitz soll sich in dem Land befinden, wo sich seine Mitglieder befinden[231]. Eine Agrarorganisation darf keine Tätigkeit ausüben, die außerhalb ihrer Anerkennung liegt. Ferner darf sie nicht mit Erzeugnissen tätig sein, die nicht von der Anerkennung abgedeckt sind bzw. den Eindruck erwecken. Die Agrarorganisation muss über eine schriftliche Satzung verfügen, aus der der Name, der Hauptsitz und die Erfüllung der Anerkennungsvoraussetzungen hervorgehen[232].

Gesetzliche Voraussetzungen zur Anerkennung einer Erzeugerorganisation sind des Weiteren:

- mindestens sieben Gründungsmitglieder
- Mindesterzeugungsmenge bzw. Mindestanbaufläche
- die Tätigkeit muss auf ein Erzeugnis bzw. eine Gruppe von verwandten Erzeugnissen beschränkt sein
- bestimmte Erzeugungs- und Qualitätsregeln müssen eingehalten werden

[230] § 3 Nr. 1 AgrarMSG.
[231] § 3 Nr. 3 AgrarMSG.
[232] § 3 Nr. 4 AgrarMSG.

- Rechtsform der juristischen Person des privaten Rechts (z. B.: e.V., GmbH, eG, AG)
- die Erzeugnisse ihrer Mitglieder werden grundsätzlich gemeinsam angeboten (Ausnahmeregelung ist möglich)
- Beitragspflicht der Mitglieder
- Satzung muss Vertragsstrafen vorseheneine Erzeugerorganisation darf den Wettbewerb auf dem Markt nicht ausschließen[233].

Eine Agrarorganisation wird auf Antrag hin anerkannt, wenn sie die Anerkennungsvoraussetzungen erfüllt. Der Antrag auf Anerkennung muss bei der zuständigen Stelle schriftlich gestellt werden. Für jeden Erzeugnisbereich muss eine Agrarorganisation einen gesonderten Antrag auf Anerkennung stellen[234]. Über den Antrag wird innerhalb von vier Monaten entschieden. Bei Prüfbedarf kann die zuständige Stelle die Frist um bis zu zwei Monate verlängern. Eine anerkannte Agrarorganisation muss an die zuständige Stelle jede Änderung, die die Antragsvoraussetzungen für eine Anerkennung betreffen, schriftlich melden und die betreffenden Unterlagen einreichen[235]. Ändert sich der Hauptsitz der Agrarorganisation und dadurch auch die zuständige Stelle, so ist die bisherige zuständige Stelle zu informieren, damit diese die neue zuständige Stelle über die Satzungsänderung informieren kann.

A. Wegfall der Anerkennung

Eine Anerkennung ist zurückzunehmen, wenn die Anerkennungsvoraussetzungen nicht gegeben sind[236]. Werden die Anerkennungsvoraussetzungen nachträglich nicht erfüllt, muss die Anerkennung wiederrufen werden. Wenn die zuständige Stelle glaubt, dass der Grund für Rücknahme bzw. Wegfall der Anerkennung innerhalb einer angemessenen Frist beseitigt werden kann, kann sie statt Rücknahme bzw. Wiederruf sich auch für Ruhen der Anerkennung entscheiden. Hat eine Agrarorganisation einen schwerwiegenden Rechtsverstoß begangen, so kann die Anerkennung von der zuständigen Stelle widerrufen werden bzw. das Ruhen angeordnet werden. Ändern sich die Anerkennungsvoraussetzungen nach Agrarorganisationsrecht, so müssen die betroffenen Agrarorganisationen die geänderten Anerkennungsvoraussetzungen innerhalb von zwölf Monaten erfüllen. Die Änderungen werden von der zuständigen Stelle der Agrarorganisation schriftlich mitgeteilt.

[233] § 3 Nr. 4 AgrarMSG.
[234] § 4 AgrarMSG.
[235] § 4 Abs. 3 AgrarMSG.
[236] § 5 AgrarMSG.

Erfüllt die Agrarorganisation die geänderten Anerkennungsvoraussetzungen bis zum Ablauf der Frist nicht, ordnet die zuständige Stelle das Erlöschen der Anerkennung an[237]. Wenn davon ausgegangen wird, dass die Mängel innerhalb einer angemessenen Frist behoben werden können, kann bis dahin die Anerkennung ruhen. Wird die Anerkennung aufgehoben oder fällt sie weg, kann die Agrarorganisation frühestens ein Jahr nach dem Wegfall erneut anerkannt werden. Die zuständige Stelle kann in besonderen Härtefällen die Frist verkürzen. Eine Agrarorganisation kann wiederum jederzeit auf eine Anerkennung verzichten. Dies muss sie schriftlich der zuständigen Stelle mitteilen[238].

Für die nach AgrarMSV anerkannten Erzeugerorganisationen und deren Vereinigungen gelten weiterhin nicht die Regelungen des § 1 des Gesetzes gegen Wettbewerbsbeschränkungen bei Preisverhandlungen mit den Abnehmern. Preisabsprachen sind somit möglich[239].

B. Sonderbestimmungen für bestimmte Erzeugnisbereiche

a) Wein

Die Mitglieder einer Erzeugerorganisation müssen zusammen mindestens 100 Hektar Rebfläche haben. Auf Grund besonderer regionaler Verhältnisse kann die Landesregierung die Mindestanbaufläche bis auf 30 Hektar Rebfläche herabsetzen[240].

b) Milch und Milcherzeugnisse

Hat ein Landwirt an zwei geographisch unterschiedlichen Orten seine Betriebsstätte, so kann er auch zwei verschiedenen Erzeugerorganisationen angehören. Die Landwirte haben sich an die vertraglich geregelten Abgabemengen an Rohmilch zu halten. Wird die Höchstmenge überschritten, wird die Erzeugerorganisation darüber von der zuständigen Stelle unterrichtet[241].

c) Landwirtschaftlicher Ethylalkohol

Für die Erzeugung landwirtschaftlichen Ethylalkohols dürfen die Erzeugerorganisation nur 49 Prozent der Rohstoffe ihrer Mitglieder verarbeiten[242].

[237] § 5 Abs.4 AgrarMSG.
[238] § 5 Abs.5 AgrarMSG.
[239] § 6 AgrarMSG; hierzu näheres unter Kapitel IV. 7.
[240] § 14 AgrarMSV.
[241] § 15f. AgrarMSV.
[242] § 17 AgrarMSV.

2. Vereinigung der Erzeugerorganisationen

Schließen mehr als zwei anerkannte deutsche Erzeugerorganisationen sich zusammen, so bilden sie dann eine anerkannte Vereinigung der Erzeugerorganisation. Mitglied einer Erzeugerorganisation kann nur werden, der auch ein Agrarerzeugnis produziert. Eine Erzeugerorganisation besteht aus mindestens fünf Mitgliedern[243]. Die Mitglieder sind verpflichtet, mindestens 90% ihrer Erzeugnisse über die Erzeugerorganisation zu vermarkten[244].

Als Mindestvoraussetzung für die Anerkennung als Vereinigung von Erzeugerorganisationen gilt die Wahrnehmung einer unterrichtenden und beratenden Tätigkeit bei den ihr angehörenden Erzeugerorganisationen oder deren Mitgliedern sowie die Aufstellung verbindlicher Erzeugungs- und Qualitätsregeln. Auch Vereinigungen von Erzeugerorganisationen dürfen den Wettbewerb auf dem Markt nicht ausschließen[245].

3. Agrarorganisationsregister

Mit dem Agrarorganisationsregister wird die Öffentlichkeit über die jeweilige Agrarorganisation informiert. Für die Informationen über die Agrarorganisation sind die Landesstellen, die auch die Anerkennung ausgesprochen haben, zuständig[246]. Über jede anerkannte Agrarorganisation müssen folgende Daten vorhanden sein: Name und Anschrift, Datum der Anerkennung und Angaben über den Erzeugnisbereich. Im Agrarorganisationenregister dürfen nur anerkannte Erzeugerorganisationen aufgeführt werden, deren Tätigkeit sich auf Agrarerzeugnisse bezieht. Das Agrarorganisationenregister wird von der Bundesanstalt für Landwirtschaft und Ernährung geführt. Auskunft über die gesicherten Daten des Registers erhält man über das Internet[247].

4. Anerkannte Erzeugnisbereiche

Die anerkannten Erzeugnisse sind § 1 Agrarmarktstrukturverordnung aufgelistet. Diese richten sich nach den Bestimmungen des Unionsrechts und orientieren sich weitgehend nach der Gemeinsamen Marktordnung. Ausgenommen sind Branchenverbände im Erzeugnisbereich Wein und Agrarorganisationen im Erzeugnisbereich Obst und Gemüse. Hierfür gelten die spezifischen Bestimmungen

[243] § 10 Abs. 1 AgrarMSV.
[244] § 10 Abs. 2 AgrarMSV.
[245] § 11 AgrarMSV.
[246] § 6 Abs. 1 AgrarMSG.
[247] Available on-line at: <https://aoreg.ble.de/> [accessed 2.03.2020].

in der Verordnung zur Durchführung der unionsrechtlichen Regelungen über Erzeugerorganisationen im Sektor Obst und Gemüse[248]. Ist ein Agrarerzeugnis dort nicht aufgelistet, so haben die einzelnen Agrarorganisationen die Möglichkeit, bei der zuständigen Stelle einen Antrag auf Anerkennung zu stellen. Das Bundesministerium für Ernährung und Landwirtschaft ist befähigt, im Einvernehmen mit dem Bundesministerium für Wirtschaft und Energie sowie mit Zustimmung des Bundesrates das Agrarerzeugnis anzuerkennen[249]. Im Erzeugnisbereich Wein können keine Branchenverbände anerkannt werden[250]. Auch für Erzeugnisse, für die eine Agrarorganisation nach anderen Vorschriften anerkannt wurde, gilt die Agrarmarktstrukturverordnung nicht.

5. Überwachung, Mitteilungen, Veröffentlichung

Die Länder müssen der Bundesanstalt für Landwirtschaft und Ernährung in elektronischer Form die Erzeugerorganisationen, die Branchenverbände sowie die Vertragsverhandlungen und die Vertragsbeziehungen mitteilen[251].

Eine anerkannte Agrarorganisation muss sämtliche Unterlagen, die ihre Tätigkeit betreffen, vier Jahre lang aufbewahren. Jede zuständige Stelle kontrolliert in ihrem Zuständigkeitsbereich jährlich mindesten drei Prozent der anerkannten Agrarorganisationen auf Grund einer Risikoanalyse die Einhaltung der Anerkennungsvoraussetzungen[252]. Die zuständigen Stellen können unter Einhaltung der Anforderungen des Agrarorganisationenrechts über Daten, die sie im Rahmen der Anerkennung oder Überwachung gewonnen haben, Informationen an andere zuständige Stellen oder Organe der Europäischen Union mitteilen[253].

6. Ordnungswidrigkeiten und Bußgeldvorschriften

Wer vorsätzlich oder fahrlässig sich nicht wahrheitsgemäß als anerkannte Agrarorganisation bezeichnet, sich nicht an Rechtverordnungen hält oder gegenüber einer Anordnung der Rechtsverordnung bzw. Vorschrift des Unionsrechts zuwiderhandelt, handelt ordnungswidrig. Die Ordnungswidrigkeit kann mit einer Geldbuße bis zu fünfzigtausend Euro geahndet werden[254].

[248] Obst-Gemüse-Erzeugerorganisationendurchführungsverordnung vom 25. September 2014 (BGBl. I S. 1561), die zuletzt durch Artikel 2 der Verordnung vom 14. Dezember 2018 (BGBl. I S. 2480) geändert worden ist.

[249] § 2 Abs. 2 AgrarMSG.

[250] § 1 Abs. 3 AgrarMSV; Ch. Busse, AgrarMSG, § 1 AgrarMSV Rn. 4.

[251] § 21 AgrarMSG.

[252] § 19 AgrarMSG.

[253] § 22 AgrarMSG.

[254] § 8 Abs. 2 AgrarMSG.

7. Freistellung vom Kartellrecht

Die GMO-VO sieht in Art. 206 VO (EU) Nr. 1308/2013 gemäß Art 42 AEUV die An-wendung der Wettbewerbsvorschriften der Art. 101 bis 106 AEUV für Vereinbarungen Beschlüsse und Verhaltensweisen gemäß Art. 101 I und 102 AEUV bezüglich der Produktion landwirtschaftlicher Erzeugnisse und des Handels mit diesen Erzeugnissen vor.

Diese Anwendung gilt allerdings nur dann, wenn sich keine Abweichungen aus der GMO-VO ergeben. Bevor das Instrumentarium der GMO-VO im Einzelnen betrachtet wird, soll die allgemeine Ausgestaltung dieser Regelung in den Artt. 206ff. VO (EU) Nr. 1308/2013 näher betrachtet werden.

A. Landwirtschaftliche Erzeugung, Erzeugerorganisationen und Handel

Gemäß Art. 209 I UAbs.1 i.V.m. Art. 206 I VO (EU) Nr. 1308/2013 sind generell solche Vereinbarungen, Beschlüsse und Verhaltensweisen bezüglich der Produktion landwirtschaftlicher Erzeugnisse und des Handels mit diesen Erzeugnissen vom aktivierten Anwendungsbereich des Wettbewerbsrechts der Art. 101 bis 106 AEUV ausgenommen. Insbesondere der Art. 101 AEUV ist in diesem Bereich also nicht aktiviert. Abweichungen zur Missbrauchsaufsicht und der Fusionskontrolle gibt es nicht, sodass diese vollumfänglich Anwendung finden[255].

Hierbei wird der Anwendungsbereich von Art. 209 I UAbs.2 VO (EU) Nr. 1308/2013 in personeller Hinsicht insoweit konkretisiert, dass es sich um die Verhaltensweisen landwirtschaftlicher Erzeugerbetriebe oder deren Vereinigungen, Vereinigungen dieser Vereinigungen, anerkannter Erzeugerorganisationen gemäß Art. 152 oder deren Vereinigungen gemäß Art. 156 VO (EU) Nr. 1308/2013 handeln kann, die sie sich auf die Erzeugung oder den Absatz landwirtschaftlicher Erzeugnisse beziehen oder die Benutzung gemeinschaftlicher Einrichtungen zu deren Lagerung, die Be- oder Verarbeitung betreffen. Insoweit handelt es sich in erster Linie um landwirtschaftliche Erzeugerbetriebe und deren Zusammenschlüsse[256]. Hierbei handelt es sich also um Marktteilnehmer und entsprechend auch um Unternehmen im bereits ausgeführten Sinne, die in den Anwendungsbereich der Art. 101ff. AEUV fallen.

Hierbei stellte sich bereits zu den Vorgängernormen die Frage der Eigenständigkeit des Unterabsatzes. Entsprechend wurde vertreten, dass Art. 176 I UAbs.2

[255] A. Lohse, in: I. Härtel (ed.), *Handbuch des Fachanwalts für Agrarrecht*, Cologne, 2012, Kap. 9 Rn 101 und 109; I. Härtel, in: *Enzyklopädie Europarecht* Bd.5 §7 Rn. 98.

[256] Die anerkannten Erzeugerorganisationen haben insoweit nur klarstellende Bedeutung, Kopp, *Art. 42 Rn.2*, in: R. Streinz, *EUV/AEUV, Kommentar*, 3. Edition, Munich, 2018.

VO (EU) Nr. 1234/2007 eine Auslegungshilfe[257] oder einen eigenständigen Tatbestand darstellt[258]. Die Vorgängernorm, Art. 176 I UAbs.2 VO (EG) Nr. 1234/2007, begründete sich weitestgehend wortgleich auf der verdrängten Norm des Art. 2 I UAbs.2 VO (EG) 1184/2006, der ursprünglich eingeführt wurde, um sicherzustellen, dass Kartellabsprachen der landwirtschaftlichen Genossenschaften jedenfalls von der Bereichsausnahme des Art. 2 I UAbs.1 VO (EG) 1184/2006 erfasst sind[259]. Während dies für eine reine Klarstellungsfunktion spricht, machte der Wortlaut des Art. 176 I UAbs.2 VO (EG) Nr. 1234/2007 dahingehend eine Einschränkung, dass die Kartellabsprachen keine Preisbindung beinhalten und den Wettbewerb nicht ausschließen dürfen. Diese Einschränkung ist in der GMO-VO nun in Art. 209 I UAbs.3 VO (EU) Nr. 1308/2013 geregelt, der besagt, dass der gesamte erste Absatz nicht nur von der notwendigen Zielverfolgung nach Art. 39 AEUV abhängt. Dies lässt es insoweit näher liegen, dass jedenfalls Art. 209 I UAbs.2 VO (EU) Nr. 1308/2013 keine eigenständige Ausnahme mehr etablieren will, sondern vielmehr den personellen Anwendungsbereich klarstellt. Insoweit erscheint die Begründung, dass der Wegfall des Wortes „insbesondere", den die Vorgängernorm noch aufwies, als zu formal[260].

Es stellt sich also insoweit nicht nur die Frage der Abweichung des Art. 209 I VO (EU) Nr. 1308/2013 von Art. 101 I AEUV, sondern vielmehr auch der Abweichung der beiden Unterabsätze voneinander.

B. Privilegierung

Insoweit stellt sich die Frage einer Privilegierung in zwei generellen Ausformungen, einerseits hinsichtlich des grundsätzlichen Verhältnisses zu Art. 101 AEUV und hinsichtlich der Erzeugerorganisationen.

a) Abweichung von Art. 101 AEUV

Einer Genehmigung bedürfen solche Vereinbarungen gemäß Art. 209 II UAbs.1 VO (EU) Nr. 1308/2013 nicht zu ihrer Wirksamkeit, sodass es sich um eine Legalaus-

[257] Zu Vorgängerregelungen G. Liebing, *Die für Unternehmen des Agrarsektors geltenden Wettbewerbsregelungen innerhalb der EWG*, Cologne 1965: 54; Kommission „Milchförderungsfonds", ABl. 1985 Nr. L 35/35, 39; „Meldoc" ABl. 1986 Nr. 348/50, 60, in: Abkehr zu „Frubo" ABl. 1974 Nr. L 237/16, 20; „Blumenkohl" ABl. 1978 Nr. L 21/23, 30.

[258] EuGH verb.Rs C-319/93, C-40/94 und C-224/94 „Dijkstra" Slg. 1995 I-4471, 4507; M. Henjes, *Spürbarkeit und Missbrauch, Zwei Schranken des UWG*, Cologne, 2014: 58.

[259] G. Liebing, *Die für Unternehmen des Agrarsektors geltenden Wettbewerbsregelungen innerhalb der EWG*, Cologne 1965: 53f, 120ff; Ries/Guida, CDE 1968, 170; a.A. EuGH verb. Rs. C-319/93, C-40 und C-224/94 „Dijkstra" Slg. 1995 I-4471 Rn. 20.

[260] So aber M. Erhart, A. Krauser, in: *MüKo Kartellrecht* , München 2011, Art. 43 AEUV, Rn.28.

nahme handelt, die unmittelbare Anwendung findet[261]. Entsprechend wird hierin ein elementarer Unterschied zu Art. 101 III AEUV gesehen, da dieser gerade keine unmittelbare Anwendbarkeit besitzt und entsprechend von einer Entscheidung der Kommission abhängt[262]. Allerdings findet Art. 101 III AEUV heute durch Art. 1 II VO (EG) Nr. 1/2003[263] unmittelbare Anwendung, sodass es sich bei.

Art. 101 III AEUV i.V.m. Art. 1 II VO (EG) Nr. 1/2003 ebenfalls um eine Legalausnahmehandelt[264]. Wäre also Art. 101 AEUV vollumfänglich aktiviert, unterfiele das von Art. 209 I UAbs.2 VO (EU) Nr. 1308/2013 erfasste Verhalten unter die VO (EG) Nr. 1/2003. Im Lichte der aktuellen Handhabung des Art. 101 III AEUV durch die Kommission sind also keine wesentlichen Unterschiede mehr festzustellen[265]. Insoweit handelt es sich zwar um eine unterschiedliche Wirkungsweise, indem Art. 101 I AEUV i.R.v. Art. 209 I UAbs.1 VO (EU) Nr. 1308/2013 bereits keine Anwendung findet[266], aber im Endeffekt erwächst hieraus keine rechtliche Konsequenz.

Hierbei entspricht die Vorgabe, dass das Verhalten den Wettbewerb nicht vollends ausschalten darf, der Vorgabe des Art. 101 III lit.b AEUV. Schwieriger ist die Beurteilung des Gleichlaufs der in Art. 101 III lit.a AEUV aufgeführten Ziele mit Art. 39 AEUV. Auch wenn der bereits dargestellte Umfang der Ziele weitreichender erscheint, bedürfte die exakte Feststellung des Einzelfalles. So oder so, handelt es sich jedoch auch bei Art. 103 III AEUV um eine Abweichung vom Regelfall des Art. 101 I AEUV, die den betroffenen Unternehmen in der Regel Vorteile gewährt, indem derartige Freistellungen eine Marktbeeinflussung ermöglichen. Auch wenn Art. 101 AEUV in diesem Bereich nicht aktiviert wurde, weicht der Gesetzgeber also durch die unterlassene Aktivierung angesichts der gezeigten Bedeutung des Wettbewerbs auch im Rahmen der GAP hiervon ab.

Der Umstand, dass im Rahmen der Legalausnahme die Zielverfolgung durch Wirtschaftsteilnehmer erfolgt, erscheint dabei problematisch. Während man dem Gesetzgeber zwangsläufig ein weites Ermessen einräumen muss, erscheint dies bei Wettbewerbsteilnehmern schwierig. Entsprechend wird der weit gefasste Tatbestand von Art. 209 I UAbs.1 VO (EU) Nr. 1308/2013 durch die Voraussetzung der Notwendigkeit eingeschränkt. Dabei ist das dargestellte Verhältnis der Ziele in Art. 39 I AEUV zu berück- sichtigen. Die Notwendigkeit muss sich also an der

[261] H. Büttner, Wettbewerbsrecht für die Landwirtschaft im Gemeinsamen Markt, *RdL* 1965, 7; 172; BKartA, BT-Drs. IV/1220, 74 – a. A. Mestmäcker, H. Schweitzer: 16f.

[262] H. Schweizer, Rn. 55 in: U. Immenga, E.J. Mestmäcker (eds), *EU-Wettbewerbsrecht,* 5. ed., München 2012, VO (EG)Nr. 1184/2006 und Art 175ff. VO (EG) Nr. 1234/2007.

[263] Verordnung (EG) Nr. 1/2003 des Rates vom 16. Dezember 2002 zur Durchführung der in den Arti- keln 81 und 82 des Vertrags niedergelegten Wettbewerbsregeln, ABl. 2003 Nr. L 1/1.

[264] Vgl. zur historischen Entwicklung der Legalausnahme und der Kritik hieran, M. Erhart, A. Krauser, in: *MüKo Kartellrecht* Art. 1 VO Nr. 1/2003: Rn.4ff.

[265] Vgl. A. Rintelen Art. 42 Rn. 20, in: E. Grabitz, M. Hilf, M. Nettesheim (eds.), *EUR AEUV*, 70.eds. München 2020.

[266] M. Erhart, A. Krauser, in: *MüKo Kartellrecht* Art. 43 AEUV Rn.13.

Gesamtheit der aufgeführten Ziele orientieren[267]. Bei der Verfolgung gegenläufiger Ziele muss also insbesondere eine Abwägung erfolgen, um sämtliche Ziele des Art. 39 AEUV miteinander in Einklang zu bringen[268]. Dies entspricht der Vorgabe für den Gesetzgeber, der jedoch gerade berechtigt ist, den Vorrang einzelner Ziele zeitweise auch entgegen anderer Ziele festzusetzen. Dieses Recht der Wettbewerbsteilnehmer besteht gerade nicht. Allerdings kann ihnen nicht abgesprochen werden eine derartige Gewichtung des Gesetzgebers zu übernehmen. Als Maßstab kann hierbei bspw. auch der Interessenausgleich im Rahmen der GMO-VO angesehen werden.

Die Heranziehung der GMO-VO als Maßstab führt jedoch zu dem Problem, dass die tatsächliche Bedeutung der Privilegierung weitestgehend eingeschränkt ist[269], denn die Notwendigkeit und damit die Wirksamkeit der Vereinbarungen, Beschlüsse oder Verhaltensweisen hängen davon ab, ob es keine andere Möglichkeit für das Erreichen der verfolgten Ziele gibt[270]. Gerade im Zusammenhang mit der GMO-VO stellt sich hier also die Frage, warum die hierin aufgeführten Regelungen allein nicht ausreichend sein sollten und es gerade der betroffenen Maßnahme bedarf. Hierbei zeigt sich, dass das betroffene Unternehmen regelmäßig nicht in der Lage sein dürfte, diesen ihm gemäß Art. 209 II UAbs. 2 S.2 VO (EU)Nr. 1308/2013 obliegenden Beweis zu führen[271].

Nichtsdestotrotz ruht das Wettbewerbsrecht im Bereich der landwirtschaftlichen Erzeugung, was im Hinblick auf die GAP vielleicht als Regelfall anzusehen ist, aber jedenfalls nicht im Hinblick auf Art. 101 I AEUV. Diese Abweichung vom Regelfall, wenn es sich auch im Gegensatz zu Art. 1 II VO (EG) Nr. 1/2003 um keine Rückausnahme handelt, gibt den landwirtschaftlichen Erzeugern, deren Vereinigungen und dem Handel eine Möglichkeit den Wettbewerb zu beeinflussen und stellt so eine Privilegierung dar.

b) Erzeugerorganisationen

Art. 209 I UAbs.2 VO (EU) Nr. 1308/2013 macht hierbei noch einmal deutlich, dass die Vereinbarungen, Beschlüsse und Verhaltensweisen der Erzeugerorganisationen gerade nicht die Ziele des Art. 39 AEUV gefährden dürfen. Insoweit stellt sich die Frage, ob in dieser Formulierung eine weitergehende Bevorzugung

[267] EuGH Rs. C-399/93 „Oude Luttikhuis" Slg. 1995, I-4515, Rn 27 Rs. C-71/74 „Frubo" Slg. 1975, I-563, Rn 22ff; Rs. 71/92 „Florimex" Slg. 1997, II-693, Rn 153.

[268] EuG verb.Rs. T-70 und 71/92, Slg. 1997 II-693 Rn.153.

[269] Vgl. Kopp, in: Streinz, EUV/AEUV Art. 42 Rn.3; A. Rintelen, Art. 42 Rn. 23 in: E. Grabitz, M. Hilf, M. Nettesheim (eds.), *EUR AEUV*.

[270] EuGH verb.Rs. C-40 bis 48, 50, 54 bis 56, 111, 113 und 114/73 „Suiker Unie" Slg. 1975, I-1663, Rn 214f.

[271] Vgl. Kommission „Meldoc" ABl. 1986 L 348/50 Rn. 54.

von Erzeugerorganisationen zu sehen ist[272]. Die Gefährdung von einzelnen Zielen ist dem Art. 39 AEUV, wie beschrieben, dem Grunde nach immanent, sodass es hierbei stets um einen Ausgleich der wiederstreitenden Interessen geht, der auch bei der Notwendigkeit zu berücksichtigen ist, sodass dies nicht gegen ein unterschiedliches Niveau spricht[273].

Ein Unterschied wird jedoch in der Wirkungsweise gesehen. Während der Tatbestand in Art. 209 I UAbs.1 VO (EU) Nr. 1308/2013 besagt, dass Vereinbarungen, Beschlüsse oder Verhaltensweisen nur unter dessen Anwendungsbereich fallen, wenn sie zur Erreichung der Ziele des Art. 39 AEUV notwendig sind, besagt Art. 209 I UAbs.2 VO (EU)Nr. 1308/2013, dass diese grundsätzlich erfasst sind, „es sei denn" die Ziele des Art. 39 AEUV wären hierdurch gefährdet. Diese Vermutung[274], dass solche Vereinbarungen, Beschlüsse oder Verhaltensweisen von Erzeugerorganisationen erst durch die Kommission wiederlegt werden müssen, erscheint insoweit als eine Abweichung.

Allerdings wurde bereits beschrieben, dass auch die GMO-VO an das Funktionsprinzip der Legalausnahme von Art. 101 III AEUV i.V.m. Art. 1 II VO (EG) Nr. 1/2003 angepasst wurde. Entsprechend wurde die GMO-VO auch an Art. 2 VO (EG) Nr. 1/2003 angepasst, indem in Art. 209 II UAbs.2 VO (EU) Nr. 1308/2013 dessen Beweislast übernommen wurde. Der weitestgehend identische Wortlaut bezieht sich unbeschränkt auf den ersten Absatz und macht so deutlich, dass das Wirtschaftsunternehmen, welches sich hierauf beruft generell die Beweislast für die Voraussetzungen der Privilegierung obliegt, auch wenn die Formulierung von Art. Art. 209 I UAbs.2 VO (EU) Nr. 1308/2013 etwas anderes nahe legt. Insoweit ist hierin keine abweichende Vermutung mehr zu sehen[275].

Also selbst wenn es sich nach dem Wortlaut inzwischen eher um einen eigenständigen Tatbestand handelt, dürfte ein über den ersten Unterabsatz hinausgehender Anwendungsbereich allenfalls als marginal einzustufen sein.

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[272] So EuGH verb.Rs. C-319/93, C-40 und C-224/94 „Dijkstra" Slg. 1995 I-4471 Rn. 20.

[273] Ibid., der es gerade als Indiz einer eigenständigen Regelung sah, dass die Kommission, wenn sie feststellt, dass die Maßnahme zur Zielverfolgung nach Art. 39 AEUV notwendig ist, nicht feststellen kann, das sie diese Ziele gefährde. Dies beinhaltet, dass die gewählten Formulierungen deckungsgleich sind; a. A. Rintelen, in: E. Grabitz, M. Hilf, M. Nettesheim, EUR AEUV Art. 42 Rn.29, der davon ausgeht dass kein einziges Ziel gefährdet sein darf. Allerdings kann dies nicht hinsichtlich Art. 39 AEUV gelten, sondern nur für eine konkrete Zielsetzung in Folge eines Sekundär- oder gar Tertiäraktes, da den Zielen des Art. 39 AEUV bereits eine gewisse Widersprüchlichkeit inne wohnt. Insoweit verweist er Beispiel konsequent auf eine Entscheidung der Kommission.

[274] EuGH verb.Rs. C-319/93, C-40 und C-224/94 „Dijkstra" Slg. 1995 I-4471 Rn. 21, der davon spricht, dass der insoweit wortgleiche Art. 2 II UAbs.2 VO (EWG) Nr. 26/1962 die Beweislast zugunsten der Erzeuger umgekehrt. Vgl. Schweizer, in: Immenga, Mestmäcker, C. *EU-Wettbewerbsrecht* VO (EG) Nr. 1184/2006 und Art 175 ff. VO (EG) Nr. 1234/2007, Rn. 40 zu Art. 176 I Uabs.2 VO (EG) 1234/2007.

[275] A. Rintelen, Art. 42 Rn. 23, in: E. Grabitz, M. Hilf, M. Nettesheim, *EUR AEUV*; M. Erhart, A. Krauser, Art. 42 Rn.23, *MüKo Kartell recht* Art. 43 AEUV Rn.2f.

c) Das öffentliche Interesse

Das öffentliche Interesse an der in dieser Aktivierung liegenden Privilegierung ist durch die Vorgaben des Art. 39 AEUV, wie sie bereits ausgeführt wurden, begründet. Der Maßstab hierfür ist die Gewichtung der Zielverfolgung im Rahmen der GMO-VO, aber auch anderer Maßnahmen in deren Anwendungsbereich, wie insbesondere die Direktzahlungsverordnung.

Entsprechend wird aufgeführt, dass die landwirtschaftlichen Erzeuger, deren Vereinigungen und der Handel mit landwirtschaftlichen Erzeugnissen durch Art. 209 VO (EU) Nr. 1308/2013 nicht vom Wettbewerb ausgenommen sind, sondern dieser hierdurch erst ermöglicht wird[276]. Die Erzeugerorganisationen spielen dabei auch im Rahmen der Binnenmarktinstrumente der GMO-VO eine wesentliche Rolle was mit dem Ausschluss der Wettbewerbsvorschriften auf die Vorschriften der GMO-VO zum Ausdruck kommt. Das in diesem Zusammenhang stehende öffentliche Interesse wird in diesem Zusammenhang deutlicher und ist entsprechend dort näher zu besprechen.

8. Anerkannte Branchenverbände

Weiterhin sieht die GMO-VO in Art. 210 I i.V.m. Art. 206 I VO (EU) Nr. 1308/2013 einen Ausschluss aus dem Anwendungsbereich von Art. 101 I AEUV für Vereinbarungen, Beschlüsse und aufeinander abgestimmte Verhaltensweisen von Branchenverbänden vor, die gemäß Art. 157 VO (EU) Nr. 1308/2013 formal anerkannt sind[277]. Bei Branchenverbänden handelt es sich um Zusammenschlüsse von Vertretern unterschiedlicher Produktionsstufen. Durch die Vertretung liegt insoweit ein Zusammenschluss von Unternehmen vor[278]. Dieser Zusammenschluss ist durch die notwendige Beteiligung mindestens einer weiteren Wirtschaftsstufe weitergehender als Art. 209 VO (EU) Nr. 1308/2013[279]. Allerdings ist der Tatbestand auch entsprechend eingeschränkt. Zum einen muss ein Branchenverband ein Ziel, wie sie in Art. 157 I lit.c VO (EU) Nr. 1308/2013 aufgeführt sind verfolgen und zum anderen müssen Vereinbarungen, Beschlüsse und Verhaltensweisen gerade diesen Zielen dienen, um unter die Ausnahme von Art. 210 I VO (EU) Nr. 1308/2013 zu fallen. Entgegen der Regelung zu den Erzeugerorganisationen ist ein derartiges Verhalten nach Art. 210 II UAbs.1 VO (EU) Nr. 1308/2013 der Kommission

[276] Schweizer, in: U. Immenga, E.J. Mestmäcker, C. *EU-WettbewerbsR*, VO (EG) Nr. 1184/2006 und Art 175ff. VO (EG) Nr. 1234/2007 Rn.12.

[277] Kommission „Rohtabak Italien" COMP/C.38.281/B.2 Rn.314; „Rohtabak Spanien" COMP/C.38.238/B.2 Rn. 348.

[278] Schweizer, in: U. Immenga, E.J. Mestmäcker (eds.), C. *EU-WettbewerbsR*, VO (EG) Nr. 1184/2006 und Art 175ff. VO (EG) Nr. 1234/2007 Rn. 96.

[279] M. Erhart, A. Krauser, Art. 43 AEUV Rn. 46 in: *MüKo Kartellrecht*.

anzuzeigen und steht unter dem Vorbehalt einer zweimonatigen Feststellungsfrist durch die Kommission, dass das betroffene Verhalten unionsrechtswidrig ist.

Die Unionsrechtswidrigkeit ist dabei festzustellen, wenn eine der Voraussetzungen aus Art. 210 IV UAbs.1 VO (EU) Nr. 1308/2013 erfüllt sind. Dies ist der Fall, wenn die Vereinbarung, Beschlüsse oder Verhaltensweisen eine Abschottung der Märkte inner- halb der Union bewirken, das ordnungsgemäße Funktionieren der Marktorganisation gefährden oder Wettbewerbsverzerrungen hervorrufen kann, die zur Erreichung der von der Branchenmaßnahme verfolgten Ziele der GAP nicht unbedingt erforderlich sind. Zudem ist die Unionsrechtswidrigkeit festzustellen, wenn das Verhalten die Festsetzung von Preisen oder Quoten umfasst, zu Diskriminierungen führen oder den Wettbewerb für einen wesentlichen Teil der betreffenden Erzeugnisse ausschalten kann. Dabei zeigt sich hier eine explizitere Orientierung an den Zielen Der GMO-VO indem es nicht nur heißt, dass die Ziele des Art. 39 AEUV nicht gefährdet sein dürfen, sondern explizit eine Gefährdung des Funktionierens der Marktorganisation oder eine mögliche Abschottung der Märkte innerhalb der Union explizit ausschließen. Dies wird noch deutlicher, wenn es im Weiteren heißt, dass die Maßnahme, wenn sie Wettbewerbsverzerrungen hervorrufen kann, zur Erreichung der Ziele der GAP unbedingt erforderlich sein muss. Hierin ist eine weitere Steigerung im Vergleich zu Art. 209 I VO (EU) Nr. 1308/2013 zu sehen, der nur von der Notwendigkeit der Maßnahme zur Zielerreichung bzw. der Gefährdung der Ziele spricht.

Entsprechend handelt es sich ebenfalls um eine Abweichung im Sinne von Art. 101 III AEUV i.V.m. Art. 1 II VO (EG) Nr. 1/2003, die eine Marktbeeinflussung ermöglicht, mithin um eine Privilegierung. Ebenso wie die Erzeugerorganisationen hat auch diese eine besondere Bedeutung im Zusammenhang mit den Binnenmarktinstrumenten.

9. Die Erzeugerorganisationen in der landwirtschaftlichen Praxis

2019 waren in Deutschland 38 Erzeugerorganisationen nach der GMO amtlich anerkannt bzw. befinden sich in der Übergangsphase zur Anpassung an die neue Marktordnung[280]. Über die GMO haben anerkannte Erzeugerorganisationen die Möglichkeit, sogenannte "Operationelle Programme" nach festen Vorgaben zu formulieren und aus Beiträgen der Erzeuger soSgenannte "Betriebsfonds" zu bilden, die von der EU bezuschusst werden können und mit denen Maßnahmen gefördert werden, die u.a. der Verbesserung der Qualität der Erzeugnisse, umweltgerechter Wirtschaftsweise oder der Einführung neuer Produkte dienen. In Deutschland firmieren die Erzeugerorganisationen zu 80% in der Rechtsform der "eingetragenen Genossenschaft" (eG), daneben gibt es u.a. die Rechtsform der AG und der GmbH.

[280] Die nachfolgenden Zahlen sind entnommen aus: DGRV – Deutscher Genossenschafts- und Raiffeisenverband e.V., 2016: 6ff.

A. Die traditionelle Rechtsnatur einer Erzeugerorganisation: Die eingetragene Genossenschaft

Eine eingetragene Genossenschaft (eG) ist eine Gesellschaft bzw. juristische Person, mit nicht geschlossener Mitgliederzahl (mindestens 3 Mitglieder, § 4 GenG), deren Zweck darauf gerichtet ist, den Erwerb oder die Wirtschaft ihrer Mitglieder oder deren soziale oder kulturelle Belange durch gemeinschaftlichen Geschäftsbetrieb zu fördern (§ 1 Abs. 1 GenG).

Anders als bei einer AG oder GmbH steht nicht eine Gewinnerzielung der Genossenschaft, sondern die Unterstützung ihrer Mitglieder im Vordergrund.

Die Genossenschaft erhält ihre Rechtsfähigkeit als juristische Person durch die Eintragung in das Genossenschaftsregister; Genossenschaften gelten immer als Kaufleute i.S.d. HGB (Kaufmann kraft Rechtsform bzw. Formkaufmann, § 17 Abs. 2 GenG).

Die Genossenschaft ist keine Kapitalgesellschaft im engeren Sinne; sie wird auch nicht bei den ergänzenden Vorschriften für Kapitalgesellschaften aufgeführt (vgl. Drittes Buch, Zweiter Abschnitt HGB: §§ 264 bis 335b HGB). Dafür enthalten die §§ 336 bis 339 HGB ergänzende Vorschriften für eingetragene Genossenschaften, die jedoch im Wesentlichen auf die für Kapitalgesellschaften geltenden Regelungen verweisen.

So müssen auch Genossenschaften einen Jahresabschluss bestehend aus Bilanz, sowie einen Lagebericht aufstellen (§ 336 HGB) und offenlegen (§ 339 HGB).

Das (Eigen-)Kapital der Genossenschaft wird über die Geschäftsanteile bzw. Genossenschaftsanteile der Mitglieder (Genossen) aufgebracht. Die Höhe eines Kapitalanteils wird in der Satzung festgelegt.

Im Gegensatz zu einer GmbH oder AG, bei der die Höhe bzw. Anzahl der Kapitalanteile (Aktien) die Stimmrechte bestimmt, haben Genossenschaftsmitglieder unabhängig von ihren Geschäftsanteilen eine Stimme in der Generalversammlung (§ 43 Abs. 3 GenG; allerdings kann die Satzung Mehrstimmrechte vorsehen) – insofern sind die Mitbestimmungsbefugnisse der Genossen beschränkt und einzelne Genossen können keine Kontrolle über eine Genossenschaft erreichen.

Scheidet ein Mitglied aus der Genossenschaft aus, muss die Genossenschaft den Kapitalanteil üblicherweise an das Mitglied zurückzahlen (wiederum im Gegensatz zur AG, bei der die Aktien bei Veräußerung einen neuen Eigentümer bekommen, das Eigenkapital des AG aber davon unberührt bleibt) – das Eigenkapital der Genossenschaft schwankt deshalb.

Im Bereich der deutschen Landwirtschaft sind genossenschaftlich organisierte Unternehmen „eine Institution am Markt". In traditionellen landwirtschaftlichen Branchenbereichen, wie der Milch-, Fleisch- oder der Viehwirtschaft, aber auch in anderen landwirtschaftlichen Sektoren, wie Gartenbau und Wein, sind Genossenschaften verbreitet und gehören zu den marktführenden Einrichtungen. Darauf aufbauend, stellen die genossenschaftlichen Unternehmen für die Versorgung des

ländlichen Raums mit Bedarfsgütern und Dienstleistungen einen entscheidenden volkswirtschaftlichen Faktor dar. Am Markt sind daher verschiedene Arten von Genossenschaften tätig. Eine zentrale Rolle nehmen dabei die Kreditgenossenschaften mit Warengeschäft ein, die nach dem historischen Vorbild der Raiffeisenschen Darlehnskassenvereine noch heute vor allem Betriebsmittel zu günstigen Konditionen bereitstellen. Hinzu kommen die Bezugs- und Absatzgenossenschaften sowie die Verwertungsgenossenschaften, die im landwirtschaftlichen Warenhandel, jedoch insbesondere in den Milch-, Fleisch, Obst oder Gemüsesparten tätig sind.

B. Das System der Raiffeisengenossenschaften

Innerhalb der Dachorganisation des DGRV werden die landwirtschaftlichen Genossenschaften unter der Kategorie der „Raiffeisengenossenschaften" geführt. Ihr Spitzenverband ist der Deutsche Raiffeisenverband e.V. (DRV), der als einer der vier Bundesverbände innerhalb des DGRV agiert. Die ländlichen Genossenschaften unterliegen grundsätzlich einem zweistufigen System aus regionalen Primärgenossenschaften auf der ersten und Haupt- bzw. Zentralgenossenschaften auf der zweiten Stufe. Innerhalb dieses Systems teilen sich die landwirtschaftlichen Genossenschaften in verschiedene Bereiche der Agrar- und Ernährungswirtschaft auf.

C. Zahlen und Daten

Unter dem organisatorischen Dach des DRV verbergen sich in etwa 2250 Genossenschaften. Diese teilen sich auf verschiedene Bereiche der Land- und Ernährungswirtschaft auf. Dazu gehören namentlich 396 landwirtschaftliche Waren-, 224 Molkerei- und Milch-, 88 Vieh-, Fleisch-, und Zucht-, 84 Obst-, Gemüse- und Gartenbau-, 750 Agrar-, 165 Winzer- und 537 übrige Genossenschaften. Je nach Bereich kommen auf der zweiten Stufe Haupt- bzw. Zentralgenossenschaften hinzu, die überregionale Aufgabenwahrnehmung und Förderung betreiben.

D. Waren- und Dienstleistungsgenossenschaften

Die landwirtschaftlichen Waren- und Dienstleistungsgenossenschaften bestehen aus einem Netzwerk von 396 Primärgenossenschaften, fünf Hauptgenossenschaften und der Deutschen Raiffeisenwarenzentrale (DWRZ) als Zentralgenossenschaft mit einer Bündelungsfunktion für die Segmente „Baustoffe" und Fahrzeugbeschaffung. Die Hauptgenossenschaften sind die Agravis Raiffeisen AG, die BayWa AG, die Raffeisen Waren GmbH, die Raffeisen Waren-Zentrale Rhein Main eG, und die ZG Raiffeisen. Zu den Aufgabenfeldern der Waren- und Dienstleis-

tungsgenossenschaften gehört beispielsweise das Bezugs- und Absatzgeschäft innerhalb der Bereiche Getreide, Saatgut, Pflanzenschutz, Düngemittel, Agrartechnik, nachwachsende Rohstoffe oder Kartoffeln. Die Sparte der Waren- und Dienstleistungsgenossenschaften ist die umsatzstärkste unter den landwirtschaftlichen Genossenschaften. Mit einem Umsatz von 34,8 Mrd. euro erzielte sie 57,2% des Gesamtumsatzes aller Raiffeisengenossenschaften im Jahr 2015.

E. Molkereigenossenschaften

Innerhalb der Raiffeisenorganisation gibt es 224 Molkereigenossenschaften, die sich in verschiedene Bereiche von der Milcherzeugung bis zur Milchverwertung aufteilen. Die genossenschaftlich erzeugte Milch wird teilweise durch die Genossenschaften selbst verwertet, teilweise an Dritte vermarktet. Auch hier gibt es zentrale genossenschaftliche Einrichtungen. Es handelt sich demnach um Unternehmen mit Förderzweckbindung, die Primärgenossenschaften koordinieren und unterstützen. Diese sogenannten Molkereizentralen sind die Deutsches Milchkontor GmbH (DMK) und die Bayernland eG. In der Milchwirtschaft spielen die Molkereigenossenschaften eine erhebliche Rolle. In etwa zwei Drittel des nationalen Milchaufkommens, also ca. 21,65 Millionen Tonnen Milch, werden von genossenschaftlichen Unternehmen vermarktet. Durch diese wurde im Jahr 2015 ein Umsatz von 12,6 Mrd. euro erzielt, was mehr als der Hälfte des Branchengesamtumsatzes entspricht. Auch innerhalb der landwirtschaftlichen Genossenschaften haben die Molkereigenossenschaften einen hohen Anteil am Jahresgesamtumsatz. 12,6 Mrd. euro stellen 20,7% des Jahresumsatzes 2015 der landwirtschaftlichen Genossenschaften dar. Unter den erfolgreichsten sechs Molkereien Deutschlands befinden sich fünf Unternehmen in der Form einer eG.

F. Vieh-, Fleisch- und Zuchtgenossenschaften

Auch bei den Vieh-, Fleisch- und Zuchtgenossenschaften zeichnet sich ein .ähnliches Bild ab. Insgesamt sind 88 solcher Genossenschaften unter dem Dach des DRV vereint. Auf sekundärer Stufe gibt es auch hier zwei Zentralgenossenschaften: Die Westfleisch SCE mbH und die Viehzentrale Südwest GmbH. Im Wesentlichen werden durch diese Genossenschaftssparte zwei Bereiche bedient: Viehhandel und Viehverwertung. Mit 6,2 Mrd. euro Umsatz im Jahr 2015 erwirtschafteten die Vieh-, Fleisch- und Zuchtgenossenschaften 10,2% des Gesamtumsatzes der landwirtschaftlichen Genossenschaften. Mit der Westfleisch SCE mbH, der Vion Food Group oder Danisch Crown sind auch unter den Top 10 der Fleischverarbeitungsunternehmen in Deutschland signifikante Marktanteile in der Hand genossenschaftlich ausgestalteter Unternehmen.

G. Agrargenossenschaften

Zudem kommen 750 Agrargenossenschaften, die ebenfalls unter dem Dach des DRV angesiedelt sind. Agrargenossenschaften im 6 heutigen Sinne sind aus den überkommenen landwirtschaftlichen Produktivgenossenschaften (LPG) der ehemaligen DDR durch einen einigungsbedingten Umwandlungsprozess entstanden. Aus dieser historischen Entwicklung heraus wird verständlich, weshalb die Landwirtschaft in Ostdeutschland zu einem weit überwiegenden Teil von den Agrargenossenschaften abgedeckt wird. Dementsprechend kommen die 750 Agrargenossenschaften nur in den ostdeutschen Bundesländern vor, zählen dort allerdings 25 000 Mitglieder und in etwa gleichviele Arbeitnehmer. Dies liegt an der typischen Struktur der Agrargenossenschaften als Mehrfamilienbetriebe im Sinne einer Produktionsgenossenschaft, wonach die Mitglieder im Regelfall auch die Mitarbeiter der Genossenschaft sind. Insgesamt wird ein Viertel der gesamten landwirtschaftlichen Nutzfläche Deutschlands von den Agrargenossenschaften bewirtschaftet.

H. Sonstige Branchen und Unternehmenszweige der Raiffeisengenossenschaften

Weiterhin sind die Raiffeisengenossenschaften auch im Bereich des Obst-, Gemüse- und Gartenbaus tätig. Als ländliche Bundeszentralen der insgesamt 88 Genossenschaften, sind die Bundesvereinigung der Erzeugerorganisationen Obst und Gemüse e.V. (BVEO) sowie die Landgard eG für den Gartenbau tätig. Insgesamt kommt die Sparte der Obst-, Gemüse- und Gartenbaugenossenschaften auf einen Umsatz von 3,4 Mrd. euro, was einem Bruchteil von 5,6% des Gesamtumsatzes der Raiffeisengenossenschaften entspricht. Bei den Winzergenossenschaften zeichnet sich ein ähnliches Bild im kleineren Maßstab ab: Zwar gibt es unter dem Dach des DRV 165 Winzergenossenschaften und 2 Zentralkellereien als regionale Zentralgenossenschaften, die Badische Winzerkellerei eG und die Württembergische Weingärtner- Zentralgenossenschaften eG. Allerdings machen diese mit einem Gesamtumsatz von 0,8 Mrd. euro ‚nur' 1,3% des Jahresumsatzes aller ‚Raiffeisengenossenschaften' aus.

V. Resümee

Die Erzeugerorganisationen als eingetragene Genossenschaften stellen einen wesentlichen Faktor im Rahmen der deutschen Volkswirtschaft dar. Sie fungieren dabei insbesondere als Stabilisatoren regionaler Infrastrukturen. Im Landwirtschaftssektor haben Unternehmen in der Rechtsform der eingetragenen Genos-

senschaft eine gewichtige Bedeutung für die Versorgung mit landwirtschaftlichen Erzeugnissen. Neben der Urproduktion und Versorgung durch die Primärgenossenschaften wird auf übergeordneter Ebene die Interessenvertretung und Vermarktung zentral organisiert. Dies ermöglicht es, vor allem im Kollektiv, konkurrenzfähig zu bleiben und so regionale Strukturen aufrecht zu erhalten. Zudem kann den Produzenten durch die zentralen Genossenschaftsverbände Sicherheit und Stabilität verschafft werden, indem in der Satzung zumeist beispielsweise eine Abnahmepflicht verankert wird. Die Zentralgenossenschaft wiederum kann die Produkte national und international vermarkten, worum sich dementsprechend die Primärgenossenschaft nicht mehr ‚kümmern' muss. Insofern findet das Prinzip der kollektiven Selbsthilfe, am Rahmen der Landwirtschaft besonders anschaulich darstellbar, als ein Modell der stufenweisen Aufgabenteilung im Förderkreislauf statt.

Chapter VI

QUO VADIS AGRARORGANISATIONENRECHT? – EINE KURZE BETRACHTUNG IN SECHS KAPITELN

Christian Busse

I. Die Konzeption des Agrarorganisationenrechts

Die Konzeption des Rechts der anerkannten Agrarorganisationen, das im Weiteren Agrarorganisationenrecht genannt wird[281], basiert auf einer einfachen Grundidee. Durch die Zusammenarbeit von Akteuren im Bereich der landwirtschaftlichen Erzeugung und Verarbeitung soll eine Stärkung des Agrarbereichs erreicht werden. Die Zusammenarbeit wird dabei vom Staat anerkannt und gefördert. Letztlich gründet auf dieser Idee das auf der ganzen Welt verbreitete landwirtschaftliche Genossenschaftswesen. Da die Genossenschaft jedoch nur eine spezielle Rechtsform der juristischen Gesellschaft darstellt und in allen Wirtschaftszweigen vorhanden ist, sollte mit den anerkannten Agrarorganisationen eine speziell auf die Landwirtschaft ausgerichtete Kooperationsform geschaffen werden.[282]

[281] Vgl. als grundlegende Veröffentlichungen des Verfassers zum Agrarorganisationenrecht den 2014 veröffentlichten Kommentar „AgrarMSG/AgrarMSV – Das Recht der anerkannten Agrarorganisationen" und den Aufsatz Das Recht der anerkannten Agrarorganisationen – ein Update 2014 bis 2017, *Der Agrarbetrieb*, 2018, 2: 88–96.

[282] Aus diesem Gedanken heraus ergibt sich, dass landwirtschaftliche Genossenschaften aus dem Agrarurerzeugungsbereich grundsätzlich für eine Anerkennung als Erzeugerorganisation in Betracht kommen, wenn sie die speziellen Voraussetzungen des Agrarorganisationenrechts erfüllen. So ist wohl auch A. Suchoń, *Legal aspects of the organisation and operation of agricultural co-operatives in Poland*, 2019: 81f, zu verstehen. Das Erfordernis des Agrarorganisationenrechts, dass eine juristische Person vorliegt, dürfte bei Genossenschaften allgemein erfüllt sein. Schwierigkeiten bergen die Punkte, dass prinzipiell nur Erzeuger Mitglieder einer Erzeugerorganisation sein dürfen und die Satzung einer Erzeugerorganisation vorsehen muss, dass die Erzeuger die demokratische Kontrolle in den Organen ausüben. Insofern ist jede Genossenschaft vor ihrer Anerkennung als Erzeugerorganisation genau zu überprüfen. A. Suchoń, a.a.O.: 82f, äußert sich ebenfalls kurz zu der Frage, ob eine Vereinigung im Sinne des EU-Agrargeoschutzrechts die Form einer Genossenschaft annehmen kann; vgl. zu der parallelen Frage des Verhältnisses dieser Vereinigungen und anderer Organisationen im Agrargeoschutzrecht zu anerkannten Agrarorganisationen Ch. Busse, Gedanken zum Verhältnis von Geoschutzgemeinschaften zu anerkannten Agrarorganisationen, 2018: 486–501.

Wird die Entwicklung dieser speziellen Rechtsform in Deutschland betrachtet, so geht sie auf die Zeit zurück, in der sich die Bundesrepublik Deutschland auf den Beginn des gemeinsamen Agrarmarktes 1970 vorbereitet hat. Damals entstand die erste gesetzliche Regelung, die es ermöglichte, landwirtschaftliche Erzeugerorganisationen anzuerkennen und finanziell zu unterstützen. Etwa zeitgleich hatte auch die damalige Europäische Wirtschaftsgemeinschaft (EWG) dieses Instrument für sich entdeckt[283]. Während es in Deutschland allerdings für alle landwirtschaftlichen Erzeugungsbereiche zum Einsatz kam, nutzte es die EWG zunächst nur sehr punktuell. Der Startpunkt war dabei der Bereich frisches Obst und Gemüse, da dort eine klassische Agrarmarktorganisation mit ihren Interventionsstandardinstrumenten nicht verwirklicht werden konnte.

In Deutschland wurde das Instrument von der Agrarurerzeugungsseite intensiv genutzt und blieb jahrzehntelang nahezu unverändert bestehen. Die EU fasste 2007 die verstreuten Regelungen zu Erzeugerorganisationen in der Einheitlichen Marktorganisation (EGMO) zusammen und beschloss 2013 im Rahmen der nunmehrigen Gemeinsamen Marktorganisation (GMO) eine Ausweitung des Instruments auf alle Erzeugnisbereiche. Damit war sie jetzt dem deutschen Regelungsmodell gefolgt. Die deutschen Bestimmungen wurden auf diese Weise durch das Prinzip der unmittelbaren Anwendung des EU-Rechts weitgehend überlagert und dadurch novellierungsbedürftig.

Ebenfalls zusammengefasst und horizontalisiert fanden sich die EU-Regelungen zu Branchenverbänden. Branchenverbände gehen über die Erzeugerseite hinaus und sollen prinzipiell alle Stufen der Vermarktungskette abbilden. Folglich eignen sich neben den Erzeugern und den Verarbeitern auch reine Zwischenhändler sowie Unternehmen des Einzelhandels als Mitglieder eines Branchenverbandes. Dieser Teil des Agrarorganisationenrechts besaß kein Gegenstück in Deutschland. Das Vorbild waren vielmehr die französischen und niederländischen Bestimmungen zu Branchenverbänden. Deutschland hatte sich hingegen nach dem im Dritten Reich erfolgten diktatorischen Zwangszusammenschluss aller Ebenen der Landwirtschaft im Reichsnährstand, der den Charakter eines Branchenverbandes aufwies, bewusst gegen die Beibehaltung eines solchen Systems entschieden.

Strukturell sieht die Europäische Kommission die Agrarorganisationen als Kontrapunkt zur in den letzten Jahrzehnten erfolgten Liberalisierung des EU-Agrarmarktes an. Anstatt den Agrarmarkt durch staatliche direkte Interventionen zu steuern, sollen nun die Agrarorganisationen diese Funktion übernehmen und damit vor allem die Urerzeuger ihr Schicksal selbst steuern. In der Theorie mag diese Idee überzeugend klingen. In der praktischen Umsetzung stößt sie jedoch auf erhebliche Schwierigkeiten. So ist es bislang nicht gelungen, in der EU ein flä-

[283] Vgl. zur historischen Entwicklung Ch. Busse, Erzeugerorganisationen und Branchenverbände im EU-Agrarmarktrecht – Ein kurzer Abriss ihrer Entwicklung vor dem Hintergrund der deutschen Rechtslage, *Agrarrecht – Jahrbuch*, 2011: 107–144.

chendeckendes Netz von anerkannten Agrarorganisationen für die wichtigsten Erzeugnisbereiche zu etablieren[284].

Nur wenn ein solches Netz vorhanden ist, kann jedoch die verfolgte Konzeption aufgehen. Signifikant ist beispielsweise, dass in der letzten Milchmarktkrise erneut der Weg der Direktbeihilfen gewählt und dabei keinerlei Verknüpfung mit dem Agrarorganisationenrecht vorgenommen wurde. Gleiches gilt für jüngere Direktbeihilfen in mehreren anderen Erzeugnisbereichen. Selbst im Bereich frisches Obst und Gemüse wurde es den Mitgliedstaaten gestattet, im Rahmen der letzten Marktstützungsmaßnahme die Beihilfen direkt den Erzeugern zu gewähren, da über die vorhandenen Erzeugerorganisationen nicht alle Erzeuger erreicht worden wären und sich die Erzeugerorganisationen zum Teil mit einer solchen Aufgabe überfordert gefühlt haben.

II. Das EU-Agrarorganisationenrecht in der aktuellen GMO

Ungeachtet dieser Schwierigkeiten bildet das Agrarorganisationenrecht im Rahmen der GMO, die derzeit in Form der aktuellen Fassung der Verordnung (EU) Nr. 1308/2013 gilt, ein Herzstück der gesamten Marktordnungsregelung. In Erwägungsgrund 131 der GMO heißt es zu den Erzeugerorganisationen: „Die Erzeugerorganisationen und ihre Vereinigungen können eine nützliche Rolle bei der Bündelung des Angebots, der Verbesserung der Vermarktung, der Planung und der Anpassung der Erzeugung an die Nachfrage, der Optimierung der Erzeugungskosten und der Stabilisierung der Erzeugerpreise, der Durchführung von Forschung, der Förderung bewährter Verfahren und der Leistung technischer Unterstützung, der Bewirtschaftung von Nebenerzeugnissen und von Risikomanagement-Instrumenten, die ihren Mitgliedern zur Verfügung stehen, spielen und somit zur Stärkung der Stellung der Erzeuger in der Lebensmittelkette beitragen. Erwägungsgrund 132 der GMO ergänzt hinsichtlich der Branchenverbände: „Die Branchenverbände können eine wichtige Rolle für den Dialog zwischen den Akteuren der Versorgungskette sowie die Förderung bewährter Verfahren und der Markttransparenz einnehmen".

Die Novellierung der Regelungen durch die GMO hat in Erwägungsgrund 133 der GMO folgende Erläuterung erfahren: „Die bestehenden Vorschriften über die

[284] Siehe als jüngste von der Europäischen Kommission in Auftrag gegebene Studie Europäische Kommission (Hrsg.), Study of the best ways for producer organisations to be formed, carried out their activities and be supported, 2019. Für Mitte 2017 werden dort, S. 147, 3.434 Erzeugerorganisationen und 71 Vereinigungen angegeben. Bei etwa fünfzig Prozent handelte es sich um Genossenschaften. Insgesamt waren nach dieser Studie nur etwa neun Prozent aller im Agrarbereich tätigen Organisationen als Agrarorganisationen förmlich anerkannt. Auf der Internetseite der Generaldirektion Landwirtschaft und Ländliche Räume der Europäischen Kommission lassen sich weitere Studien zum Agrarorganisationenrecht abrufen.

Begriffsbestimmung und Anerkennung der Erzeugerorganisationen, ihrer Vereinigungen und der Branchenverbände sollten daher harmonisiert, gestrafft und ausgedehnt werden, um eine mögliche Anerkennung auf Antrag im Rahmen von durch diese Verordnung geregelten Satzungen für bestimmte Sektoren vorzusehen. Insbesondere sollten die Kriterien für die Anerkennung und die Satzungen von Erzeugerorganisationen sicherstellen, dass diese Organisationen auf Initiative von Erzeugern gegründet werden und nach Regeln kontrolliert werden, die es den zusammengeschlossenen Erzeugern ermöglichen, eine demokratische Kontrolle über ihre Organisation und deren Entscheidungen auszuüben. Die Regelungen selbst finden sich im Wesentlichen in den Art. 152 bis 175 GMO.

In systematischer Hinsicht gliedern sich die geltenden Vorschriften und damit das Instrument als solches in mehrere Sachbereiche auf. Art. 152 bis 154 GMO regeln die Anerkennung von Erzeugerorganisationen. Ergänzend normiert Art. 155 GMO die Frage, in welchem Umfang Erzeugerorganisationen Tätigkeiten auf Dritte auslagern dürfen. Für die Anerkennung der Vereinigungen von Erzeugerorganisationen gilt Art. 156 GMO. Art. 157 und 158 GMO widmen sich der Anerkennung von Branchenverbänden. Während die Mitgliedstaaten generell selbst entscheiden können, für welche Erzeugnisbereiche sie Anerkennungen ermöglichen wollen, ordnet Art. 159 GMO an, dass für bestimmte Erzeugnisbereiche Erzeugerorganisationen bzw. Branchenverbände von den Mitgliedstaaten anerkannt werden müssen. Für die Marktbeteiligten besteht hingegen in allen Erzeugnisbereichen das Prinzip der Freiwilligkeit. Mithin können die Organisationen frei entscheiden, ob sie eine Anerkennung beantragen. In Art. 160 bis 163 GMO sind für wenige Erzeugnisbereiche zusätzliche Regelungen für die Anerkennung enthalten.

Die Vorschriften zur Anerkennung erstrecken sich auf alle in Art. 1 Abs. 2 GMO von der GMO erfassten Erzeugnisbereiche. Beachtenswert ist dabei Art. 1 Abs. 2 lit. x GMO, weil dadurch in Verbindung mit der Eingangsfußnote zu Anhang I Teil XXIV erreicht wird, dass alle landwirtschaftlichen Erzeugnisse, die unter das Agrarkapitel des AEUV fallen, umfasst werden, auch wenn sie nicht speziell in Anhang I aufgelistet sind. An die Vorschriften zur Anerkennung schließen sich weitere Regelungsbereiche des Agrarorganisationenrechts an. Art. 164 und 165 GMO gestatten den Mitgliedstaaten, auf Antrag „bestimmte Vereinbarungen, Beschlüsse und aufeinander abgestimmte Verhaltensweisen" einer anerkannten Agrarorganisation auf Nichtmitglieder befristet auszudehnen. Diese so genannte Allgemeinverbindlichkeitserklärung unterliegt dabei engen Voraussetzungen. Dies betrifft zum einen die Repräsentativität der jeweiligen Agrarorganisation. Zum anderen sind die ausdehnungsfähigen Regeln der Agrarorganisation enumerativ aufgelistet. Außerdem darf keine nachteilige Wirkung auf andere Marktteilnehmer entstehen. Liegt eine Allgemeinverbindlichkeitserklärung vor, ist es dem Mitgliedstaat zudem möglich, die Agrarorganisation zu ermächtigen, von den betroffenen Nichtmitgliedern Finanzbeiträge zu erheben.

Mit Art. 166 GMO wird die Europäische Kommission ermächtigt, Maßnahmen zu fördern, durch die die Agrarorganisationen das Angebot besser an der Marktnachfrage ausrichten können. Art. 167 GMO regelt speziell für den Weinbereich, dass unter anderem Branchenverbänden durch die Mitgliedstaaten gestattet werden kann, Vermarktungsregeln zur Steuerung des Angebots festzulegen. Art. 150 GMO regelt dies in Bezug auf alle Formen von Agrarorganisationen für geogeschützten Käse und Art. 172 GMO ebenso für geogeschützten Schinken. Neben der Allgemeinverbindlichkeitserklärung und den genannten Marktförder- und Marktregulierungsmaßnahmen enthalten Art. 148 und 168 GMO noch ein weiteres Instrument, das allerdings keine direkte Verbindung zu Agrarorganisationen aufweist. So können die Mitgliedstaaten gestützt auf diese Bestimmungen die Vertragsbeziehungen zwischen Urerzeugern und Abnehmern der Urerzeugnisse regeln. Dabei darf allerdings nur das Vorhandensein bestimmter Kernvertragselemente vorgeschrieben werden, nicht jedoch deren konkreter Inhalt. Mithin ist es beispielsweise nicht möglich, auf diese Weise Mindestpreise festzusetzen. Rechtssystematisch betrachtet hätte Art. 168 GMO seinen Platz außerhalb des Abschnittes der GMO zu Agrarorganisationen finden müssen, so wie es bei Art. 148 GMO auch zutreffenderweise der Fall ist.

Erst die Einfügung eines neuen Abs. 1a in die Art. 148 und 168 GMO, die im Rahmen der jüngsten Novellierung der GMO durch die Verordnung (EU) 2017/2393 vorgenommen wurde, hat das Instrument der Vertragsregulierung punktuell in einen direkten Zusammenhang mit dem Agrarorganisationenrechts gebracht. So kann nun die Einhaltung der Bestimmungen zur Vertragsregulierung unabhängig von einer gesetzgeberischen Entscheidung des Mitgliedstaates unter anderem von anerkannten Erzeugerorganisationen und deren Vereinigungen unmittelbar eingefordert werden. Die Bestimmungen zur Vertragsregulierung werfen insgesamt zahlreiche Auslegungsfragen auf[285].

Den Verkauf von Agrarurerzeugnissen betrifft ebenfalls Art. 125 GMO, der Branchenvereinbarungen im Zuckersektor regelt. Allerdings handelt es sich bei diesen Branchenvereinbarungen nicht um anerkannte Branchenverbände im Sinne des Agrarorganisationenrechts. Die Anerkennung der die Branchenvereinbarung abschließenden Verkäufer- und Käuferverbände ist denn auch gesondert in Anhang II Teil II Nr. 6 lit. a GMO geregelt. Hieran zeigt sich gut, dass es immer noch nicht gelungen ist, für die einschlägigen Regelungen ein stimmiges Gesamtkonzept zu finden.

Weitere Bestimmungen zu Agrarorganisationen finden sich in Art. 209 und 210 GMO und folglich im kartellrechtlichen Teil der GMO. Hiernach genießen anerkannte Agrarorganisationen Ausnahmen vom allgemeinen Kartellverbot des

[285] Vgl. am Beispiel des Art. 148 GMO näher Ch. Busse, Zur Auslegung der ab 1.1.2018 geltenden Fassung des Art. 148 GMO im Hinblick auf die erfassten Vermarktungsstufen, *Agrar- und Umweltrecht*, 2018: 125–131.

Art. 101 Abs. 1 AEUV. Diese Bestimmungen und ihre Verschränkung mit einer weiteren Kartellfreistellung für Erzeugerorganisationen und deren Vereinigungen in Art. 152 Abs. 1a und 1b GMO sowie den speziellen Kartellfreistellungen für den Zuckerbereich in Art. 125 in Verbindung mit Anhang X GMO und für den Milchbereich in Art. 149 GMO sind relativ schwer verständlich[286]. Dies ist unter anderem das Resultat der Änderungsverordnung (EU) 2017/2393, obwohl die Novellierung der GMO im Bereich des Agrarorganisationenrechts eigentlich zum Zweck hatte, unter anderem im Agrarkartellrecht für mehr Klarheit zu sorgen[287]. Damit im Zusammenhang steht auch die neu aufgenommene Bestimmung des Art. 172a GMO zu Wertaufteilungsklauseln, die nach hiesiger Ansicht schon zuvor zulässig waren.

Schließlich ermächtigt Art. 222 GMO die Europäische Kommission, in Fällen schwerer Ungleichgewichte, die in einem Erzeugnisbereich auf dem Agrarmarkt auftreten, den in diesem Erzeugnisbereich vorhandenen Agrarorganisationen zu gestatten, bestimmte Krisenmaßnahmen zu ergreifen, die ansonsten gegen Art. 101 AEUV verstoßen würden. Mit Hilfe der allgemeinen Krisenermächtigung des Art. 219 GMO kann die Europäische Kommission solche Maßnahmen auch auf andere Organisationsformen in dem jeweiligen Erzeugnisbereich ausdehnen. Geschehen ist dies 2016/17 im Rahmen der letzten Milchmarktkrise durch die Durchführungsverordnung (EU) 2016/559 und die Delegierte Verordnung (EU) 2016/558. In der EU hat jedoch keine einzige Agrarorganisation aus dem Milchbereich diese Sonderfreistellung genutzt. Sowohl Art. 222 GMO selbst als auch die beiden Kommissionsverordnungen geben zu zahlreichen Interpretationsfragen Anlass[288].

Recht der Europäischen Kommission zum Agrarorganisationenrecht besteht nur wenig, obwohl die GMO in ihren Art. 173 bis 175 GMO umfangreiche Delegations- und Durchführungsermächtigungen enthält. Zu nennen sind vor allem die

[286] Siehe eingehend zum Verhältnis des Agrarorganisationenrechts zum Kartellrecht Ch. Busse, Kommentierung des § 28 des Gesetzes gegen Wettbewerbsbeschränkungen (GWB), in: Busche, Röhling (eds.), *Kölner Kommentar zum Kartellrecht,* Band 1: §§ 1-34a GWB, Köln, 2017: 908–1115 (Randnummer 156ff), und ferner die Darstellung von Sitar, Gemeinschaftlicher Verkauf und Mengensteuerung durch Vereinigungen landwirtschaftlicher Erzeuger, *Agrarrecht – Jahrbuch*, 2018: 119–136; speziell zu dem bedeutsamen, aber im Einzelnen umstrittenen APVE-Urteil des EuGH Busse, Klarheit oder nicht Klarheit – Das Urteil des EuGH vom 14.11.2017 zu den Kartellverbotsausnahmen im EU-Agrarmarktrecht, *Wirtschaft und Wettbewerb*, 2018: 438–444, sowie zu Molkereigenossenschaften: M. Zoeteweij-Turhan, *The Role of Producer Organizations on the Dairy Market,* 2012; Ch. Busse, Die Stellung der Molkereigenossenschaften im Agrarkartellrecht, *Wirtschaft und Wettbewerb*, 2016: 154–164; Ch. Busse, Der Sachstandsbericht des Bundeskartellamtes vom 13.3.2017 zu dem Verfahren „Lieferbedingungen für Rohmilch", *Agrarrecht – Jahrbuch*, 2018: 167–180. Hingewiesen sei ferner noch auf M. Litjens, *Producenten Organisatie als erkend kartel,* Diss. Groningen, 2018.

[287] Vgl. daher kritisch Ch. Busse, Der GMO-Abschnitt der Verordnung (EU) 2017/2393 im Lichte der Schlussfolgerungen der Kommission I des Liller CEDR-Kongresses, *Agrarrecht – Jahrbuch*, 2018: 137–147.

[288] Vgl. näher Ch. Busse, Die Sonderkartellverordnungen der Europäischen Kommission vom April 2016 zur Planung der Milcherzeugung, *Zeitschrift für Wettbewerbsrecht*, 2017: 88–112.

horizontal angelegte Delegierte Verordnung (EU) 2016/232 sowie für den Milchbereich die Delegierte Verordnung (EU) Nr. 511/2012 und die Durchführungsverordnung (EU) Nr. 880/2012, für den Bereich Obst und Gemüse unter anderem die Durchführungsverordnung (EU) Nr. 543/2011 und für den Hopfenbereich die Durchführungsverordnung (EG) Nr. 1299/2007. Ein Register mit allen in der EU anerkannten Agrarorganisationen existiert leider nicht. Ausgeblendet wird vorliegend der Bereich Fischerei und Aquakultur, in dem es ebenfalls das Instrument der anerkannten Erzeugerorganisationen und Branchenverbände gibt.

Insgesamt ist das Agrarorganisationenrecht der EU oftmals nicht leicht nachvollziehbar und von einer Vielzahl rechtlicher Unsicherheiten gekennzeichnet. Es bedürfte einer durchgehenden Revision, um es kohärenter und verständlicher zu gestalten. Die gegenwärtigen Unsicherheiten haben dazu geführt, dass es bislang nicht in dem gewünschten Maße von der Landwirtschaftsseite in der EU angenommen wurde. Hieran hat die Möglichkeit, die Gründung von Agrarorganisationen und wichtige Bereiche der Tätigkeiten von Agrarorganisationen im Rahmen der Entwicklung des ländlichen Raums finanziell zu fördern, wenig geändert. Teils knüpfen auch direkte Förderungen in der GMO an das Instrument der Agrarorganisationen an. Genannt sei der Bereich frisches Obst und Gemüse, in dem ebenfalls eine Reihe von Auslegungsschwierigkeiten und daraus resultierende finanzielle Rückforderungen der EU gegenüber den Mitgliedstaaten entstanden sind.

III. Das deutsche Durchführungsrecht zum EU-Agrarorganisationenrecht

Jeder Mitgliedstaat besitzt ergänzendes nationales Recht zum EU-Agrarorganisationenrecht. Wird insofern das deutsche Recht betrachtet, so ist 2013 aus dem seit 1969 bestehenden originären deutschen Recht zu Erzeugerorganisationen und deren Vereinigungen das Agrarmarktstrukturgesetz (AgrarMSG) hervorgegangen, das seitdem das Durchführungsrecht zum EU-Agrarorganisationenrecht darstellt[289]. Nach § 3 AgrarMSG sind die deutschen Bundesländer für die Durchführung des Agrarorganisationrechts zuständig. Im Wesentlichen besteht das AgrarMSG aus Verordnungsermächtigung für das Bundesministerium für Ernährung und Landwirtschaft (BMEL), die Einzelheiten des Agrarorganiationenrechts zu regeln. Darunter fallen erstens nach § 4 AgrarMSG die Anerkennungsvoraussetzungen. Zweitens kann gemäß § 4a AgrarMSG mittels einer Rechtsverord-

[289] Siehe zur Entstehung und Konzeption des AgrarMSG Ch. Busse, Das neue deutsche Agrarmarktstrukturgesetz 2013 – Landwirtschaftliche Erzeugerorganisationen und Branchenverbände im deutschen Recht, *Jahrbuch des Agrarrechts*, XII (2013): 27–38; in polnischer Sprache: *Przegląd Prawa Rolnego*, 2013, 12: 173–187.

nung die Allgemeinverbindlichkeit angeordnet werden. Hierbei sind die Voraussetzungen noch enger als in Art. 165 GMO gefasst, da es einer Situation bedarf, in der Nichtmitglieder „negative Folgen für den betreffenden Erzeugnisbereich" verursachen.

Drittens ermächtigt § 5a AgrarMSG das BMEL, auf Art. 219 und 222 GMO gestützte Sonderkartellfreistellungen legislativ durchzuführen. In entsprechender Weise bezieht sich viertens § 6a AgrarMSG auf die Vertragsregulierung. Die Bezeichnungen als „a"-Paragraph zeigen, dass diese Bestimmungen erst nach 2013 in das AgrarMSG eingefügt wurden. Sie spiegeln insofern auf der einen Seite die Fortentwicklung des EU-Agrarorganisationenrechts wider, das durch Änderungen der GMO entstanden ist. Auf der anderen Seite zeigen sie den Willen der deutschen Agrarpolitik, die verschiedenen Optionen des EU-Agrarorganisationenrechts – wie etwa die Allgemeinverbindlichkeitserklärung und die Vertragsregulierung – zu nutzen. Allerdings ist bislang in Deutschland noch kein Antrag auf eine Allgemeinverbindlichkeitserklärung gestellt worden.

Eine mit dem EU-Agrarorganisationenrecht vergleichbare Kartellfreistellung für Agrarorganisationen enthält § 5 AgrarMSG. Diese Freistellung ist dabei wesentlich einfacher als die EU-rechtliche Freistellung formuliert, indem sie sich pauschal auf sämtliche Tätigkeiten bezieht, die die jeweilige Anerkennung der Agrarorganisation umfasst. Wie auch im EU-Agrarorganisationenrecht darf allerdings gemäß § 4 Abs. 2 AgrarMSG der Wettbewerb nicht ausgeschlossen werden. § 6 AgrarMSG regelt die Errichtung eines Agrarorganisationenregisters, das über das Internet öffentlich zugänglich ist und gestützt auf § 9 AgrarMSG durch die Bundesanstalt für Ernährung und Landwirtschaft (BLE) – einer Behörde im Geschäftsbereich des BMEL – geführt wird[290]. Ende 2018 waren in Deutschland im landwirtschaftlichen Bereich 722 Erzeugerorganisationen, 11 Vereinigungen und ein Branchenverband anerkannt. Letzterer ist im Zuckerbereich durch die Umwandlung eines schon zuvor bestehenden bundesweiten Verbandes entstanden. In anderen Erzeugnisbereichen – vor allem im Milch- und Weinbereich – wird seit längerem über die Schaffung von Branchenverbänden diskutiert. Nach § 7 AgrarMSG können durch Rechtsverordnung die notwendigen Vorschriften zur Überwachung, ob das Agrarorganisationenrecht ordnungsgemäß angewendet wird, getroffen werden. § 8 AgrarMSG ermöglicht es, die zugehörigen Bußgeldbestimmungen zu erlassen, um Verstöße zu sanktionieren.

Gestützt auf die zahlreichen Verordnungsermächtigungen des AgrarMSG ist ebenfalls 2013 die Agrarmarktstrukturverordnung (AgrarMSV) entstanden. Ihre 34 Paragraphen erfassen die gesamte Bandbreite des Agrarorganisationenrechts. Die §§ 2 bis 5 AgrarMSV gestalten die Anerkennung aus. Dabei werden auch einige Konkretisierungen gegenüber dem EU-Agrarorganisationenrechts vorge-

[290] Vgl. die Internetseite <http://www.aoreg.ble.de> [accessed 1.2.2020].

nommen. So regelt etwa § 2 Abs. 2 AgrarMSV, dass eine Agrarorganisation, die in mehreren Erzeugnisbereichen tätig ist, für jeden dieser Bereiche einer gesonderten Anerkennung bedarf. Diese Regelung ist durch die Änderungsverordnung (EU) 2017/2393 in Form der neuen Art. 154 Abs. 1a und Art. 157 Abs. 1a in die GMO übernommen worden.

Der Paragraph 2 Abs. 3 AgrarMSV bestimmt näher, wer eine Agrarorganisation rechtsverbindlich vertritt. In § 4 AgrarMSV wird das Anerkennungsverfahren und in § 5 AgrarMSV der Wegfall der Anerkennung geregelt. Einer der Gründe, die zur Entziehung der Anerkennung führen, ist nach § 5 Abs. 2 Satz 1 Nr. 2 AgrarMSV, dass eine Agrarorganisation fortgesetzt schwerwiegende Rechtsverstöße begeht, die das Erscheinungsbild der Agrarorganisation erheblich beeinträchtigen. Hierin schlägt sich nieder, dass der Staat durch die Anerkennung der Agrarorganisation nicht nur Rechte, sondern auch Pflichten auferlegt. Eine einzelne Agrarorganisation soll nicht das Instrument der Agrarorganisation durch ein gravierendes Fehlverhalten in Verruf bringen.

Für den Fall von Verstößen einer Agrarorganisation gegen das Kartellrecht sieht § 6 AgrarMSV eine Kooperation der für die Anerkennung zuständigen Behörde mit den Kartellbehörden vor. Die §§ 8 bis 11 AgrarMSV gehen näher auf die Anerkennung von Erzeugerorganisationen und deren Vereinigungen ein. So normiert etwa § 9 Absatz 1 AgrarMSV den im EU-Agrarorganisationenrecht nicht deutlich geregelten Aspekt, dass Mitglied in einer Agrarorganisation grundsätzlich nur eine Person sein darf, die selbst Urerzeugnisse aus dem Bereich erzeugt, in dem die Agrarorganisation tätig ist. Nach § 9 Abs. 2 AgrarMSV muss bei einer Einstellung der Urerzeugung die Mitgliedschaft in der Erzeugerorganisation innerhalb eines Jahres beendet werden.

§ 9 Abs. 3 AgrarMSV regelt die Mitgliedschaft von Personen, die keine Urerzeugung betreiben. Solche Personen können nicht zur Erfüllung von Anerkennungsvoraussetzungen – etwa die Erreichung der in § 10 Abs. 1 AgrarMSV vorgesehenen Mindestmitgliederzahl von fünf Mitgliedern – beitragen und dürfen keine Stimmenmehrheit in den Organen der Erzeugerorganisation besitzen. Sie werden daher als „inaktive Mitglieder" bezeichnet. § 10 Abs. 2 AgrarMSV setzt die Andienungspflicht auf neunzig Prozent der produzierten Urerzeugnisse fest. Eine ganze oder teilweise Aufhebung der Andienungspflicht ist gemäß § 10 Abs. 3 AgrarMSV nur mit einer Zweidrittelmehrheit in der Erzeugerorganisation beschließbar. Nach § 11 Abs. 1 AgrarMSV liegt die Mindestmitgliederschaft für Vereinigungen bei zwei Mitgliedern.

Die §§ 12 und 13 AgrarMSV betreffen Branchenverbände und die §§ 13a bis 13c AgrarMSV den Erlass und die Aufhebung einer Allgemeinverbindlichkeitserklärung. Die §§ 14 und 14a AgrarMSV sind der Vertragsregulierung gewidmet. § 14c AgrarMSV behandelt Branchenvereinbarungen im Zuckersektor, die wie schon erwähnt streng genommen nicht zum Agrarorganisationenrecht gehören.

Die §§ 15 bis 16 AgrarMSV tragen den Sonderbestimmungen des EU-Agrarorganisationenrechts im Milchbereich Rechnung. § 17 AgrarMSV gestattet im Erzeugnisbereich landwirtschaftlicher Ethylalkohol, dass bis zu 49 Prozent der von der Erzeugerorganisation verarbeiteten Urerzeugnisse zugekauft werden dürfen. Die §§ 18 bis 20 AgrarMSV ermöglicht Überwachungsbestimmungen und Mitteilungspflichten. § 22 AgrarMSV gestattet, bei Verstößen gegen das Agrarroganisationenrecht Bußgelder zu verhängen. Diese nur auszugsweise dargestellten Bestimmungen zeigen, dass das horizontale EU-Agrarorganisationenrecht beträchtliche Lücken aufweist. Dies betrifft sogar derart essentielle Aspekte wie die Frage, in welchem Umfang nicht als Erzeuger aktive Personen Mitglied in einer Erzeugerorganisation sein können.

Abschnitt I der Anlage zur AgrarMSV ordnet bestimmten im EU-Agrarorganisationenrecht enthalten Erzeugnisbereichen einzelne weitere Erzeugnisse zu. Denn die von der GMO beschriebenen Erzeugnisbereiche sind nicht vollständig kohärent. So enthält der Auffangerzeugnisbereich des Anhangs I Abschnitt XXIV GMO mehrere Erzeugnisse, die sachlich eigentlich in zuvor aufgelistete Erzeugnisbereiche gehören. Ein Beispiel sind lebende Schweine, die Abschnitt I Nr. 4 der Anlage zur AgrarMSV dem Erzeugnisbereiche Schweinefleisch zuordnet, da Erzeugerorganisationen im Schweinefleischbereich nicht selten auch lebende Schweine – etwa für die Aufzucht – erzeugen und vermarkten. Der Abschnitt II der Anlage zur AgrarMSV bildet aus Erzeugnissen des Anhangs I Abschnitt XXIV GMO die vier zusätzlichen Erzeugnisbereich „Damtiere und Kaninchen", „Wolle", „Arzneipflanzen" und „Kartoffeln". So bestanden in diesen Bereichen bei Inkrafttreten der damaligen EGMO in Deutschland bereits Erzeugerorganisationen.

Bislang sind kaum verwaltungsrechtliche Streitigkeiten in Deutschland zum Agrarorganisationenrecht entstanden. Insofern hat die Überführung der zahlreichen nach vormaligen deutschen Recht bestehenden Erzeugergemeinschaften und deren Vereinigungen in das neue Recht der Agrarorganisationen reibungslos funktioniert. Ein einziges Gerichtsurteil ist dem Verfasser bekannt geworden. So musste das Verwaltungsgericht Würzberg 2014 entscheiden, ob die Satzung einer Organisation, die aus Weintraubenerzeugern, Weintraubenverarbeitern und Weinhändlern bestand, die Voraussetzungen des AgrarMSG erfüllte. Das Verwaltungsgericht Würzburg verneinte – aus Sicht des Autors zutreffend – die Frage, da die Urerzeugungsseite nicht allein die wesentlichen Entscheidungen innerhalb der Organisation treffen konnte. Vor allem der Verkaufspreis für die Weintrauben sollte maßgeblich von der Verarbeitungs- und Handelsseite mitbestimmt werden[291].

[291] Verwaltungsgericht Würzburg. Urteil vom 13.3.2014, Aktenzeichen: W K 12.636, *Agrar- und Umweltrecht* 2014: 353–356; siehe dazu die Urteilsanmerkungen von Ch. Busse, Anerkennung von Erzeugerorganisationen nach der AgrarMSV, juris PraxisReport *Agrarrecht*, 2014, 6 vom 24.7.2014, und Ch. Köpl, *Agrar- und Unweltrecht* 2014: 356–358.

IV. Die UTP-Richtlinie und ihre geplante Umsetzung im Rahmen des AgrarMSG

Nach der Novellierung des Agrarorganisationenrechts durch die GMO 2013 hat sich der konzeptionelle Blick der EU ausgeweitet. Sie rückte mehr und mehr die Lebensmittelkette als solche in den Fokus. Denn offenbar reichen die Möglichkeiten, sich zu Agrarorganisationen zusammenzuschließen, nicht aus, um das Ungleichgewicht in der Lebensmittelkette zu beseitigen. Ein Grund dafür ist, dass viele Urerzeuger leicht verderbliche Lebensmittel produzieren, die innerhalb kurzer Frist verkauft werden müssen. Hinzu kommt, dass nicht wenige Bereiche des Agrarmarktes nach wie vor durch strukturelle Überschüsse gekennzeichnet sind. Beides zusammen schwächt die Marktposition der Urerzeuger erheblich. Zusätzlich ist die Abnahmeseite teils beträchtlich konzentriert. Dem Zwischenhandel und den Verarbeitern wiederum steht in vielen EU-Mitgliedstaaten ein Oligopol auf der Ebene des Lebensmitteleinzelhandels gegenüber.

Dies alles führt in wichtigen Erzeugnisbereichen – darunter als einem sehr großen Sektor dem Milchbereich – zu teilweise nicht ausreichenden Erlösen der Urerzeuger. Die Lücke in den Erlösen muss dann durch staatliche Subventionen in Form der Agrardirektzahlungen und anderer ständiger Beihilfen sowie in Krisenzeiten durch Marktinterventions- und Sonderfördermaßnahmen ausgeglichen werden. Die Europäische Kommission versucht daher seit einiger Zeit, dieser unbefriedigenden Situation mit einer Reihe von Maßnahmen entgegenzuwirken. Neben einer Verbesserung der Transparenz der Marktgegebenheiten durch einen öffentlichen Zugang zu amtlichen Marktdaten sowie einer Verstärkung der Förderung zur Absicherung von Marktrisiken hat die Europäische Kommission 2018 nach eingehenden Vorarbeiten den gesetzgebenden Organen der EU den Legislativvorschlag einer „Richtlinie über unlautere Handelspraktiken in den Geschäftsbeziehungen zwischen Unternehmen in der Agrar- und Lebensmittelversorgungskette" unterbreitet. Dieser Vorschlag ist in geänderter Form durch die Richtlinie (EU) 2019/633 vom 17.4.2019 verwirklicht worden[292] und von den EU-Mitgliedstaaten bis zum 1.5.2021 legislativ umzusetzen. Spätestens ab 1.11.2021 muss das jeweilige nationale Recht anwendbar sein.

[292] Vgl. dazu Ch. Busse, L. Glas, Vom Legislativvorschlag zur Bekämpfung unlauterer Handelspraktiken über genossenschaftliche Verbandsstrafen und das Chicorée-Urteil des EuGH bis zur Änderungsverordnung (EU) 2017/2393 – Bericht über die gemeinsame Sitzung der Ausschüsse für Agrarförder- und Marktorganisationsrecht sowie für Agrarwirtschaftsrecht am 26.4.2018 in Harsewinkel, *Agrar- und Umweltrecht*, 2018: 290–293, und Ch. Busse, Zur Richtlinie (EU) 2019/633 über unlautere Handelspraktiken in der Agrar- und Lebensmittelversorgungskette sowie zur Konzeption der Grünen Architektur im Rahmen der laufenden GAP-Reform – Bericht über die 6. Sitzung des Ausschusses für Agrarförder- und Marktorganisationsrecht am 9.5.2019 in Bad Herrenalb, *Agrar- und Umweltrecht*, 2019: 311–313.

Auf der Seite, die durch das neue Recht – nach der englischen Bezeichnung „unfair trading practices" UTP-Recht genannt – geschützt werden soll und daher Rechte aus dem UTP-Recht ableiten kann, stehen im Rahmen der Urerzeugungsebene nicht nur die einzelnen Landwirte, sondern auch Erzeugerorganisationen und deren Vereinigungen, wie Erwägungsgrund 10 der Richtlinie (EU) 2019/633 erläutert. Besonders betont wird dabei, dass sowohl anerkannte als auch nicht anerkannte Erzeugerorganisationen und Vereinigungen erfasst werden. Zudem sollen dadurch landwirtschaftliche Genossenschaften miteingeschlossen werden. Für den Weinbereich wird zugleich in Erwägungsgrund 19 auf Musterverträge hingewiesen, die Agrarorganisationen ausarbeiten können und die sich nach Art. 164 GMO für allgemeinverbindlich erklären lassen. Erwägungsgrund 31 geht noch besonders auf das Beschwerderecht von Agrarorganisationen ein. So dürften die Agrarorganisationen eine Beschwerde stellvertretend für ihre Mitglieder erheben.

Rechtssystematisch handelt es sich nur bei den genannten Einzelpunkten um Agrarorganisationenrecht, während die Richtlinie (EU) 2019/633 insgesamt am ehesten dem öffentlich-rechtlichen Wirtschaftsaufsichtsrecht zugeordnet werden kann, wie es auch in anderen Wirtschaftsbereichen besteht. Es werden Aspekte des so genannten Lauterkeitsrechts – in Deutschland mit dem Gesetz gegen den unlauteren Wettbewerb zivilrechtlich ausgestaltet – mit der öffentlich-rechtlichen Bekämpfung missbräuchlicher Wettbewerbspraktiken kombiniert. Derartige öffentlich-rechtliche Regelungen finden sich im GWB in horizontaler Weise und in einigen Sektorgesetzen – beispielsweise im Bereich der Telekommunikation – in spezieller Weise ausgeformt. Auf Grund der punktuellen direkten Anknüpfung an die Agrarorganisationen und der generellen Verbindung zum Gedanken der Stärkung der Urerzeugungsseite geht in Deutschland die Tendenz dahin, die Richtlinie (EU) 2019/633 im AgrarMSG und in der AgrarMSV umzusetzen, zumal bislang in Deutschland auf Bundesebene kein umfassendes Gesetz für den Agrarbereich besteht[293].

Dadurch würde sich der Charakter des AgrarMSG als einem bislang fast ausschließlich der Durchführung des EU-Agrarorganisationenrechts gewidmeten Rechtsakt erweitern. Während das Agrarorganisationenrecht nach wie vor den Schwerpunkt des Gesetzes ausmachen würde, käme durch die Aufnahme des Rechts der unlauteren Handelspraktiken im Agrar- und Lebensmittelsektor ein weiterer Regelungsbereich hinzu, der auch Konstellationen beinhaltet, in denen die Urerzeuger keine unmittelbare Rolle spielen. Vermutlich wird sogar der Hauptteil der kommenden Einzelfälle entsprechend einzuordnen sein, da die Geschäftspraktiken des Oligopols des Lebensmitteleinzelhandels gegenüber den Herstellern der Agrarverarbeitungserzeugnisse im Fokus stehen werden.

[293] Vgl. zur Frage eines derartigen Gesetzes zuletzt Ch. Busse, Ein neues Landwirtschaftsgesetz? – Überlegungen zur „Leipziger Erklärung" des Deutschen Naturschutzrechtstages vom 25.4.2018, *Natur und Recht*, 2019: 807–813.

V. Das EuGH-Urteil vom 13.11.2019 in der Rechtssache C-2/18

Wie schwierig im Einzelnen das Verhältnis der vorliegend dargestellten Normen untereinander ist, zeigt plastisch das Urteil des EuGH vom 13.11.2019 in der Rechtssache C-2/18[294]. In Litauen erging 2015 ein Gesetz, mit dem unfaire Handelspraktiken im Milchbereich untersagt werden sollten. Unter anderem ordnet das Gesetz an, dass eine Molkerei allen Milcherzeugern, die eine bestimmte Tagesmenge an Rohmilch an die Molkerei liefern, derselbe Preis zahlen muss. Zu diesem Zweck finden sich zehn Gruppen gebildet. Die kleinste Gruppe umfasst Anlieferungen bis 100 Kilogramm und die größte Gruppe Anlieferungen von mehr als 20.000 Kilogramm. Nur Milcherzeuger, die ihre Rohmilch über eine Erzeugerorganisation an die Molkerei liefern, sind von der Regelung ausgenommen. Hintergrund ist, dass in Litauen mehr als 20.000 sehr kleine Milcherzeuger vorhanden sind, deren Rohmilch von sechs Verarbeitungsunternehmen gekauft wird. Die flächendeckende Gründung von Erzeugerorganisationen, mit deren Hilfe die einzelnen Milcherzeuger ihre Marktmacht erhöhen könnten, ist bislang in Litauen nicht gelungen.

Innerhalb des litauischen Parlaments war das Gesetz umstritten. Eine Gruppe von Parlamentariern, die das Gesetz abgelehnt hatten, beantragte beim litauischen Verfassungsgericht eine Überprüfung des Gesetzes. Das litauische Verfassungsgericht legte daraufhin dem EuGH die Frage vor, ob das Gesetz in dem beschriebenen Punkt gegen die GMO verstößt. Vor dem EuGH wurde in der Folge die Frage erörtert, ob die Vertragsregulierungsbestimmung des Art. 148 GMO eine derartige indirekte Preisfestsetzung untersagt. Der EuGH stellte fest, dass „mangels eines Preisfestsetzungsmechanismus [in der GMO] die freie Bestimmung der Verkaufspreise auf der Grundlage des freien Wettbewerbs einer der Bestandteile der [GMO] und Ausdruck des Grundsatzes des freien Warenverkehrs unter Bedingungen wirksamen Wettbewerbs“ ist. Mithin gestatte – so der EuGH weiter – die GMO grundsätzlich keine Festsetzung von Mindestkaufpreisen durch die Mitgliedstaaten. Art. 148 GMO verfolge ebenfalls diesen Grundsatz, indem er den Kaufpreis ausdrücklich als frei verhandelbar einstufe. Auch charakterisiere Erwägungsgrund 138 der GMO die Vertragsregulierung als Beitrag zur Vermeidung unfairer Handelspraktiken.

Indes sollte – wie der EuGH weiter festhielt – mit Art. 148 GMO nicht die Materie der unlauteren Geschäftspraktiken abschließend geregelt werden. Dies ergebe sich auch daraus, dass der EU-Gesetzgeber erst 2019 die Richtlinie (EU)

[294] EuGH, Urteil vom 13.11.2019, Rechtssache C-2/18 (Lietuvos Respublikatos Seimo), ECLI:EU:C: 2019:962. Generalanwalt Bobek spricht in seinen zugehörigen Schlussanträgen vom 7.3.2019, ECLI:EU:C: 2019:180, Randnummer 54, von der „in der Tat recht komplexen Struktur” des Art. 148 GMO.

2019/633 verabschiedet habe. Nunmehr unterfalle allerdings die Thematik den Vorgaben der Richtlinie (EU) 2019/633. Die Richtlinie (EU) 2019/633 entfalte nach ständiger Rechtsprechung des EuGH bis zum Ende ihrer Umsetzungsfrist wie jede Richtlinie eine Vorwirkung, die beinhalte, während der Umsetzungsfrist nicht dem Sinn und Zweck der Richtlinie (EU) 2019/633 zuwiderzuhandeln. Ob die litauische Regelung mit der Richtlinie (EU) 2019/633 vereinbar ist, war daher anschließend vom litauischen Verfassungsgerichtshof zu prüfen. Ebenfalls gab der EuGH dem litauischen Verfassungsgerichtshof die Prüfung auf, ob das litauische Gesetz geeignet ist, die von ihm verfolgten Ziele zu erreichen und dadurch die mit dem Gesetz einhergehende Einschränkung des Wettbewerbs gerechtfertigt werden kann[295].

VI. Ausblick auf die derzeit verhandelte GAP-Reform

Inzwischen ist hinreichend deutlich geworden, dass das EU-Agrarorganisationenrecht unter den Aspekten der Anwenderfreundlichkeit, der Kohärenz und der Beseitigung unklarer Punkte Optimierungsbedarf besitzt. Trotzdem hat die Europäische Kommission im Rahmen ihrer Legislativvorschläge für die Gemeinsame Agrarpolitik ab 2021, die von ihr Anfang Juni 2018 vorgelegt worden sind, keine einzige Änderung im Bereich des Agrarorganisationenrechts vorgesehen[296]. Offenbar möchte sie erst die Auswirkungen der 2017 vorgenommenen Modifikationen abwarten. Mittlerweile steht jedoch fest, dass die GAP-Reform nicht vor Ende 2020 beschlossen sein wird und die neuen Regelungen vermutlich erst im Laufe des Jahres 2021 in Kraft treten oder gar erst ab 1.1.2022 gelten werden.

Das Europäische Parlament war von Beginn an mit dieser Zurückhaltung der Europäischen Kommission nicht einverstanden. In dem Entwurf seines Berichtes zum Entwurf der GMO-Änderungsverordnung vom Mai 2019 sind daher zahlreiche Änderungen im EU-Agrarorganisationenrecht vorgesehen[297]. Diese reichen von Ergänzungen der von Agrarorganisationen verfolgbaren Zielsetzungen über eine neue Bestimmung zu länderübergreifenden Agrarorganisationen bis hin zu einer Konnexitätsbestimmung zwischen der Allgemeinverbindlichkeitserklärung und der kartellrechtlichen Krisenvorschrift des Art. 222 GMO. Zudem soll die Regelung der Angebotssteuerung durch Agrarorganisationen auf alle Agrargeoschutzerzeugnisse erstreckt werden. Ferner sind eine rechtliche Verankerung der schon existenten „EU-Beobachtungsstelle für Agrarmärkte" und ein Frühwarnme-

[295] Generalanwalt Bobek (Fn. 294), Randnummer 43 ff, hat hingegen in dem litauischen Gesetz einen Verstoß gegen die GMO gesehen.

[296] Vgl. KOM (2018) 394 endgültig vom 1.6.2018.

[297] Europäisches Parlament, Ausschuss für Landwirtschaft und ländliche Entwicklung, Dokument A8-0198/2019 vom 7.5.2019.

chanismus bezüglich Marktstörungen vorgesehen. Gegenwärtig bleibt abzuwarten, in welchem Umfang das neu gewählte Europäische Parlament diesen Bericht bestätigt oder sogar noch weitere Änderungen im Agrarorganisationenrecht fordert.

Ausgehend von dem Projekt des „Green Deal" hat die Europäische Kommission im Dezember 2019 für den Agrarbereich eine „Farm to Fork Strategy" für Frühjahr 2020 angekündigt[298]. Erste Signale lassen erkennen, dass dabei auch die Lebensmittelkette einer näheren Analyse unterzogen werden wird. Möglicherweise wird dabei den Agrarorganisationen eine besondere Rolle zukommen. Schon jetzt enthält die GMO unter den Zielsetzungen für die Agrarorganisationen Umwelt- und Nachhaltigkeitsgesichtspunkte. Das „Green-Deal-Projekt" besitzt das Potential, auch die im Juni 2018 vorgelegten Legislativvorschläge für die GAP ab 2021 nicht unerheblich zu beeinflussen.

[298] Vgl. Europäische Kommission, From Farm to Fork – The European Green Deal, Dezember 2019.

Chapter VII

THE ITALIAN LEGISLATION ON PRODUCER ORGANISATIONS IN AGRICULTURE TOWARDS THE EVOLUTION OF THE EUROPEAN FRAMEWORK

Irene Canfora

I. The European framework on producer organisations in the agricultural sector

In the European Union, producer organisations are increasing their role in the functioning of the agricultural and food market, since the Common Agricultural Policy reform of 2013 entrusted them to carry out several activities impacting on market governance.[299]

Indeed, after the progressive reduction of price support measures, the new regulatory framework for the agri-food sector in Europe, laid down by the Common market regulation defined in Reg. no. 1308/2013 of 17 December 2013, establishing a common organisation of the markets in agricultural products, definitively entrusts economic operators to play an essential role in the governance of the market, by the implementation of the activities laid down by groups of agricultural producers through the establishment and recognition of several entities: producer organisations, interbranch organisations, as well as groups of producers of Protected geographical indication and Protected denomination of origin. As far as producers organisations are concerned, in particular Reg. no. 1308/13 defines their legal structure, as well as the goals that should be reached by these organisations, and the specific activities to be carried out for the market functioning (art. 152 and the following). Indeed, the regulation lays down common rules concerning the definition and recognition of producer organisations, the require-

[299] I. Canfora, Organizzazione dei produttori agricoli, Digesto discipline privatistiche, XI aggiornamento UTET 2018: 362ff; D. Gadbin, L'« OCM unique »: le déclin de la régulation publique des marchés, *Revue de Droit Rural*, 2014, 423: 17ff; on the topics of the recent evolution of Common agricultural policy, see: J. McMahon, M. Cardwell, *Research Handbook on EU Agricultural Law*, Cheltenham-Northampton, 2015.

ments that are compulsory, provided by the statute, and that the Member States must check, in the event of request of recognition.

Firstly, the relevance of producer organisations within the new Common Market Organisation regulation is based on the need to enforce the concentration of supply, and to optimize the production costs. Farms are still considered, generally in any sectors, to be small and weak economic operators, in respect of the other economic subjects in the agri-food chain. The weakness of agricultural business can be considered as a problem for the European legislator, since the bargaining power of agricultural producers does not allow them to obtain the value of primary products along the food chain, when the price is mainly defined by the purchaser. Indeed, market functioning should be enhanced by the increase of farmers' bargaining power, as far as the concentration of supply reduces the cost of transactions.

Producer organisations may also promote activities not directly related to the selling of products, like services for agricultural business that each farmer can hardly obtain alone at reasonable cost. Examples are activities such as joint packaging, labelling or promotion, the organisation of quality control, the joint procurement of inputs, the joint use of equipment or storage facilities, and the management of waste directly related to the production. Any integration of producers' activities should generate gains in efficiencies. The combination of commercialisation-related activities with other types of activities aims at improving the competitiveness of producers, thereby reinforcing their position in the supply chain. Therefore, all these activities contribute to the functioning of the agricultural common market.

Secondly, in Regulation 1308/13, producer organisations are considered as key representatives of the agri-food chain, since these entities may participate in interbranch organisations and in agreements signed by interbranch organisations. Also these entities are strongly promoted by reg. 1308/13. Interbranch organisations, for the purpose of art. 157, are constituted of representatives of economic activities linked to the production, and to at least one of the stages of the supply chain (processing, trade and the distribution of products in one or more sectors). The goal of these bodies is to pursue the interests of their members and of consumers, by coordinating the market activities, with the aim of finding a better way to place the products on the market, by means of market studies or by exploring potential external markets or market segments, drawing up standard forms of contract compatible with Union rules, developing initiatives to strengthen the economic competitiveness and innovation of the products, etc.

Thirdly, the European regulation allows the recognised groups of producers representative of the production in a geographical area (both producers organisations or interbranch organisations) to ask the Member State for a temporary extension of their internal rules, if these rules are considered profitable for the economic situation of the productive sector. The "extension of rules" is a significant legal tool, which increases the function of private operators in the governance

of the market and in the definition of the rules of conduct of economic operators established by themselves.

However, it is important to point out that the activity of producer organisations, within the provision of the Regulation 1308/13, must be carried out on the basis of competition rules specially applicable to the agricultural sector. In general, on the one hand, Regulation 1308/13 provides derogations from competition rules for the joint selling of producer organisations. Indeed, Article 210 establishes that "Article 101(1) TFEU shall not apply to agreements, decisions and concerted practices of interbranch organisations recognised under Article 157 of this Regulation with the object of carrying out the activities listed in point (c) of Article 157(1)". The reason for this provision is that the potentially negative impact of the joint distribution, including by joint selling platforms or joint transportation as well as joint processing, is compensated by the effects of efficiency for small businesses operating in the agricultural sector.

Then, on the other hand, the respect for general competition rules by the producer organisation includes the prohibition of price fixing. Furthermore, the Commission or the national competition authorities can evaluate of the impact of the agreement on the common policy goals, in this case asking for the repeal of agreements signed by groups of farmers.

Recently, the legislative framework on producer organisations has been extensively discussed by the European Court of Justice in the Endive case, published a few days before the approval of Regulation no. 2017/239 of 13 December 2017, the mid-term reform regulation, also called the "Omnibus Regulation".

The Court of Justice, in its judgement of 14 November 2017, case C-671/15, concerning the fruit and vegetable sector, reaffirms the limit of the marketing activities of producer organisations, in accordance with the rules concerning the competition law in the agricultural sector: the European rules must be interpreted as meaning that "practices that relate to the collective fixing of minimum sale prices, a concertation on quantities put on the market or exchanges of strategic information, cannot escape the prohibition of the agreements, decisions and concerted practices laid down in Article 101(1) TFEU, if they are agreed between a number of producer organisations or associations of producer organisations, or are agreed with entities not recognised by a Member State in order to achieve an objective defined by the EU legislature under the common organisation of the market concerned, such as professional organisations not having the status of producer organisation, association of producer organisation or interbranch organisation"; furthermore, "practices that relate to a concertation on prices or quantities put on the market or exchanges of strategic information may escape the prohibition of agreements, decisions and concerted practices laid down in Article 101(1) TFEU if they are agreed between the members of the same producer organisation or the same association of producer organisations recognised by a Member State and are strictly necessary for the pur-

suit of one or more of the objectives assigned to the producer organisation or association of producer organisations concerned in compliance with EU legislation".[300]

As far as recognized producer organisations are concerned, it should be noticed that, after the CAP mid-term reform of 2017, laid down by regulation 2017/2393, the "control" by the competition authorities on those activities, considered as strategic for market functioning (for example concentration of supply), seems to be limited. Indeed, the concentration of supply is considered as a fundamental goal of the producer organisation: therefore, it is outlined in the regulation (Article 152, § 1a) that "by way of derogation of art 101(1) TFUE, a producer organisation recognised under paragraph 1 of this Article may plan production, optimise the production costs, place on the market and negotiate contracts for the supply of agricultural products, on behalf of its members for all or part of their total production".

With regard to the application of the competition rules, it is still possible that such activities are declared incompatible with the objectives set out in art. 39 of the Treaty, any decision of the national authority asking for a modification or a repealing of that measure can be applied only for the future (Article 152 par. 1c). It is clear that Reg. 1308/13 aims at entrusting the recognised producer organisations with the functions of market governance, in particular with regard to the implementation of the supply of agricultural products through the role of negotiation of the supply by the recognised groups of producers.

However, the latest version of the EU rules on producer organisations has been criticized by a study commissioned by Agri Committee (2018), which outlines the need for a wider consideration of the speciality of competition rules in the agricultural sector, which should not be considered as strict exemption to the general rules of art. 101, since the responsibilities and objectives of the organisations defined by the CAP necessarily escape the application of the general competition rules.[301]

II. The origins of the European legislation concerning groups of farmers and the first development of Italian legislation

The European Union's approach aimed at widening the role of producer organisations in the supply chain is in fact quite new. In the past, the European legislation –

[300] For a critical analysis of the decision, see A. Jannarelli, Dal caso "indivia" al regolamento omnibus n. 2393 del 13 dicembre 2017: le istituzioni europee à la guerre tra la PAC e la concorrenza?, *Diritto Agroalimentare*, 2018: 109ff; C. Del Cont, Affaire Endives" suite et bientôt fin: la Cour de Cassation saisit la Cour de Justice de l'Union Européenne – réflexions sur l'arrêt du 8 décembre 2015, *Rivista Diritto Agrario*, 2016: 44; see also: P. Cavarzeran, Associazionismo dei produttori agricoli e diritto della concorrenza dell'Unione Europea, *Rivista di Diritto agrario,* 2019, II: 5ff.

[301] C. Del Cont, A. Jannarelli, *Research for AGRI Committee – New competition rules for agri-food chain in the CAP post 2020*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, 2018.

apart from the special provision concerning competition rules stipulated firstly by Reg. no. 26, in 1962, later by Reg. 1184/04, and finally by the abovementioned rules of Reg. 1308/13 – defined the rules for the implementation of producers associations in specific member states, where the dispersion of supply was greater. Firstly, Reg. 1360/1978 included Italy, several regions of France, and Belgium among the areas where the farmers' association should have been implemented. Then, Regulation 1360/1978 was repealed and replaced with Reg. 952/1997.[302] Overall, the general legislation on farmers' associations (compliance with which was the condition for access to financial support for producer associations) was in force until 1999.

In general, the characterization of groups of producers was aimed at the definition of common rules on production, in particular on product quality or the use of organic practices; common rules for placing goods on the market and rules on production information, with particular regard to harvesting and availability. None of the rules of the European Regulation, in this phase, required the groups of producers to negotiate their production or to concentrate the supply.

Later, after the Treaty of Athens of 2004, a similar special provision for supporting the establishment of producer associations in the enlargement Countries was laid down by Reg. 1698/05, art. 35, which was applicable only to new Member states. Conversely, it should be noticed that the European legislation provided for, since the origin of the Common Market organisation, especially in the fruit and vegetable sector, the establishment of producer organisations as a structural tool for the functioning of the market. Indeed, in this field, the fragmentation of the offer as well as the perishability of the products needed a concentration of supply and an organisation of the activities, which is possible only through the governance of activities entrusted to groups. The groups of producers in this sector must necessarily concentrate the supply, by selling the production of all their members through the association: in fact, the possibility to sell the products directly on the market is expressly limited, by the European regulation, to a limited part of the production (20%).

Therefore, the regulative framework laid down in the fruit and vegetable sector should be considered as a permanent model in the European legislation; meanwhile a (softer) general legislation on groups of producers (farmer associations, producer organisations) appeared only for a short period and for special Countries, with the purpose of increasing the presence of groups of farmers, without providing for a marketing role in the supply chain uniquely aimed at the concentration of the offer. With regard to the Italian legislative framework, the imple-

[302] This regulation was applicable in Italy, in France (in the regions of Languedoc-Roussillon, Provence-Alpes-Côte d'Azur, Midi-Pyrénées, Corsica, the departments of Drôme and Ardèche and in the overseas departments), in Belgium, in Greece, in Spain, in Portugal, in Ireland, in Austria, and in Finland.

mentation of the European rules was laid down between the 1960s and 70s. In this period, in Italy saw the introduction of special legislation concerning, on the one hand, the regulation of groups of producers in the fruit and vegetable sector (law no. 622/1967) and, on the other hand, a general law concerning the establishment of farmers associations (law no. 674/78). Law no. 674/1978, enacted with the aim of implementing EC reg. no. 1360/78, for the first time in Italy provided the general requirements for the recognition of groups of producers, established for homogeneous productive sectors. Indeed, the national legislation defined the mandatory requirements of the statute (in particular: the prohibition on being a member of more than one group from the same productive sector; the internal representative system; control on the members' fulfilment of contractual obligations related to the economic functions of the organisation), provided that the administrative Regions have the role to define the further conditions for approval, with the purpose of providing a financial contribution to the groups of producers.

A significant revision of the Italian legislation on producer organisations was introduced in 2001 by the legislative decree no. 228 of 18 May 2001, the Agricultural orientation and modernization law, which introduced into Italy a new perspective for the regulation of the agricultural sector. The decree is still considered a milestone in the Italian legislation on agriculture, since it provided a new version of Article 2135 of the Civil Code, defining agricultural business and related activities in the national legislation; it introduced a set of rules implementing the contract between farmers and the public administration, aimed at enforcing agricultural production; it also provided rules on the quality protection and identification of agricultural production; as well as a framework of rules on producer organisations and interbranch organisations.

Regarding producer organisations, Article 26 and Article 27 of the decree 228/2001 (currently repealed and replaced by legislative decree no. 102/2005) draw up a new legislative model of producer organisations, with the purpose of implementing their role in the enforcement of the supply within the agri-food chain.[303]

It is interesting to notice that the Italian choice of 2001 was completely uncoupled from the contemporaneous European legislative framework, in which the interest of a general regulation of agricultural groups diminished, limiting the regulation only to the fruit and vegetable sector. As outlined before, in this sector the producer organisations played an essential role in the common organisation, defined by the European regulation 2200/96, in which producer organisations were considered the key subject for the functioning of the supply chain. Therefore, they must concentrate the supply, by marketing the whole production of their members.

[303] A. Jannarelli, Comment to Art. 26 of legislative decree 228/2001 and I. Canfora, Comment to art 27 of legislative decree 228/2001, *Rivista di diritto agrario*, 2002: 622ff; L. Russo, Commentario all'art. 26 d. lgs 228 del 2001, *Nuove Leggi Civili Commentate*, 2001: 862.

In 2001, the legal scheme established at the European level only for the fruit and vegetable sector, was extended in Italy to all agricultural sectors. As consequence of the mandatory marketing role of all the producer associations in Italy, the national legislation established that the organisation has to take the form of a specific legal type of company. Consequently, a legal group has to ensure an adequate financial structure, which, if lacking, will exclude it from the legal qualification of a producer association. Indeed, as outlined in the literature, such a definition of "producer organisation" has the effect of separating the subjects with an economic function in the agri-food chain, entrusted to groups of economic operators (mainly: concentration of offer), from the role played by the representative organisations of farmers (national or local trade union organisations representative of business operators in agriculture).[304]

III. The Italian legislation on agricultural producer organisations

Currently, the legislation in force on producer organisations in Italy is legislative decree no. 102 of 2005. As a general legislative act, decree 102/2005 currently establishes the legislative framework of the agricultural market's functioning, as well as the definition of subjects operating within the agri-food chain, i.e.: producer organisations and interbranch organisations. Furthermore, the national legislation implemented the European rules defined by Reg. 1308/13, by several ministerial decrees, defining the special rules required by the updated European framework after CAP 2014-20.

The legislative decree of 2005 was introduced with the purpose of regulating the agricultural market. For this reason, it is oriented to emphasize the role of the subjects on the market and their activities along the agri-food chain – on the model of the producer organisations operating in the fruit and vegetable sector, for the purpose of EU regulations.

Firstly, the legislative decree establishes the goals of the legislation, pointing out that the main goal of producer organisations is to sell the production of their members on the market: for this purpose, art. 2 specifies that the organisation has to: ensure that the production is planned and adjusted to the demand, concentrate the supply and place the production of their members on the market, manage the market crisis, reduce the production costs, promote environmental practices (including practices involving environmental protection, animal welfare, quality

[304] Cf. A. Jannarelli, *Commento all'art*: 634: the author shows that the rule excludes all the groups of producers, with a representative function of agricultural business operators, that played a role in the framework of the agricultural market, in accordance with the previous national legislation.

protection of food, traceability, biodiversity, and landscape protection); ensure the transparency of the contractual relationships along the food chain by defining the price of the products sold by the members, and promote assistance for the implementation of logistic platforms, new technologies and access to external markets.

Strictly related to these goals is the provision on the establishment of a financial fund of the organisation (which should be implemented by public supporting measures), as well as the legal qualification of the entity recognised as a "producer organisation". In terms of the legal qualification, art. 3 provides that producer organisations must be a limited company, the corporate purpose of which is to sell the agricultural products of the members and whose share capital is referred to farmers or farmers' co-operatives.

Alternatively, the legal scheme can be that of the agricultural co-operative or of a consortium of co-operatives; finally, the producer organisation shall be established as a consortium company, as defined by Article 2615-*ter* of the Civil Code, whose members are farmers or co-operatives of farmers. In a nutshell, the essential requirement is that the entity asking for recognition shall be constituted only by farmers (or group of farmers). In practice, the prevalence of producer organisations constituted in Italy choose the legal scheme of co-operatives or of a consortium company, since these legal forms are the most supportive form in terms of the purpose of the legislation, allowing the participation of farmers in decision making and in supplying the (whole) production to the organisation. Indeed, the principle of democratic participation of the members in the decisions of the organisation, as well as the "open-door" principle (meaning that the organisation should include the producer of the represented productive sector if they request to participate) is really hard to square with the limited commercial company rules, which are based on capital participation.[305] Furthermore, the Italian legislation defines the content of the statute of the producer organisation, laid down at European level by Article 153 of Regulation 1308/13. Since the model of the Italian legislation was laid down taking into account the provision of EU Reg. no. 2200/96 on the fruit and vegetable sector, the national provision is still fully compatible with the European legislation in force. It should be noticed, however, that there is a problem of coordination between internal rules in Italy, due to the sequence of sources of law of different levels, i.e., the legislative act of 2005 and the ministerial decree implementing the European rules.

With the aim of updating the national legislation on the agricultural market regulation, the effect of which would have been to solve the conflict between internal legislative texts, Law no. 154 of 28 July 2016 delegated to the government the task of revising the main topics on market regulation, but hardly any of them

[305] A. Jannarelli, *Commento all'art. 26 del decreto "agricoltura"*: 642. Cfr. L R. Russo, *Commentario all'art. 26 d. lgs 228 del 2001*, 862. A. Jannarelli, *Il diritto dell'agricoltura nell'era della globalizzazione*, Bari, 2003: 25ff.

have been implemented by further regulative acts, and the legislative decree of 2005 has not been modified.

Therefore, decree no. 205 of 2005 is still in force, although the ministerial decree of 3 February 2016 no. 387, aimed at the implementation of EU Regulation 1308/13, introduced provisions different from those already defined by the legislation in force: for example the minimum period of the membership has been modified to a minimum period of one year by the decree of 2016, in accordance with the (minimum) period of membership required by the European regulation; while the legislative decree still establishes a longer period of three years.[306] More recently, Article 8 of the ministerial decree no. 1108 of 31 January 2019 amended the decree of 2016, establishing that it applies to recognised producer organisations, for the purpose of EU Regulation 1308/13, while the legislative decree no. 102/2005 shall apply to sectors not complied by the EU Regulation 1308/13. However, this provision does not resolve the conflict of law, since the general national legislation is still in force, and the restriction has been established by legislative act of a secondary level.

However, for the purpose of law no. 102 of 2005, the statute has to include the following elements:

- the duty to apply the rules adopted by the producer organisation relating to marketing and protection of the environment;
- the possibility for not more than one producer organisation for each sector of production to be a member;
- the duty to sell directly through the organisation at least 75% of their production (while the 25% shall be sold directly by the farmer to different purchasers);
- the minimum period of membership of three years (one year, according to the ministerial decree of 2016);
- internal rules aimed at guaranteeing the democratic control of the organisation by the farmers;
- internal sanctions for the violation of statutory obligations, in particular the payment of the financial contribution for membership;
- accounting rules and budget rules.

Furthermore, the organisation shall be constituted by a minimum number of members, and a minimum production volume sold through the organisation (defined by the ministerial decree of 3 February 2016, no. 387, amended by ministerial decree 31 January 2019 no. 1108).

[306] This conflict between the internal sources of law has been outlined by A. Jannarelli, Le organizzazioni dei produttori e le organizzazioni interprofessionali, in: *Profili giuridici del sistema agro-alimentare e agro-industriale. Soggetti e concorrenza*: 105. The author concludes that the provision of 2016 shall be considered unlawful in consideration of the nature of the ministerial decree as a legislative act of second level.

The organisations are recognised at the local level, by the Regions, or, in the case of a number of geographical areas, by the Ministry of agriculture. The activities laid down by producer organisations are defined by art. 7 of the decree, providing the operative programs established by the organisations. These programs are developed on the basis of the operational fund, including the contributions of the members and public funding. The programs provide actions aimed at enhancing the quality of production and its value, environmental production techniques, as well as the definition of framework contracts, as defined in art. 10 of the legislative decree.

In any case, the current national legislation includes both a general ministerial decree implementing Reg. 1308/13 and special rules which refer to specific sectors: e.g., the ministerial decree of 13 February 2018 no. 617 on olive oil producer organisations and the ministerial decree of 13 August 2019 no. 8867, applicable to the fruit and vegetable sector.

The definition of a framework contract concluded by the producer organisation is aimed at defining the conditions for negotiation with the purchaser of the member's production. In particular, the framework can include the definition of different price conditions depending on the quality of the product, the production process, and the market trends. This definition of a framework contract has to be considered as having significant relevance, since the national legislation (in accordance with the contractual relationship rules in the food chain laid down by Reg. 1308/13) currently provides that the price of the purchase of agricultural products shall be clearly defined at the moment of the conclusion of the agreement (Article 62 of Law 27/2012).

In conclusion, the possibility of defining the price (or the price criteria) for the whole production transferred by the members to the organisation, should enforce the role of producer organisation: the collective negotiation of price is defined on the basis of contents laid down by the framework contract, which takes on a new significance following the contractual relationships rules in the food chain.[307]

IV. Conclusions

When considering the extended presence of producer organisations in the European agricultural market, as a tool for the governance of the agricultural food chain, it is evident that the Italian legislation currently in force is laid down in accordance with the European legal framework. This is true in particular considering that the possibility of recognising producer organisations is subject to the development of the marketing role of producer organisations, which increases

[307] I. Canfora, I contratti di coltivazione, allevamento e fornitura, in: AAVV: *I contratti del mercato agroalimentare*, Napoli, 2013: 152.

their effective role as a "subject governing the market". However, the exclusion of the recognition of producer organisations, limiting their action to the regulative activity of their members, reduces the degree of flexibility allowed by Regulation 1308/13. Indeed, after the CAP reform of 2013, the role of producer organisations should also be considered in terms of their involvement in different activities, for example the implementation of environmental standards of production, without a specific focus on the concentration of the offer.[308]

This "marketing approach" laid down in Italian legislation is able to exclude from the field of recognized producer organisations groups of producers whose purpose is to provide different services to enhance the multifunctionality of agriculture. An example is the possibility to establish groups of farmers involved in activities of "social farming", including educational activities, welfare support for workers with disabilities, and pet-therapy activities. Although the Italian legislation expressly provides for the establishment of producer organisations in this field (Article 4 of the Law no. 141/2015, referred to "the products of the social agriculture"), the requirement currently stipulated in the general legislative decree 102/2005 seems impossible to fulfil: if we just consider that such farmers activities do not produce goods – but only services, for the public interest.[309] In conclusion, the Italian choice aimed at limiting the function of producer organisations only to the "marketing role" can be considered as a barrier to the development of different functions and activities of producer organisations, not only in terms of the production delivery within the agri-food chain, but also different "governance rules" of agriculture.

[308] On the diffusion of the producer organisationin Italy, before the CAP reform 2014-20, see G. Petriccione, R. Solazzo, Le organizzazioni dei produttori nell'agricoltura italiana, *Agriregionieuropa*, September 2012: 30; M. D'Alessio, Le Organizzazioni dei produttori: una nuova prospettiva contrattuale, *Economia Agroalimentare*, 2013: 69 ff.

[309] See I. Canfora, L'agricoltura come strumento di welfare. Le nuove frontiere dei servizi dell'agricoltura sociale, *Diritto Agroalimentare*, 2017: 5.

Chapter VIII

THE LEGAL RULES FOR ASSOCIATIONS OF AGRICULTURAL PRODUCERS IN POLAND

Aneta Suchoń

I. Introduction

Agriculture is an important branch of the Polish economy. There are over 1 million agricultural holdings operating in this country. In 2018, 1,428,800 farms used 1,469,000 ha of agricultural land and reared 9,842,500 large livestock units.[310] There were ca. 1,398,000 farms that used over 1 ha of agricultural land.[311] Yet the pace of the area structure changes is still slow. The fragmentation of agricultural farms persists at a high level.[312] According to the announcement of the President of the ARMA of 17 September 2019 on the size of the average area of agricultural land on farms in individual provinces, and on the average area of agricultural land on a farm in Poland in 2019, it was 10.95 ha.[313] More than half are the smallest farms, that is with up to 5 ha of agricultural land (they made up 28% of farm area). At the same time, a significant proportion of these farms is characterized by low economic potential and production efficiency. There were ca. 352,000 farms that used over 10 ha of agricultural land (72% of farms' area).[314] The average farm area increases each year. Despite this trend, it is still much smaller than in Germany or France.

The above statistical data shows that agricultural producers and their farms are a small unit in Poland and, therefore, joint action is extremely important. As-

[310] Central Statistical Office, *Rolnictwo w 2018 r.*, Available on-line at: <https://stat.gov.pl/obszary-tematyczne/rolnictwo-lesnictwo/rolnictwo/rolnictwo-w-2018-roku,3,15.html> [accessed 2.04.2020].

[311] Available on-line at: <https://swiatrolnika.info/rolnicza-statystyka-dane-gus-za-2018-rok> [accessed 2.04.2020].

[312] Central Statistical Office, *Rolnictwo w 2018 r.*, available on-line at: <https://stat.gov.pl/obszary-tematyczne/rolnictwo-lesnictwo/rolnictwo/rolnictwo-w-2018-roku,3,15.html> [accessed 2.04.2020].

[313] Available on-line at: <https://www.arimr.gov.pl/pomoc-krajowa/srednia-powierzchnia-gospodarstwa.html> [accessed 2.02.2020].

[314] Available on-line at: <https://swiatrolnika.info/rolnicza-statystyka-dane-gus-za-2018-rok> [accessed 1.03.2020].

sociations of Polish agricultural producers contribute to the improved productive capacity and competitiveness of the agricultural sector. They increase the value of agricultural producers' share in the food chain. For farmers who cooperate with others, it is easier to do farming business by means of the methods oriented towards environmental protection, to achieve the sustainable development of agriculture, and to introduce innovations which require high outlays.[315] Working together also helps them to take actions aimed at limiting the effects of climate change and using alternative sources of energy.

The aim of this chapter will be to assess whether the legal regulations in Poland are conducive to the association of agricultural producers. The issues related to the indicated issues are extensive, therefore only a selection will be addressed. First of all, I will focus on dairy co-operatives. Next, I will address farmers' co-operatives and energy co-operatives. In the last part, I will cover groups and associations of agricultural producers. The chapter will also indicate other possibilities of agricultural producers' associations, which have been operating in Poland for many years. Namely, associations of rural women, industry associations and machinery rings.

It should be emphasized that the Constitution of the Republic of Poland guarantees Polish farmers the right to associate. Reference should be made to Articles 12, 58 and 59 thereof. Thus, according to Article 12, the Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations.[316] Article 58 states that the freedom of association shall be guaranteed to everyone. Associations whose purposes or activities are contrary to the Constitution or statutes shall be prohibited.[317] Article 59 stipulates: The freedom of association in trade unions, socio-occupational organizations of farmers, and in employers' organizations shall be ensured.[318]

As rightly emphasized by E. Tomkiewiecz, "The freedom of association guaranteed by the Constitution of the Republic of Poland is particularly important for farmers because they operate in a dispersed manner, they have a very weak position in relation to public authorities and the sphere of agricultural services,

[315] For more detailed discussion, see: A. Suchoń, *Legal aspects of the organisation and operation of agricultural co-operatives in Poland*, Poznań, 2019: 10ff.

[316] Available on-line at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 1.05.2020].

[317] Art. 58 of the Constitution of the Republic of Poland states: the courts shall adjudicate on whether to permit an association to register or to prohibit an association from such activities. Statutes shall specify the types of associations requiring court registration, a procedure for such registration and the forms of supervision of such associations. Available on-line at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 1.05.2020].

[318] Available on-line at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 1.05.2020].

including g the agri-food industry (...). Therefore, such organisations can represent their collective interests much more effectively in relation to various entities".[319]

II. Dairy co-operatives

According to the Act of 16 September 1982 on Co-operative Law,[320] a co-operative is a voluntary association of an unlimited number of persons, with a variable composition and a share fund, which conducts joint economic activities in the interests of its members. It should be stressed that Article 1 of the Act stipulates that a co-operative may also carry out social, educational and cultural activities for the benefit of its members and their environment. The scope of legal regulations affecting the organisation and functioning of agricultural co- operatives is very wide.

The term "agricultural co-operative" is itself not a legal term in the Polish legal system. It can be found in literature,[321] draft bills,[322] and foreign legal systems.[323] Besides the farmers' co-operatives which were established under the Act of 4 October 2018 on Farmers' Co- operatives, in Poland co-operatives of agricultural producers have existed for many years, in the form of dairy co-operatives, co-operative agricultural producers' groups, "Samopomoc Chłopska" (farmers' self-help) co-operatives and others. Therefore the author of this chapter assumes that by agricultural co-operatives is meant co-operative entities engaged in agricultural production (agricultural holdings) and other entities operating in the agricultural sector, which are involved in at least one stage of such activities, or, operating more broadly in this sector. The members of such a co-operative are mainly agricultural producers.[324]

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[319] E. Tomkiewicz, Prawne formy zrzeszania się rolników i ich rola w reprezentowaniu interesów zawodowych, in: *Prawo rolne*, (ed.) P. Czechowski, Warsaw, 2020: 439ff.

[320] Consolidated text: Journal of Laws of 2018, item 1285 as amended.

[321] S. Wojciechowski, *Spółdzielnie rolnicze: jakie być mogą i powinny w Polsce według wzorów zagranicznych*, Poznań 1936; H. Cioch, Spółdzielnie rolnicze, in: *Zarys prawa spółdzielczego*, Warsaw, 2007; J. Bijman, R. Muradia, A. Cechin, Agricultural co-operatives and value chain coordination, in: B. Helmsing, S. Vellem (eds.), *Value chains, inclusion and endogenous development: Contrasting theories and realities*, Milton Park 2011: 82ff; A. Suchoń, *Prawna koncepcja spółdzielni rolniczych*, Poznań 2016: 8ff.

[322] *MPs draft of the law on agricultural co-operatives* 2003, Print No 2759 of 2004. The Sejm of the Republic of Poland, Available on-line at: <http://orka.sejm.gov.pl/proc4.nsf/drafts/2759_p.htm> [accessed 2.01.2020].

[323] Chapter III of the French Rural Code (*Code rural et de la pêche maritime*) applicable to Les societies co-operatives Agricole. See e.g. *Code rural et de la pêche maritime, code forestier, commenté*, La Rochelle 2014. The Italian legislature also uses the concept of agricultural co-operatives in the Civil Code, e.g. Article 2513 of the Italian Civil Code

[324] A. Suchoń, *Legal aspects of the organisation and operation of agricultural co-operatives in Poland*, Poznań, 2019: 7ff.

The milk co-operatives in Poland have been developing since the interwar period. Currently, there are more than 130 of them.[325] It is not their number, however, but their market share and how they contribute to the development of agriculture that matter most. Milk co-operatives in Poland have been expanding. Most of all, similarly to co-operative agricultural producer groups, milk co-operatives have taken over some of the activities connected with the agricultural activity conducted by a member–agricultural producer. Those activities include purchasing milk from members and supporting cattle breeding. The regulations do not define milk co-operatives. Therefore, their scope of activity is specified in a statute. They usually deal with the purchase and processing of milk. It needs to be pointed out that there are co-operatives which only deal with purchasing and do not engage in processing. However, there are not many entities of this kind. It is important to stress that milk products qualify as agricultural products under the Treaty of Rome and are listed in attachment 1.

Along with the main types of activities, some milk co-operatives engage in breeding milk cattle owned by the members, thereby increasing milk production and enhancing its quality. They take actions against cattle diseases and to promote hygiene and prevention principles. Moreover, they help to organize farms which specialize in milk production and delivery.[326] Such actions contribute to the development of the farms owned by milk producers and the innovative nature of the milk market. The milk co-operatives which deal with milk processing allow the producers to participate in another stage of the food chain, namely to make money not only from the sale of milk but also from the balance surplus coming from the processing activity. Poland's milk co-operatives increasingly often sell their products on market.

Many Polish dairy co-operatives are important on the market, not only in Poland. Some of their products are exported. For example, in 2018 the Mlekovita Group achieved a turnover of PLN 4,669.84 million[327] and employed over 2390 people. The group consists of over 13 production plants and 23 of its own distribution centres. The co-operative produces a wide range of over 400 brand dairy products and is the largest exporter of the dairy industry in our country.[328] The co-operative Mlekpol SM achieved a turnover of PLN 4,045.58 million[329], Łowicz

[325] *Spółdzielczość w liczbach*, Available on-line at: <http://ruchspoldzielcow.pl/baza-wiedzy/spoldzielczosc-w-liczbach> [accessed 10.05.2020].

[326] Available on-line at: <http://mleczarstwopolskie.pl/> [accessed 2.03.2020].

[327] Grupa Mlekowita [on-line]. Forum Mleczarskie, Available on-line at: <https://www.forummleczarskie.pl/FIRMY/0194/grupa-mlekovita> [accessed 2.01.2020].

[328] Ibid.

[329] *TOP 25 producentów branży mleczarskiej w 2018 r. Ranking pełny według obrotów za 2018 rok,* Available on-line at: <https://www.forummleczarskie.pl/FIRMY/TOP-POLSKA/2018> [accessed 4.02.2020].

OSM: PLN 1,281.61 million; Piątnica OSM: PLN 1,235.20 million; and Koło OSM; PLN 678,31 million.[330]

It is worth emphasizing that the milk market is very important for Polish producers. The total milk production of Poland in 2018 amounted to 13,768 million litres, which represented a 3.5% increase in relation to 2017. In 2018 milk deliveries to collection points were higher than in the previous year. Producers delivered 11,614 million litres of raw material to purchasers, that is 2.7% more than in 2017.[331]

III. Farmers' co-operatives

Article 4 of the Act of 4 October 2018 on farmers' co-operatives,[332] states that a farmers' co-operative is a voluntary association of natural or legal persons who: 1) run an agricultural farm as specified in the agricultural tax regulations, who conduct agricultural activity falling under special branches of agricultural production, who are the producers of agricultural products or of groups of these products, or who breed fish, and who are hereinafter referred to as "farmers"; 2) are not farmers and conduct activity related to the storing, sorting, packing or processing of agricultural products or groups of these products, or the fish produced by the farmers referred to in point 1, or service activities supporting agriculture, including those referred to in point 1, such as services using machines, tools or devices for the production of agricultural products by these farmers or groups of these products, or fish, and who are hereinafter referred to as the "entities which are not farmers".[333]

A co-operative of farmers can be established by at least 10 farmers. According to the Act of 4 October 2018 on farmers' co-operatives, these entities are predominantly made up of farmers, fluctuating bodies of persons and variable capital which conduct joint business activity for the benefit of their members. This Act stipulates that the activity of a farmers' co-operative is focused on conducting business activity for the benefit its members, relating to: 1) the farmers planning their production of produce, or groups of products, and adjusting it to market con-

[330] Ibid.

[331] Central Statistical Office, *Rolnictwo w 2018 r.*, Available on-line at: <https://stat.gov.pl/obszary-tematyczne/rolnictwo-lesnictwo/rolnictwo/rolnictwo-w-2018-roku,3,15.html> [accessed 4.02.2020]: 63ff.

[332] Journal of Laws of 2018, item 2073.

[333] See more about the act on farmers' cooperatives, e.g. J. Bieluk, Spółdzielnie rolników – konstrukcja prawna, *Studia Iuridica Agraria*, 2018, volume XVI: 13ff.; A. Suchoń, *Legal aspects of the organization and operation of agricultural co-operatives in Poland*, Poznań, 2019: 7ff; eadem, Uwagi na tle projektu ustawy o spółdzielniach rolników, *Przegląd Prawa Rolnego*, 2017, 2: 191–208ff.

ditions, especially considering their quantity and quality; 2) the concentration of supply and handling the sales of products or groups of products produced by the farmers; and 3) the concentration of demand and handling the purchase of necessary means for the production of products or groups of products. The farmers' co-operative, in addition to the above activity, can also conduct activity relating to, for example: storing, packaging and standardising the products or groups of products produced by the farmers; processing the products or groups of products produced by the farmers and the marketing of those processed products; providing services for the benefit of farmers in connection with the production of products or groups of products by the farmers; selling the products or groups of products produced by the farmers; promoting among its members environmentally friendly cropping techniques, production technology or waste management methods. The farmers' co-operative may also run social, cultural and educational activities for the benefit of its members and their environment (the income coming from these activities must not account for more than 25% of the income of the farmers' co-operative earned in a given trading year).

Tax preference is also introduced by the Act of 4 October 2018 on farmers' co-operatives. For example, buildings and structures or parts of buildings and land occupied by a farmers' co-operative or an association of farmers' co-operatives for the activities defined in Article 6 (1) and (2) of the Act of 4 October 2018 on farmers' co-operatives, owned or in perpetual usufruct by a farmers' co-operative or an association of farmers' co-operatives which operate as a microenterprise (within the meaning of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the Treaty), are exempt from property tax. On the other hand, the aforementioned Act on corporate income tax states that the income of farmers' co-operatives within the meaning of the Act of 4 October 2018 is exempt from this tax.

This aid for farmers' co-operatives is, as a rule, granted within the *de minimis* framework referred to in the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid Text with EEA relevance – where such aid is granted to entities running an economic activity other than agricultural.[334]

The Act of 4 October 2018 on farmers' co-operatives introduces new legal solutions regarding the shares. The statute of the co-operative may provide for

[334] If a co-operative conducts agricultural activity, then under the *de minimis aid in agriculture*. About de minimis aid in agriculture A. Suchoń, Wybrane zagadnienia prawne pomocy de minimis w rolnictwie, *Przegląd Prawa Rolnego*, 2011, 1; eadem, Nowe zasady pomocy de minimis w rolnictwie – aspekty prawne i ekonomiczne, *Zeszyty Naukowe SGGW Ekonomika i Organizacja Gospodarki Żywnościowej*, 2014: 107.

the annual establishment of the number of shares that particular members are entitled to in proportion to their percentage in the total value of the products, or groups of products, purchased by the co-operative from its members in the trading year directly preceding the year when the number of shares was established. In such a case, 1) the number of shares that particular members are entitled to is established based on a resolution adopted at the general meeting by a majority of two-thirds of votes, in the presence of at least half of those entitled to vote; 2) the statute lays down the rules and date for the contributions of shares or return of contributions of shares (Article 11 of the Act).

Farmers' co-operatives may also apply for the status of an energy co-operative. As regards legal regulations, pursuant to the Act of 20 February 2015 on renewable energy sources[335] (with amendments from 2019), an energy co-operative is a co-operative within the meaning of the Act of 16 September 1982 on co-operatives or of the Act of 4 October 2018 on farmers' co-operatives, the purpose of which is the production of electricity, biogas or heat in renewable energy source installations, and balancing the demand for electricity, biogas or heat, exclusively for the needs of the energy co-operative itself and its members, connected to an area-defined electricity distribution network with a nominal voltage lower than 110 kV, a gas distribution network, or a district heating network. The energy co-operative is required to meet all of the following conditions: 1) it must operate in the area of a rural or urban-rural commune, within the meaning of the regulations on public statistics, or in an area of no more than 3 such communes directly neighbouring with each other; 2) the number of its members has to be less than 1000; 3) if the purpose of its activity is the production of: a) electricity, then the total installed electric power of all installations of a renewable energy source must cover at least 70% of the annual own energy needs of the co-operative and its members; and cannot exceed 10 MW; (b) heat, then the total available thermal capacity cannot not exceed 30 MW; or (c) biogas, then the annual capacity of all installations cannot exceed 40 million m^3 (Article 38e).

The energy co-operative may start its operations once it has been entered in the register of energy co-operatives. The register of energy co-operatives is maintained by the General Director of the National Support Centre for Agriculture. Such co-operatives operate within the area of a rural or urban-rural commune, within the meaning of provisions on public statistics, or within the area of no more than three adjacent communes of this type.

[335] Journal of Laws, idem 478, as amended.

IV. Agricultural Producer Groups

In recent years, groups of agricultural producers have been gaining popularity among agricultural producers in Poland. Currently, there are more than 900 of such entities,[336] including more than 500 in the form of co-operatives.[337] Pursuant to the Act of 15 September 2000 on Agricultural Producer Groups, natural persons, organisational units without legal personality, and legal persons, that, as part of agricultural activity, run: 1) a farm, in accordance with the agricultural tax regulations, or 2) an agricultural business in special branches of agricultural production – may be organised into agricultural producer groups in order to adjust agricultural products and the production process to market conditions, to jointly market the products, in particular to prepare the products for sale, to centralize sales and deliveries to wholesale buyers, to set out common rules about the production information especially in connection with crops and the availability of agricultural products, to develop business and marketing skills, to streamline the innovation processes, and to protect the environment. The groups carrying out those goals help to develop agriculture and to increase the incomes of agricultural producers.[338]

An agricultural producer group is not a separate legal entity, but such groups can be organised on the basis of each type of business entity, namelya limited company, a co-operative, an association and a voluntary association. It is worth mentioning that there are two stages in the formation of such groups. In the first stage, the legal personality is established, for example that of a limited liability company, a co-operative, an association or a voluntary association. In the second stage, the group is registered. The Director of the regional office of the Agency for Restructuring and Modernization of Agriculture (appropriate to the seat of the group) makes an administrative decision which states that the legal personality has met the conditions specified in the regulations and has been registered as an agricultural producer group. The legal status of the group needs to be taken into consideration. A group of agricultural producers is not a separate legal entity, but it is an association of agricultural producers managing farms (i.e. independent business units) and working together in order to achieve the common aim of improving the financial situation and increasing the competitiveness of farms[339]. It is important to note that the group does not work for its own profit but for the ben-

[336] *Register of groups of agricultural producers*, Available on-line at: <https://www.arimr.gov.pl/grupy-i-organizacje-producentow/rejestry-prowadzone-przez-arimr/rejestr-grup-producentow-rolnych.html> [accessed 4.05.2020].

[337] Ibid.

[338] A. Suchoń, Co-operatives in the face of challenges of contemporary agriculture in the example of Poland, in: R. Budzinowski (ed.), *Contemporary challenges of Agriculture Law: among Globalization, Regionalisation and Locality,* Poznań, 2018: 303–311.

[339] S. Prutis, Formy organizacyjno-prawne współdziałania producentów rolnych, in: *Prawo rolne*, (ed.) P. Czechowski, Warsaw, 2019, 426 ff.

efit of its members. It functions only owing to the entities it is composed of. Thus, it is possible to assume that groups of agricultural producers work according to the rules characteristic for co-operatives. One of the definitions of a co-operative states that a co-operative is an entity running a business which belongs to and is controlled by its users, and which distributes the financial surplus depending on the degree to which its services are used.[340]

In the EU 2014–2020 funding period, agricultural producer groups may still apply for financial aid, but the rules for its granting have changed diametrically. The main regulations are: Regulation of the Minister of Agriculture and Rural Development of 2 August 2016 on detailed conditions and method of granting, payment and repayment of financial aid within the activity "Creation of producer groups and organisations" covered by the Programme of Rural Areas Development for the years 2014–2020,[341] Regulation of the Minister of Agriculture and Rural Development of 18 February 2016 on the requirements to be fulfilled by a business plan of a group of agricultural producers.[342]

V. Agricultural producer organisations

In addition to co-operative groups of agriculture producers, mention should also be made of organisations of agricultural producers. So far, no agricultural producer organisations have been established in Poland on the milk market. The situation in other markets is the same. Fruit and vegetable producer organisations are an exception, but there are separate legal regulations in this area and they already have a certain tradition.[343] The Polish legislator intends to encourage the creation of organisations, which is why legal regulations have been amended and issued in recent years. For example, on 20 May 2020 the Regulation of the Minister of Agriculture and Rural Development of 27 April 2020 took effect, amending the Ordinance concerning the detailed conditions and procedure of granting, disbursement and return of financial aid as part of the activity entitled "Establishment of groups of producers and producer organisations" covered by the Programme of Rural Areas Development for the years 2014–2020.[344]

[340] See the definition of agricultural co-operatives formulated by the American Department of Agriculture together with a group of scientists in: D. Mierzwa, *Przedsiębiorstwo spółdzielcze. Tradycja i współczesność*, Wrocław, 2011: 41ff. Different definitions of the cooperative, see K. Hakelius, *Cooperative Values – Farmers' Cooperatives in the Minds of the Farmers*, Uppsala, 1996: 47ff.

[341] Journal of Laws of 2016, item 1284 as amended.

[342] Journal of Laws of 2016, item 237 as amended.

[343] A. Suchoń, Agricultural Cooperatives and Producer Organizations in Poland, *CEDR Journal of Rural Law* 2015, 2: 25–37.

[344] Journal of Laws, item 799.

Thanks to this amendment, not only groups of agricultural producers but also organisations may take advantage of EU funding. Moreover, in 2019 and 2020 there were amendments to the executive regulations to the Act of 20 April 2004 on the organisation of the milk and milk products market,[345] and to the Act of 11 March 2004 on the organisation of certain agricultural markets[346] concerning selected issues in connection with establishing organisations of agricultural producers, including associations of milk producers.

As far as agricultural producers organisations are concerned, including those of milk producers, it must first be stated that the director of the regional branch of the Ministry of Agriculture and Rural Development (ARMA), competent for the seat of the applicant, is the body designated by the acts for recognition of organisations and associations of producer organisations, as well as interbranch organisations, including international producer organisations, international associations of producer organisations and international interbranch organisations. Registration is made by way of a decision, upon request of the organisation or association, submitted to the director of the regional branch of ARMA.

As regards the organisations of milk producers, the Act of 20 April 2004 on the organisation of the milk and milk products market does not indicate that only entities entered in the National Court Register are subject to registration. There is also no provision, as there is in the Act on agricultural producer groups, stating that it must be a legal person.

In this respect, reference should be made to § 2 of the Regulation of the Minister of Agriculture and Rural Development of 5 February 2016 on the information to be contained in the application for recognition of producer organisations, associations of producer organisations and interbranch organisations on the milk

[345] Journal of Laws of 2019, item 1430 as amended, Regulation of the Minister of Agriculture and Rural Development of 5 February 2016 on information to be provided in the application for recognition of producer organizations, associations of producer organizations and interbranch organizations on the milk and milk products market, and the type and scope of documents confirming the fulfilment by these entities of the conditions for recognition (Journal of Laws 2016, item 216), as amended, among others by Regulation of the Minister of Agriculture and Rural Development of 31 January 2020 amending the Regulation on information to be contained in the application for recognition of producer organizations, associations of producer organizations and interbranch organizations on the milk and milk products market and the type and scope of documents confirming the fulfilment by these entities of the conditions for recognition, Journal of Laws of 2020, item 254, 254.

[346] i.e. Journal of Laws of 2018, item 945; of 2019, item 2020. Regulation of 7 January 2016 on the recognition of producer organizations and associations of producer organizations and interbranch organizations operating on agricultural markets other than those for milk and milk products and fruit and vegetables (Journal of Laws of 2016, item 87) amended by the Regulation of the Minister of Agriculture and Rural Development of 27 June 2019 amending the Regulation on the recognition of producer organizations and associations of producer organizations and interbranch organizations operating on agricultural markets other than those for milk and milk products and fruit and vegetables (Journal of Laws of 2019, item 1293).

and milk products market, and on the type and scope of documents confirming that these entities meet the conditions for recognition[347] (changed by the aforementioned amendment of 31 January 2020). This regulation stipulates that an application for recognition of a producer organisation, an association of producer organisations or an interbranch organisation is to contain the name, legal form and National Court Register number of the producer organisation, association of producer organisations or interbranch organisation. The application must be accompanied, among others by a description of the organisational structure of the producer organisation, including the structure of shares or the number of shares and votes held by individual members (for example in a limited liability company), shareholders or stockholders of the producer organisation at the shareholders' meeting or the general meeting of members of the producer organisation. It seems that the best form for an organisation is a co-operative or a limited liability company. According to the Polish Commercial Companies Code Article 151, a limited liability company may be formed by one or more persons for any legitimate purpose (save as otherwise provided in this Act). The initial capital of a limited liability company shall be no less than 5,000 PLN.

The next step is the registration of the organisation. The Act of 20 April 2004 states that the director of a regional branch of the ARMA may recognize as a milk producer organisation only an entity which jointly meets the following conditions:

Firstly, it must be made up of at least 20 members and produce and market no less than 2 million kilograms of milk or milk products produced within that quantity of milk per year. It should be noted that these are either unprocessed milk or processed milk products.

Secondly, during the 12 months preceding the month of application, at least 20 members of that organisation must have produced and marketed milk or milk products. Agricultural producers must have been active on the milk market for at least one year, as they have to demonstrate the marketing of milk or milk products. At the same time, the regulations indicate 20 agricultural producers, which means that there may be more members who have not marketed milk or milk products in the last year.

Thirdly, the entire quantity of milk or milk products produced on the holdings of the members of that organisation must be marketed through it. This regulation prevents milk or milk products from being sold directly to entrepreneurs or consumers, even as part of direct sale. However, part of the milk may be used for the members' own needs.

Fourthly, the period of notice of termination of membership in this organisation cannot be less than 6 months and must meet the requirements set out in Article 161(1)(a) and (d) of Regulation (EU) No 1308/2013 of the European Par-

[347] i.e. Journal of Laws of 2019, item 169.

liament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.

The director of the regional branch of ARMA competent for the seat of a producer organisation, an association of producer organisations, or an interbranch organisation, carries out inspections of recognized producer organisations, recognized associations of producer organisations and recognized interbranch organisations to the extent specified in the EU Regulation. These inspections are conducted at least once every two years.

As regards other markets, for example cereals, rice, hops, processed fruit and vegetable products, and beef and veal, the rules for their establishment and operation are laid down in the Act of 11 March 2004 on the organisation of certain agricultural markets and in Regulation of 7 January 2016 on the recognition of producer organisations, associations of producer organisations and interbranch organisations operating on agricultural markets other than those for milk and milk products and fruit and vegetables. This Regulation provides that the minimum number of members of a producer organisation must be at least ten members who are producers of a product or group of products falling within one of the sectors listed in Article 1 (2) a-h, l-o and q-x of the EU Regulation no.1308/2013. The Polish regulation also stipulates that members of a producer organisation who are producers of a product, or of a group of products, must make up at least 80% of the members of this organisation. An application for recognition of a producer organisation, an association of producer organisations, or an interbranch organisation, must include, inter alia the name, legal form and National Court Register number of the producer organisation, association of producer organisations, or interbranch organisation; and an indication of the product or product group for which the entity seeks recognition.

After the registration of an agricultural producer organisation, the director of the regional branch of ARMA carries out, at least once every two years, inspections within the scope defined by the European Union regulations. An application for the recognition of a producer organisation, of an association of producer organisations, or of an interbranch organisation, is submitted on a form drafted and made available by the Agency for Restructuring and Modernization of Agriculture (on the website).

Thus, similarly to the case of groups of agricultural producers, the first step involves the establishment of an economic entity, for example a co-operative, limited liability company and only then may the application for recognition of this entity as a producer organisation be submitted. The application is submitted on a form drafted and made available by the Agency for Restructuring and Modernization of Agriculture. The producer organisation attaches to the application, among other things a copy of the statute, the agreement or another founding document of the producer organisation; and statements of the members on belonging to this

organisation and on not belonging to another producer organisation recognised for the same product or group of products, and on not belonging to a group of agricultural producers within the meaning of provisions on groups of agricultural producers and their unions, recognized for the same product or group of products as the applying producer organisation.

The producer organisation must attach to its application a business plan which contains, among other things, a description of the organisational structure of the producer organisation, the number of plots of land and the total area on which individual producer organisation members who are producers conduct their production of product or group of products for which the organisation applies to be recognized. In the case of farm animals covered by the obligation to be entered in the livestock register, the application must also contain the number of tagged farm animals and herd location, with an indication of the number of these locations. An entity that seeks recognition must also indicate the estimated size and net value of the production of the product or group of products of individual members of the producer organisation who are producers of the goods to be sold by the producer organisation, planned for a period of at least 5 years, with a division into subsequent years of the business plan performance; the scope and description of activities that the producer organisation plans to carry out for a period of at least 5 consecutive years with a view of accomplishing the goal or goals for which it applies to be recognised. Agricultural producers submitting documents in order to register must have a functioning plan for 5 or more years, which favours the association of farmers. Such legal regulation should be assessed positively.

Turning to fruit and vegetable producer groups and organisations, it should be noted that pursuant to Article 6 of the Act on co-operative law (simplifying the establishment of co-operatives), the founders of pre-recognised co-operative fruit and vegetable producer groups were to be natural persons and legal persons producing at least one of the products listed in the product groups in respect of which the entity applies for preliminary recognition, and which were specified in the Annex to the Regulation of the Ministry of Agriculture and Rural Development of 19 September 2013 on the conditions for the preliminary recognition of producer groups in fruit and vegetables, the recognition of producer organisations in fruit and vegetables and the conditions and requirements to be met by plans for recognition by producers of fruit and vegetables on the territory of the Republic of Poland. The minimum number of founders is to be only 5, not 10 or 20, as is the case with other agricultural producer organisations. The provisions stipulated additional requirements for organisation.

It should be stressed that preliminarily recognised groups can no longer be formed in Poland. On the other hand, an association of fruit and vegetable producers, such as a co-operative, can be recognised as a fruit and vegetable producer organisation if it is formed by at least five producers, each of whom produces at

least one of the products listed in the product groups for which it applies for recognition, and which are set out in the Annex to the Regulation of 19 September 2013. In Poland fruit and vegetable producer organisations do exist.

VI. Cultivation contracts concluded by assocations of agricultural producers

The main, fundamental influence on the operation of assocations of agricultural producers is exercised by the legal and agricultural contracts concluded by these entities, and resulting from their agricultural activity. These are, largely, contracts for the cultivation and sale of agricultural products. As the literature rightly points out, the purpose of the cultivation contract[348] is to link agricultural production to its distribution onto the market by ensuring the agricultural producer markets his products. Such contracts are important and necessary owing to the seasonal nature of agricultural activity, its dependence on weather conditions and the relatively long production process.[349] The literature draws a distinction between production and trade cultivation contracts.[350] The former are believed to involve continuous cooperation in production and the contracting authority's supervision over the production process.[351]

It is important that agricultural co-operatives may act both as an agricultural producer (a farmers' co-operative, or a group of agricultural producers) or as a contracting producer (for example a dairy co-operative or other). By concluding a cultivation contract, a co-operative group of agricultural producers, which does not, as a general rule, own land, undertakes to produce and deliver to the contractor a specified quantity of agricultural products of a specified type, and the contractor undertakes to receive those products within the agreed time limit, pay the price and provide certain additional performances if the contract or special provisions so provide (Article 613 Polish Civil Code). Thanks to the membership agreements and the resulting obligation to produce and deliver agricultural products with specific parameters to the group, a co-operative of agricultural producer groups may fulfil the provisions of the cultivation or sale contract. It can therefore

[348] See e.g. W.J. Katner, Kontraktacja, in: S. Włodyka (ed.), *System Prawa Handlowego*, t. 5, SIP Legalis 2014; B. Zdziennicki, *Kontraktacja produktów rolnych. Funkcje i problemy organizacyjne*, Warsaw, 1975.

[349] Ibid. For more detailed discussion, see: A. Suchoń, *Legal Aspects of the Organisation and Operation*: 127ff.

[350] A. Stelmachowski, Kontraktacja, in: J. Rajski (ed.), *Prawo zobowiązań – część szczegółowa, System Prawa Prywatnego*, vol.7, SIP Legalis 2004: 249ff. Also J. Szachułowicz, Kontraktacja, in: K. Pietrzykowski (ed.), *Komentarz do K*C, vol. II, Warsaw, 2000: 159–183.

[351] For more detailed discussion, see: A. Suchoń, Z prawnej problematyki umowy kontraktacji w praktyce, *Przegląd Prawa Rolnego*, 2017: 1.

be considered that the legislator has confirmed that a group operates only thanks to (the existence of) agricultural holdings, and for them, taking over part of their obligations related to agricultural activity.

It is important to define the subject of the cultivation contract. In the light of the Polish Civil Code, an agricultural producer undertakes to produce and deliver a specified quantity of agricultural products of a specified type. At the same time, the quantity of agricultural products may also be indicated in the contract by the area in which they are to be harvested. The cultivation contract is extremely important for co-operative agricultural producer groups. Particularly at the beginning of their existence, attractive conditions which will encourage other agricultural producers to associate are important.

VII. Financial resources allocated to associations of agricultural producers

Of particular interest are the recent changes concerning financing from EU funds, which are to encourage the association of Polish agricultural producers. As of 20 May 2020 an ordinance took effect[352] amending the Ordinance of 2 August 2016 concerning detailed conditions and the procedure of the granting, disbursement and return of financial aid as part of the activity entitled "Establishment of groups of producers and producer organisations" covered by the Programme of Rural Areas Development for the years 2014–2020. Funding may be applied for by: firstly, a group of agricultural producers that has been recognised no earlier than on 1 January 2014 and which has been established for a product or group of products other than live poultry (regardless of age), poultry meat or edible poultry offal: fresh, chilled, or frozen, referred to in the Ordinance of the Minister of Agriculture and Rural Development dated 10 April 2016 concerning the list of products and product groups for which agricultural producer groups may be formed, the minimum annual volume of commodity production and the minimum number of members of an agricultural producer group.

A producer organisation, recognised no earlier than on 1 January 2014 on the basis of the Act of 11 March 2004 on the organisation of certain agricultural markets, or of 20 April 2004 on the organisation of the milk and milk products market. Such an organisation must also be established for a product or group of products other than those belonging to the poultry meat section, as mentioned in part XX of Annex I to the Regulation (EU) No 1308/2013 of the European Parliament and

[352] Regulation of the Minister of Agriculture and Rural Development of 27 April 2020 amending the Ordinance concerning detailed conditions and procedure of granting, disbursement and return of financial aid as part of the activity entitled "Establishment of groups of producers and producer organizations" covered by the Programme of Rural Areas Development for the years 2014-2020 (Journal of Laws of 2020, item 799).

of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.

Aid is granted to a group or an organisation which, for example, undertakes to carry out a business plan, operates as an entrepreneur running a micro, small or medium-sized enterprise. Moreover, such a group or organisation must not have members who are producers of a single product or product group, who have already been members of a group of agricultural producers, preliminarily recognized as a group of producers of fruits and vegetables or an organisation of producers of fruit and vegetables established for the same product or for a product identical to the one produced.

The regulation also stipulates the requirements concerning members, which is a novelty in comparison to the previous funding periods. Namely, each member of this group or organisation who is a producer has been granted payments on the basis of provisions on payments within systems of indirect support in the year of the group's recognition, or at least once throughout the 2 years prior to the year in which the group was recognized,[353] in the event that a group is recognized for a plant product or group of plant products, or if each of the members of the group who is a producer had farm animals covered by the obligation to be entered in the livestock register at least in the year prior to the year of group's recognition.

The granting of aid is not continuous. The President of the Agency for the Restructuring and Modernisation of Agriculture publishes a call for applications for aid on the Agency's website. The aid application is submitted to the director of the ARMA regional branch competent for the seat of the group or organisation. Aid is granted to the group and the organisation in the order established by the ARMA President using selection criteria, for example if the group or organisation has the form of a co-operative, 3 points are awarded. The regulation also states that 5 points are awarded if there are investments planned in the business plan which contribute to the achievement of the Programme's cross-sectional objectives: a) innovativeness by introducing new production, process or technology principles, different from those currently applied, or by changing the technologies currently applied, or (b) combating climate change or protecting the environment, through the use of machinery, equipment, appliances or technologies which reduce negative effects on the environment, or solutions which reduce the consumption of resources, in particular water or energy.

The amount of aid in any given year of operation received by the beneficiary is determined on the basis of the value of the documented annual net revenue from the sale of the products or group of products for which the group or organisation is recognised. Additionally, important are also the revenues from the sale

[353] These conditions do not apply to individuals who have taken over an entire agricultural holding in the year preceding the year of group's or organisation's recognition or in the year of the group's or organisation's recognition.

of processed products covered by Annex I to the Treaty on the Functioning of the European Union, made from products or groups of products for which the beneficiary has been recognised.[354]

It is also worth referring to other EU programs that encourage farmers to cooperate with other farmers or other entities. The regulation of the Minister of Agriculture and Rural Development of 23 December 2016 concerning the detailed conditions and procedure for the granting and disbursement of financial aid within the activity "Współpraca" ("Cooperation") covered by the Programme of Rural Areas Development for the years 2014-2020[355] indicates that aid is granted to EIP operational groups provided that they are composed of at least two different entities belonging to the following different categories: farmers, forest owners, entrepreneurs, or entities providing consulting services. Aid is granted for operations: 1) whose purpose is the elaboration and implementation of an innovation within the scope of: a) a new or substantially improved product covered by Annex I to the Treaty on the Functioning of the European Union; (b) new or substantially improved technologies or organisational or marketing methods for the production, processing or marketing of products covered by Annex I to the Treaty on the Functioning of the European Union; or (c) the creation or development of short supply chains or local markets for the production, processing or marketing of products covered by Annex I to the Treaty on the Functioning of the European Union. The aid is granted by reimbursing part of the eligible costs, which include the costs of: for example construction, alteration or renovation in connection with the modernization of facilities or infrastructure, the purchase or installation of new machinery or equipment, including means of transport. Aid is granted in the order established by the Agency for the Restructuring and Modernisation of Agriculture using the selection criteria laid down in the Regulation.

VIII. Clusters in the agri-food industry in Poland

Entities operating in the agri-food industry may also associate within clusters,[356] which, however, are not very popular at present in Polish agriculture. However, there are examples of clusters in the agri-food industry in Poland, the following being examples: "Dolina Ekologicznej Żywności"[357], "Kujawsko-Pomorski Oddział

[354] As per the Regulation, produced by its members and sold to buyers who are not: members of the beneficiary; the spouse of a beneficiary member; entities linked by capital or personally, directly or indirectly, to a beneficiary member or his/her spouse.

[355] Journal of Laws of 2017, item 25.

[356] B. Jeżyńska, Organizacja rolniczej działalności wytwórczej w ramach klastra, *Studia Iuridica Agraria* 2011, 9: 257-270.

[357] "Dolina Ekologicznej Żywności" (The Ecological Food Valley) is one of the first clusters in Poland to associate various entities working to promote and develop organic food. The cluster is

Stowarzyszenia Producentów Żywności Metodami Ekologicznymi "Ekoland"[358], "Klaster Spożywczy Południowej Wielkopolski – Stowarzyszenie", "Agro Klaster Kujawy – Stowarzyszenie na Rzecz Innowacji i Rozwoju", and "Polska Natura".[359]

Polish legal regulations do not contain a definition of this term. E. Porter[360] described clusters as geographic aggregations of related companies, specialized suppliers, service providers, companies from related sectors and associated institutions that compete and cooperate with each other. They are created by entrepreneurs from traditional sectors; production and services as well as advanced technologies.[361] Clusters strengthen the competitiveness in countries and regions and increase the level of innovation thanks to, inter alia, cooperation and easier access to external sources of knowledge and information.[362] Clusters are sometimes referred to as "collaborative groups", "cooperative groups", "economic networks" as well as "cooperative links", and "collaborative relationship".[363]

The no longer binding Regulation of the Minister of Regional Development of 7 April 2008 on the granting of financial aid by the Polish Agency for Enterprise Development under the Innovative Economy Operational Program 2007–2013[364] stated that a collaborative relationship is a grouping of unrelated entrepreneurs operating in a specific sector, conducting innovative activities, as well as research organizations and business environment institutions, which aim to stimulate innovative activity by promoting intensive contacts, using a common technological base, exchanging knowledge and experience, contributing to technology transfer, creating a network of connections and disseminating information among the entrepreneurs included in this grouping (Article 27).

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open. Entities and organisations supporting the development of organic farming and the production of organic food in Eastern Poland can join it, Available on-line at: <http://www.dolinaeko.pl/> [accessed 2.05.2020].

[358] This cluster was made up of 68 entities, dominated by organic farms – at almost 93%. The remaining members represented the processing of ecological agricultural products, producing pasta, processing fruit and vegetables, processing meat and baking bread. However, the cluster is no longer operational, E. Kacprzak, Funkcjonowanie klastrów rolnożywnościowych na ekologicznym rynku rolnym w Polsce, *Rozwój Regionalny i Polityka Regionalna*, 2014: 16, 119-133.

[359] Available on-line at: <http://orka2.sejm.gov.pl/INT8.nsf/klucz/ATTB57HFX/%24FILE/i25670-o1.pdf>; <https://mapaklastrow.parp.gov.pl/Klastry2/index.html> [accessed 2.05.2020].

[360] M.E. Porter, *On Competition*. Boston, 2009: 213–214. M.E. Porter, Porter o konkurencji, Warsaw, 2001: 246; Available on-line at: https://pl.wikipedia.org/wiki/Klaster_(gospodarka)#cite_note-5 [accessed 2.05.2020]. A. Grycuk, Klastry jako instrument polityki regionalnej, *Infos Biuro Analiz Sejmowych,* 2010: 2.

[361] The most famous cluster in the world is Silicon Valley, in northern California, where thousands of companies from high-tech sectors are located, A. Grycuk, Klastry jako instrument polityki regionalnej, *Infos Biuro Analiz Sejmowych*, 2010: 2: 1 ff.

[362] M.E. Porter. Clusters and the New Economics of Competition, *Harvard Business Review* 1998, 76: 80 ff.

[363] A.Lis, A.Lis, Klaster, inicjatywa klastrowa, powiązanie kooperacyjne – rozróżnienie pojęć, *Studia i Materiały Polskiego Stowarzyszenia Zarządzania Wiedzą* 2010, 37: 195-204.

[364] Journal of Laws of 2008, no 68, item 414.

Groups and organisations of agricultural producers can form clusters, but currently such cooperation is not popular in Poland. Clusters can benefit from the aforementioned EU "Cooperation" program (The regulation of the Minister of Agriculture and Rural Development of 23 December 2016 concerning the detailed conditions and procedure for the granting and disbursement of financial aid within the activity classed as "Cooperation") covered by the Program of Rural Areas Development for the years 2014-2020, which aims to support cooperation between farmers, entrepreneurs and scientists. It is mainly focused on introducing innovations to practice in the agricultural sector, and forest food, through the activities of operational groups for innovation (EIP).[365]

Agricultural Producers can also create civil law partnerships, which are a form of cooperation. Legal regulations are contained in the Polish Civil Code. Namely, according to Article 860 Civil Code §1, by a deed of partnership, the partners commit to strive to achieve a common economic purpose by acting in a specified way, especially by making contributions Agricultural Producers can also create associations. The Act of 7 April 1989, Law on Associations states that an association is a voluntary, self-governing, permanent non-profit union. An association independently sets its goals, action programs and organizational structures, and passes internal acts concerning its activities.

IX. Social-professional farmers' organisations

In discussing the issue of associations of agricultural producers, it is worth mentioning the Act of 8 October 1982 on social-professional farmers' organisations.[366] This act stipulates that social-professional organisations of farmers are: machinery rings, agricultural industry associations, farmers' unions, unions of machinery rings and agricultural organisations, and unions of agricultural industry associations. Agricultural professional organisations are legal persons of the corporate type, as they are based on the membership relationship of the farmers affiliated to them. The establishment of such an organisation depends on the fulfillment of the conditions specified in the legal regulations.[367]

Pursuant to Article 15 of the act on social-professional farmers' organisations, a machinery ring is a voluntary, independent and self-governing social and professional organisation of individual farmers, representing their comprehensive professional and social interests. A machinery ring may operate in one or more adjacent villages. They may also operate in urban areas. The following entities may

[365] Minister of Agriculture and Rural Development; Available on-line at: http://orka2.sejm.gov.pl/INT8.nsf/klucz/ATTB57HFX/%24FILE/i25670-o1.pdf [accessed 2.05.2020].

[366] Journal of Laws of 2019, item 491.

[367] E. Tomkiewicz, Prawne formy zrzeszania się rolników i ich rola: 439ff.

be members of a machinery ring: 1) a person running an individual agricultural holding as its owner, holder or user; 2) an adult member of the family of a farmer listed under item 1, who works in the agricultural holding run by this farmer; or 3) a person who has transferred their agricultural holding for a retirement pension or disability pension.

The first machinery rings in the Polish territories emerged in the 1870s, under the Prussian annexation. By the outbreak of World War I, there existed ca. 4.1 thousand machinery rings with a total of about 175 thousand members. After World War II, the chief organisation of machinery rings established in the years 1956-1957 was the Central Union of Machinery Rings. Up until 1959, machinery rings provided mainly services related to mechanization. At the end of 1989, there were 31.5 thousand machinery rings. Since then, their number has decreased significantly.[368]

The detailed rules and conditions concerning how one may become a member of a machinery ring or quit their membership are laid down in the statutes of the machinery rings; the statutes may also provide for the admission as members of a machinery ring of persons other than those referred to above, whose work is directly linked to agriculture. It should be stressed, however, that machinery rings are currently of negligible importance in rural relations, although many of them are still officially registered in the National Court Register. Moreover, there is no doubt that the provisions of this act should be amended. This was enacted in 1982, when the division into individual farms (i.e. farms run by natural persons) and state farms was in place. Following the political transformation, this division was abolished. There exist the concepts of a family agricultural holding and of an individual farmer, but not of an individual agricultural holding.

Article 21 of the Act on social-professional farmers' organisations stipulates that a machinery ring may be affiliated in a communal or voivodeship union of farmers, machinery rings and agricultural organisations, and if it doesn't join such a union, it is affiliated in the National Union of Farmers, Machinery Rings and Agricultural Organisations. Importantly, a machinery ring may be the founder and member of a co-operative established with a view to providing services to the agricultural sector and other types of services that respond to the needs of the rural environment. Such co-operatives are governed by the provisions of the Co-operative Law.

X. Industry associations

In discussing social-professional farmers' organisations, it is worth mentioning industry associations which are sometimes used to create agricultural producer

[368] Available on-line at: <https://kolkarolnicze.pl/historia-kolek-rolniczych/> [accessed 5.10.2019]. A. Stelmachowski, Ewolucja form organizacyjno-prawnych kółek rolniczych in: *Rola kółek rolniczych w przeobrażeniach społeczno-gospodarczych wsi i rolnictwa*, Cracow, 1997: 442 ff.

groups. Such an industry association is a voluntary, independent and self-governing social and professional organisation that represents and defends the interests of individual farmers who specialize in a given branch of plant or animal production. An agricultural industry association may operate within the territory of one or more villages, within one or more communes (municipalities) in a given voivodeship, as well as in one or more voivodeships. Membership of an agricultural industry association is governed by, respectively, the provisions of Article 15 § 3 and 4 of the act, which means that persons entitled to membership of a machinery ring may also be members of an industry association. A member of an industry association may be a member of a machinery ring at the same time.

The Supreme Court, in its resolution of 21 June 1988[369] decided that "it is inadmissible for legal entities and natural persons who do not meet the requirements laid down in Article 15 par. 4, read in conjunction with Article 23 par. 3 of the Act of 8 October 1982 on social-professional farmers' organisations, to affiliate in agricultural industry associations. Nevertheless, the provisions of an agricultural industry association providing for the granting of honorary titles and cooperation with supporting parties are not in contravention of the cited act".

In its decision of 17 September 1984 (IV PPN 3/84)[370] the Supreme Court concluded that "in light of Article 15 par. 4, read in conjunction with Article 23 par. 3 of the Act of 8 October 1982 on the social-professional farmers' organisations, legal entities that are scientifically involved in agricultural matters, as well as enthusiasts and activists of the association who are not active farmers, cannot be members of an agricultural industry association".

Agricultural industry associations may affiliate in unions of agricultural industry associations, and if they do not join one, they are affiliated in the relevant national industry union.

XI. Associations of Rural Women

Associations of Rural Women have been popular in Poland for a very long time. For many years, the legal regulations concerning women's associations were laid down in the Act of 8 October 1982 on social-professional farmers' organisations. Currently they are governed by the Act of 9 November 2018 on associations of rural women.[371] Pursuant to this act, an association of rural women is a voluntary, self-governing social organisation of rural residents, independent of government administration and local government units, supporting the development of entrepreneurship in the countryside and actively working for the benefit of rural

[369] III PZP 8/88, OSNC 1989/12/191.
[370] OSNC 1985/5-6/74.
[371] Journal of Laws of 2018, item 2212.

communities. As per the act, the initiative to establish an association of rural women must come from at least 10 people. Any person who is at least 18 years of age and who resides in a village where the association of rural women operates, in a rural community located within the administrative boundaries of a town, or a town with up to 5 000 inhabitants, may be a member such an association. Thus, any agricultural producer may join an association of rural women, regardless of whether they are female or male. The members adopt the statute of the association of rural women and choose the founding committee.

Associations of rural women represent the interest of rural women and their families, work toward the improvement of their social and professional situation, and support the comprehensive development of rural areas. In particular, these associations: conduct social and educational and cultural activities in rural environments for the benefit of comprehensive development of rural areas; support the development of women's entrepreneurship; initiate and conduct activities for the improvement of living and working conditions of women in the countryside; disseminate and develop forms of cooperation, management and rational methods of running households; represent the interests of rural women before public administration bodies; and foster folk culture, including in particular local and regional culture.

XII. Conclusion

Associations of agricultural producers have a long tradition in Polish territories, which started to develop as early as during the period of the Partitions in the XIXth century and, then, during the interwar period, in the years of 1918–1939. In the period after the II World War, the most significant development occurred in co-operatives conducting agricultural activity, that is co-operatives of agricultural production. The popularity of such entities resulted from the fact that the Poland of that time was a socialist state characterised by the collectivised agriculture. Moreover, agricultural reform led to the liquidation of large and medium-sized agricultural holdings. After the Second World War, cooperation among agricultural producers kept growing through agricultural circles, branch associations and associations of rural women. Such cooperation used to be incentivized by the legal regulations.

After 1989, many agricultural co-operatives were dissolved, and their role generally weakened. Moreover, the dependence of co-operatives on the state in the times of socialism, followed by frequent loss of their self-governing and social character, contributed to the strengthening of the negative image of co-operatives among the rural population.[372] Some branches, such as dairy co-operatives, were

[372] Available on-line at: <http://krs.org.pl> [accessed 5.10.2019].

active and strong throughout various periods. Some of them have been active for over a hundred years.

New challenges and opportunities for the development of associations of agricultural producers came with Poland's accession to the European Union, although some normative changes had taken place earlier. What has changed, however, is that now more importance is given to co-operatives which support their members who run agricultural and agriculture-related activities. There are co-operatives which take over various stages of the agricultural activity of their members.

There are more than 900 groups of agricultural producers registered in the Agency for Restructuring and Modernisation of Agriculture (ARiMR). The Act on agricultural producer groups itself was passed as early as in 2000, but only amendments to it and the possibility of obtaining EU funds led to the development of entities bringing together agricultural producers. Co-operative groups of agricultural producers sell the agricultural produce produced on the members' agricultural holdings, market it, and store and deliver the means of production. Despite these new entities, the level of organisation in agriculture remains low. Some of the established groups of agricultural producers have been dissolved.[373] There is a lack of legal instruments guaranteeing the durability of these entities, such as, for example, the obligation to be a member of the group for at least ten years since receiving EU funding.

In summing up these considerations, above all the author assesses positively the adoption and entry into force of the Act of 4 October 2018 on farmers' co-operatives. It is without a doubt that the introduction of a separate concept of farmers' co-operatives into the national legal system, of legal instruments facilitating the setting up and functioning of this type of co-operatives, constitutes a significant factor in the development of the theory of co-operative law and is aligned with the European tendencies of co-operative development.[374] The membership of both legal persons and natural persons who do not conduct agricultural activity, but are active in the area of storing, warehousing, sorting, packaging and processing agricultural products, also merits a positive assessment.

In the author's opinion, however, it is necessary to consider the introduction of a few changes to the discussed legal act. In its present form, the Act of 4 October 2018 cannot contribute to the rapid growth in the number of farmers' co-

[373] See registers of groups of agricultural producers maintained by the Agency for Restructuring and Modernization of Agriculture, Available on-line at: <https://www.arimr.gov.pl/grupy-i-organizacje-producentow/rejestry-prowadzone-przez-arimr/rejestr-grup-producentow-rolnych.html> [accessed 5.10.2019]. As at October 2019, there were about eight hundred fifty groups of agricultural producers in this register.

[374] In some European countries, it is precisely due to the expansion of the object of activities of co-operatives and to its adjustment to the needs of agriculture and to the requirements of Common Agricultural Policy that co- -operatives are in a good financial condition and can significantly support the farming holdings of co-operative members. See more: A. Suchoń, *Prawna koncepcja spółdzielni*: 66ff and the literature therein.

operatives. This is because some of the regulations may pose a barrier to the development of these entities.

The Act of 8 October 1982 on social-professional farmers' organisations needs to be amended. Agricultural circles have a long history and yet, currently, not many development opportunities. A positive view should be taken on the adoption of a separate Act on associations of rural women. The groups have a long history and a positive influence on the development of rural areas. The groups associate farmers' wives, city dwellers and, increasingly often, the women who run agricultural farms by themselves as agricultural producers.

The Polish legislator makes attempts to introduce the instruments that stimulate the development of agricultural producers associations, including the legal definition of an energy co-operative or the Act on farmers' co-operatives. To sum up, it needs to be concluded that the legal regulations on agricultural co-operatives, their structure and the way they operate try to respond to the challenges of modern agriculture even if, undoubtedly, further changes to legislation need to be made.[375] Nevertheless, although there are legal regulations on setting up organisations of agricultural producers, they are not popular among farmers.

[375] A. Suchoń, *Prawna koncepcja spółdzielni*: 375ff.

Chapter IX

LEGAL AND ECONOMIC ASPECTS OF ASSOCIATIONS OF AGRICULTURAL PRODUCERS IN THE WORLD – THE CASE OF SLOVAKIA

Jarmila Lazíková

I. Introduction

Producer organisations are an important subject in the EU internal market. A producer organisation is a rural business, owned and controlled by producers and engaged in collective marketing activities.[376] A producer organisation is characterized by user-ownership, user-control and user-benefits: (1) it is user-owned because the users of the services of the producer organisation also own the organisation, where ownership means that the users are the main providers of the equity capital in the organisation; (2) it is user-controlled because the users of the services of the producer organisation also decide on the strategies and policies of the organisation; and (3) it is for the benefit of users, because all the benefits of the producer organisation are distributed to its users on the basis of their use. Thus, individual benefits are in proportion to individual use.[377] Producer organisations are the means by which farmers are supposed to defend themselves from being bypassed and marginalized by liberalization and globalization.[378] Producer organisations are widely heralded as leading contributors to poverty reduction and the achievement of food security.[379]

[376] C. Penrose-Buckley, *Producer Organisations. A Guide to Developing Collective Rural Enterprises*, Oxfam GB 2007: 4ff.

[377] P. Jämsén, S. Ikäheimo, P. Malinen, *Capital Formation in Kenyan farmer-owned cooperatives. A Case study,* FAO 1999: 37ff.

[378] B. Vorley, *The Chains of Agriculture: Sustainability and the Restructuring of Agri-food Markets*. World Summit on Sustainable Development, International Institute for Environment and Development, International Institute for Environment and Development 2001: 1ff.

[379] FAO, *Producer Organisations. Reclaiming Opportunities for Development,* FAO Regional Office for Africa 2010: 1–10.

It is difficult for farmers to be competitive on the market. Producer organisations are able to achieve economies of scale that contribute to strengthening the position of their members (agricultural producers) on the market. The main functions of producer organisations are usually the joint sale of farm products, providing farm inputs for members, providing farm machinery services, insurance and risk-sharing, and the marketing of farm products.[380] Producer organisations can play useful roles in concentrating supply, improving marketing, planning and adjusting production to demand, optimizing production costs and stabilizing producer prices, carrying out research, promoting best practice and providing technical assistance, managing by-products, and making risk management tools available to their members, thereby contributing to strengthening the position of producers in the food chain.[381]

The notion of a "producer organisation" is connected with the Common Market Organisation introduced for fruit and vegetables in 1972. According to Article 13 of Regulation (EEC) No. 1035/72 of the Council on the common organisation of the market in fruit and vegetables, a producer organisation was defined as any organisation of fruit and vegetable producers established on the producers' own initiative for the purpose of promoting the concentration of supply and the regularization of prices and making suitable technical means available to producer members for presenting and marketing the relevant product. Later, the concept of a producer organisation was broadened to include other agricultural commodities. According to EU law, the existing rules on the definition and recognition of producer organisations should be harmonized, streamlined and extended to provide for possible recognition on request under the statutes set out in accordance with this regulation for certain sectors. In particular, the recognition criteria and statutes of producer organisations should ensure that such bodies are formed on the initiative of producers and are controlled in accordance with rules enabling the producer members to scrutinize their organisation and its decisions democratically.[382]

The recognition procedure is necessary in order to receive support from EU funds. The minimum criteria for recognition are stipulated by the member states.

[380] I. Takáč, *Competitiveness of small and medium enterprises in Slovakia. Competitiveness and innovations on agricultural land in SR*. Konkurencieschopnosť a inovácie na poľnohospodárskej pôde v SR, Slovak University of Agriculture in Nitra 2011: 61–66; I. Takáč, P. Schwarcz, J. Lazíková, A. Bandlerová, A. Fehér, Associating farmers in the producers´organisation for suitable development of agriculture in Slovakia, *International Journal of Agricultural Resources, Governance and Ecology*, 2015, 2: 105–122.

[381] Preamble of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671–854); point 131.

[382] Preamble of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671–854); point 133.

In Slovakia, a producer organisation must have at least five members and an annual turnover of at least 100,000 EUR in marketable production. Moreover, recognised producer organisations are obliged to apply a democratic structure that gives members an equal say in the producer organisation's management. This is usually linked with the one-member-one-vote rule, similar to that of a co-operative. Therefore, many of these organisations have the legal form of a co-operative. It is also the case in Slovakia that most of the producer organisations use the legal form of a co-operative, in spite of the fact that the legislation also enables the legal form of a business or company to be used, and notwithstanding the negative connotations in relation to socialist agricultural co-operatives. In addition, the basic capital required for a co-operative is at the lowest level (1,250 EUR) compared with other types of corporations, (e.g., 5,000 EUR in the case of a limited liability company or 25,000 EUR in the case of a company with shares). Moreover, the members of the producer organisations are mainly co-operatives themselves, providing agricultural production and becoming involved as members in the producer organisations. Naturally, they are skilled at doing business as a co-operative. To explain the differences between agricultural co-operatives as agricultural producers and agricultural co- operatives as producer organisations, a short historical background of Slovak co-operatives is given below.

II. The Historical Background of Co-operatives in Slovakia

Agricultural co-operatives have a long tradition in Slovakia. The first agricultural co-operative was established in Slovakia in 1845.[383] The Farmers' Society (Gazdovský spolok) was established by Samuel Jurkovič in Sobotište. This was the first credit co-operative in Slovakia. In accordance with this co-operative model, new credit co-operatives were established in other villages and towns in the country.[384] The role of the credit co-operative was to protect small farmers against pressure from stronger competitors in the market.[385] Over the period since then, the Slovak co-operative movement has undergone enormous changes. It has survived the industrial revolution, two world wars and several social systems, and has passed through feudalism, capitalism and socialism to the free-market economy,[386] with the free movement of goods, services, persons and capital within the EU internal market.

Co-operatives maintained their dominant position also during the period of the centrally planned economy, between 1948 and 1989. However, the concept of

[383] P. Martuliak, 150 years of Slovak co-operatives 1845–1995, *Agroinštitút Nitra*, 1995: 2ff.

[384] E. Šúbertová, Current situation in co-operative entrepreneurship in Slovakia, *VADYBA management*, 2007, 1: 68–74.

[385] M. Demo, *The History of the Agriculture in Slovakia*, 2001: 21ff.

[386] E. Šúbertová, Current situation in co-operative entrepreneurship in Slovakia, *VADYBA Management*, 2007, 1: 68–74.

a co-operative was modified.[387] Law No. 49/1959 Coll. was adopted with respect to united arable co-operatives and Law No. 49/1961 Coll. with respect to the statutes of a co-operative. According to these laws, around 12,560 arable co-operatives were established, cultivating 4,792,900 ha of agricultural land, with more than 970,000 members in the former Czechoslovakia.[388] In 1975, Law No. 122/1975 Coll. on agricultural co-operatives was adopted, regulating the legal status of co-operatives, the legal status of their members, and the labour and social rights of their members. The aim of this law was to create large-scale arable co-operatives with large-scale land management.[389] This was realized by establishing large enterprises created by merging several co-operatives located in a number of different villages. In the 1980s, specialisation in production was initiated and the trend towards large-scale production intensified.[390]

In 1990, the transformation processes of the national economy started to change the central planned economy towards a socially and ecologically oriented market economy. This had a significant impact on agricultural co-operatives. The agricultural co-operatives had to begin a long-term transformation process.[391] In the 1990s, legislation was adopted to regulate the process of property restitution and the transformation and privatization of agricultural producers in the agricultural sector. Special regulations to carry out the overall process of transformation in the agricultural sector were included, mainly in (1) the First Restitution Law (Law No. 229/1991 Coll.), (2) the Second Restitution Law (Law No.503/2003 Coll.), (3) Law No. 42/1992 Coll. on the changes in property relations and settlement of property rights in co-operatives, as amended (the Transformation Act), (4) the First Amendment to the Transformation Law (Law No. 264/1995 Coll.), and (5) the Second Amendment to the Transformation Law (Law No. 3/2005 Coll.).[392]

Agricultural land was returned to individual private owners and the value of all the assets of the agricultural co-operatives, (e.g. buildings, machines, animals) had to be stipulated. The net equity of the assets had to be transferred to the entitled beneficiaries, who were regarded as the rightful owners of agricultural co-operatives.[393] The entitled beneficiaries included all the co-operative members and the

[387] J. Lazíková, A. Bandlerová ff., *Agrárne právo*, Slovak University of Agriculture in Nitra, 2011: 131ff.

[388] J. Gaisbacher, *Bankrot a vyrovnanie z pohľadu transformácie slovenského poľnohospodárstva*. *Disseration thesis*, Slovak University of Agriculture in Nitra, 2005: 24ff.

[389] J. Gaisbacher, *Bankrot a vyrovnanie z pohľadu transformácie slovenského poľnohospodárstva*. *Disseration thesis,* Slovak University of Agriculture in Nitra, 2005: 56ff.

[390] I. Námerová, Contemporary Slovak Society and Agrarian Reform, *Human Affairs*, 1997, 7: 77–85.

[391] J. Lazíková, A. Bandlerová, P. Schwarcz, Agricultural cooperatives and their development after the transformation, *Bulletin of the Szent István University. Special Issue. Part II*, Szent István University Gödöllö, 2008: 515–523.

[392] A. Bandlerová, J. Lazíková ff., *Agrárne právo Európskej únie*, Slovak University of Agriculture in Nitra, 2007: 138ff.

[393] Research Institute of Agricultural and Food Economics, *Agricultural producer cooperatives and their role in Slovakia*, VUEPP, Bratislava, 1997: 4ff.

persons who owned land or inventory used by the co- operative for its production. The Transformation Law stipulated a key for dividing the net equity among the entitled beneficiaries: 50% to be distributed among those whose land was cultivated by the agricultural co-operative, 30% among those whose inventory was used by the agricultural co-operative and 20% among those who had worked in the agricultural co- operative. Each entitled beneficiary received a share of the co-operative net equity calculated from the value of his or her assets or working years in the agricultural co-operative.[394] Then, the agricultural co-operatives were allowed to change their legal form to that of a business or company, or to remain in the legal form of a co-operative, according to the new regulations in the new Commercial Code.

The majority of co-operatives decided to continue to operate as co-operatives under the new legal regulations.[395] The property of the transformed agricultural co-operatives was distributed among the entitled beneficiaries in accordance with the transformation laws. For this reason, the property of agricultural co-operatives was owned not only by the members of the co-operatives but also by other beneficiaries, such as landowners and owners of other agricultural property. Many beneficiaries were not members of the co-operatives. This means that a large part of the co-operatives' property was given to non-members. On the one hand, owners were entitled to benefits, as non-members of a co-operative who owned a share of the co-operative assets, although they had no voting rights in the General Assembly meeting. On the other hand, there were members of co-operatives who did not own co-operative assets, and this was considered a disadvantage mainly in cases where voting rights depended on the amount of assets owned in a co-operative.[396] After 1992, there were two groups of agricultural co-operatives in Slovakia: agricultural co-operatives which had not been transformed and were established as new legal entities according to the new Commercial Code after 1991, and agricultural co-operatives which had been transformed.[397] Some of the entitled beneficiaries asked for their shares, in order to start private farming. The rest of the entitled beneficiaries were to obtain their shares of assets after seven years from the date of approval of the transformation project. The entitled beneficiaries expected to obtain their shares in cash. Therefore, the representatives of the agricultural producer co-operatives applied pressure to the government to amend the Transformation Law. Otherwise, most of them were expected to file for bankruptcy. The Transformation Law was amended in 1995. The shares

[394] J. Lazíková, A. Bandlerová ff., *Agrárne právo*, Slovak University of Agriculture in Nitra, 2011: 133ff.

[395] A. Bandlerová, J. Lazíková ff., *Agrárne právo Európskej únie*, Slovak University of Agriculture in Nitra, 2007: 140ff.

[396] A. Bandlerová, *Entrepreneuring of cooperatives in Slovakia,* International scientific days. Economic and management aspects of the sustainable development in agriculture, Slovak University of Agriculture in Nitra, 2001: 263–268.

[397] A. Bandlerová, J. Lazíková ff., *Agrárne právo Európskej únie*, Slovak University of Agriculture in Nitra, 2007: 141ff.

of entitled beneficiaries were converted into bonds which could be traded on the market. These bonds were traded according to their real value, which was smaller than the nominal value. The owners of bonds had a right to ask to be a member of a particular agricultural co-operative, a right to have a share in its profit, a right to sell his or her bonds on the market and a right to ask the co-operative to buy the bonds after seven years from the transformation procedure of a co-operative, for their real (not their nominal) value. On average, the real value was 15–30% of the nominal value of the bonds. The trade in co-operative bonds was influenced by the local conditions, mainly the mentality and social situation of beneficiaries.[398] Nowadays, business has increased with respect to co-operative bonds, but the real purchase prices are still lower than their nominal values. Co-operative bonds are usually bought by the members of the co-operative management.

The impact of the amendment to the Transformation Law on the further development of co-operatives was controversial. On the one hand, the amended law enabled the transformed co-operatives to survive. On the other hand, the dualism of property ownership in a co-operative still remained. There were some members of a co-operative with shares in the co- operative's property, bound by classical co-operative rules of voting, and other beneficiaries (non-members) with bonds that entitled them to have rights in the profit of a co-operative equal to shareholders' rights in a capital company. Agricultural producer co-operatives were obliged to issue co-operative bonds to the beneficiaries who were not members of the co-operative. If the agricultural co-operative had not issued these bonds by the end of the year 2005, entitled persons were able to file a claim in court for liquidation of this co-operative.

During the 1990s, the number of agricultural producer co-operatives decreased, due to bankruptcy or changes of legal form into companies. In 1990, there were 73 state farms, each of them cultivating on average 5083 ha of agricultural land and around 681 agricultural producer co-operatives cultivating on average 2484 ha of land per co-operative. Fifteen years later, there were only five state farms with an average area of 1972 ha of agricultural land.[399] However, around 598 agricultural co-operatives still cultivated approximately 1367 ha of land per co-operative.[400] This made up around 44% of all agricultural land in Slovakia.[401] After 2005, the number of agricultural producer co-operatives did not change

[398] J. Lazíková, A. Bandlerová, P. Schwarcz, Agricultural cooperatives and their development after the transformation. *Bulletin of the Szent István University. Special Issue. Part II,* Szent István University Gödöllö, 2008: 515–523.

[399] M. Gubová, M. Ambrózyová, *The development trend of the structural changes in agriculture*, VUEPP Bratislava 2005: 5ff.; Ministry of Agriculture and Rural Development of the SR, *Green report on the situation in agriculture and food industry*, Bratislava 2006: 124ff.

[400] *Ministry of Agriculture and Rural Development of the SR, Green report on the situation in agriculture and food industry, Bratislava* 2006: 137ff.

[401] Ibidem.

dramatically. In 2009, there were about 597 agricultural co-operatives, with an average area of 1268 ha of agricultural land.[402] Nowadays, there are around 560 agricultural producer co-operatives.[403]

In 2004, the Slovak Republic became a member of the EU. The agricultural producer co-operatives had to adapt to the European Single Market and to the rules of the Common Agricultural Policy. At this time, the Slovak agricultural co-operative movement faced two major challenges: (1) keeping up with the ideas of co-operative philosophy with the aim of satisfying the needs of co-operative members, and (2) dealing with strong competition in the EU markets.[404] The characteristic problems of Slovak agricultural co-operatives were as follows: over employment, social security contributions perceived as being high (social insurance, health insurance), lack of availability of free capital, and the low profitability of co-operatives. These factors had negative impacts on the competitiveness of co-operatives in the long term.[405] In 1989, the agricultural co-operatives employed about 80% of all agricultural workers.[406] This rate has decreased to 65%.[407] The agricultural co-operatives fulfilled very important social and demographic functions, especially in rural areas. In the 1990s, the total revenues per hectare of agricultural land for the agricultural producer co-operatives amounted to around 639 EUR; nearly 33 EUR lower than the revenues of agricultural companies. This trend has persisted, due to the better starting position of the agricultural companies in the 1990s. The companies obtained the most valuable property of agricultural producer co-operatives and state farms, without any debts. The imbalance in the starting point for doing business in the new market economy has still not been overcome; however, the differences between agricultural producer co-operatives and agricultural companies are decreasing from year to year.[408] The agricultural producer co-operatives in Slovakia still perform an important function as producers of agricultural and food commodities. Furthermore, they play an important role as providers of social services (employment, social services for employees, services for the municipality) and ecological services (care for the environment, land and forestry cultivation, ecological production) in rural areas.[409]

[402] Ministry of Agriculture and Rural Development of the SR, *Green report on the situation in agriculture and food industry*, Bratislava 2010: 145ff.

[403] Z. Chrastinová, Ekonomická, produkčná a sociálna situácia v poľnohospodárskych subjektoch. *Roľnícke noviny*, 2018, 7: 10–11.

[404] E. Šúbertová, Current situation in co-operative entrepreneurship in Slovakia, *VADYBA Management*, 2007, 1: 68–74.

[405] Ibid.

[406] A. Bandlerová, J. Lazíková, *Agrárne právo Európskej*: 138ff.

[407] J. Némethová, A. Dubcová, H. Kramáreková, Poľnohospodárstvo Slovenska v rokoch 2002-2014 a jeho regionálne diferenciácie. *Geografický časopis*, 2017, 3: 281–298.

[408] Z. Chrastinová, Ekonomická, produkčná a sociálna situácia v poľnohospodárskych subjektoch, *Roľnícke noviny*, 2018, 7: 10–11.

[409] A. Bandlerová, J. Lazíková, *Agrárne právo Európskej*: 38ff.

In Slovakia, agricultural co-operatives were also established as producer organisations in order to increase the economic power of their members in the market. However, only a few producer organisations were established before the accession of the Slovak Republic into the EU, due to the heritage from the socialist period and an associated lack of trust. This was caused mainly by insufficient knowledge about the role, structure and benefits of producer organisations and by the lack of practical leadership skills. Another important factor was the lack of a stimulus for establishing producer organisations and financial support that was only symbolic. The situation changed after the accession of Slovakia into the EU in 2004. The producer organisations were supported from EU funds, mainly via programmes for rural development. During the first funding programme period (2004–2006), only 34 producer organisations were established in Slovakia. During the next period (2007–2013), 63 producer organisations were created, mainly in Western Slovakia.[410] Most producer organisations were established in the dairy, cereals, pork, oilseed, fruit and vegetables and beef sectors. However, agricultural producers did not establish effective producer organisations that could ensure a sufficient amount and quality of agricultural commodities, with regular supplies for the food industry.[411] Only a few agricultural producers established functioning producer organisations, mainly in the potato and fruit sectors.[412] However, the agricultural producers argued that most of the producer organisations merely used the financial support, and after five years they declared bankruptcy. Nowadays, there are around 25 functioning producer organisations in Slovakia.[413] Their role mainly involves collective bargaining for product sales in the market. They promote low buying costs, (e.g., for seeds, fertilizers and pesticides) and the sale of large quantities of agricultural commodities for relatively higher prices than in the case of individual sales. The producer organisations represent the traditional co-operative model, where collective ownership and governance predominates. Therefore, producer organisations are considered as secondary co-operatives, because mainly large agricultural producer co-operatives are involved as members in producer organisations. There is a relatively low proportion of other legal forms and individual farmers. One of the reasons for the lack of success in establishing producer organisations in Slovakia is the lack of financial support after exhausting the EU financial resources. Leadership was found to be a crucial factor in determining a co-operative's performance.

[410] I. Takáč, P. Schwarcz, J. Lazíková, A. Bandlerová, A. Fehér, Associating farmers in the producers´organisation for suitable development of agriculture in Slovakia, *International journal of Agricultural Resources, Governance and Ecology*, 2015, 2: 105–122.

[411] Ministry of Agriculture and Rural Development of the SR, *Green report on the situation in agriculture and food industry*, Bratislava 2018: 133ff.

[412] Ibid.

[413] Ministry of Agriculture and Rural Development, 2018, *Slovakia - Rural Development Programme 2014-2020*, Bratislava MPRV SR, Available on-line at: <https://www.apa.sk/index.php?navID=496> [accessed 8.08.2019].

Strong leadership helps to overcome the collective action problems, but the commitment of a leader from a long-term perspective requires adequate compensation. Without a sufficient salary, the motivation of a leader decreases, which has negative consequences for a co-operative's performance.[414] Therefore, one of the priorities of the Ministry of Agriculture and Rural Development of the Slovak Republic is to support the establishment of producer organisations.[415]

Retailers have an interest in buying agricultural commodities from Slovak farmers, to support their sales and to supply Slovak agricultural commodities to Slovak consumers. However, the retailers need to buy different kinds of agricultural commodities in large quantities, on a regular basis, and small farmers are not usually able to supply appropriate amounts of these agricultural commodities. Only producer organisations are able to fulfil this role. This also represents an effective tool for agricultural producers and retailers. If an agricultural producer wants to be successful on the market, it is necessary for the producer to adapt and to try to understand the main role of the producer organisations. It is also necessary for the state to support the establishment of the producer organisations and to identify the criteria for approval of projects, in order to hinder misuse of financial support for other purposes and to help the producer organisations and their leaders to understand their role, mainly in supporting the sale of the agricultural commodities of their members. Nowadays, there are only a few producer organisations in Slovakia that fulfil their roles.

III. The Internal Governance of Producer Organisations in Slovakia

Most producer organisations in Slovakia have the legal form of a co-operative. This legal form is regulated by the Commercial Code, which defines a co-operative as a corporation of an unrestricted number of persons, established for the purpose of doing business or meeting the economic, social or other needs of its members. Co-operatives must have at least five members. However, there is one exception: the limit of five persons does not have to be fulfilled if there are at least two legal entities in the members of a co-operative. The co-operative has a legal form and is considered a legal entity. It is responsible for its debt, and the members do not guarantee its debts.

Co-operatives are established on the first meeting of the General Assembly. The main role of this meeting is to stipulate the basic capital that should be registered in the Business Register, to approve the statutes of the co-operative and

[414] I. Banaszak, *Success and failure of cooperation in agricultural markets. Evidence from producer groups in Poland*, Aachen, 2008: 5ff.

[415] Ministry of Agriculture and Rural Ddevelopment of the SR, *Green report on the situation in agriculture and food industry*, Bratislava, 2018: 128ff.

to elect the first members of the various bodies (Board of Directors and Control Commission). Co-operatives are established as legal entities via registration in the Business Register, administrated by the appropriate courts.

The minimum basic capital is 1250 EUR. This is the smallest amount of basic capital, compared to other legal forms. The co-operative must create a fund to cover losses. This fund must be created at a level of at least 50% of the basic capital and should receive 10% of profits each year.

Most legal rules related to the legal regulation of a co-operative are dispositive; the law allows the adoption of suitable rules in the statutes of a co-operative according to the needs of its members.

The internal governing structure of a co-operative is created by the General Assembly, consisting of all co-operative members, by the Board of Directors as the main decision-making body, and by the Control Commission as the control body of a co-operative. These are the obligatory bodies of a co-operative. Other bodies created by a co-operative are merely facultative and are defined in the statutes of a co-operative.

The General Assembly is the highest body of a co-operative and is the main decision-making body. The main competences of the General Assembly include amending the statutes, electing members of the Board of Directors and the Control Commission, approving the financial statements, deciding on the distribution and use of profits or losses, deciding on an increase in, or reduction of, registered capital, deciding on the main issues and concepts of co-operative development, and deciding on the fusion, mergers, divisions or abolishment of the co-operative or conversions of its legal form. The Commercial Code stipulates that each member has only one vote if the statutes of the co-operative do not stipulate otherwise. In practice, the distribution of votes among members in producer organisations is fully proportional and depends on the amount of the member's contribution. The members have voting rights proportional to their equity capital contribution, which does not represent the value of trade with the co-operative. Generally, a decision is adopted on obtaining a majority of votes of the present members of the General Assembly. In special cases, the law or the statutes of the co-operative can stipulate other criteria. A co-operative has a duty to organize a meeting at least once per year. It is also possible to organize partial meetings of the General Assembly, but this must be regulated in the statutes of the co-operative. The partial meetings cannot decide on the cancellation of the co-operative, a change in its legal form, or any other issues stipulated by the statutes of the co-operative.

Natural persons and legal entities who wish to become members of a co-operative must file an application, deliver it to a co-operative, and pay a membership fee. The minimum fee is not stipulated by law, but it cannot be zero. The level of the fee and the conditions for its payment are usually defined by the statutes of the co-operative. The statutes may stipulate different membership fees for natu-

ral persons and legal entities. The statutes may also stipulate that an applicant for membership becomes a member only after paying an entrance fee (as a particular part of a member's fee). The rest should be paid within three years if the statutes of the co-operative do not stipulate a shorter period for payment. Moreover, the statutes of the co-operative may impose a duty on a member to pay another member's fee. Membership of a co-operative ends following mutual agreement between the co-operative and the member, the withdrawal of a member, the exclusion of a member or bankruptcy with respect to the property of a member. There are no legal restrictions for withdrawal of a member from a co-operative. A membership ends at the very latest six months from the delivery of an announcement of withdrawal. The exclusion of a member may take place as a consequence of the repeated interruption of the member's duties, if a member is prosecuted for an intentional crime against the co-operative or some of its members, or for other reasons according to the statutes of the co-operative. The Board of Directors decides on the exclusion of a member if the statutes of the co-operative do not include other rules. Although the members of a co-operative represent their primary farms, secondary co-operatives (producer organisations) do not own the shares of their members.

The Board of Directors is a statutory body of a co-operative. Its main role is to manage the daily activities and roles of a co-operative. The Board of Directors realizes the resolutions adopted by the General Assembly. In Slovakia, the legal requirements regarding the composition of the Board of Directors are flexible, but Slovak law does not allow the Board of Directors to be composed of non-members, regardless of whether they are good professional managers. This means that only members of the co-operative can be elected as directors in this body. This is usually not considered to be an impediment to the effective composition of this body, because the members of a co-operative are more likely to be good managers than outside persons. Moreover, there are usually more potential disparities between the interests of a Board of Directors consisting of outside persons and the members of co-operative. On the other hand, a lack of managerial skills in co-operative members may influence the success of the producer organisation on the market. There is only one exception with regard to non-members; a non-member can be a director on the Board of Directors only if he or she is a natural person who is a member of a legal entity which is a member of that co-operative. *De lege ferenda*, it may be considered a possibility to be a member of the Board of Directors without being a member of the co-operative. Moreover, a member of the Board of Directors may not be a member of the Control Commission of the same co-operative. This restriction is also valid for the members of the Control Commission. They may not be members of the Board of Directors of the same co-operative.

The number of directors on the Board of Directors usually varies from three to seven. Election rules are established by considering product-group representation and personal expertise. Each member of the Board of Directors has only one vote.

Decisions are adopted on obtaining a majority of the votes of the present members, if the law or statutes of the co-operative do not stipulate other rules. The Board of Directors selects its president from its members, provided the General Assembly does not reserve this right for itself. The president of the co-operative organises and manages the board meetings. He or she usually also manages the daily operations of the co-operative. If a co-operative has fewer than 50 members, it is considered to be a small co-operative, and in this case, there is no Board of Directors but only a director who acts on behalf of the co-operative. The service period for members of the Board of Directors is a maximum of five years, though the statutes of the co-operative may stipulate a shorter period. The first members of the Board of Directors may be elected for maximum of three years. The re-election of the same members is allowed, provided it is not prohibited by the statutes of the co-operative. In practice, this period is usually three years, irrespective of whether it is the first or a subsequent Board of Directors and regardless of the sector of the producer organisation.

The Control Commission is entitled to control all activities in a co-operative. It has at least three members elected by the General Assembly. At the head of the Control Commission, there is a president and vice president elected by the members of the General Assembly or by the members of the Control Commission according to the statutes of the co-operative. Only members of the co-operative can be members of the Control Commission. Slovak law does not allow the Control Commission to be composed of non-members. Each member of the Control Commission has only one vote. The decision is adopted on obtaining a majority of the votes of the present members if the law or statutes of the co-operative do not stipulate otherwise. The function period of the members in the Control Commission is a maximum of five years, although the statutes of the co-operative may stipulate a shorter period. The first members of the Control Commission may be elected for a maximum of three years. Re- election of the same members is allowed if it is not prohibited by the statutes of the co-operative. However, a member of the Board of Directors cannot be a member of the Control Commission at the same time.

The Control Commission gives its opinion on the financial statement and the distribution and use of profits or losses in the co-operative. The Control Commission has access to all economic information about the co-operative. The Control Commission informs the Board of Directors on any inconsistencies discovered during the control process and may ask for the adoption of adequate measures for improvements. In the case of a small co-operative, the role of the Control Commission is performed by the General Assembly. A co-operative with more than 50 members must apply a dual structure of internal government. Most producer organisations are considered to be small co-operatives, where only a Board of Directors is established. The role of the Control Commission is usually performed by the General Assembly.

IV. Legal and political aspects of the institutional environment

Legal and political measures influence the performance of producer organisations, especially tax policies, competition law and subsidies policies. The institutional environment of agricultural co-operatives in Slovakia is socially oriented only in agricultural producer co-operatives, with producer organisations being merely business-oriented. One of the reasons for this may be the membership of producer organisations: producer organisations are mostly established by legal entities (agricultural producer co-operatives and agricultural companies) and the participation of small individual farmers in producer organisations is generally rare.

Tax law. In Slovakia, a group of direct and indirect taxes is applied to all undertakings, regardless of whether they do business in agriculture or in other fields of the national economy. The taxes include income tax, local taxes, such as taxing of motor vehicles used for business and real-estate taxes (land plots and buildings), value added tax, and consumer taxes for beer, wine, alcohol, tobacco, oil, electricity, coal and gas.

There are no special tax rules for the income of co-operatives, whether they are agricultural producers or producer organisations. The basic rate of tax income is 21% for all legal entities. Real-estate taxes are in the hands of municipalities, and co-operatives are dependent on the policy of the municipality. There are usually large differences between municipalities. The tax from vehicles used for business purposes depends on the policy of the regions (NUTS III). However, if a vehicle is used exclusively in agriculture or forestry, the vehicle is free from those taxes. VAT is a tax regulated by the state and its rate is 20%. A decreased rate of VAT (10%) is used also for some agricultural commodities, such as meat and fish, milk, butter and bread, as defined in Annex 7 of Act No. 222/2004 Coll. on value-added tax. Of the consumer taxes, those on oil and electricity represent the biggest tax burden for agricultural co-operatives, especially agricultural producer co-operatives. However, the Ministry of Agriculture and Rural Development of the SR introduced state aid measures for agricultural producers, to compensate at least partially for this tax burden.

Competition law. Competition law is related to all the undertakings of subjects that represent economic activity. Agricultural activities are also economic activities. Competition law includes cartel law, abuse of a dominant position in the EU market, mergers of undertakings, and state aid (Articles 101–106, TFEU). However, EU competition law stipulates some special provisions for agriculture, (e.g., Council Regulation (EC) No. 1184/2006, applying certain rules of competition to the production of, and trade in, agricultural products and Regulation (EU) No.1308/2013 of the EP and of the Council, establishing a common organi-

sation of the markets in agricultural products). The EU competition rules are applied, unless the practice of undertakings has an effect on trade between the EU member states. Producer organisations in Slovakia usually trade only at the local, regional or national level. This means that their activities do not usually have an effect on EU trade. In such cases, national competition rules apply. However, there are no special rules in Slovak national law relating to agriculture and producer organisations. Most agreements, decisions and common practices of farmers and their producer organisations that concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, are excluded from the rules of EU competition law (mainly Article 101, TFEU, relating to cartel law), unless the objectives of the Common Agricultural Policy are jeopardized. The second aspect of competition law concerns abuse of a dominant position in the market, according to Article 102 TFEU. In the case of Slovakia, there are no agricultural producer cooperatives or producer organisations with a dominant position in the market, relevant to the application of EU or national competition legal rules. Therefore, the establishment of the producer organisations does not present any risk to market competition. The market power (the bargaining power) of agricultural producers will be higher when they are members of a producer organisation. However, in the case of Slovakia, this power is still insufficient, compared with that of stronger contractors. However, the creation of producer organisations may improve market competition, because producer organisations reduce the discrepancies between the market power of agricultural producers and that of their contractors. Producer organisations improve market efficiency by dealing with the difficulties of access to the market, by providing market access to small holders or by linking land and labour markets. Therefore, producer organisations are considered to be efficient operators rather than a risk factor for price creation in the market. Nowadays, this is the case for producer organisations in Slovakia, because the development of producer organisations did not start successfully and most of them were abolished after the expiration of the obligatory period of their duration and after exhausting the available financial support. However, it is possible that this situation may change in the future. Therefore, their position and practices in the market should be evaluated on a case-by-case basis during this period.

Subsidy policy measures. Financial incentives are the usual policy measures. One such measure was included in the rural development programme of 2014-2020, oriented towards activities aimed at improving the sale of agricultural commodities through producer organisations.[416] The entitled beneficiaries are

[416] L. Rumanovská, Impact of EU common agricultural policy 2014–2020 implementation on agriculture in Slovak Republic, *Scientific papers. Management, Economic Engineering in Agriculture and Rural Development,* 2016, 1: 459–465; L. Rumanovská, I. Takáč, *Realizácia spoločnej poľnohospodárskej*

recognised producer organisations in the fruit and vegetables sector. According to Article 34 of Regulation No. 1308/2013, the financial support is equal to the amount of the financial contributions referred to in point (a) of Article 32(1) as actually paid, and limited to 50% of the actual expenditure incurred and to 4.1% of the value of the marketed production of each producer organisation or their association. According to Article 35 of Regulation No. 1308/2013, in regions of member states where the degree of organisation of producers in the fruit and vegetables sector is particularly low, the Commission may adopt implementing acts authorizing member states, at their duly substantiated request, to pay producer organisations national financial assistance equal to a maximum of 80% of the financial contributions. Producer organisations are considered to be of low degree if their market share was less than 20% of the fruit and vegetable production from the region over the last three years. Nowadays, there is no financial support for other sectors of agricultural commodities.

V. The position of producer organisations on the market

The common main roles of producer organisations are collective bargaining, collecting farm products, including transport and storage, marketing branded products, integrating supply inputs and wholesaling and retailing for the members. Producer organisations help to decrease the risk related to the lack of available financial capital and subsequently to strengthen the liquidity of their members, especially in the dairy sector. The competitiveness of producer organisations in the dairy sector has been increased by selling through common product marketing, (e.g., milk machines or the milk-for-schools policy measure).

Producer organisations by sector. Most producer organisations focus on the cereals and milk sectors. Some of them focus on other sectors, such as oilseed, fruit and vegetables, potatoes, pork or poultry and eggs. However, there are still no producer organisations focused on beef, sugar, wine or other commodities. Moreover, most of the established producer organisations were abolished in 2014 and 2015, after the expiration of the project period and exhaustion of the available financial support. More than 50% of all producer organisations were abolished as a result of bankruptcy. Nowadays, most producer organisations are active in the milk sector (around 26%), the cereals sector (23%) or the fruit and vegetables sector, including potatoes (23%). There are only two producer organisations for oilseed, two producer organisations for poultry and eggs, and one producer organisation for sheep meat, tobacco, hops and honey and other bee products.

politiky v rokoch 2014–2020, Fast-growing trees and plants growing for energy purposes, Slovak University of Agriculture in Nitra, 2015: 60–67.

Producer organisations by region (NUTS III). Most producer organisations were established in agricultural regions such as the Trnava region (35%), the Trenčín region (15%), the Nitra region (14%) and the Košice region (12%). These regions are also the regions where many producer organisations went bankrupt. Around 47% of all bankrupt producer organisations in Slovakia were originally established in the Trnava region. The corresponding figures are more than 10% for the Košice region, the Nitra region and the Trenčín region. In the Bratislava region only, all the established producer organisations still exist. Most producer organisations went bankrupt in 2015. Twenty-five producer organisations were abolished and, of these, 22 were in the Trnava region.

Producer organisations and their members. According to the previous analysis, there are important questions about who the members of producer organisations are. In our research in 2016, 912 agricultural producers were interviewed to determine whether they were members of a producer organisation. Of 543 legal entities, only 18% were members of a producer organisation and of 369 individual farmers, only around 14% were engaged with a producer organisation. In general, only a very small percentage of agricultural producers are interested in engaging with a producer organisation. The main role of a producer organisation should be to promote small farmers, via integration in the market. In spite of this fact, the interest among individual farmers is less than the interest among legal entities in agriculture.

Interest in engaging with a producer organisation is different in different regions. Most of the agricultural producers willing to be members of a producer organisation are concentrated in the Banská Bystrica region (around 31%), the Nitra region (around 24%) and the Košice region (around 20%). In each region, there is greater willingness to be engaged in a producer organisation in legal entities than in individual farmers. There is only one exception: the Banská Bystrica region, where the number of individual farmers engaging with a producer organisation is higher than the number of legal entities (Table 1).

According to the above-mentioned results, agricultural producers, especially individual farmers, do not comprehend the meaning and the objectives of the producer organisations. They still have fears stemming from the period of collectivization and therefore they refuse to join with other agricultural producers in a producer organisation. The situation is aggravated by the fact that producer organisations have, in most cases, the legal form of co-operatives. On the one hand, a producer organisation is a very useful tool to enable an agricultural producer to be more competitive on the market, but on the other hand it is very difficult to persuade Slovak agricultural producers to engage because the negative effects of collectivization and the socialist period still persist, (for example, old debts of agricultural producers, land fragmentation, undocumented land ownership, the unavailability of land ownership, etc.).

Table 1. Agricultural producers engaged in a producer organisation by the regions

Region	Number of agricultural producer (respondents) to be engaged in a producer organisation	Share of legal entities (%)	Share of individual farmers (%)
The Bratislava region	15	80.00	20.00
The Banská Bystrica region	29	44.83	55.17
The Košice region	21	52.38	47.62
The Nitra region	34	64.71	35.29
The Prešov region	14	92.86	7.14
The Trenčín region	7	85.71	14.29
The Trnava region	19	68.42	31.58
The Žilina region	10	80.00	20.00

Source: own calculations.

Turnover of the producer organisations. Only 10% of total turnover in agriculture is realized by producer organisations. In 2017, the turnover of producer organisations was 10.61% of the total agricultural turnover in Slovakia (approximately 205 million EUR). The most active sectors in the total turnover of producer organisations are the potatoes, milk and fruit and vegetables sectors. According to the data, the interest of agricultural producers in selling their products through producer organisations is greater in sectors with a higher labour intensity. This is also a signal for policymakers to introduce adequate financial incentives and other forms of support. The shares of particular agricultural sectors in the turnover of producer organisations are shown in Table 2.

Table 2. The share of producer organisations in the total turnover by sectors

Sector	Turnover in mil EUR		Share in the total turnover of producer organisations (%)	
	2017	2018	2017	2018
Cereals	16.8	16.2	8.18	7.52
Milk	53.2	42.6	25.91	19.79
Oilseeds	4.6	4.7	2.24	2.18
Fruit and vegetables	56.3	67.1	27.42	31.17
Potatoes	41.5	56.2	20.21	26.10
Poultry and eggs	18.5	15.7	9.01	7.29
Others	14.4	12.8	7.01	5.95

Source: own calculations.

The shares of producer organisations in the total turnover by region, correspond to the distribution of the producer organisations. The highest share of total turnover was found in the Bratislava region, where the producer organisations for potatoes and fruit and vegetables are concentrated. The Košice region and the Nitra region, where producer organisations for milk and fruit and vegetables are concentrated, are in second and third place regarding the turnover of the producer organisations. The share of producer organisations in the total turnover in particular regions depends on the sector in which the producer organisations are engaged (Table 3).

Table 3. The share of producer organisations in the total turnover by regions

Region	Turnover in mil EUR		Share in the total turnover of producer organisations (%)	
	2017	2018	2017	2018
The Bratislava region	79.14	98.63	38.55	45.81
The Banská Bystrica region	6.57	6.57	3.20	3.05
The Košice region	29.93	34.84	14.58	16.18
The Nitra region	27.18	24.48	13.24	11.37
The Prešov region	9.32	8.89	4.54	4.13
The Trenčín region	14.89	13.12	7.25	6.10
The Trnava region	14.22	14.21	6.93	6.60
The Žilina region	24.04	14.55	11.71	6.76

Source: own calculations.

VI. Concluding remarks

The main roles of producer organisations are collective bargaining, marketing branded products, and collecting farm products, including transport and storage. In spite of this fact, only a few producer organisations were established before the accession of Slovakia into the EU. Most of them were established during the period 2007-2013, mainly in the dairy, cereals, pork, oilseed, fruit and vegetables and beef meat sectors. There are still no producer organisations focused on beef, sugar, wine or other commodities. Moreover, only a few producer organisations have survived to the present. Most of the established producer organisations were abolished in 2014 and 2015, after the expiration of the project period and the exhaustion of the available financial support. There are also other reasons for their bankruptcy, such as the lack of financial support after the exhaustion of

the EU financial resources, the leadership of producer organisations consisting only of the members of a co-operative, the lack of knowledge and skills within the producer organisations, and the persistent fear of Slovak agricultural producers, stemming from collectivisation during the socialist period. These reasons should be taken into account when preparing the policy measures for a new programme for Slovak agriculture.

Chapter X

FARMER CO-OPERATIVES IN SLOVENIA: LEGISLATION AND PRACTICE

Franci Avsec

I. Introduction

Co-operatives in Slovenia are regulated by two basic legal instruments: the Slovenian Co-operatives Act[417] and the Council Regulation (EC) 1435/2003 on the statute for a European Cooperative Society.[418] The first Act was adopted by the Slovenian Parliament in 1992, while the second legal instrument came into force on the Slovenian territory after Slovenia joined the EU on 1 May 2004. Both instruments are general in scope, since they cover co-operatives in all sectors of activities regardless of their membership. For the present, no European co-operative society has been established in Slovenia, all existing co-operatives are organised and operate according to the Slovenian Co-operatives Act.

The term "agricultural co-operative" is not statutorily defined in the Slovenian legislation. The Act on agriculture[419] lays down conditions for recognition of producer organisations and producer groups, but such organisations or groups may be organised in various legal forms, not only as co-operatives, although the co-operative form seems to be most suitable with regard to the conditions prescribed.

The notion of an agricultural co-operative may cover co-operatives with various membership and activities, ranging from co-operatives for joint agricultural production to the market, supply and processing co-operatives of farmers as self-employed agricultural producers. Although a few Slovenian co-operatives have, to a very limited extent, their own agricultural production (mainly in the fruit and milk sector), this activity is carried out by hired workers and not by farmer members. For the present, there is no known agricultural co-operative in Slovenia which is based on the joint agricultural production of members.

[417] Zakon o zadrugah, Uradni list RS, No.45/2008, 57/2012, 90/2012 – ZdZPVHVVR, 26/2014, 32/2015, 2720/17, 22/2018.

[418] OJ, No. L 207, 18.8.2003: 1–24.

[419] Zakon o kmetijstvu, Uradni list Republike Slovenije, No. 45/2008, 57/2012, 90/2012 – ZdZPVHVVR, 26/2014, 32/2015, 27/2017 and 22/2018.

Due to the natural conditions and historical development in Slovenia, agricultural holdings take up a considerable area of agricultural land and forest. According to the agricultural census of 2016, 69,902 agricultural holdings used 494,641 hectares of agricultural land and 387,868 hectares of forests, 231 holdings (0.03% from the total number of agricultural holdings) were organised as legal entities using 5.3% of the total agricultural land in use (mainly renting state-owned land). The remaining 69,671 agricultural holdings (99.7% of the total number) were family farms using 94.7% of the agricultural land.[420] As forestry can hardly be separated from other activities on family farms (although it plays a subordinate economic role compared to agriculture and complementary activities on farms), farmers in Slovenia sell forest products not only through specialised forestry co-operatives, but also through agricultural co-operatives with a wide range of activities. Therefore, this paper deals with farmer co-operatives in Slovenia.

The second section presents a brief historical survey of the development of farmer co-operatives. The next four sections deal with the legal definition of a co-operative and the economic importance of farmer co-operatives (the third section), membership (the fourth section), financial structure (the fifth section) and the governance of farmer co-operatives (the sixth section). The last section is dedicated to the future perspectives of farmer co-operatives.

II. Historical development agricultural and other co-operatives in Slovenia – a brief survey

On the territory of today's Slovenia, like in other European countries, modern co-operatives were called into life by the far-reaching economic and social changes triggered by the industrial revolution, the development of the railways and the increasing influence of the market on economic and social life. After the March Revolution of 1848 abolished feudal relationships, farmers became the owners of the land they cultivated, but they had to face growing competition as the newly built railways brought cheap agricultural products from abroad while, on the other hand, industrialisation also offered opportunities for more competitive agricultural production. Farmers, craftsmen and other small producers needed additional money for new ways of production, for the payment of taxes and of inheritance shares in cash (to preserve the integrity of farms in the case of generational change). As small producers could not obtain loans from existing banks, the situation turned to the advantage of usurers who lent money for high interests, so that many farms went bankrupt and many people emigrated, as the domestic industry was not developed enough to absorb all the former agrarian population.

[420] SURS (Statistical Office of the Republic of Slovenia), 2019.

The first organisation which tried to solve this problem on the basis of cooperative principle of self-help was established, on the initiative of Jan Nepomuk Horak (1818–1893), in the legal form of an association, in Ljubljana in 1856.[421] Soon after the Austrian Co-operatives Act from 1873[422] provided for a more expeditious registration procedure and the simpler operation of co-operatives, numerous credit co-operatives were founded on the Slovenian national territory.

In the first period, the Slovenian co-operative movement was led by the patriotic intelligentsia which considered co-operatives as an important tool for the economic emancipation of the Slovenian nation, propagating credit co-operatives after the Shulze-Delitzsch's model and examples from Czech co-operative movement. Important initiators of the Slovenian co-operative movement in this period were the brothers Dr. Jože Vošnjak (1834–1911), a physician and member of the state Parliament, and Mihael Vošnjak (1837–1920), an engineer, initiator and president of the first Slovenian co-operative union. This union (Union of Slovenian credit co-operatives in Celje) was established as early as in 1883 and began to audit the affiliated co-operatives on their request as early as in 1888, 15 years before the Austrian Act introduced the obligatory periodical auditing of co-operatives in 1903.[423] At the turn of the century, the Raiffeisen model of credit and other co-operatives, especially among farmers and in rural areas, was successfully propagated by Dr. Janez Evangelist Krek (1865–1917), the leader of the Christian social movement, while credit, consumer and similar co-operatives also began to emerge within the workers' social democratic movement.

After credit co-operatives had enabled the access of farmers and craftsmen to credit, other co-operatives were also founded, for instance farmer co-operatives for supply, processing and marketing. The first milk processing cooperatives developed within agrarian communities which processed milk into cheese during the summer pasture of cows on the common land in the Alps, gradually extending the joint processing and marketing also to the period when the cattle were not on the pastures.[424]

After the First World War, the co-operative movement on the Slovenian territory was weakened by the new political delimitations which separated many co-operatives from their co-operative unions. In 1920s, co-operatives and their

[421] D. Schauer, *Prva doba našega zadružništva* (*The first period of our cooperative movement*), Ljubljana 1945: 25ff.

[422] Postava o pridobilnih in gospodarstvenih društvih ali tovarištvih (Act on industrial and provident associations or friendly societies). (1873). Državni zakonik za kraljevine in dežele v državnem zboru zastopane (14 May 1873).

[423] Zakon z dne 10. junija 1903. l. o pregledu pridobitnih in gospodarskih zadrug ter drugih društev (Act from 10 June 1903 on auditing of economic cooperatives and other associations), Državni zakonik za kraljevine in dežele, zastopane v državnem zboru 63/1903 (23. junij 1903).

[424] For a more detailed review see V. Valenčič, Začetki organizacije našega mlekarstva (The begininngs of our milk processing organisation), *Kronika (Ljubljana)*, Vol. 38, 1/2: 30–43.

unions succeeded in establishing co-operative banks. However, the world economic crisis at the beginning of the 1930s stopped economic growth and price scissors (changed terms of trade between agriculture and industry) triggered a serious debt crisis for farmers. At first, state intervention tried to alleviate the situation, by prolonging moratoriums for repayment of debts several times, until in 1936 the Regulation on the Liquidation of Farmers' Debts prescribed that credit co-operatives and other credit institutions transferred the claims against farmers to the Privileged Agrarian Bank (PAB), which issued government bonds in difficulties, but a part of the debt had to be written off without compensation for credit institutions.[425]

In 1937, the Kingdom of Yugoslavia unified the co-operative law by the adoption of the Economic Co-operatives Act which introduced a more solidary conception of a co-operative. According to the Act, co-operatives had to conclude transactions which directly fulfilled their purpose mainly with members. Compared with the previous Austrian Co-operatives Act, the Yugoslav Economic Co-operatives Act from 1937 put more emphasis on equal members' voting rights (limiting exceptions from this principle) and surplus distribution according to the business of members with the co-operative (limiting the rate of eventual interest on paid-in shares). The Act also prescribed a minimum percentage of surplus which had to be allocated to reserves, which were no more distributable among members in the case of dissolution of a co-operative. In such a case, the property that remained after the creditors had been satisfied, and the nominal value of member shares had been reimbursed, had to be transferred to the co-operative union to which the former co-operative had been affiliated.

After the II World War, the co-operative unions which had been connected with the previous pre-war political parties were wound up, their property nationalized. Credit co-operatives which were the backbone of the co-operative system, were put into liquidation. A radical agrarian reform was carried out following the principle "The land belongs to them who cultivate it".[426] The federal and republic legislation determined the maximum surface of agricultural land and forests that was allowed to be in private property (in principle, 45 hectares for farmers and 3 hectares for non-farmers).

The General Co-operatives Act from 1946[427] developed a rather collectivistic conception of co-operatives, defining them as "voluntary organisations of working people who, for development of the national economy, on the basis of joint work, develop the agricultural economy and crafts and evolve the initiative of the broadest masses in the country and in the city in organizing the production, sup-

[425] M. Maček, *Urejanje kmečkih dolgov v stari Jugoslaviji*: 417–439.

[426] So literally the first sentence of Article 19 of the Yugoslav Constitution from 1946 (Ustava Federativne Ljudske Republike Jugoslavije).

[427] Splošni zakon o zadrugah, Uradni list Federativne Ljudske Republike Jugoslavije, No. 59/1946.

ply and distribution of goods".[428] In the first years after the war, co-operatives for reconstruction and renewal, supply and sale co-operatives, as well as various agricultural and forestry co-operatives, played an important role in the reconstruction of the country and the regular supply of the population.

After the adoption of the federal Basic Agricultural Co-operatives Act (1949), a political campaign was started for the establishment of so-called agricultural working co-operatives, where farmers would jointly cultivate the collectivised land following the example of Soviet kolkhozes. Due to serious infringements of the voluntary principle, poor technical equipment and the unsatisfactory economic performance of the agricultural working co-operatives, the campaign failed and was officially stopped at the beginning of the 1950s, when the agricultural working co-operatives were wound up. In spite of the newly introduced special maximum relating to the surface of *arable* agricultural land allowed to be privately owned by farmers (10 hectares in lowlands, 20 hectares in hilly and mountainous regions per holding), the major part of agricultural land and forests remained in private ownership throughout the whole period after II World War.

In the 1950s, Yugoslavia introduced a self-management system of workers and working people which was based on social ownership as a basic, prevailing ownership form not only in enterprises but also in agricultural and other co-operatives. Although the more liberalized economic system stimulated the business activities of supply and market agricultural co-operatives, the legislation and agricultural policy gradually equalized co-operatives with social enterprises. The governance rights of members were weakened, while employees obtained greater influence in formal decision-making, which led to a separation of processing and other facilities from farmer co-operatives. At the beginning of the 1960s, all representative, audit and business co-operative unions ceased to function as independent legal entities. A campaign for larger agricultural co-operatives through mergers was started. As the Slovenian Act on forests from 1965[429] introduced common management of socially and private forests by specialized 14 forest management enterprises, farmer co-operatives lost their role in forestry. The agricultural policy favoured large agricultural enterprises with which the private farmers would co-operate and participate in management.

The political attitude towards private agriculture and co-operatives began to change towards the end of the 1960s. In 1969, Slovenia adopted special legislation for saving and credit services within agricultural co-operatives, agricultural enterprises and forest management organisations. These services were allowed to collect savings from farmers and employees and to grant credit for the develop-

[428] Splošni zakon o zadrugah (1946), Article 1.

[429] Zakon o gozdovih, Uradni list Republike Slovenije, No. 30/1965.

ment of co-operatives, private farms and rural areas.[430] The legislation strengthened the governance rights of farmer members in agricultural co-operatives and of the so called farmer "cooperators" (Slov.: "kooperanti") in agricultural enterprises and forestry management organisations. A modernisation of private farms began, supported by agricultural co-operatives, their advisory service (partly financed by the state), and saving and credit services.

The present period of farmer co-operatives began after Slovenia gained independence in 1991. In 1992, the Co-operatives Act currently in force was adopted. In 2004, Slovenia joined the European Union.

III. The legal definition of a co-operative and the economic importance of farmer co-operatives

In the original text of the Co-operatives Act, a co-operative was defined as "an organisation of variable number of members with the purpose to promote the economic interests of members, which is based on voluntary entry, free withdrawal and the equal rights of members to participate in the operation and management of the co-operative" (Article 1). The third amendments to the Co-operatives Act (2009) broadened the statutory purpose of a co-operative with the "promoting of economic and social activities of members", explicitly permitting a co-operative to conduct its activity through a subsidiary. This modification brought the definition of a co-operative more closely to that of European co-operative societies,[431] aiming at open, wider options for the operation of co-operatives to the benefit of their members.

The core business of farmer co-operatives in Slovenia is concentrated on the supply of members with agricultural and forestry inputs, and marketing farmers' agricultural and forestry products, either processed or unprocessed. The concentration of supply and demand through a co-operative strengthens the farmers' bargaining power on the market, while the processing capacities in several co-operatives ensure farmers a higher share in the added value. The most economically important processing capacities of co-operatives can be found in the wine sector (processing grapes into wine), while the share of co-operatives in processing meat, milk and wood is lower. Many farmer co-operatives also supply rural populations with consumer goods.

If we compare data on the total purchase of agricultural products from agricultural holdings (collected by the Statistical Office of Slovenia) with data pertaining to the purchase of agricultural products by farmer co-operatives affiliated to

[430] Zakon o ustanavljanju in poslovanju hranilno kreditnih služb kmetijskih in gozdarskih delovnih organizacij, Uradni list Socialistične republike Slovenije, No. 22/1969.

[431] Cf. Article 1(3) of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

the Co-operative union of Slovenia (which collects data on the operation of its member co-operatives), it can be concluded that farmer co-operatives affiliated to this Union have an important – for some products even majority – market share.

Table 1. Market shares of co-operatives affiliated to the Co-operative union of Slovenia for different agricultural products

Product	Market share
Slaughter cattle	79%
Milk	79%
Pigs	93%
Wheat	35%
Maize	60%
Potato	69%

Source: Zadružna zveza Slovenije (Co-operative Union of Slovenia), Letno poročilo 2017 (Annual Report 2017), 2018.

Fifty nine farmer co-operatives which are voluntary members of the Co-operative union of Slovenia belong to the group of the largest co-operatives. In 2019, they were responsible for 86% of total revenues and employed 87 % of employees of all (not only farmer) cooperatives, showing a surplus of approximately 2.17 million euros, while the net result for all cooperatives was a surplus of 2.42 million euros.[432]

IV. Membership

A co-operative may be established by at least three founders, who may be natural persons or legal entities (Article 4 of the Co-operatives Act). The founding act, signed by the founders, must also contain the statutes of the co-operative.

After the establishment of a co-operative, new members may be admitted on the basis of written admission statement and a positive decision adopted by the competent body of a co-operative, unless the statutes provide that the applicant is admitted as soon as the co-operative received the admission statement (this provision is rarely applied in practice).

The ordinary membership consists of three relationships between the member and a co-operative: (1) the transactional, (2) the ownership, and (3) the control (governance) relationship. Transactions concluded by a member and a co-operative through which the co-operative directly realises its purpose, providing

[432] AJPES, Informacija o poslovanju gospodarskih družb in zadrug v Republiki Sloveniji leta 2019 (Information on operation of commercial companies and cooperatives in the Republic of Slovenia for 2019), Ljubljana, 2020: 38, and own calculations.

benefits to its members as suppliers, workers and/or consumers (the so-called co-operative transactions, for instance the delivery of agricultural products to processing and marketing co-operatives, the sale of inputs to members of supply co-operatives) are regulated in more detail by the statutes.

The statutes may allow a co-operative to enter into co-operative transactions with non-members, but each co-operative is bound to conclude co-operative transactions mainly with its members (Art. 2 of the Co-operatives Act). Taking into account the statutory purpose of the co-operative, business with the co-operative on the basis of co-operative transactions is a basic membership right or, if the statutes so provide, also a duty in farmer and other co-operatives. The contracts in the food supply chain are regulated not only by the general obligation law, but also by special provisions.

In this respect, the Slovenian Act on agriculture prescribes that contracts for the delivery of raw milk between a farmer, on the one hand, and a collector or a processor, on the other, had to regulate certain issues and be concluded in written form from 1 January 2015 onwards (Art. 58.a).[433] A similar duty was introduced from 1 January 2019 onwards for contracts relating to the delivery of other agricultural products.[434]

The Act on Agriculture also stipulates maximum payment periods for the delivery of perishable agricultural products (45 days) and other agricultural products (90 days, with certain specific provisions for grapes intended for processing, Art. 61.b and 61.c of the Agriculture Act). While co-operative transactions are characteristic for ordinary members of a farmer co-operative, the Co-operative Act, following the SCE-Regulation, permits co-operatives to admit, besides co-operative members, also members who do not expect to use or produce the goods and services of the co-operative (investor members). Although some farmers' co-operatives have included provisions about investor membership in their statutes, the investor members have not been admitted, in practical terms. It seems that outside investors and co-operatives prefer to establish commercial companies because the governance rights of investor members in co-operatives are limited, as will be shown in the next sections.

The official statistical service does not collect data about the number of members in various co-operatives. These data are available only for farmer co-operatives affiliated to the Co-operative union of Slovenia. 59 member co-operatives of this union had approximately 13,000 members, or on average 216 per co-operative in 2017.[435]

[433] This statutory provision, introduced by the second amendments to the Act on agriculture from 2014 (ZKme-1B), is based on Art. 148 of Regulation 1308/2013/EU.

[434] Provisions on the written form and certain clauses of delivery contracts for other agricultural products, except milk, were introduced in the fourth amendments to the Act on agriculture (ZKme-1D), being based on Art. 168 of Regulation 1308/2013/EU.

[435] Zadružna zveza Slovenije (Cooperative union of Slovenia), Letno poročilo 2017 (Annual report 2017), Ljubljana, 2018.

V. The financial structure of farmer co-operatives

The property of a co-operative consists of contributions to the capital made by the founders and later admitted members, as well as of retained (not distributed) surplus.

The Co-operatives Act provides for obligatory members' shares. The statutes of a co-operative stipulate the number of shares which must be subscribed and paid-in by each member (the obligatory share) and, if several obligatory shares must be subscribed, the number of obligatory shares. The statutes may adapt the obligation to subscribe and pay shares to the members' financial capabilities and their readiness to invest in the co-operative.

If the members are obliged to subscribe different numbers of obligatory shares, the statutes must determine the objective basis for the determination of the members' financial obligations relating to obligatory shares. According to the Co-operatives Act, such a basis may be the volume of potential or actually agreed co-operation between the member and the co-operative, depending on the size or other characteristics of the members' economic units (farms in agricultural co-operatives, households in consumer co-operatives etc., Article 35(2)).[436]

In addition to obligatory shares, a member may subscribe one or more voluntary shares under conditions specified in the statutes, provided that the subscription is accepted by the competent body of the co-operative. When new members join a co-operative, the share capital of the co-operative increases, while it is reduced if the existing members notice their voluntary shares or exit from the co-operative and the nominal value of shares is redeemed to the member or her successor.

The Co-operative Act prescribes no mandatory minimum amount of a member share or minimum share capital of the co-operative, but permits, following the example of the SCE Regulation (which mandatorily prescribes a minimum share capital of 30,000 EUR), a national co-operative, if its statutes permit the transfer of shares, to determine the minimum amount under which the share capital must not be decreased by the reimbursement of shares. The transfer of shares, if permitted by the statutes, must be approved by the competent body of the co-operative (Articles 39.a and 39.b of the Co-operatives Act).

The property of a co-operative increases not only through the payment of shares, but also through the efficient operation and reinvestment of at least part of the annual surplus. According to the Co-operatives Act, each co-operative must allocate at least 5% of its annual surplus to the obligatory reserves, as long as it operates.

Besides obligatory reserves, a co-operative may also form other reserves (voluntary funds). While the obligatory reserves are not distributable among mem-

[436] The provision seems to have been taken over from Article 73(1) of the former Spanish Co-operative Act (Ley 3/1987, de 2 de abril, General de Cooperativas).

bers as long as the co-operative is operating, the voluntary funds may be distributed among members before the dissolution of the co-operative only if the statutes permit such distribution (Art. 43 and 44 of the Co-operatives Act).

The surplus that is not allocated for reserves may be distributed among members according to their business (co-operative transactions) done with the co-operative if the statutes do not provide any other criteria for distribution (Article 45 of the Co-operatives Act).

The balance sheet of some co-operatives shows also the so-called indivisible co-operative capital. This item corresponds to the value of assets that may not be distributed among members in situations when the co-operative is wound up. Such a legal regime was introduced within the framework of privatisation of the former socially owned capital by the transitory provisions of two legal acts, namely the Co-operatives Act from 1992 and the Forests Act from 1993, for the following assets:

- assets that were transferred from social ownership to ownership of the co-operative (Article 74 of the Co-operatives Act),
- assets that were restored to co-operatives and co-operative unions according to the provisions on the restitution of co-operative property that had been nationalized without compensation after 1945 (Article 65-68 of the Co-operatives Act),
- shares (up to 45%) of the social capital in 45 food processing enterprises or their parts, that were specified in the Annex to the Co-operatives Act. These shares were transferred to farmer co-operatives that had concluded contracts on production or business co-operation with these enterprises in the 5-year period from 1986 to 1990 (Article 57-64 of the Co-operatives Act),
- assets in social ownership that were transferred from forest management enterprises to forest co-operative organisations, agricultural co-operatives or the Co-operative union of Slovenia (Article 83 of the Forest Act from 1993).[437]

[437] Slovenia belongs to the most forested countries in Europe: the share of forests in the total surface amounts to 58.5% (Zavod za gozdove Slovenije, 2019). Immediately after WWII, forest productive co-operatives played a crucial role in the reconstruction of the country and the protection of the economic interests of small forest owners (large forest property in private ownership was abolished by a radical agrarian reform in 1945). After 1948, specialised forest productive co-operatives were merged with the so-called general agricultural co-operatives. As the general agricultural co-operatives were not very efficient in the management of private forests, forest business unions of agricultural co-operatives were formed in 1957. At the beginning of the 1960s, the tasks and assets of forest business co-operative unions were transferred to agricultural co-operatives. In spite of the accelerated concentration of general agricultural co-operatives, their size, economic power and professional forestry staff lagged considerably behind the 14 enterprises which managed the socially owned forests. The Slovenian Forest Act from 1965 introduced the common management of socially and privately owned forests. The common management included not only forestry planning, but also protection and silvicultural activities, the construction and maintenance of forest infrastructure, har-

These measures favoured co-operatives existing at the time when the Co-operatives Act entered into force, in particular, farmer co-operatives which benefited from the assignment of (minority) shares in 45 food processing enterprises, and from the transfer of certain socially owned assets from the forest managing organisations.

Due to compromise solutions in the privatisation legislation, co-operatives were given minority shares in 45 food processing companies. As a matter of fact, the percentage of socially owned capital given to co-operatives in 45 food processing enterprises was lower than 45%, due to legislative provisions,[438] as well as the options given to enterprises listed in the Annex to the Co-operatives Act.[439] Another fact that weakened the position of farmer co-operatives in the food processing enterprises was the extreme fragmentation of co-operatives participating in the privatisation of these enterprises: on average, 9 co-operatives were given shares in one of food processing enterprise listed in the Annex to the Co-operatives Act. Nevertheless, farmer co-operatives have managed to increase their share in some food processing companies. For instance, co-operatives which obtained shares in the second largest milk processing company in Slovenia, increased their shares up to 99.6% in 2018.[440]

Summing up, the Co-operatives Act foresees several equity items with different levels of (in)divisibility among the members and various impacts on the variability of the co-operatives' own capital.

A co-operative is liable for its obligations with its entire assets. In a bankruptcy procedure, any eventual deficit is first covered by the collection of unpaid shares. If the deficit is not covered by the payment of shares, the limited liability of members (up to a certain amount) may be activated unless the statutes exclude the personal liability of members (Article 40 of the Co-operatives Act).

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vesting and even disposal of forest wood products. The Constitution of 1974 guaranteed farmers who were owners of forests right to participate in decision making and in the income generated by the common management of their forests (Cf. I. Winkler, *Temeljne značilnosti in dosedanji razvoj skupnega gospodarjenja z družbenimi in zasebnimi gozdovi v Sloveniji* [*Basic characteristics and the past development of the common management of public in private forests in Slovenia*], 1983). The present Forest Act from 1993 preserved provisions on common management plans for "all forests regardless of their ownership", but the owners are free to dispose of forests wood products.

[438] The total percentage of socially owned capital which could be transferred to co-operatives was 45%. However, the Cooperatives Act itself determined that the 45-percent capital share was to be calculated from the value of socially owned capital belonging to certain production units in 9 (out of 45) enterprises listed in the Annex to the Act. Secondly, if an enterprise listed in the Annex had transferred, entirely or partly, its socially owned capital, to another enterprise, according to the legislation in force before the Cooperatives Act was adopted, the socially owned capital available for privatization, including for the transfer to co-operatives, was, according to the prohibition of retroactive effect of legislation, correspondingly diminished or even no longer available.

[439] On request made by the enterprise listed in the Annex to the Cooperatives Act, the socially owned capital for transfer to co-operatives could be proportionally reduced if some activities of the enterprise concerned had no connection with co-operatives as suppliers.

[440] Mlekarna Celeia, d. o. o. Letno poročilo 2018 (Annual Report 2018): 5.

Table 2. The continuum of equity items in Slovenian co-operatives regarding their divisibility among members

<table>
<tr><td colspan="5">Divisibility ← → Indivisibility</td></tr>
<tr><td>VOLUNTARY SHARES
(may be reimbursed before the termination of membership, after the dissolution of the cooperative they are reimbursed before obligatory shares)</td><td>OBLIGATORY SHARES
(reimbursable after the termination of membership or dissolution of a cooperative)</td><td rowspan="2">VOLUNTARY RESERVES OR FUNDS
(reimbursable after the dissolution of a cooperative, unless the statutes permit dIstribution before the dissolution of a cooperative)</td><td rowspan="2">OBLIGATORY RESERVES
(may not be distributed among members before the dissolution of a cooperative)</td><td rowspan="2">INDIVISIBLE COOPERATIVE PROPERTY
(may not be distributed among members even after the dissolution of a cooperative - in such a case these assets are transferred to the cooperative union for development of a new cooperative or cooperatives in general)</td></tr>
<tr><td colspan="2">if the statutes of a cooperative lay down minimum capital, the reimbursement must not decrease the capital under the minimum amount laid down by the statutes)</td></tr>
</table>

Source: Own presentation, based on the Slovenian Cooperatives Act.

In farmer co-operatives affiliated to the Co-operative union of Slovenia, indivisible capital represents as much as 63% of the total equity and 30% of the total liabilities shown in the annual reports for 2018 (Table 2 below). Such a structure enables farmer co-operatives to better absorb shocks causing the variability of other equity items and to be less dependent on outside financing.

Table 3. Liabilities and the structure of the equity of farmer co-operatives affiliated to the Co-operative union of Slovenia (aggregate values from the annual reports for 2018)

Liabilities and equity	Value (EUR)
• Liabilities	363,019,925
• Equity, from which:	174,316,805
• co-operative capital	114,452,408
• indivisible capital	110,607,502
• members' shares, from which:	3,844,907
– obligatory shares	3,523,418

Liabilities and equity	Value (EUR)
– voluntary shares	321,489
• capital surplus	20,777,694
• revenue reserves	25,401,582
• revaluation reserve	5,419,914
• reserves due to valuation at fair value	7,909,603
• net profit or loss brought forward	–724,502
• net profit or loss for the financial year	1,080,106

Source: Ajpes, Javna objava letnih poročil (Publication of annual reports), 2019, and own calculations.

VI. The governance of agricultural co-operatives

According to the principle that co-operatives are governed by their members, the supreme governance body of a co-operative is a general meeting consisting of all members, if the statutes do not stipulate, due to large membership, a large business area or similar grounds for a general meeting of representatives, which are elected by and from members (Article 1 and 14 of the Co-operatives Act).

In order to adapt governance system to a variable number of members, the Slovenian Co-operatives Act foresees several options also related to other obligatory and facultative bodies of the co-operative.

As the supreme body of a co-operative, the general meeting decides on the most important issues: it adopts and amends the statutes, elects and to recalls members of obligatory co-operative bodies, approves the annual report of the co-operative, and decides on a change of legal status (merger, division or transformation into other legal form) and on the dissolution of the co-operative.

Each co-operative must have an administrative and a supervisory organ. The administrative organ is usually the administrative committee. In co-operatives with less than 10 members, the administrative organ may be unipersonal – a president. Similarly, but independently from the number of members, the supervisory organ of a co-operative may be either a supervisory committee or a supervisor. The general meeting of the co-operative elects both the management and the supervisory organ (president, administrative committee, supervisory committee or supervisor).

The supervisory committee and a supervisor have two tasks in common: to examine the annual report of the co-operative and to compile a report on this examination. The report of the supervisory body must be read before the general meeting approves the annual report (Article 42 of the Co-operatives Act). Compared with the supervisor, a supervisory committee of a co-operative has addi-

tional powers. It is authorized to represent a co-operative concluding a contract with the president. If there is no supervisory committee and the general meeting elected a supervisor, this task is performed by the general meeting itself, or a special representative nominated for this purpose by the general meeting (Article 31(5) of the Co-operatives Act). If the statutes thus provide, the supervisory committee may temporarily (until the final decision of the general meeting) remove the president, members of the administrative committee or a managing director from their offices if they seriously violated their duties, in such a way that the co-operative suffers considerable damage or is threatened with such damage (Article 33(4) of the Co-operatives Act). In order to preserve the independence of the supervisory committee, a member of the co-operative who was elected to the supervisory committee may not be expelled from the co-operative by the administrative committee, but only by the general meeting.

Unlike in public limited companies, where the management board in the two-tier system directs business operations of the company independently and at its own liability[441], the administrative committee of a co-operative is bound to the specific promotional mandate of the co-operative.

According to the principle of self-governance, the president, and the members of the administrative and supervisory committees must be individuals who are either members or statutory representatives of members, or linked on the basis of membership, employment or another legal relationship to the legal entity which is a member of the co-operative. If the statutes do not provide otherwise, each co-operative member has one vote in the general meeting. Special provisions apply for investor members: they may have at most 25% of all the votes in a general meeting and at most 25% of the members of the administrative committee and supervisory committee may be elected among investor members (Article 33.a of the Co-operatives Act).

In some aspects, the Co-operatives Act and other legislation permits certain departures from the principle of self-government.

Thus, a co-operative may have, beside the obligatory administrative committee or a president, also a managing director. The managing director may not be a member of the administrative or supervisory committee, but does not need to be a member of the co-operative. The reason for this exception is to permit the co-operative to hire a professional to conduct the daily business. The Act also does not require that a supervisor (having narrower tasks than the supervisory committee) should be elected from among the members of the co-operative. In practice, farmer and other co-operatives with a large business volume regularly opt for a managing director, while it is more likely that a supervisor is found in co-operatives with a small number of members.

[441] Zakon o gospodarskih družbah (Commecial Companies Act), Article 265.

According to a special act,[442] employees have the right to participate in the management of enterprises and co-operatives collectively or individually. The collective forms of employees' participation in co-operatives encompass the right of workers to elect a workers' council which has the right to be informed, the right to joint deliberations with the employer, the right to co-decision and the right to veto certain decisions of the employer. The further regulation of participation is to be fixed in an agreement between the employer and the employees. Small co-operatives may enable the participation of employees' representatives in the supervisory committee, while middle-sized and large co-operatives are bound to do this.

VII. Producer organisations, producer groups and other forms of cooperation between farmers

In accordance with the EU regulations, the Slovenian Act on agriculture regulates, among others, recognised producer organisations, producer groups for joint marketing and producer groups for implementation of quality schemes. Through recognition by the competent ministry and fulfillment of additional conditions these organisations and groups may obtain certain subsidies aiming at concentration of supply and adaptation of production to the market demand. Farmer cooperatives may also be recognised as producer organisations or producer groups for joint marketing or implementation of quality schemes if they satisfy certain requirements, relating to the minimum number of members, minimum turnover with the concerned agricultural product(s), production facilities (agricultural area), minimum delivery obligations of members, etc.

The most demanding requirements are prescribed for recognition of producer organisations which may be, according to the Slovenian executive regulations presently in force, established in the following sectors: milk and milk products, fruit and vegetables, olive oil and table olives, hops and pigmeat.

Less demanding requirements are prescribed for recognised producer groups for joint marketing which may be established in more numerous sectors (fruits and vegetables, beef and veal, meat products and live animals (small ruminants and farmed game), sugar beet, forest wood products, hemp, bee products, agricultural products from the quality scheme for organic production and processing, bread wheat, herbs, ornamental plants, pumpkin oil, grapes for wine and potatoes).

As producer organisations may be recognised if they unite exclusively or combine with major producers in certain sector and/or acquire their turnover predominantly from marketing certain agricultural products, and since the number

[442] Zakon o sodelovanju delavcev pri upravljanju (Act on participation of employees in management), Official Journal of the Republic of Slovenia, 2007, 42; 2008, 45 – ZArbit.

of specialised farmer cooperatives represent a minority in comparison with other, multipurpose supply and marketing farmer cooperatives, the number of recognised producer organisations is relatively low in Slovenia. Some farmers think that specialised organisations are more vulnerable to market oscillations , so financial subsidies and the more homogeneous interests of membership may not always outweigh the inherent risks of specialisation and the cost of the administrative burden. On the other hand, the establishment of a producer organisation on the secondary level or as a part of an existing (multipurpose) cooperative requires a high level of consensus of all members and should be elaborated more in detail at the statutory level. As of 12 August 2020, there were three recognised producer organisations and ten producer groups for joint marketing in Slovenia.[443]

Although no organisation has been recognised as a producer group for the implementation of a quality scheme, many farmer cooperatives have assumed certain tasks in the certification process within the quality scheme »'selected quality'« (introduced in 2017), lowering the cost for participating farmers to obtain certain temporary financial support.

Other important foms of cooperation between farmers are machine circles, organised as associations for the joint use of agricultural mechanisations, and agricultural communities for the joint use and management of common agricultural land (for instance, the Alpine pastures) which do not have a separate legal personality, the common agricultural land is either a co-ownership or joint ownership of members. In 2020, there were 52 machine circles and 360 agricultural communities registered in the Slovenian business register.[444]

VIII. Conclusion

Farmer co-operatives will also face important challenges in the future. Although all farmer co-operatives, taken together, have a considerable market share for several agricultural products, the real bargaining power of individual co-operatives with more concentrated enterprises in the food-processing and retail sectors is substantially weaker. Although the EU and Slovenian competition rules impose certain limits on the concentration of supply, there is still a lot of space for horizontal cooperation among farmer co-operatives in the field of purchase, research and development, joint production and commercialisation. A first positive experience in this decade was that of a joint company which was established by several co-operatives for the joint marketing of raw milk in Slovenia and abroad. The rules

[443] Ministry of Agriculture, Forestry and Food, 2020.

[444] AJPES, 2020, ePRS: Poslovni register Slovenije, Available on-line at: <https://www.ajpes.si/prs/> [accessed 12.07.2020].

about producer organisations and their associations also offer further possibilities that have not been exhausted yet.

The most important inner challenge of the future development of farmer co-operatives most probably relates to the coordination and successful management of heterogenous farmers' interests due to more diversified farm sizes, various levels of market-orientation and the different production specialisation of the member farms. In order to stay competitive, farmer co-operatives will have to steadily adapt their services to the different preferences of their members, staying open and economically attractive for all producers, including young farmers and farmers with a high development potential.

Chapter XI

LA COOPERATIVE Y LA INTEGRACION ASOCIATIVA COMO ELEMENTOS DEL CAMBIO EN LA PRODUCCION AGROALIMENTARIA ESPANOLA[445]

Trinidad Vázquez Ruano

I. Notas introductorias

La forma cooperativa y el asociacionismo agrario son los aspectos fundamentales en los que se ha apoyado la transformación del sector agroalimentario en el ámbito nacional de España y son los temas sobre los que nos vamos a ocupar en el presente trabajo. De forma somera, cabe indicar que – siguiendo los datos señalados por el Observatorio Socioeconómico del Cooperativismo Agroalimentario Español (OSCAE)[446] – las Entidades Asociativas Agrarias (en adelante, EAAs) se conforman por aproximadamente un total de 3.700 entidades cooperativas agrarias (de 1º y 2º grado)del ámbito agroalimentario nacional, con una facturación de unos 34 mil millones de euro en el pasado año. Ello supone el 90% de su composición, siendo el resto Sociedades Agrarias de Transformación (SAT), cooperativas de utilización de maquinaria agraria (CUMAS) y cooperativas de explotación comunitaria de la tierra (CEC), entre otras formas empresariales civiles y mercantiles. Dichas entidades están representadas por la organización *Cooperativas Agro-alimentarias de España*, la cual aglutina alrededor de 1.172.226 de socios cooperativistas en nuestro territorio y en los diversos subsectores, haciendo especial referencia a los siguientes: frutas y hortalizas, aceites de oliva, vinos, lácteos, ovino y caprino, cereales y alimentación animal.

[445] Este trabajo trae su causa en la concesión del Proyecto de investigación: *Trust and security in the olive oilmarket: Efficientinformationfortheconsumer*, por parte del Instituto de Estudios Giennenses de la Diputación Provincial de Jaén, convocatoria 2019 (IP. Trinidad Vázquez Ruano).

[446] Hacemos referencial al Estudio 'El cooperativismo agroalimentario. Macromagnitudes del Cooperativismo Agroalimentario Español' del Observatorio Socioeconómico del Cooperativismo Agroalimentario Español (OSCAE) elaborado en 2018 y publicado en junio de 2019 (para ampliar la información, véase: Available on-line at: <http://www.agro-alimentarias.coop/ficheros/doc/05987.pdf> [accessed 2.03.2020].

En la tabla que se relaciona a continuación, y que se corresponde con una elaboración propia según los datos proporcionados por el centro de estadística del Ministerio de Trabajo, Migraciones y Seguridad Social, la distribución de cooperativas por Comunidades Autónomas es la siguiente:

Comunidad autónoma cooperativas

		Número	Porcentaje
1	Andalucía	710	22,02%
2	Castilla- La Mancha	430	13,33%
3	Castilla y León	345	10,70%
4	Comunidad Valenciana	335	10,39%
5	Cataluña	298	9,24%
6	Extremadura	281	8,71%
7	Aragón	193	5,98%
8	Galicia	169	5,24%
9	Región de Murcia	127	3,94%
10	Navarra	92	2,85%
11	País Vasco	66	2,05%
12	Canarias	61	1,89%
13	La Rioja	46	1,43%
14	Islas Baleares	31	0,96%
15	Madrid	20	0,62%
16	Principado de Asturias	16	0,50%
17	Cantabria	5	0,16%

*Fuente: Cooperativas agrarias dadas de alta en la Seguridad Social (MITRAMIS)

Si bien, la relevancia de las cooperativas en el entorno agroalimentario no sólo destaca a nivel interno, sino que es destacable su creciente presencia en los mercados internacionales. En concreto, puede afirmarse que el 34% de las cooperativas exportan y representan el 18% de la facturación exportadora del conjunto del sector agroalimentario. Manifestándose una tendencia creciente en valor en lo que respecta a las exportaciones de las cooperativas agroalimentarias y de la facturación de las mismas en los mercados exteriores.

Siguiendo el Estudio presentado por el Observatorio Socioeconómico del Cooperativismo Agroalimentario Español sobre 'Macromagnitudes del Cooperativismo Agroalimentario Español'[447], conviene destacar uno de los datos de notoria

[447] Nos referimos al ya citado Estudio 'El cooperativismo agroalimentario. Macromagnitudes del Cooperativismo Agroalimentario Español' del Observatorio Socioeconómico del Cooperativismo Agroalimentario Español (OSCAE) publicado en 2019: 37–40.

importancia en la materia que nos ocupa, cuál es el aumento del efecto de la concentración empresarial. Ello supone que se reduzca el número de entidades cooperativas de menor dimensión y que, al mismo tiempo, incremente el tamaño medio de cada empresa. Respecto de esta apreciación, conviene resaltar la presencia de las cooperativas de segundo grado, las cuales concentran y gestionan la transformación y/o comercialización de un volumen de productode las cooperativas de base destacable, a saber: un total de 134 entidades de segundo gradoconcentraron el pasado año el 23% de la facturacióntotal a nivel nacional.

Pese a los indicadores que se han puesto de manifiesto, las divisiones del sector agroalimentario español hacen notar la deficiente rentabilidad entre los esfuerzos realizados y las inversiones económicas en el mismo. Circunstancia que precisa la adopación de medidas que fomenten la integración en dicho ámbito y el impulso de grupos comercializadores de naturaleza cooperativa y asociativa que, superando los límites autonómicos, formen parte y actúen en la cadena agroalimentaria en conjunto tanto en los mercados internos como en los internacionales.

II. Las sociedades cooperativas en el ordenamiento Español

La forma cooperativa ha de considerarse el modelo social base en el sector agroalimentario a nivel nacional. Si bien, su estudio tiene que partir de la resolución de algunas materias de interés en la práctica empresarial, tal es el caso de la delimitación conceptual de este tipo societario, por un lado; y, de otro, del fomento de las entidades cooperativas y del propio cooperativismo como forma de ejercicio de la libertad de empresa por pequeñas unidades productivas.

1. Conceptualización y notas singulares

La Constitución española contiene una mención expresa sobre las entidades cooperativas[448], con el tenor literal que reproducimos: "Los poderes públicos (…) fomentarán, mediante la legislación adecuada, las sociedades cooperativas (…)".

Esta referencia genérica que sólo establece la necesidad de que las autoridades estatales impulsen las entidades cooperativas mediante la aprobación de la correspondiente normativa-supone que la definición del término cooperativa haya que concretarlo en razón de diversos elementos de naturaleza jurídica, económica e ideológica.

[448] Art. 129, apartado 2º de la Constitución española. Para ampliar esta información: F. Vicent Chuliá, Capítulo I. Introducción, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2nd Edition: 69–74.

La Alianza Cooperativa Internacional en la Declaración sobre la Identidad Cooperativa estableció unadelimitación del términotendente a homogeneizar los criterios vigentes en el ámbito internacional[449] y lo concretóde la siguiente forma:

> una asociación autónoma de personas que se han unido de forma voluntaria para satisfacer sus necesidades y aspiraciones económicas, sociales y culturales en común, mediante una empresa de propiedad conjunta y de gestión democrática.

Esta Declaración completa la definición de la entidad cooperativa con un conjunto de valores del movimiento cooperativo y de principios que le son aplicables[450].

Dentro de los primeros, caben mencionarse: la autoayuda o oacción conjunta y la responsabilidad mutua(el desarrollo individual pleno se logra con la asociación con el resto, acción conjunta y responsabilidad mutua); la autorresponsabilidad (los socios aceptan la responsabilidad de su cooperativa y se ocupan de su promoción y difusión); la democracia en su organización y funcionamiento; la igualdad (el socio es el elemento básico de la cooperativa); la equidad en la contribución de los socios en la cooperativa; la solidaridad o preferencia del interés común de la entidad (predominio del interés colectivo no sólo respecto de los socios, sino también de los empleados y no socios que formen parte de la cooperativa, así como de las cooperativas entre sí); la honestidad (actuación empresarial ética); la transparencia en su información; y la responsabilidad y vocación sociales.

Los principios previstos en la Declaración de la Alianza Cooperativa Internacional mediante los que las cooperativas ponen en práctica los valores antes mencionados, por su parte, se determinan en los que siguen[451]. El *principio de adhesión voluntaria y abierta*, es decir que las cooperativas están abiertas a cualquier persona que utilice sus servicios y asuma sus responsabilidades, sin discriminación alguna. Y, sin perjuicio, de posibles límites respecto a quiénes pueden ser socios en función de la finalidad específica que caracterice a la sociedad cooperativa. El *principio de gestión democrática* por parte de los socios que van a ser los que determinen sus políticas y adopten las decisiones de la misma. En las cooperativas de primer grado los socios tienen equivalente derecho de voto (un socio se corresponde con un voto), mientras que para las de segundo o ulterior grado se permite modificar dicha regla, como se indicará cuando proceda. El *principio de participación económica* de los socios, el cual supone que van a contribuir de manera equitativa al capital de sus cooperativas y lo van a gestionar reconociendo la titularidad colectiva de una parte del mismo. En las cooperativas el capital es

[449] XXXI Congreso de la Alianza Cooperativa Internacional (ACI) celebrado en Manchester, septiembre de 1995.

[450] *Vid*., M.J. Morillas Jarillo, Capítulo II. Concepto y clases de cooperativas, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2nd Edition: 163–170.

[451] Para ampliar esta materia, puede consultarse Mª J. Morillas Jarillo, Capítulo II, 163–170.

un elemento preciso, pero no puede entenderse que sea de carácter esencial. El *principio de autonomía e independencia* respecto de sus relaciones con otras organizaciones, incluido el Gobierno estatal. El *principio de educación, formación e información,* los dos primeros respecto de los socios, miembros de los órganos de representación y directivos de la cooperativa, a fin de que puedan desempeñar sus funciones adecuadamente. Por su parte, la información se hace extensiva al público en general. El *principio de cooperación* entre cooperativas en los diversos ámbitos (estructuras locales, nacionales, regionales e internacionales). Y, en último término, el *principio del interés por la comunidad*, en la medida en que la finalidad básica de las cooperativas es el beneficio de los socios que las conforman, así como el de las comunidades en general.

La Ley de Cooperativas española, en observancia de los principios diferenciadores de la economía social y que han de regir las cooperativas junto a la normativa aplicable, ha optado por primar la dimensión empresarial de esta tipología societaria. El texto de la norma define la sociedad cooperativa del siguiente modo[452]:

> (…) sociedad constituida por personas que se asocian, en régimen de libre adhesión y baja voluntaria, para la realización de actividades empresariales, encaminadas a satisfacer sus necesidades y aspiraciones económicas y sociales, con estructura y funcionamiento democrático (…) y se regirá (…) conforme a los principios formulados por la Alianza Cooperativa Internacional, en los términos resultantes de la presente Ley (…)

Por tanto, cabe considerar que las entidades cooperativas son agrupaciones voluntarias y democráticas de personas que tienen una misma necesidad económica y social y, a fin de satisfacerla, crean una empresa que explotan en común, bajo el principio de la ayuda mutua, desarrollando una economía de servicio. En razón de ello, los aspectos característicos de las entidades cooperativas se concretan en que se trata de una sociedad mercantil especial titular de una empresa, en la que los socios se singularizan por tener ánimo de lucro y en la que los beneficios sociales se distribuyen entre los mismos por retornos o por precios. La sociedad cooperativa va a explotar su objeto social para satisfacer directamente las necesidades de los socios que la integran, no obteniendo un beneficio social repartible entre sus socios en proporción a las aportaciones al capital social. Antes al contrario, se limita a abonarles si así lo prevén los Estatutos sociales, y en razón del límite que establece la correspondiente Ley y de acuerdo con la distribución parcial a los socios del excedente realizado con sus entregas o prestaciones a la propia entidad. Es, por consiguiente, una agrupación voluntaria que se distingue porque su organización corporativa y financiera respeta los principios de la Alianza Cooperativa Internacional.

[452] Art. 1 de la Ley 27/1999, de 16 de julio, de Cooperativas española (BOE núm. 170, de 17 de julio). M.J. Morillas Jarillo, Capítulo II, op.cit.: 163–170; F. Vicent Chuliá, Capítulo I, 90–98.

No obstante, y a pesar de la extendida calificación doctrinal de las cooperativas como sociedades mercantiles, esta modalidad societaria no se ha reflejado de forma unitaria en la legislación española ni en la jurisprudencia de nuestro Tribunal Constitucional. La negación de la naturaleza mercantil de estas sociedades implica que no se encuadren entre las materias que la Constitución española reserva a la competencia exclusiva del Estado[453], sino que – por el contrario – se trate de una materia cuya competencia legislativa se reconoce a las Comunidades autónomas en base a lo previsto en sus propios Estatutos de autonomía[454]. Razón que ha traído como consecuencia que, a nivel interno, los Estatutos de autonomía de las Comunidades autónomas de España hayan reclamadola competencia legislativa en materia cooperativa y que – junto a la norma estatal – existan normas cooperativas autonómicas, como comprobaremos seguidamente.

2. Cuestiones sobre el régimen jurídico aplicable

Las entidades cooperativas se singularizan porque son objeto de regulación por tres niveles legislativos superpuestos, cuáles son: la Unión europea, el Estado español y las Comunidades autónomas. La convergencia de estas facultades legislativas hace que exista una notoria complejidad en lo que concierne a su sistema de fuentes normativas aplicables.

La Ley 27/1999, de 16 de julio, de Cooperativas es la norma nacional que se ocupa de la regulación de esta modalidad societaria. Esta norma sustituyó a la Ley General de Cooperativas 3/1987, de 2 de abril. La norma vigente se integra por un total de 120 artículos y variasdisposiciones, lo que hacenconsiderarlaunanormaextensa que regula el conjunto de singularidades de estetipo social.

Si bien, la actual Ley cooperative-como se ha indicado-convive con las normas autonómicas sobre la materia. Por cuanto el Estado y las Comunidades autónomas comparten la competencia legislativa respecto de las entidades cooperativas. Y ello porque el efecto mediato de que las Comunidades autónomas en el ámbito nacional hayan solicitado la correspondiente competencia legislativa[455], ha hecho que en casi la totalidad de las mismas se hayan aprobado normas que regulan esta materia.Como consecuencia, la Ley de Cooperativas estatal deja de ser norma general para limitarse a ser una Ley de aplicación supletoria en las

[453] Apartado 1º del art. 149 de la Constitución española.

[454] En este sentido, el apartado 3º del art. 149 de la Constitución española prevé expresamente: *las materias no atribuidas expresamente al Estado por esta Constitución podrán corresponder a las Comunidades Autónomas en virtud de sus respectivos Estatutos (...).* Sobre esta cuestión: J.I. Peinado Gracia, Capítulo I. Normas y ámbito de aplicación, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2nd Edition: 125–128; F. Vicent Chuliá, Capítulo I: 99–105.

[455] Art. 2 de la Ley 27/1999 de Cooperativas española.

Comunidades autónomas que no hayan ejercido la correspondiente competencia legislativa y en las que, aun contando con una normativa propia, se planteen lagunas jurídicas en su texto.

La Ley de Cooperativas nacional, sin embargo, va a resultar de aplicación *directa* en los supuestos que de modo expreso se recogen en sus disposiciones, a saber: las sociedades cooperativas que desarrollen su actividad cooperativizada en el territorio de varias Comunidades autónomas (excepto cuando en una de ellas se desarrolle con carácter principal); y a las sociedades cooperativas que realicen principalmente su actividad cooperativizada en Ceuta y Melilla. Además, la Ley de Cooperativas nacional resulta de aplicación directa en aquellos aspectos que son de competencia estatal exclusiva, como los concursales, las cuestiones procesales o los contables.

Las normas autonómicas vigentes al momento de elaborar este trabajo son las que se relacionan a continuación: la Ley 14/2011, de 23 de diciembre, de Sociedades Cooperativas Andaluzas y el Decreto 123/2014, de 2 de septiembre, por el que se aprueba el Reglamento de la Ley 14/2011, de 23 de diciembre, de Sociedades Cooperativas Andaluzas; Decreto Legislativo 2/2014, de 29 de agosto, del Gobierno de Aragón, por el que se aprueba el texto refundido de la Ley de Cooperativas de Aragón; la Ley 6/2013, de 6 de noviembre, de Cooperativas de Cantabria; la Ley 4/2002, de 11 de abril, de Cooperativas de la Comunidad de Castilla y León; Ley 11/2010, de 4 de noviembre, de Cooperativas de Castilla-La Mancha(modificada por la Ley 4/2017, de 30 de noviembre, de Microempresas Cooperativas y Cooperativas Rurales de Castilla-La Mancha); Ley 12/2015, de 9 de julio, de Cooperativas de Cataluña; Ley 2/1998, de 26 de marzo, de Sociedades Cooperativas de Extremadura; la Ley 5/1998, de 18 de diciembre, de Cooperativas de Galicia; la Ley 8/2006, de 16 de noviembre, de Sociedades Cooperativas, de la Región de Murcia; la Ley 4/2001, de 2 de julio, de Cooperativas de La Rioja; la Ley 1/2003 de 20 de marzo, de cooperativas de las Islas Baleares; la Ley 4/1999, de 30 de marzo, de Cooperativas de la Comunidad de Madrid;la Ley 4/2010, de 29 de junio, de Cooperativas del Principado de Asturias; Decreto Legislativo 2/2015, de 15 de mayo, del Consell, por el que aprueba el Texto Refundido de la Ley de cooperativas de la Comunidad Valenciana; y la Ley Foral 14/2006, de 11 de diciembre, de Cooperativas de Navarra. A las que se añaden, la Ley 4/1993, de 24 de junio, de Cooperativas de Euskadi (modificada por la Ley 8/2006, de 1 de diciembre y por la Ley 6/2008, de 25 de junio, de la Sociedad Cooperativa Pequeña de Euskadi) y el Anteproyectode Ley de Cooperativas de Euskadi;y el Proyecto de Ley de Cooperativas de Canarias de 2018.

Junto a lo expuesto, hay que tenerpresente que la legislacióncooperativa se completa con la regulaciónaprobadarespecto del fomento del cooperativismo, el régimen fiscal de las cooperativas, y la legislación especial sobredeterminadasclases de cooperativas (comolas de crédito, las de seguros y las de tranporte, en-

tre otras). Lo que haceconcurriren la materia otras disposiciones que tienen su aplicación sobre aspectos parciales o tipos especiales de cooperativas, en relación con otras de carácter autonómico o de aplicación a la actividad de esas tipologías.

3. Formas de integración cooperativa económica

El contenido de la norma cooperativa reconoce e impone a los poderes públicos una legislación tendente a fomentar las sociedades cooperativas y, a su vez, la integración de las mismas, del siguiente modo[456]:

> (…) se reconoce como tarea de interés general, a través de esta Ley y de sus normas de aplicación, la promoción, estímulo y desarrollo de las sociedades cooperativas y de sus estructuras de integración económica y representativa.

A nivel interno, se observa una tendencia generalizada del impulso y promoción de las sociedades cooperativas, fundamentalmente en el sector agroalimentario. Los aspectos que han influido en mayor medida en la tendencia indicada son los que a continuación se enumeran.

De un lado, el propio contenido de las disposiciones normativas vigentes en materia cooperativa y que hemos referido con anterioridad, las cuales tratan de potenciar las sociedades cooperativas como empresas, reforzando su posición competitiva en el mercado[457]. De otro lado, el fomento del cooperativismo y de la integración desde la perspectiva institucional, como lo es la creación del *grupo cooperativo* al que nos referiremos después; y el reconocimiento de las sociedades cooperativas mixtas[458]. Estas últimas, se singularizan por la existencia de socios "cuyo derecho de voto en la Asamblea General se podrá determinar, de modo exclusivo o preferente, en función del capital aportado en las condiciones establecidas estatutariamente, que estará representado por medio de títulos o anotaciones en cuenta que se denominarán partes sociales con voto, sometidos a la legislación reguladora del mercado de valores". El régimen de sus derechos y deberes deberá establecerse en los Estatutos sociales y, supletoriamente, se regirán por lo dispuesto en la legislación de sociedades anónimas para las acciones. Es decir, las cooperativas mixtas se conforman con la presencia de socios capitalistas, que deben participar en el porcentaje del beneficio neto íntegro que les corresponda, sin

[456] Apartado 1º del art. 108 de la Ley 27/1999 de Cooperativas española. Pueden consultarse los trabajos de: Mª J. Morillas Jarillo, M.I. Feliú Rey, *Curso de cooperativas,* Madrid, 3ª edic.: 596; F. Vicent Chuliá, Capítulo I, op.cit.: 75–85.

[457] *Vid.,* F. Vicent Chuliá, Capítulo I, 75–76.

[458] Art. 107 de la Ley 27/1999 de Cooperativas española. Sobre esta materia hemos realizado otros trabajos previos: T. Vázquez Ruano, Capítulo XXVII, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Tirant lo Blanch, Valencia, 2019, 2nd Edition, vol. II: 1709–1724.

que éste se vea mermado por las asignaciones a los fondos irrepartibles que deben pesar exclusivamente sobre el excedente que producen las operaciones cooperativizadas y quedan a cargo de los socios partícipes en las mismas[459]. Si bien y pese a lo indicado, en la práctica cuentan con mayor relevancia en lo que hace a las formas de colaboración económica[460], la creación de *cooperativas de segundo (y ulterior) grado* y los *grupos cooperativos*; y la *fusión* como modo de concentración de empresas en el sector cooperativo, de cuyo estudio nos ocupamos a continuación.

3.A. Las cooperativas de segundo (o ulterior) grado y el grupo cooperativo

La clasificación básica de las sociedades cooperativas puede establecerse, en líneas generales, en razón de dos criterios relevantes: el nivel de integración; yel objeto de la entidad o actividad mutualizada. En el primer caso, se distinguen las cooperativas de primer grado[461] y las cooperativas de segundo (o ulterior) grado que son las que cuentan entre sus socios con, al menos, dos cooperativas[462]. Así, una cooperativa de segundo grado consiste en una cooperativa constituida por dos cooperativas de base, aunque también pueden integrar como socios otras personas jurídicas, públicas o privadas, y empresarios individuales. Las cooperativas de segundo grado son una modalidad de organización genérica de los procesos de integración cooperativa con finalidad económica que propician las economías de escala, pero carente de vinculación patrimonial. Siendo esta última nota de distinción la que las separa de las fusiones.

El régimen jurídico que le es aplicable resulta limitado, pero se rige de forma supletoria por el de la sociedad cooperativa de primer grado. El objeto de las cooperativas de segundo grado va a ser "promover, coordinar y desarrollar fines económicos comunes de sus socios, y reforzar e integrar la actividad económica de los mismos". Razón que ha sido determinante en el incremento de las cooperativas agrarias y, en particular, las cooperativas que comercializan productos alimenticios.

[459] Sobre ello: J. Grima Ferrada, La cooperativa mixta: Un tipo societario, *Revista jurídica de Economía Social y Cooperativa*, *Ciriec- España*, 2001, 12: 9; P.A. Romero Candau, De las cooperativas integrales, de las de iniciativa social y de las mixtas, AA.VV, Coord. J.A. García Sánchez, *Cooperativas. Comentarios a la Ley 27/1999, de 16 de julio*, Madrid 2001, vol. I: 804.

[460] A. Cuenca García, Las cooperativas de segundo grado en la Ley 27/1999, de 16 de julio, de cooperativas, *Revista Jurídica de Economía Social y Cooperativa, Ciriec- España*, 2000, 11: 69–118; M.J. Vázquez Pena, *Las cooperativas de segundo grado: peculiaridades societarias*, Valencia 2002.

[461] Art. 1.1ºde la Ley 27/1999 de Cooperativas española.

[462] Apartado 1ºdel art. 77 de la Ley 27/1999 de Cooperativas española. Para ampliar esta materia: R. Alfonso Sánchez, *La integración cooperativa y sus técnicas de realización: la cooperativa de segundo grado*, Ed. Tirant lo Blanch, Valencia, 2000: 361–377; C. Vargas Vasserot, E. Gadea Soler, F. Sacristán Bergia, *Régimen económico, integración, modificaciones estructurales y disolución*, La Ley, Madrid, 2017: 211–215; M.J. Vázquez Pena, Capítulo XI. II. Formas personificadas de integración: cooperativas de segundo grado, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2nd Edition 1218–1227.

Como se ha indicado, su constitución precisa la necesaria concurrencia de, como mínimo, dos sociedades cooperativas. La representación de cada persona jurídica-socio en las Asamblea general de la entidad va a corresponder a la persona que tenga su representación legal. Por regla general y si así lo prevén los Estatutos sociales, en las cooperativas de segundo grado el voto de los socios podrá ser proporcional a su participación en la actividad cooperativizada de la sociedad y/o al número de socios activos que integran la cooperativa asociada. Aunque con la limitación máxima de que ningún socio puede ostentar más de un tercio de los votos totales, salvo que la sociedad esté integrada sólo por tres socios (pudiendo ostentar el 40%); y si la integrasen dos socios, los acuerdos deberán adoptarse por unanimidad. La cuantificación de votos de las entidades que no sean cooperativas no podrá alcanzar el 40% de los votos sociales.

En otro orden, y aun cuando es la Asamblea general la competente para designar de entre sus socios o miembros de entidades socios componentes de la sociedad a los que van a formar parte del Consejo Rector, Interventores, Comité de Recursos (en su caso) y los liquidadores, estatutariamente puede reconocerse que conformen el Consejo Rector o sean interventores personas cualificadas y expertas que no sean socios, ni miembros de entidades socias. En cuanto al haber líquido resultante, se distribuye entre las socios en proporción al importe del retorno percibido en los últimos cinco años, o desde la constitución de la entidad secundaria si no se alcanza dicho plazo; o al volumen de actividad cooperativizada desarrollada por cada socio con la cooperativa durante el citado período; o al número de miembros de cada entidad agrupada. La norma establece, asimismo, la posibilidad de que las sociedades cooperativas de segundo grado se transformen en cooperativas de primer grado, lo que supone que sean absorbidas las cooperativas-socios.

El conjunto de normas cooperativas autonómicas reconoce las cooperativas de segundo o ulterior grado como formas de integración económica cooperativa. Si bien, se plantean algunas cuestiones divergentes relacionadas con el modo de su constitución, organización interna y la gestión de las mismas[463]. En lo que respecta al criterio del objeto de la cooperativa o de la actividad cooperativizada, la norma determina un *numerus apertus*de tipos de cooperativas de primer gradoy su regulación específica[464]. Siendo posible su ampliación por otros nuevos tipos cooperativos.

Nos referimos, en concreto, a las siguientes: las cooperativas de consumidores y usuarios en las que se mutualiza la necesidad de consumo de bienes y servicios de sus socios[465]; las cooperativas de viviendas en las que se mutualiza la necesi-

[463] Véanse, entre otros: A. Cuenca García, Las cooperativas, 69–118; R. Puentes Poyatos, M. Velasco Gámez, J.M. Antequera Solís, Las sociedades cooperativas de segundo grado y su relación jurídica con socios, *Revista de estudios cooperativos, REVESCO*, 2007, 93: 98–143.

[464] Art. 6 de la Ley 27/1999 de Cooperativas española. Sobre esta materia, Mª J. Morillas Jarillo, Capítulo II, op.cit.: 173–180, así como el vol. II de la obra colectiva AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2ª edic.

[465] Art. 88 de la Ley 27/1999 de Cooperativas española.

dad de alojamiento[466]; las cooperativas de crédito en las que se mutualiza el uso de servicios financieros activos y pasivos[467]; las cooperativas de trabajo asociado en relación con la capacidad laboral para cualquier labor o industria[468]; cooperativas sanitarias que mutualizan el ejercicio de actividades sanitarias y el uso de las mismas[469]; cooperativas de enseñanza que mutualizan el ejercicio de actividades docentes y su uso[470]; cooperativas agrarias en las que se mutualizan las necesidades de uso o consumo de bienes y servicios derivadas de una actividad económica agraria, ganadera o forestal sin sustituir a sus socios en el ejercicio principal de la actividad[471]; cooperativas de explotación comunitaria de la tierra en las que se mutualiza el ejercicio de la labor agraria[472]; cooperativas de servicios en las que se mutualizan las necesidades derivadas de actividades industriales, de servicios, profesionales o artísticas sin sustituir a los socios en el ejercicio principal de la actividad[473]; cooperativas de la mar que mutualizan las necesidades derivadas de actividades pesqueras, sin sustituir a sus socios en el ejercicio principal de la actividad[474]; cooperativas de transportistas en las que se mutualizan las necesidades derivadas de actividades de transporte, sin sustituir a sus socios en el ejercicio principal de la actividad[475]; y las cooperativas de seguros que mutualizan el ejercicio de la actividad aseguradora en aquellos ámbitos en los que se encuentren legalmente habilitadas[476].

Junto a este elenco de modalidades cooperativas, cabe distinguir otra tipología específica, como lo son: las cooperativas integrales que se distinguen porque su objeto social es plural[477]; las ya referidas cooperativas mixtas que cuentan con la doble naturaleza de cooperativas y entidades de capital; y las cooperativas sin ánimo de lucro que son aquéllas en las que se gestionan servicios de interés general[478]. En estas últimas, quedan encuadradas las cooperativas de iniciativa social que desempeñan labores asistenciales o se dedican a la integración laboral de personas con cualquier causa de exclusión social, o satisfacen necesidades sociales no atendidas por el mercado[479].

Asímismo, es reseñable la clasificación que se hace depender de la dimensión de la cooperativa en relación con el número de socios, tal es el caso de las

[466] Arts. 89 a 92 de la Ley 27/1999 de Cooperativas española.
[467] Art. 104 de la Ley 27/1999 de Cooperativas española.
[468] Arts. 80 a 87 de la Ley 27/1999 de Cooperativas española.
[469] Art. 102 de la Ley 27/1999 de Cooperativas española.
[470] Art. 103 de la Ley 27/1999 de Cooperativas española.
[471] Art. 93 de la Ley 27/1999 de Cooperativas española.
[472] Arts. 94 a 97 de la Ley 27/1999 de Cooperativas española.
[473] Art. 98 de la Ley 27/1999 de Cooperativas española.
[474] Art. 99 de la Ley 27/1999 de Cooperativas española.
[475] Art. 100 de la Ley 27/1999 de Cooperativas española.
[476] Art. 101 de la Ley 27/1999 de Cooperativas española.
[477] Art. 105 de la Ley 27/1999 de Cooperativas española.
[478] Disposición Adicional 1ª y 9ª de la Ley 27/1999 de Cooperativas española.
[479] Art. 106 de la Ley 27/1999 de Cooperativas española.

cooperativas de menor tamaño como las de trabajo asociado y las de explotación comunitaria de la tierra. Respecto de las que se establecen ciertas especialidades en relación con su constitución, inscripción y funcionamiento y, en igual sentido, en lo que hace a sus órganos sociales y al régimen económico que le es propio.

Por último, la integración empresarial de las sociedades cooperativas desde la perspectiva institucionalpuede hacerse a través de la creación de *grupos cooperativos*[480], los cuales se determinan como un modo de agrupación sin vinculación patrimonial. Y ello ha de considerarse de forma positiva para el desarrollo de las pequeñas y medianas empresas. El grupo cooperativo consiste en el acuerdo por el que dos o más cooperativas deciden ceder a una entidad cabeza de grupo la posibilidad de que ejercite facultades o emita instrucciones de obligado cumplimiento para las demás. Por lo que se produce una unidad de decisión en el ámbito de dichas facultades y de las competencias que le son atribuidas; y teniendo en cuenta que la emisión de instrucciones podrá afectar a distintos ámbitos de gestión, administración o gobierno. Ya que se establecen relaciones asociativas entre las cooperativas que hacen que actúen con una unidad de decisión propia. Por ende, la subordinación no se establece a favor de una sociedad independiente, sino en lo que hace a una entidad en la que participa un conjunto de entidades dominadas. Es decir, las entidades ceden el control a una estructura común en la que todas participan.

3.B. Anotación sobre la fusión cooperativa

La concentración de entidades cooperativas para desarrollar en común una actividad económica y social puede suponer un cambio mayor a los indicados en los apartados precedentes. En particular, hacemos alusión a la posible disolución de algunas o todas las cooperativas participantes y su integración en una cooperativa resultante nueva, mediante la fusión de sus patrimonios. Si bien es cierto que la precisa desaparición de las sociedades que se fusionan, parece distanciar este proceso del ámbito de la integración cooperativa[481], nada obsta que deba entenderse como un mecanismo de concentración entre cooperativas.

[480] Véase el art. 78 de la Ley 27/1999 de Cooperativas española. Sobre esta materia, pueden consultarse: J.M. Embid Irujo; R. Alfonso Sánchez, Capítulo XI. III. Formas no personificadas de integración: grupos cooperativos, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2ª edic., vol. II: 1229–1260; R. Server Izquierdo, E. Meliá Martí, Caracterización empresarial de los grupos y otras formas de integración cooperativa al amparo del nuevo marco legislativo, *Revista de estudios cooperativos, REVESCO*, 1999, 69: 9–41; C. Vargas Vasserot, E. Gadea Soler, F. Sacristán Bergia, *Régimen económico*: 211–215; C. Vargas Vasserot, Integración y diferenciación cooperativa: de las secciones a los grupos de sociedades, *Boletín de la Asociación Internacional de Derecho Cooperativo*, 2010, 44: 159–176.

[481] *Vid.,* J.M. Embid Irujo, R. Alfonso Sánchez, Capítulo XI. III. Formas, op.cit.: 1232–1235; E. Meliá Martí, A.M. Martínez García, *Caracterización y análisis del impacto de los resultados de las fusiones cooperativas en el sector agroalimentario español*, 2014; R. Server Izquierdo, E. Meliá Martí, Bases

La fusión de cooperativasconsiste en la unión de la cooperativa en una nueva o por la absorción de una o más por otra cooperativa ya existente[482]. Esta definición nos permite distinguir entre: la fusión homogénea entre cooperativas,y la especial o heterogénea cuando se fusionan con sociedades de diversa naturaleza. En este segundo planteamiento, la fusión se va a organizar en función de la normativa propia de la sociedad absorbente. Las fusiones homogéneas, por su parte, pueden efectuarse por creación (varias cooperativas se extinguen para crear una nueva) o por absorción (una o varias cooperativas se extinguen y transmiten su patrimonio a otra ya existente). En cualquiera de los dos supuestos las cooperativas participantes quedarán disueltas, aunque no entrarán en liquidación, y sus patrimonios y socios pasarán a la sociedad nueva o absorbente que asumirá los derechos y obligaciones de las sociedades disueltas. Los fondos sociales, obligatorios o voluntarios, de las entidades disueltas se integrarán en los de igual clase de la cooperativa nueva o absorbente[483].

La fusión es un proceso que comienza con la elaboración y aprobación del proyecto de fusión por parte de los Consejos Rectores y que tendrá que contener, al menos, las siguientes consideraciones: la denominación, clase y domicilio de las cooperativas participantes y de la nueva (en el caso de que la hubiera) y los datos identificativos de la inscripción de aquéllas en los Registros de Cooperativas que correspondan; el sistema para fijar la cuantía que se reconoce a cada socio de las cooperativas que se extingan como aportación al capital de la nueva o absorbente; los derechos y deberes de los socios de la cooperativa extinguida en la nueva o absorbente; la fecha a partir de la cual las operaciones de las cooperativas que se extingan habrán de considerarse realizadas a efectos contables; y los derechos de los titulares de participaciones especiales, títulos participativos u otros títulos asimilables de las cooperativas que se extingan en la nueva o absorbente.

A continuación se somete la fusión a las Asambleas generales de las cooperativas participantes aportando a los socios la información necesaria sobre dicho proceso. El acuerdo de fusión deberá adoptarse por mayoría de dos tercios de votos favorables en cada sociedad y, a su vez, publicarse en el Boletín Oficial del Estado y en un diario de gran circulación en la provincia. En todo caso, se reconoce tanto el derecho de oposición de los acreedores ordinarios de cualquiera de las cooperativas fusionadas o de la absorbente[484], y el derecho de separación de los socios que no hubieran votado a favor de la fusión. Éstos habrán de dirigir el escrito de separación al presidente del Consejo Rector dentro de los cuarenta días siguientes a la publicación del acuerdo de fusión. Finalmente, el acuerdo de fusión

y parámetro económico-sociales de la integración en cooperativas agrarias. Caso estudio del proceso de fusión, *Revista Jurídica de Economía Social y Cooperativa, Ciriec-España*, 2002, 41: 85–110.

[482] Art. 63 de la Ley 27/1999 de Cooperativas española.

[483] Apartado 3º del art. 63 de la Ley 27/1999 de Cooperativas española.

[484] Art. 66 de la Ley 27/1999 de Cooperativas española.

aprobado por las Asambleas generales de las cooperativas fusionadas, junto a los respectivos balances, se elevará a escritura pública y se procederá a su inscripción en el Registro de Sociedades Cooperativas para hacer efectivo dicho proceso y darle la correspondiente publicidad frente a terceros.

III. Integración asociativa en el sector agroalimentario

1. El asociacionismo cooperativo

La integración cooperativarepresentativa hace referencia a los supuestos en los que la relación entre las sociedades cooperativas no se singulariza por tener una finalidad económica de manera exclusiva, como los planteamientos anteriormente referidos. Antes bien, la primacía se otorga al interés general o a la representación pública de un sector[485]. El principio reconocido por la Alianza Cooperativa Internacional de la 'cooperación intercooperativa' trae como consecuencia que se produzca una estructuración de plataformas de colaboración de carácter libre y voluntario. De este modo, es posible tanto la integración cooperativa como otrasformas de unión de cooperativas de diferentes peculiaridades. Distinguiéndose el asociacionismo cooperativo que tienen por finalidad la defensa y representación de los intereses generales de las cooperativasy del cooperativismo no empresarial (la intercooperación representativa); de la colaboraciónentre sociedades cooperativas con la pretensión de fomentar e impulsar suactuación empresarial, la cual se corresponde con la intercooperación económica. En el ámbito agroalimentario, el asociacionismo ha de entenderse como una forma de organización de los esfuerzos de los participantes para conseguir un incremento de la valoración de la producción y una tutela única de los intereses de los mismos.

En consonancia con ello, y junto a las cooperativas de segundo (o ulterior) grado y de los grupos cooperativos, la norma nacional prevé que las cooperativas de cualquier tipo y clase podrán constituir sociedades, agrupaciones, consorcios y uniones entre sí, o con otras personas físicas o jurídicas, públicas o privadas, y formalizar convenios o acuerdos para cumplir su objeto social de manera adecuada y obtener una mejor protección de sus intereses[486].

Las clases de asociacionismo cooperativo van a ser las siguientes. De un lado, las *Uniones* conformadas por tres cooperativas de la misma clase como mínimo

[485] J.M. Embid Irujo, Problemas actuales de la integración cooperativa, *Revista de Derecho Mercantil*, 1998, 227: 7–36.

[486] Art. 79 y arts. 118 a 120 de la Ley 27/1999 de Cooperativas española. Sobre ello véase E. Dávila Millán, Capítulo XII. Asociacionismo y representación del movimiento cooperativo, AA.VV: *Tratado de Derecho de Sociedades Cooperativas*, Dir. J.I. Peinado Gracia, Coord. T. Vázquez Ruano, Valencia, 2019, 2ª edic., vol. II: 1275–1288; J.M. Embid Irujo, R. Alfonso Sánchez, Capítulo XI, op.cit.: 1265–1270.

y que podrán integrarse en otra unión existente o constituir una nueva. De otro, las *Federaciones*que se conforman por cooperativas o por uniones de cooperativas o por ambas formas, precisándose que como mínimo- asocien diez cooperativas que no sean todas de la misma clase. Y, por último, las *Confederaciones* que surgen por la asociación de uniones de cooperativas y las federaciones. En cuyo caso es necesario, al menos, tres federaciones de cooperativas que agrupen a cooperativas de tres Comunidades autónomas diversas.

Cualquiera de estas entidades adquiere personalidad jurídica una vez que la escritura pública de constitución se inscriban en el Registro de Sociedades Cooperativas, la cual hará referencia no sólo a las entidades promotoras, al acuerdo de constitución y a los Estatutos sociales, sino también a los que van a integrar los órganos de representación y gobierno.

La finalidad esencial que distingue a estas entidades es la representación y defensa de los intereses generales de las sociedades cooperativas y de sus socios ante las Administraciones Públicas y ante las personas físicas o jurídicas. Además de lo señalado, se le reconocen otras funciones concretas, cuáles son: el fomento de la promoción y formación cooperativa; el ejercicio de la conciliación en los conflictos surgidos entre las cooperativas que asocien o entre éstas y sus socios; la organización de servicios de asesoramiento, auditorías, asistencia jurídica o técnica en interés de sus socios; y ser interlocutores y representantes ante las entidades y los organismos públicos.

2. Las entidades asociativas de carácter agroalimentario y su normativa

La norma que se ocupa de la regulación de la integración cooperativa en el ordenamiento jurídico nacional es la Ley 13/2013[487], la cual se encarga no sólo del fomento de la integración de cooperativas, sino también de otras entidades asociativas de carácter agroalimentario. El objetivo fundamental de este texto normativo se centra en el impulso de la fusión e integración de las cooperativas agrarias y del resto de formas asociativas agroalimentarias, entre las que se incluyen los ya referidos grupos cooperativos que asocian a varias cooperativas con la entidad cabeza de grupo y que ejercitan facultades u otorganinstrucciones de obligado cumplimiento para sus integrantes. Produciéndose una unidad de decisión respecto deesas facultades.

[487] Ley 13/2013, de 2 de agosto, de fomento de la integración de cooperativas y de otras entidades asociativas de carácter agroalimentario (BOE núm. 185, de 6 de abril). Sobre dicha norma: E. Meliá Martí, M. Peris Mendoza, Los procesos de integración de las cooperativas agroalimentarias. De la norma a la realidad. Especial referencia a la Ley 13/2013 de Fomento de la Integración Cooperativa, *Revista de Estudios Cooperativos: REVESCO*, 2017, 126: 177–197.

Además, el legislador trata de promover la creación de grupos cooperativos y de agrupaciones de entidades asociativascon el fin de que lleguen a ser una Entidad Asociativa Agroalimentaria de carácter Prioritario. Ha de tenerse en cuenta que van a ser entidades asociativas que conforman el primer eslabón de la cadena alimentaria, las siguientes: las sociedades cooperativas, las cooperativas de segundo grado, los grupos cooperativos, las sociedades agrarias de transformación, las organizaciones de productores con personalidad jurídica propia, y las entidades civiles o mercantiles. Estas últimas, siempre que más del 50% de su capital social pertenezca a cooperativas, a organizaciones de productores o a sociedades agrarias de transformación.

La calificación como Entidad Asociativa Agroalimentaria Prioritaria precisa del cumplimiento de una serie de requisitos que el propio legislador se ha encargado de enumerar, a saber: que se trate de una entidad asociativa agroalimentaria de las reconocidas en la norma; que su implantación y ámbito de actuación económico sea supra-autonómico; que comercialicen de forma conjunta la totalidad de la producción de las entidades asociativas y de los productores que las componen; que la facturación de la entidad solicitante, o la suma de las facturaciones de las que se fusionan o integren, alcance la cantidad mínima precisada en la norma reglamentaria y que dependerá de los sectores productivos (según la Clasificación Nacional de Actividades Económicas); y que conste expresamente en los Estatutos o en las disposiciones reguladoras correspondientes, la obligación de los productores de entregar la totalidad de su producción para la comercialización en común; al igual que contemplen las necesarias previsiones para garantizar a sus productores asociados el control democrático de su funcionamiento y de la adopción de sus decisiones. Evitándose, de este modo,la posición de dominio de uno o varios de sus miembros.

El cumplimiento de los presupuestos señalados,permite que el Ministerio de Agricultura, Alimentación y Medio Ambiente pueda reconocer la Entidad Asociativa Prioritaria, siguiendo el procedimiento reglamentario establecido a tal fin, y la inscripción en el correspondiente Registro Nacional de Entidades Asociativas Prioritarias. En concreto, se hace referencia al proceso determinado en el Real Decreto 550/2014, por el que se desarrollan los requisitos y el procedimiento para el reconocimiento de las Entidades Asociativas Prioritarias y para su inscripción y baja en el Registro Nacional de Entidades Asociativas Prioritarias[488], el cual ha sido modificado recientemente por el Real Decreto 161/2019, de 22 de marzo[489]

[488] Real Decreto 550/2014, de 27 de junio, por el que se desarrollan los requisitos y el procedimiento para el reconocimiento de las Entidades Asociativas Prioritarias y para su inscripción y baja en el Registro Nacional de Entidades Asociativas Prioritarias, previsto en la Ley 13/2013, de 2 de agosto, de fomento de la integración de cooperativas y de otras entidades asociativas de carácter agroalimentario (BOE núm. 173, de 17 de julio). En particular, arts. 3 a 6 del citado texto normativo.

[489] Real Decreto 161/2019, de 22 de marzo, por el que se modifica el Real Decreto 550/2014, de 27 de junio, por el que se desarrollan los requisitos y el procedimiento para el reconocimiento de las

en sus aspectos técnicos. Esto es, para mejorar la eficacia de las Entidades Asociativas Prioritarias y cumplir los fines de la política agroalimentaria y, al mismo tiempo, la gestión de las mismas y su eficiencia en el mercado.

3. Las reformas que la norma de entidades asociativas agroalimentarias ha introducido en el ámbito cooperativo

La Ley 13/2013 de fomento de la integración de cooperativas y de otras entidades asociativas de carácter agroalimentario, introdujo modificaciones en diversos textos normativos (como el relativo al régimen fiscal de las entidades cooperativas), entre los que cabe destacar los incluidos en la regulación nacional delsector cooperativo[490]. Los aspectos que son objeto de reforma se precisan tanto en lo que concierne a la denominación de las cooperativas, como la consolidación del asociacionismo en el sector y la determinación del régimen aplicable a las cooperativas agroalimentarias.

En primer término, el legislador pretendió mejorar la definición de las clases de cooperativas agrarias en su denominación, a fin de adaptarlas a la realidad económica y social del momento. Por lo que se incluye,entre la clasificación de las cooperativas, la designación de las calificadas como cooperativas 'agroalimentarias' y, además, se introduce esta nominación en la delimitación de las cooperativas de segundo grado[491]. Téngase en cuenta que la nueva designación de cooperativas agroalimentarias ha de entenderse extensible, en igual sentido, a cualquier precepto que se refiera a las cooperativas agrarias.

En segundo lugar, las reformas tratan de consolidar las asociaciones de las cooperativas[492]. En este caso, respecto de las previsiones relativas al destino que ha de darse alFondo de Educación y Promoción de las entidades cooperativas, se establece lo siguiente:

> (…) Para el cumplimiento de los fines de este fondo se podrá colaborar con otras sociedades y entidades, pudiendo aportar, total o parcialmente, su dotación. Asimismo, tal aportación podrá llevarse a cabo a favor de la unión o federación de cooperativas en la que esté asociada para el cumplimiento de las funciones que sean coincidentes con las propias del referido fondo.

Esto es, la norma de manera expresa hace posible que las sociedades cooperativas aporten las dotaciones del Fondo de Educación y Promoción a sus uniones

Entidades Asociativas Prioritarias y para su inscripción y baja en el Registro Nacional de Entidades Asociativas Prioritarias, previsto en la Ley 13/2013, de 2 de agosto, de fomento de la integración de cooperativas y de otras entidades asociativas de carácter agroalimentario (BOE núm. 83, de 6 de abril).

[490] Disposición Final 2ª.

[491] Art. 6 de la Ley 27/1999 de Cooperativas española.

[492] Art. 56 de la Ley 27/1999 de Cooperativas española.

o federaciones para el cumplimiento de las funciones que la legislación les tenga encomendadas en la medida en que sean coincidentes con las que son propias de dichos fondos. Admitiéndose, de este modo, una opción para las cooperativas en cuanto al destino y gestión del Fondo de Educación y Promoción.

Por último, se incluye una referencia completa al régimen de las cooperativas agroalimentarias[493], el cual parte de su delimitación en razón tanto del criterio subjetivo, como del objetivo que las singulariza. Así, van a ser cooperativas agroalimentarias desde la óptica subjetiva, las "queasocien a titulares de explotaciones agrícolas, ganaderas o forestales, incluyendo a las personas titulares de estas explotaciones en régimen de titularidad compartida" (precisado en la Ley 35/2011, de 4 de octubre, sobre titularidad compartida de las explotaciones agrarias); y, desde la perspectiva objetiva, que tengan como finalidad "la realización de todo tipo de actividades y operaciones encaminadas al mejor aprovechamiento de las explotaciones de sus socios, de sus elementos o componentes de la cooperativa y a la mejora de la población agraria y del desarrollo del mundo rural, así como atender a cualquier otro fin o servicio que sea propio de la actividad agraria, ganadera, forestal o estén directamente relacionados con ellas y con su implantación o actuación en el medio rural."

Es decir, que incidan en la actividad agraria y actúen en base a su implantación en el medio rural, y que sus actividades afecten a los productos de la cooperativa y de los socios que la conforman. En todo caso, destaca la actuación de las cooperativas agroalimentarias en el entorno territorial y social de su ubicación. No obstante lo anterior, podrán ser socios de pleno derecho de estas cooperativas, asimismo, las Sociedades Agrarias de Transformación, las comunidades de regantes, las comunidades de aguas, las comunidades de bienes y las sociedades civiles o mercantiles que tengan igual objeto social o actividad complementaria.

Las reformas indicadas pretenden superar la falta de correspondencia de las cooperativas nacionales y las del ámbito europeo, en particular, en lo que se refiere al sector agroalimentario. La patente atomización de nuestro entorno cooperativo requiere del poder legislativo la adopción de medidas que sirvan de impulso de la integración cooperativa y asociativa con el fin de incrementar la competitividad, la eficiencia y la internacionalización del sector, lo cual ha tratado de superarse con las disposiciones normativas referidas.

[493] Art. 93 de la Ley 27/1999 de Cooperativas española.

Chapter XII

THE ROLE OF THE AGRICULTURAL CO-OPERATIVE MOVEMENT WORLDWIDE – ECONOMIC COMMENTS

Maria Zuba-Ciszewska

I. Introduction

According to the International Cooperative Association (ICA), a co-operative is an autonomous association of people joining together voluntarily to meet common economic, social and cultural needs and aspirations through a jointly owned, and democratically managed enterprise. The essence for the operation of co-operatives has remained unchanged for almost 200 years, and is based on so-called co-operative principles. They relate to voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and informing, cooperation among cooperatives, and concern for community. These attractive features common to co-operatives mean that the cooperative movement is flourishing. Indeed, according to ICA data, there are currently 3 million co-operatives that provide work for 10% of the world's employed population; moreover, 12% of all people on the Earth belong to co-operatives.[494]

Co-operatives exist in almost every country in the world and they are very well represented in both the developed and the emerging economies.[495] One of the basic types of co-operatives is that of the agricultural co-operatives. These are present in numerous countries. This is due to the inherent characteristics of agriculture and rural life. Their main task is to help farmers increase their income and strengthen their economic position on the market. They also form the integrating factor for various means of production. They secure the sale of agricultural products by the farmers and enable them to adapt production to the needs and requirements of the market.[496] In every country in which they operate, agricultural co-operatives also play other crucial economic functions. Co-operatives, including agricultural ones, often

[494] Available on-line at: <https://www.ica.coop/en> [accessed 25.05.2020].

[495] W. Czternasty, *Determinanty rozwoju spółdzielczości w różnych warunkach ekonomiczno-społecznych*, Toruń, 2013: 143.

[496] D. Mierzwa, *W poszukiwaniu nowego modelu spółdzielczości rolniczej*, Wrocław, 2005: 16.

reduce the poverty levels[497] among social groups that for various reasons (for example cultural, educational) have limited opportunities for economic development and participation in business activities.[498] Agricultural co-operatives also contribute to the achievement of a broader objective, that is ensuring the food security of the country, which[499] forms part of a state's national security. Agricultural co-operatives do so by creating local food systems and by being an important link in the food chain, among other things, because they offer a variety of products for consumers[500] that are often basic for the consumer's diet, which other processors from the industry are unwilling to manufacture due to the low profit margin associated with the respective product[501]. They also reduce food losses,[502] sell their produce directly to the retailers, cover almost the entire food chain[503], and develop food exports[504]. Their role in shortening the food chain is particularly important in countries where it is too extensive, where numerous intermediaries needlessly increase consumer prices, while, at the same time, reduce the profits of farmers.[505] Agricultural co-operatives can also manage the various risks affecting agricultural supply chains.[506] These entities can also hold other functions, such as being a source of innovations, mainly concerning products and processes[507] that are the result of their market orientation.[508]

[497] J. Birchall, *Rediscovering the Coperative Advantage: Poverty Reduction through Self-Help*, Geneva, 2003: 12.

[498] D. Prakash, *Rural Women, Food Security and Agricultural cooperatives*, New Delhi, 2003: 13.

[499] M. Zuba-Ciszewska, The Role of Cooperatives in Ensuring Food Availability in Poland – on the Example of Dairy Products, *Village and Agriculture*, 2020, 1: 93–119.

[500] S.D. Falco, M. Smale, C. Perrings, The role of agricultural cooperatives in sustaining the wheat [d]iversity and productivity: the case of southern Italy, *Environ Resource Econ*, 2008, 39: 161–174.

[501] M. Zuba-Ciszewska, The role of cooperatives in ensuring food availability in Poland – on the example of dairy products, *Village and Agriculture*, 2020, 1(186): 93–119.

[502] M. Zuba-Ciszewska, The role of dairy cooperatives in reducing waste of dairy products in the lubelskie voivodeship, *Journal of Agribusiness and Rural Development*, 2018, 47(1): 97–105.

[503] J. Bijman, G. van der Sangen, K.J. Poppe, B. Doorneweert, *Support for Farmers' Cooperatives; Country Report The Netherlands*, Wageningen, 2012: 29.

[504] N. Le Cren, J. Lyons, L.P. Dana, The role of collective action in the New Zealand dairy industry: An international comparison, *International Journal of Entrepreneurship and Small Business*, 2009, Vol. 8: 154–169.

[505] J.E. Ogbu, U.A. Usman, Relevance of agricultural cooperative in the supply chain of agricultural products in Nigeria: the way forward for national economic development, *International Journal of Arts, Languages and Business Studies*, 2018, 1: 283–293.

[506] S. Jaffee, P. Siegel, C. Andrews, Rapid agricultural supply chain risk assessment: a conceptual framework, *Agriculture and Rural Development Discussion paper*, 2010, 47: 24ff.

[507] M. Zuba-Ciszewska, A. Kowalska, L. Manning, A. Brodziak, Organic milk supply in Poland: market and policy developments, *British Food Journal*, 2019, 121(12): 3396–3412; J.R. Gallego-Bono, R. Chaves-Avila, The cooperative model of agri-food innovation systems: ANECOOP and the valencian citrus industry system, *ITEA*, 2015, 111(4): 366–383; R.J. Server-Izquierdo, N. Lajara-Camilleri, Factors explaining innovation in agro-food cooperatives: a case study for Spanish citrus cooperatives, *ITEA*, 2016, 112(2): 185–199; J. Luo, H. Guo, F. Jia, Technological Innovation in Agricultural Co-operatives in China: Implications for agro-food innovation policies, *Food Policy*, 2017, 73: 19–33.

[508] J. Bijman, *Agricultural cooperatives and market orientation: a challenging combination?*, in: A. Lindgreen, M. Hingley, P. Custance (eds.), *Market orientation: transforming food and agribusiness around the customer*, Aldershot, 2010: 119–136.

The farmers' co-operative is a purposeful system of cooperation between members conducting agricultural production and the commercial enterprise they established. It has a bimodal character, being both a community of members, and an enterprise. The main objective of a co-operative is to improve the economic and social situation of its members and their families.[509] In a market economy, the activity of agricultural co-operatives is associated with market demands.[510] They must adapt to them in order to survive and develop. Higher economic performance is achieved by agricultural cooperatives that pursue entrepreneurial business strategies and value adding activities through processing and marketing.[511] Economic analysis provides the opportunity to assess this activity. Therefore, this present article forms part of the rapidly growing current of empirical research on agricultural cooperatives, their financial situation and efficiency.[512] The objective of the present work was to assess the functioning of agricultural co-operatives based on statistical data for regions and economic activities, therefore it applies a meso-economic approach. For this purpose, the author used three World Cooperative Monitors (2010[513], 2015[514] and 2019[515]) published by ICA & Euricse, with data covering 2008, 2013 and 2017, respectively. These monitors provided data on 300 of the world's largest cooperatives, including agricultural cooperatives, in various parts of the world. The reports from 2016[516] and 2017[517] contain more detailed economic data on the largest cooperatives in the world in 2014 and 2015. In addition, in order to further elaborate the characteristics of agricultural cooperatives in Europe, the

[509] M. Pietrzak, *Fenomen spółdzielni rolników. Pomiędzy rynkiem, hierarchią i klanem*, Warsaw, 2019: 354.

[510] W. Czternasty, Spółdzielczość jako szansa rozwoju struktur agrobiznesu w Polsce, in: W. Czternasty, B. Czyżewski, *Struktury kierowania agrobiznesem w Polsce*, Poznań, 2007: 237.

[511] *Development of Agricultural Cooperatives in the EU 2014*. Brussels, Available on-line at: <http://www.europarl.europa.eu/meetdocs/2014_2019/documents/agri/dv/copa-cogecareport_/copa-cogecareport_en.pdf> [accessed 20.05.2020].

[512] J. Grashuis, Y. Su, A Review of the Empirical Literature on Farmer Cooperatives: Performance, Ownership and Governance, Finance, and Member Attitude, *Annals of Public and Cooperative Economics*, 2019, 90: 77–102.

[513] *Global300. Report 2010: The world's major co-operatives and mutual businesses*. Geneva, Available on-line at: <https://www.aciamericas.coop/IMG/pdf/global300_report2011.pdf> [accessed 20.05.2020].

[514] *World Cooperative Monitor. Exploring the cooperative economy, Report 2015*, Brussels, ICA & Euricse, Available on-line at: <https://monitor.coop/en/media/library/research-and-reviews/world-co-operative-monitor-2015> [accessed 20.05.2020].

[515] *World Cooperative Monitor. Exploring the cooperative economy, Report 2019*, Brussels, ICA & Euricse, Available on-line at: <https://monitor.coop/en/media/library/research-and-reviews/world-cooperative-monitor-2019> [accessed 20.05.2020].

[516] *World Cooperative Monitor. Exploring the cooperative economy, Report 2016*, Brussels, ICA & Euricse, Available on-line at: <https://monitor.coop/en/media/library/research-and-reviews/world-co-operative-monitor-2016> [accessed 20.05.2020].

[517] *World Cooperative Monitor. Exploring the cooperative economy, Report 2017*, Brussels, Available on-line at: <https://monitor.coop/en/media/library/research-and-reviews/world-co-operative-monitor-2017en> [accessed 20.05.2020.]

author used the report for the last available year, that is 2015, published by Cooperatives Europe[518], an organisation that represents 176,000 European cooperative enterprises from all sectors of the economy. The choice of a co-operative as the subject of this chapter was influenced, among other things, by access to data on co-operatives on a global scale. There is no such complete data on other forms of association of agricultural producers, including assessments of this activity.

II. Agricultural co-operatives worldwide

The 2017 list of the 300 world's largest co-operatives included entities from 27 countries (25 in 2008) (Table 1), but the list of these countries has remained virtually unchanged for years. European countries are strongest in numbers, with 159 listed co-operatives in 2017. Since 2008, the number of European entities has, however, decreased (by 17) mainly due to a decrease in their number in France (by 10), Italy (by 16), UK (by 11), Ireland (by 2), Switzerland (by 1), while growth (by 23) was recorded in other European countries. Poland, a country from Central and Eastern Europe, joined the group of European countries that are from the western and northern parts of the continent.

Table 1. The world's largest co-operatives

Country	Number of co-operatives			Turnover (billion USD)			Economic productivity (billion USD)		
	2008	2013	2017	2008	2013	2017	2008	2013	2017
France	48	38	38	464.1	346.6	392.4	9.7	9.1	10.3
Germany	26	33	30	228.1	324.1	301.3	8.8	9.8	10.0
Netherlands	15	18	18	124.5	140.0	115.9	8.3	7.8	6.4
Italy	30	13	14	47.0	58.9	67.3	1.6	4.5	4.8
Finland	10	11	10	47.6	53.0	42.7	4.8	4.8	4.3
Denmark	4	10	7	27.9	59.7	45.0	7.0	6.0	6.4
Norway	4	7	7	11.9	23.9	20.2	3.0	3.4	2.9
Sweden	5	6	7	18.7	27.4	28.4	3.7	4.6	4.1
UK	18	7	7	63.9	54.5	33.9	3.5	7.8	4.8
Switzerland	7	7	6	56.7	79.7	72.5	8.1	11.4	12.1
Austria	1	5	5	14.8	36.0	29.8	14.8	7.2	6.0
Belgium	3	10	4	8.7	22.9	7.7	2.9	2.3	1.9

[518] *The power of Cooperation – Cooperatives Europe Key Figures 2015,* Bruxelles, Available on-line at: <https://coopseurope.coop/sites/default/files/The%20power%20of%20Cooperation%20-%20Cooperatives%20Europe%20key%20statistics%202015.pdf> [accessed 20.05.2020].

Country	Number of co-operatives			Turnover (billion USD)			Economic productivity (billion USD)		
	2008	2013	2017	2008	2013	2017	2008	2013	2017
Spain	2	7	4	25.5	71.1	22.3	12.8	10.2	5.6
Ireland	3	3	1	7.0	15.5	2.3	2.3	5.2	2.3
Poland	0	0	1	0.0	0.0	1.2	–	–	1.2
EUROPE	176	175	159	1146.5	1313.2	1182.8	6.5	7.5	7.4
USA	90	74	85	261.9	584.2	426.6	2.9	7.9	5.0
Canada	8	10	8	27.3	41.8	41.5	3.4	4.2	5.2
Brazil	1	6	5	0.8	35.0	19.9	0.8	5.8	4.0
Argentina	0	0	2	0.0	0.0	2.9	–	–	1.4
Colombia	0	1	0	0.0	1.5	0.0	–	1.5	–
AMERICAS	99	91	100	290.0	662.6	490.8	2.9	7.3	4.9
Japan	8	18	18	128.2	282.0	254.8	16.0	15.7	14.2
New Zealand	6	6	7	17.7	25.4	26.6	2.9	4.2	3.8
Australia	3	3	6	3.4	6.4	10.4	1.1	2.1	1.7
Republic of Korea	1	3	4	32.4	61.0	52.5	32.4	20.3	13.1
India	2	1	2	2.2	3.5	8.1	1.1	3.5	4.1
Singapore	2	2	2	3.2	4.5	5.3	1.6	2.3	2.6
Malaysia	1	0	1	1.1	0.0	1.6	1.1	-	1.6
Saudi Arabia	0	1	1	0.0	1.5	2.2	–	1.5	2.2
China	2	0	0	10.2	0.0	0.0	5.1	–	–
ASIA-PACIFIC	25	34	41	198.3	384.4	361.5	7.9	11.3	8.8
Total	**300**	**300**	**300**	**1635.0**	**2360.1**	**2035.1**	**5.4**	**7.9**	**6.8**

Source: own study.

The leading role of Europe is decreasing in favour of the growing significance of the co-operative movement in Asia (mainly Japan and Korea) and the Pacific Area (mainly Australia), where there are now 16 more substantial co-operatives than in 2008. There are 100 large agricultural co-operatives operating in the Americas, i.e. as in 2008, with the number operating in the US slightly decreasing and that of South America increasing.

Between 2008 and 2017, the turnover of the 300 largest co-operatives in the world increased by almost ¼ to 2035.1 billion dollars. Despite the fact that the largest part of this turnover (over 58%) is produced in Europe, the increase since 2008 in this group of countries was the smallest (by 3.2%), when we compare it to the dynamic increase in turnover in Asia-Pacific countries (by 82.2%) or the Americas (by 69.2%). On these two latter continents, all countries participating in

the ranking recorded an increase in revenues in 2017 when compared to 2008. In the case of Asia, the largest increase was recorded in India (by 263%) and that was with an unchanged number of co-operatives, and Australia (by 205%), in which the number of individual entities doubled. In the Americas, the highest turnover increase was recorded in Brazil (almost 25 times), which resulted, among other things, from a fivefold increase in the number of the largest co-operatives. However, US co-operatives still generate most of the co-operative movement revenue of the entire Americas (almost 87%), nevertheless, it is 3 pp (percentage points) less than in 2008. In Asia, where Japan is responsible for over 70% of all revenues, its pan-national share has increased by 5 pp since 2008. In Europe, half of the countries recorded an increase in the revenues of their largest co-operatives (from 28% to 101%) and the other half saw a decrease (from 12% to 66%) – and that even with a growing number of co-operatives. Therefore, it is necessary to compare the economic productivity of the national co-operative movements. This is the relation of revenues to the number of co-operatives in the respective country. We find the highest average economic productivity of the discussed entities (Table 1) in Asia (8.8 billion dollars), followed by Europe (7.4 billion dollars), and finally America (4.9 billion dollars), although the latter recorded the largest improvement. In most countries (15), since 2008, the average economic productivity has improved, but there is a clear difference in individual countries. There is a small group of countries where the statistical co-operative has revenues (in 2017) of 10–14 billion dollars (Germany, France, Switzerland, Republic of Korea, Japan). For the remaining countries, this productivity is much lower (below 6.5 billion dollars).

Agricultural co-operatives (Table 2) are an important part of the entire co-operative movement (97 entities in 2017). This section includes all co-operatives that operate along the entire agricultural value chain, starting from the cultivation of agricultural products and livestock farming to the industrial processing of agricultural products and animals. This sector includes both agricultural producers' co-operatives and consortia of co-operatives (or similar arrangements) that carry out the processing and marketing of agricultural goods for their members.[519]

Since 2008, almost all economic activities have recorded a decrease in the number of strong co-operatives (from several to even 70%), except for the insurance sector, in which the number of entities doubled. This sector also recorded the largest increase in revenues (by 173.7%). Revenues also increased in agriculture (by 0.2%) and sales (by 16.8%). Among the 300 largest entities, while the share of the number of co-operatives operating in the agricultural sector (Figure 1) slightly decreased (by 1.3 pp, down to 32.3%), their share in revenues decreased by 5.6 pp to 23.2%. Moreover, the relationship between these two shares

[519] *World Cooperative Monitor. Exploring the cooperative economy, Report 2019*, Brussels, Available on-line at: <https://monitor.coop/en/media/library/research-and-reviews/world-cooperative-monitor-2019> [accessed 20.05.2020].

Table 2. The world's largest co-operatives listed by their field of activity

Economic activities	2008		2013		2017	
	Number of co-operatives	Turnover (billion USD)	Number of co-operative	Turnover (billion USD)	Number of co-operatives	Turnover (billion USD)
Agriculture	101	472.0	95	584.8	97	473.0
Banking	34	429.5	14	191.3	21	341.8
Retail	72	354.1	52	465.8	53	413.7
Insurance	58	281.7	121	1029.5	117	771.0
Industry	9	35.3	10	39.5	3	16.4
Health	6	27.0	5	31.8	3	10.2
Utilities	16	18.5	0	0	5	7.5
Other	4	17.0	3	17.4	1	1.4
Total	**300**	**1635.0**	**300**	**2360.1**	**300**	**2035.1**

Source: own study.

decreased (from 0.9 to 0.7), which indicates that despite the significant quantitative importance of agricultural co-operatives, they do not achieve an equally significant place in economical results, or that their role has even decreased. In contrast, in the case of the banking sector, with its share in revenues decreasing by almost 10 pp (to 16.8%), as well as its share in the number of entities also decreasing (by 4.3 pp to 7%), its significance in the economical results of the largest entities was enhanced. This is demonstrated by the increase in the share ratio from 2.3 to 2.4. The sales sector also participates in a greater share of the global economic outcomes than would be suggested by number of functioning co-ops, although in 2008 this situation was reversed. It should be noted, however, that since 2008, the shares of this sector have decreased in numbers (by 6.3 pp to 17.7%) and in sales (by 1.3 pp to 20.3%). The largest sector is insurance, whose share in the number increased by 19.7 pp to 39%, i.e. a growth similar to the results achieved (by 20.7 pp to 37.9%). In this case, its economical significance results from its numerical significance. The shares of industry, health or utility services are smaller in revenues than their shares in numbers, and, since 2008, they have decreased.

Almost 57% of the largest agricultural co-operatives operate in Europe (Table 3) and that means that every third large co-operative in this area operates in the agricultural sector. Despite the decrease in their numbers, the largest agricultural co-operatives in Europe and the Americas recorded an increase in turnover (by 12% and 17%), which improved their economic productivity. However, it is still at least twice lower than the productivity of the largest agricultural co-operatives in the Asia and Pacific regions, and that even with its decline (by USD 3.1 billion) due to a decrease in their turnover (by almost 41 billion USD).

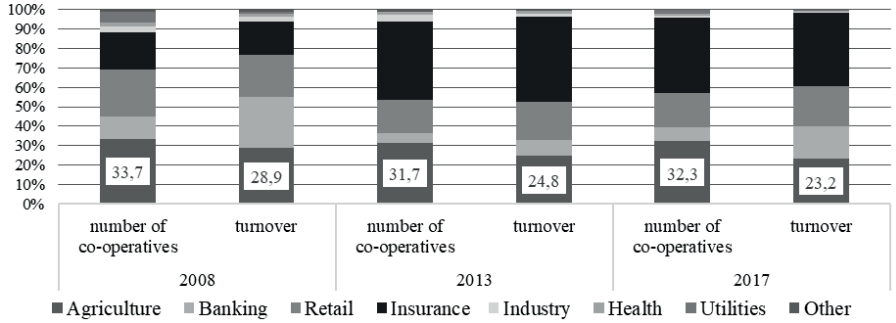

Figure 1. The world's largest co-operatives by economic activity

Source: own study.

Table 3. The largest agricultural co-operatives

Region	Number of co-operatives			Turnover (billion USD)			Economic productivity (billion USD)		
	2008	2013	2017	2008	2013	2017	2008	2013	2017
EUROPE	57	60	55	191.8	297.9	215.3	3.4	5.0	3.9
AMERICAS	31	25	29	106.9	138.6	125.2	3.4	5.5	4.3
ASIA-PACIFIC	13	10	13	173.4	148.4	132.5	13.3	14.8	10.2
Total	101	95	97	472.0	584.8	473.0	4.7	6.2	4.9

Source: own study.

The role of the agricultural sector varies in the respective countries. Most agricultural co-operatives (Figure 2) are found in the US and France, and their 2017 share in these countries was 27% and 45% among all of their largest co-operatives. Agricultural entities from these two countries constituted 41% of all 97 co-ops active in this sector in 2017 and it was 8 pp less than in 2008. In other countries, the number of agricultural entities did not exceed 9 in 2017.

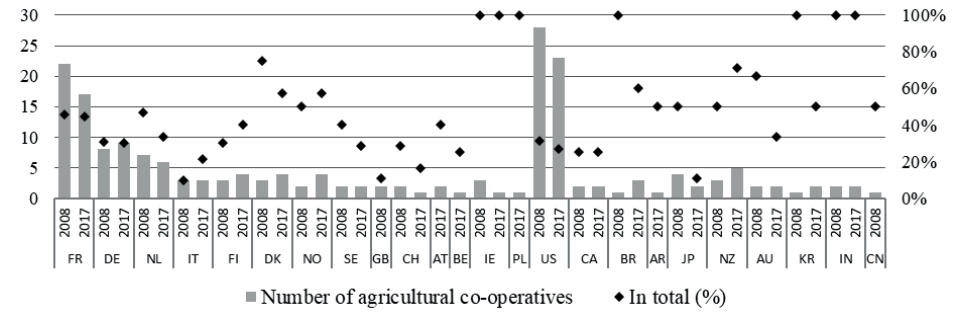

Figure 2. The role of the largest agricultural co-operatives in the countries

Source: own study.

The largest agricultural co-operatives are relatively smaller than the other types of entities operating as co-operatives (Table 4). For example, while in 2008, over 51% of all agricultural co-operatives achieved revenues below 2 billion dollars, in the case of other types of entities this share amounted to just over 46%. Only 5% of agricultural co-operatives generated revenues greater than 15 billion dollars and in the case of the remaining types of co-operatives, this was achieved by 8.5%. In 2013, the share of entities with revenues exceeding 15 billion dollars amounted to 17.1% in the non-agricultural group and only 6.4% in the agricultural group. Despite the fact that from 2008 to 2017 the number of small (with revenues of up to 5 billion dollars) agricultural co-operatives decreased (from 79 to 71), the rate of this decrease was smaller than this decrease in the number of non-agricultural co-operatives (from 155 to 133). Therefore, in 2017, they constituted over 73% of all agricultural co-operatives, i.e. 7.7 pp more than this share for non-agricultural co-operatives.

Table 4. The largest agricultural co-operatives by size of turnover

Turnover (billion USD)	2008				2013				2017			
	Agriculture		Another		Agriculture		Another		Agriculture		Another	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
<=1	19	18.8	34	17.1	0	0	0	0	0	0	0	0
1.1-2	33	32.7	58	29.1	21	22.1	49	23.9	40	41.2	68	33.5
2.1-5	27	26.7	63	31.7	43	45.3	71	34.6	31	32.0	65	32.0
5.1-10	13	12.9	19	9.5	16	16.8	39	19.0	16	16.5	31	15.3
10.1-15	4	4.0	8	4.0	9	9.5	11	5.4	6	6.2	13	6.4
15.1-20	1	1.0	2	1.0	2	2.1	11	5.4	1	1.0	6	3.0
20.1-25	0	0	5	2.5	1	1.1	5	2.4	0	0	5	2.5
25.1-30	0	0	3	1.5	0	0	3	1.5	0	0	3	1.5
30.1-40	2	2.0	1	0.5	0	0	9	4.4	2	2.1	4	2.0
>=40.1	2	2.0	6	3.0	3	3.2	7	3.4	1	1.0	8	3.9
Total	101	100.0	199	100.0	95	100.0	205	100.0	97	100.0	203	100.0

Source: own study.

In addition, only 4% of all agricultural entities generated revenues above 15 billion dollars, that is three times fewer than in the non-agricultural group (13%). In each audited year, the number of co-operatives reaching at least 40 billion dollars in revenues was several times higher in the non-agricultural group than their number among the agricultural co-operatives. Therefore, this disproportion persists in the size of classes of the largest agricultural co-operatives versus non-agricultural co-operatives.

In 2017, half of the largest agricultural co-operatives (Figure 3) operated in the dairy (26) and cereal (23) industries (sector). This was 6 dairy plants less and 4 cereal co-operatives more - than in 2008. As the value of co-operative turnover from these industries increased (by 30% to 122.2 billion dollars and by 29% to 115.9 billion dollars, respectively), their significance among the largest agricultural entities grew.

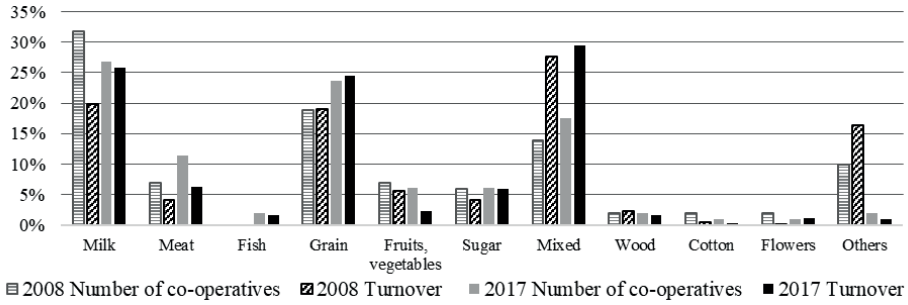

Figure 3. Share of the largest industrially diverse co-operatives in the agriculture sector

Source: own study.

Furthermore, there is a large group of co-operatives with multi-directional activity (17.5%), combining plant and animal production, the value of which increased by nearly 7% to 139 billion dollars and these constituted the largest part of the total turnover of the agriculture sector (29.4%). Therefore, while in the case of dairy and cereal production, the share in the number and turnover is relatively proportional, in the case of mixed production, their economic significance is much higher than their number would indicate. The role of two other industries is also noticeable. The six largest co-operatives are sugar factories, with a turnover increase of over 43% to 28.1 billion dollars. A similar result (29.4 billion dollars, i.e. half more than in 2008) was generated by co-operatives involved in animal production (11 in 2017, i.e. 4 more than in 2008). Apart from sugar factories and flower co-operatives, other plant production co-operatives (fruit and vegetables, wood, cotton) recorded a decrease in their turnover (by 59%, 27%, and 44%, respectively) with similar numbers to 2008. In addition, while in 2017, only 2 co-operatives (almonds, fertilizers) were assigned to the other category, in 2008, there were as many as 10 entities in this category, mainly providing services for the agriculture (for example insurance, finance, energy supply) and not dealing directly with production.

The average economic productivity of agricultural co-operatives increased by 4% to 4.9 billion dollars (Figure 4), whereas the highest economic efficiency (8.2 billion dollars) was recorded by co-operatives specializing in various products. The co-operatives from the florist, cereal, dairy, confectionery, wood and fish industries were slightly less productive, being at 4 to 5.3 billion dollars on average. The least effective were entities from the meat, fruit and vegetable, and

cotton industries. Herein, only a few industries dealing in the production of flowers (almost 10 times), milk (by 60%), sugar (by 43%), cotton (by 11%) and grain (by 7%) saw improvement in performance.

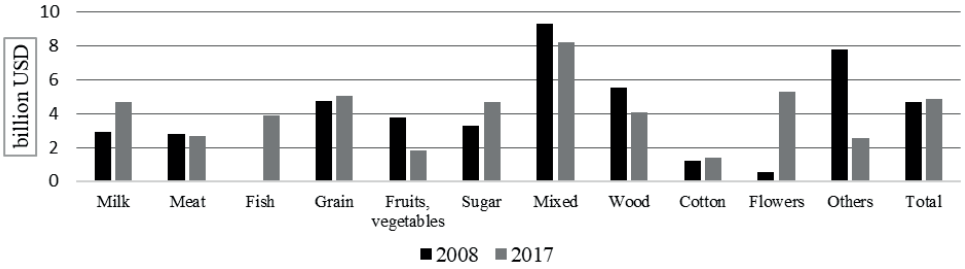

Figure 4. Economic productivity of the largest agricultural co-operatives according to the industry they operate in

Source: own study.

The largest revenues are generated statistically by the largest agricultural co-operatives in Japan and Korea (Figure 5), but a decrease in this value is noticeable. Agricultural co-operatives in Denmark and Switzerland also demonstrate high levels of economic productivity. In other countries, this value does not exceed 5.6 billion dollars.

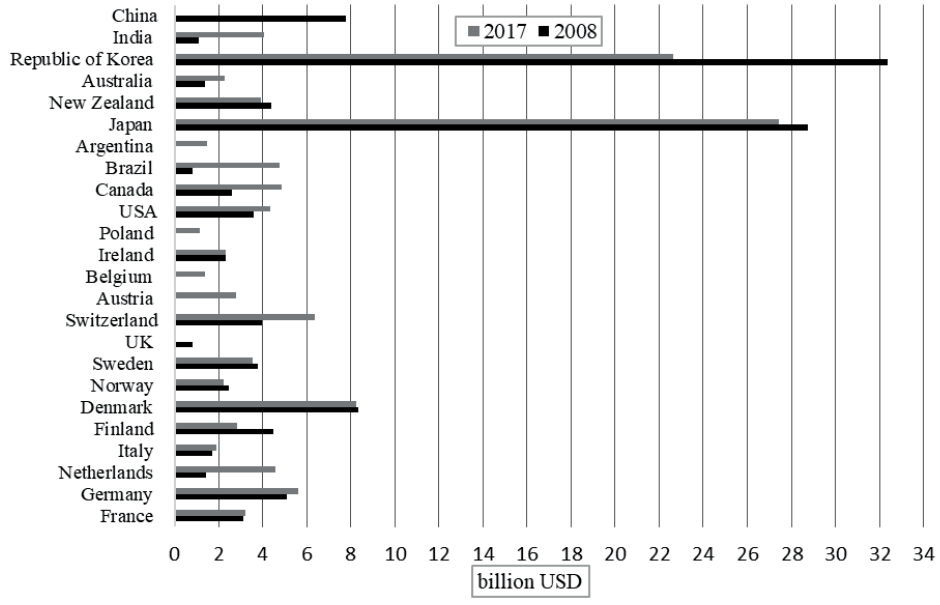

Figure 5. Economic productivity of all the largest agricultural co-operatives per country

Source: own study.

The differences in economic performance can also be seen across countries within the same industry. For example, the largest dairy co-operatives (Figure 6) in the USA (Dairy Farmers of America), the Netherlands (Friesland Campina), New Zealand (Fonterra) and Denmark (Arla Foods), generated 12 to 15 billion dollars in 2017, that is several times more than the largest dairy co-operative in Poland (Mlekovita).

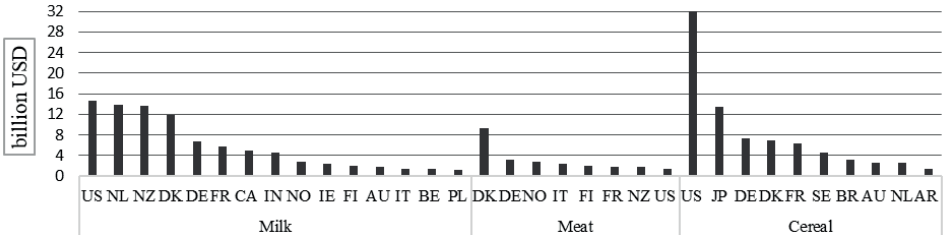

Figure 6. The 2017 economic productivity of the largest dairy, meat and cereal co-operatives, by nation.

Source: own study.

Slightly smaller differences occur in the case of co-operatives involved in meat production, although here the highest turnover (Danish Crown) is seven times higher than the lowest (Producers Livestock Marketing Association in the USA). The largest co-operative producing grain in the USA (CHS Inc.) had a revenue of over USD 18 billion more than the next largest co-operative (Hokuren in Japan) and almost 22 times higher than the smallest co-operative from the list (Agricultores Federados Argentinos Sociedad Cooperativa Limitada of Argentina).

Based on the World Co-operative Monitors for 2014 and 2015, which are the latest reports presenting more detailed economic data, it can be concluded that the largest agricultural co-operatives have a more stable source of financing than other types of co-operatives. The share in financing assets by equity, together with the net profit in 2015 was 35.8% (36.9% in 2014), of which the profit was at the level of 3.6%. The profit generated by agricultural co-operatives, therefore, reduces their dependence on external sources. The Asia and Pacific co-operatives are the least indebted. Agricultural co-operatives are able to repay their current liabilities from their current assets, as reported by the level of current liquidity ratio (1.43), nevertheless a slight decrease in this indicator is noticeable. The index of the use of accounts payable to suppliers with respect to the current liabilities, reveals the bargaining power of the co-operative with respect to suppliers, i.e. the higher the value, the higher the bargaining power. In 2015, it amounted to 44% and its decrease from 62% in 2014 was mainly due to a decrease in this indicator in Europe and Asia. Its decrease may have resulted, among other things, from incurring further current liabilities such as an overdraft on a current account. This would also confirm the reason for the decrease in the level of financial liquidity. Agriculture

co-operatives in the Americas region are more financially solid, as testified by the degree of coverage of their fixed assets by long-term capital. The largest agricultural co-operatives have a slightly higher level of return on equity (ROE) than do other co-operative sectors. This index can be representative of the potential increase of the internal source of capital – the total equity. Based on 2015 data, we can conclude that for every 100 dollars of equity invested in agricultural co-operatives, its owners received a net profit of 11 dollars, which was more than in 2014. At the same time, its level varied regionally, because co-operatives from the Americas (20.8%) were more than twice as profitable when compared to those from Europe (8.4%) and Asia-Pacific (7.6%). Compared to 2014, only the European co-operatives did not improve their return on equity; they maintained it instead. The return on assets (ROA) was also higher in America (6.2%) than in Europe (2.9%) and Asia (2.9%). This may indicate that this situation is mainly influenced by the net profit earned. Compared to the previous year, the efficiency of the use of assets improved in America and Asia, and decreased in Europe. Still, overall, agricultural co-operatives managed their assets better than did other types of co-operatives.

Using the latest data covering the majority of European countries, it can be stated that in 2015, 30% of all co-operatives operated in the agriculture sector. Moreover, nearly 7% of all members of co-operatives in Europe, i.e. almost 10 million citizens, belong to agricultural co-operatives. Agricultural co-operatives are also an important employer on the European market. They employ nearly 680 thousand persons, i.e. over 14% of the total number of employees in the co-operative sector. Agricultural co-operatives generate over 347 billion euro of turnover, i.e. over 39% of the entire co-operative sector's turnover.[520]

Table 5. Characteristics of agricultural co-operatives and their role in the co-operative sector (%) in selected European countries in 2015

Country	Co-operative		Members		Employees		Turnover	
	number	%	thousand	%	thousand	%	billion euro	%
Austria	**1020**	60.6	**306.3**	9.6	–	–	8.5	83.0
Belgium	301	89.1	–	–	3.9	57.0	3.8	63.8
Bułgaria	900	46.6	–	–	–	–	–	–
Croatia	509	40.8	7.9	39.2	1.3	46.5	0.1	53.3
Cyprus	9	14.5	–	–	0.04	1.2	0.02	4.4
Czech Republic	364	27.9	0.9	0.6	–	–	1.3	47.9
Denmark	28	20.1	45.7	14.5	–	–	**25.0**	77.9

[520] *The power of Cooperation – Cooperatives Europe Key Figures 2015,* Bruxelles, Available on-line at: <https://coopseurope.coop/sites/default/files/The%20power%20of%20Cooperation%20-%20Cooperatives%20Europe%20key%20statistics%202015.pdf> [accessed 20.05.2020].

Finland	33	0.7	**139.5**	2.1	28.0	29.9	**11.8**	28.0
France	**14429**	64.1	**451.2**	1.7	**161.8**	13.3	**86.0**	28.0
Germany	**2316**	30.9	**1400.0**	6.3	**82.0**	9.5	**66.0**	33.8
Greece	916	98.2	–	–	–	–	0.7	–
Hungary	**1116**	33.0	31.5	3.8	–	–	1.1	48.3
Ireland	75	90.4	**201.7**	99.1	12.0	99.6	**14.2**	99.9
Italy	**6741**	17.0	**792.1**	6.3	**114.4**	9.9	**38.3**	25.5
Lithuania	402	91.6	12.9	8.1	–	–	0.7	79.9
Malta	16	29.6	2.3	52.2	–	–	–	–
Netherlands	37	52.9	**99.9**	0.5	40.6	32.0	**27.8**	34.4
Poland	**2991**	31.3	**317.2**	4.0	**87.9**	29.3	7.1	49.0
Portugal	735	84.4	–	–	9.6	67.7	2.4	–
Romania	68	4.0	–	–	–	–	0.2	67.4
Slovak Republic	136	44.9	5.7	1.3	6.1	25.5	1.2	48.4
Spain	**3844**	19.2	**1179.3**	16.2	**99.0**	34.1	**25.7**	42.1
Sweden	30	0.5	**160.4**	3.7	14.5	42.3	7.4	54.6
UK	625	9.2	**157.2**	1.1	–	–	8.8	16.8
Georgia	**1168**	–	8.3	–	–	–	–	–
Norway	16	0.3	40.0	1.7	14.5	38.7	6.9	59.6
Turkey	**12567**	37.1	**4232.6**	70.5	–	–	–	–

– no date.

Source: own study.

Among over 51 thousand agricultural co-operatives (Table 5), the majority are located in France (14.4 thousand), Turkey (12.6 thousand), Italy (6.7 thousand), Spain (3.8 thousand), Poland (3 thousand), Germany (2.3 thousand), Georgia (1.2 thousand), Hungary (1.1 thousand), and Austria (1 thousand). In most countries for which data is available, the number of members of agricultural co-operatives exceeds 100,000, and there were also several countries for which it exceeded 1 million (Turkey, Germany, Spain). In France, Italy, Spain, Poland and Germany alone over 545 thousand people are employed in agricultural co-operatives. Agricultural co-operatives generated the highest turnover in France (86 billion euro), Germany (66 billion euro), Italy (38.3 billion euro), the Netherlands (27.8 billion euro), Spain (25.7 billion euro), Denmark (25 billion euro), Ireland (14.2 billion euro) and Finland (11.8 billion euro). These are countries where the co-operative sector is well developed or where there are few but economically strong co-operatives (as in Denmark, the Netherlands, and Ireland). Therefore, it is also important to assess the economic strength of such entities.

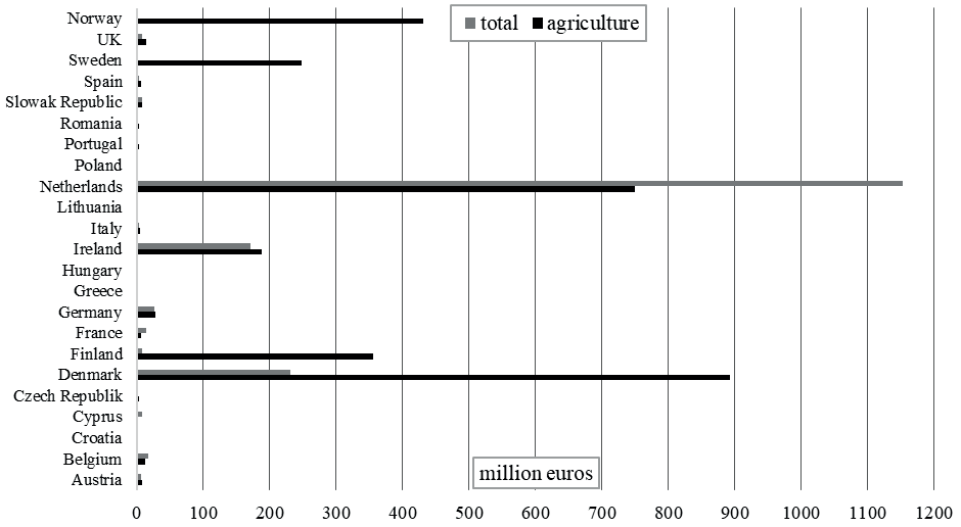

Figure 7. Economic productivity of co-operatives in Europe in 2015

Source: own study.

The most productive agricultural co-operatives (Figure 7) operate in Denmark (893.2 million euro on average), the Netherlands (750 million euro), Norway (432 million euro), Finland (357 million euro), Sweden (248 million euro), and Ireland (189 million euro). Among the countries mentioned above, the entire co-operative sector achieves high results only in Denmark, the Netherlands and Ireland. In the subsequent group of countries (Belgium, Germany, UK), the performance of an average agricultural co-operative, as in the entire co-operative sector, ranges from 13 to 29 million euro. In other countries, this performance is in the range of 0.2 to 8 million euro.

We can conclude that the turnover of national agricultural co-operatives in a country is not affected just by the number of active agricultural co-operatives, because high turnover is generated in countries with both a large (France, Germany, Italy, Spain) and a small number (Denmark, Finland, Ireland, the Netherlands) of agricultural co-operatives (Table 6). Furthermore, entities operating in Denmark, Finland, Ireland and the Netherlands share ratings of high economic productivity. Another common feature is the nationally high level of membership within agricultural co-operatives: an average of 1.6 thousand members in Denmark, 4.2 thousand in Finland, and 2.7 thousand both in Ireland and in the Netherlands. Still, in a country like Sweden or Norway, with a high number of members and high productivity, the revenues of the entire agricultural sector are at an average level due to the small number of entities. The opposite situation applies to Poland, Austria and the UK, where average revenues (from 7 to 9

billion euro) are obtained mainly due to the existence of numerous agricultural co-operatives. In countries with low efficiency and low membership in the co-operative agricultural sector, co-operatives are very small and economically weak.

Table 6. Factors determining the amount of revenue generated by agricultural co-operatives

Country	Turnover (billion euro)	Number of co-operatives	Economic productivity (million euro)	Average number of members in the co-operative
Austria	8.5	**1020**	8	300.3
Croatia	0.1	509	0.2	15.6
Czech Republic	1.3	364	4	2.5
Denmark	25.0	28	**893**	**1632.5**
Finland	11.8	33	**357**	**4228.3**
France	86.0	**14429**	6	31.3
Germany	66.0	**2316**	28	604.5
Hungary	1.1	**1116**	1	28.3
Ireland	14.2	75	**189**	**2689.1**
Italy	38.3	**6741**	6	117.5
Lithuania	0.7	402	2	32.1
Netherlands	27.8	37	**750**	**2699.6**
Poland	7.1	**2991**	2	106.1
Slovak Republic	1.2	136	8	41.6
Spain	25.7	**3844**	7	306.8
Sweden	7.4	30	**248**	**5345.0**
UK	8.8	**625**	14	251.6
Norway	6.9	16	**432**	**2500.0**

dark color – high turnover, gray color – medium turnover, light color – low turnover

Source: own study.

III. Conclusion

1. Agriculture is one of the most important areas in which the largest co-operatives in the world operate. However, their number in the period 2008–2017 decreased slightly (by 4) to 97 and the generated turnover increased almost imperceptibly (by 0.2%) to 473 billion dollars. Still, the share of the agricultural sector in the revenues of the largest co-operatives fell (from 28.9% to 23.2%). The deepening disproportion between the share of agricultural co-operatives in the quantity and turnover among the world's 300 largest co-operatives indicates that, despite the

visible quantitative significance of agricultural co-operatives, they do not achieve an equally significant place in the economic results of this group. Indeed, their role is decreasing. In addition, the largest agricultural co-operatives are relatively smaller than non-agricultural co-operatives. A worrying phenomenon is the persistence of the disproportion in the structure of the size of turnover classes to the detriment of the agricultural sector.

2. Almost 57% of the largest agricultural co-operatives operate in Europe, i.e. every third largest co-operative in this area operates in the agriculture sector. Despite the decrease in their numbers, the largest agricultural co-operatives in Europe and America recorded an increase in turnover, which improved their economic productivity. Yet, this is still at least twice as low as the productivity of the largest agricultural co-operatives in Asia and Pacific (10.2 billion dollars), and that despite its decline.

3. The role of the agricultural sector varies in the respective countries. Most of the largest agricultural co-operatives are found in the US and France (40 in total in 2017). Furthermore, the largest agricultural co-operatives are dominated by those dealing in dairy (26.8%), cereal (23.7%) and mixed (17.5%) production. In the case of dairy and cereal production, their share in the turnover of the entire agricultural industry (25.8% and 24.5%, respectively) is relatively proportional to their numerical share. In the case of mixed production, the economic significance (29%) is much higher than their numbers would indicate. Since 2008, only some crop production co-operatives (fruit and vegetables, wood, cotton) have recorded a decline in turnover. The average productivity of the largest agricultural co-operatives has increased by 4% to 4.9 billion dollars, but there is a gap in productivity between industries, which in 2017, reached almost 7 billion dollars (9 billion dollars in 2008). Only a few industries saw improvement in economic productivity. These were entities dealing in the production of flowers (almost 10 times), milk (by 60%), sugar (by 43%), cotton (by 11%) and grain (by 7%). The decrease in the productivity of fruit and vegetable and wood co-operatives was mainly due to the decrease in revenues of these industries. In the case of the meat and mixed industries, this was due to a faster rate of growth in the number of co-operatives than that of their turnover. There is also a visible diversity of economic productivity between countries, including co-operatives operating within the same industry, for example the largest dairy co-operatives that operate in the US, the Netherlands, New Zealand and Denmark generated from 12 to 15 billion dollars in revenues in 2017, that is from a few up to several billion dollars more than did dairy co-operatives from other countries.

4. According to 2015 data, there were over 51,000 agricultural co-operatives in Europe. These have as members almost 10 million farmers, while the number of employees amounted to nearly 680 thousand. The most agricultural co-operatives (almost 90% of all) are found in France, Turkey, Italy, Spain, Poland, Germany,

Georgia, Hungary and Austria, and their share in the co-operative sector in the individual countries ranges from 17% to 64%. Agricultural co-operatives generate the highest turnover (from 12 to 86 billion euro) in France, Germany, Italy, the Netherlands, Spain, Denmark, Ireland and Finland. It should be noted that the list of countries with the highest turnover does not coincide with the list of countries with the largest number of agricultural co-operatives, because the economic strength of such entities varies. The most effective agricultural co-operatives (average economic productivity from 189 to 893 million euro) operate in Denmark, the Netherlands, Norway, Finland, Sweden and Ireland, while Belgium, Germany and the UK have a slightly lower productivity (from 13 to 29 million euro). In other countries, this figure is much lower (from 0.2 to 8 million euro). Factors that affect the level of agricultural co-operative turnover in the respective countries include not only the number of agricultural co-operatives, but also the economic productivity of individual agricultural co-operatives and the number of members within each agricultural co-operative. If both these factors are at a very high level, they eliminate the negative impact of a low number of co-operatives (such as in Denmark, Finland, Ireland, and the Netherlands). Similarly, the existence of a very large number of co-operatives eliminates the negative impact of low levels of productivity and low number of members (as in France, Germany, Italy and Spain). In the first case, therefore, we can talk about intensive growth of agricultural co-operative movement in the country, but extensive growth in the second case.

Chapter XIII

FINAL CONSIDERATIONS AND DE LEGE FERENDA REMARKS

Aneta Suchoń and Franci Avsec, Christian Busse, Irene Canfora, Alfredo Gustavo Diloreto, Catherine Del Cont, Jarmila Lazíková, Allison Macé, José Martinez, Trinidad Vázquez Ruano, Maria Zuba-Ciszewska

The final considerations have been prepared by all the authors. The author's name and surname appears in brackets at the end of his or her text.

To sum up, it should be concluded that both the development of agricultural producer associations and the legislation regulating the form of their organisation and operation were strongly influenced by political and historical factors, as well as by socio-economic needs. They have undoubtedly helped to tackle some of the challenges faced by agriculture, such as improving production capacity, enhancing the competitiveness of the agricultural sector and increasing its value share in the food chain of agricultural producers. The engagement of farmers' associations in negotiating the prices of agricultural products, purchasing cheaper production means and processing may help increase the farmers' incomes. The current trend in the development of agricultural producer associations needs to be aligned with the development of global agriculture.[521] This is connected with, for example, the necessity to enhance the competitiveness of agricultural producers, the protection of regional products, social economy, energy, environmental protection, and processing. The basic characteristic of agricultural associations is their objectives, that is activities linked to the agricultural sector or, in other words, to different sections of the food chain.

The activity of agricultural producer associations is increasingly being influenced by regulations connected with the development of agricultural law and food law. The regulations do not impose any form of cooperation on co-operatives, thus it seems justified to argue that this is the most advantageous structure in line with

[521] R. Budzinowski, *Problemy ogólne prawa rolnego*, *Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Poznań 2008, 120 ff.

the development of agribusiness. Although the agrarian structure in all countries is diversified, co-operatives are, as a rule, common there. For instance, the average surface of an agricultural farm in France is 55 ha, in Germany – 67 ha, and in Spain – 25 ha[522], in Poland – 10.95 ha, in Brazil – 64 ha, in USA – 170 ha. In addition, depending on the country, sometimes commercial companies, civil associations, civil law companies, and cooperation between farmers only on the basis of a civil law contract (for example consortia), are also popular.

Co-operatives, as a rule, are intended for small and medium-sized agricultural holdings, that is usually family farms. They are a flexible form of conducting business activity created by heterogeneous entities, which provides an opportunity for the development of agricultural holdings, and which are very diverse both in terms of their area and the degree of modernisation. Such an entity, regardless of its size, is a small one.[523] Membership of a co-operative enables it to develop and increases its competitiveness in the European and word market. A co-operative is a complex legal body and, at the same time, a dynamic unit in terms of the changes to the Common Agricultural Policy and EU policies, and in other regions of the world.

When compared with socialist, postsocialist countries and others (the Americas, in Asia and in the so-called Old European Union), the development of different forms of bringing agricultural producers together took different forms in the countries. In the countries with the market economy, there is a continuity running from the setting up of co-operatives by agricultural producers from the XIXth century until now. In socialist countries, however, before the political transformation, agricultural production co-operatives were common. That was the case in for example Poland, East Germany, and Slovakia. As it turns out, the political changes did not change the attitude of the country's older inhabitants to co-operativeness right away.

The dependence of co-operatives on the state in socialist times, followed by frequent loss of their self-governing and social character, contributed to the strengthening of the negative image of co-operatives among the rural population.[524] New challenges and opportunities for the development of associations of agricultural producers in the form of co-operatives came with accession to the European Union. Following accession to the European Union, interest in establishing agricultural producer groups, also in the form of co-operatives acting for and in the interest of co-operatives, could be observed.

What has changed, however, is that now more importance is assigned to co-operatives which support their members who run agricultural farm and agricul-

[522] Available on-line at: <https://ec.europa.eu/> [accessed 30.02.2020].

[523] See: Available on-line at: <http://krs.org.pl> [accessed 20.03.2020]. See A. Suchoń, Wpływ Wspólnej Polityki Rolnej na rozwój spółdzielczości rolniczej, *Zeszyty Naukowe Polityki Europejskie, Finanse i Marketing* 2012, 8: 438–452. J. Bijman, *The changing nature of farmer*: 1–22.

[524] See: Available on-line at: <www.krs.org.pl> [accessed 5.03.2020].

ture-related activities. There are co-operatives which take over various stages of the agricultural activity of their members. Some also engage in the processing of the agricultural produce produced by their members (for example dairy co-operatives). There are also co-operatives engaged in agricultural processing activity, as a result of which their members can work on agricultural lands (Aneta Suchoń).

The development of co-operativeness is influenced by internal legislation. For example, the Constitution of Spain has highlighted co-operative values. Article 129(2) prescribes that public authorities successfully support various forms of membership of an enterprise and are favourable, through proper legislation, to the development of co-operative associations. In terms of the influence of internal legislation on co-operativeness, certain limitations need to be noted. Even though the Act of 27/1999 on Co-operatives has been adopted and it lays down that the co-operative issues are to be regulated by national authorities, there are also some interpretations which hold that provinces are allowed to adopt their own legal regulations. Some provinces have already proceeded with that. The national Act on Co-operatives provides for taking actions in the general interest, for promoting and developing co-operatives and their integrative structures, and for promoting the formation of second-degree co-operatives. The business integration of co-operatives can be put in place through so-called co-operative groups, as well as through creating groups, consortia and associations between themselves, or together with other natural, legal, public or private persons. Such issues as the corporate integration of co-operatives in the form of a federation, co-operative unions and co-operative associations were affected by the Spanish legislator after the Act of 13/2013 was adopted. The Act promotes the integration of co-operatives and other entities in the agri-food sector and has made changes to national regulations. Basically, to promote the consolidation of an association in that sector, the system applying to agri-food co-operatives has been outlined. The Act lays down, in particular, that the Education and Promotion Fund can be dedicated to the co-operative entities cooperating with other entities as well as to the union or a co-operative federation that it is associating with (Trinidad Vázquez Ruano).

In the Argentine Republic there are various associative forms for agricultural activity and associations of agricultural producers. The current global context characterized by demands of competitiveness, scale, professionalism and efficiency, means that it is more difficult for agricultural activity to develop in isolation, so the subjects involved in the agricultural activity adopt various associative forms for their development, among which stand out societies and contracts, which mainly enable a larger scale and better access to agricultural products markets. Among the forms adopted are co-operatives, limited liability companies, corporations, collaborative groups, transitory unions and consortiums or contracts of

an associative nature, such as partnerships and the operating association also forming an intermediate figure between the company contract and the lease, or the maquila contract that allows integration between agricultural and industrial producers.

In Argentina, among the limited liability companies and the public limited companies which are regulated in the General Law of Companies 19.550 in accordance with its text ordered in 1984, in which, although a special form is not adopted for the constitution of a company whose the object is the agricultural activity, one of the figures established there can be chosen, the first being the preferred form in family businesses, to which sole proprietorship is incorporated by Law 26.994 in 2015, and that can only be constituted as an anonymous society. Another possibility is collaboration groups, transitory unions and consortia regulated in the Civil and Commercial Code approved in 2014 by Law 26.994, which came into force in 2015, to people from the same sector or activity that allows the acquisition of goods, the commercialization of production or the packaging of the products of its members. Co-operatives in Argentina are regulated by Law 20.337 and its amendments and that, like the previous ones, does not have a special reference to agricultural co-operatives; the same generic norms are applied. Agricultural co-operatives can be defined as those organized by agricultural producers that aim to lower costs, achieve a better insertion in the market, share technical and professional assistance, commercialize together, and initiate transformation processes of primary production which incorporate added value. Finally, there are contracts of an associative nature, such as those for sharecropping and the associative for tambera explotation, which form an intermediate figure between the partnership contract and the lease contract, or the maquila contract that allows integration between agricultural and industrial producers (Alfredo Gustavo Diloreto).

Farmers in Germany cooperate in a variety of ways. In addition to traditional organisational structures (ranging from neighborhood assistance for farmers, machinery co-operatives and management companies to farm mergers) there are a number of modern forms of cooperation which have been developed either by European law (producer organisations) or by national law (registered co-operatives). The degree of cooperation is much higher in horizontal cooperation than in vertical cooperation. In addition to the various legal structures offered by German civil law, incentives offered by the state in tax law and state aid law also contribute to this. However, this degree of cooperation could be further strengthened if specific disadvantages resulting from horizontal cooperation could be reduced. One of these disadvantages is the lack of flexibility in the organisational structures under company law, which prevents individual adaptation to the specific needs of the respective cooperation. Another disadvantage is that the individual farmer regularly suffers a considerable loss of rights as a result of cooperation. In

particular, the co-operative, which in its original version was intended to enable a high level of participation by the farmers involved, has developed into a model of hierarchical management structures in legal practice. In addition, it must be emphasised that the entrepreneurial model in German agriculture provides for an independently entrepreneurial farmer. The German agricultural structure allows this only to a limited extent. Nevertheless, the need to cooperate is seen as a sign of the economic and social decline of the company (José Martinez).

Although the Constitution of Poland does not refer to co-operativeness, the Polish legislator has made some attempts in recent years to make it easier for agricultural producers to associate in the form of a co-operative. This is exemplified by the amendments to the Act on co-operative law regulating the formation of co-operatives in order that they can apply to be recognized as a group of agricultural producers, as a preliminarily recognized group, or as an organisation of fruit and vegetable producers. For many years it was a company that used to be the common form of creating agricultural producer groups, but currently it has moved towards a co-operative. The shift is attributed to the amendment to the regulation on financing the formation of producer groups and producer organisations under the Rural Development Programme for the years of 2014-2020. Currently, three additional points are granted to a co-operative group of agricultural producers. Additionally, the Polish legislator adopted the Act of 4 October 2018 on farmers' co-operatives that mainly associate farmers and have a widely specified type of activity. The farmers' co-operative is also allowed to apply to be recognised as an energy co-operative. It is also worth mentioning the associations of rural women. It was the Act of 9 November 2018 on associations of rural women that provided a lot of support and financial incentives for women living in rural areas, not only farmers' spouses but also agricultural producers (Aneta Suchoń).

Farmer co-operatives in Slovenia have been able to retain an important share in marketing agricultural and forestry products and supply of their members with inputs and other services. Their share in processing of agricultural products, especially in wine, meat, milk and wood sector is smaller, but not negligible. Several farmer co-operatives have also retail shops for supply of rural population with consumer goods. This development can be ascribed to several factors. The co-operatives existing at the time of the privatization process formed, through the transformation of socially owned capital and restitution of nationalised co-operative property, considerable indivisible co-operative capital (shown as a special item in their balance sheet) so that they did not have to start from scratch. On the other hand, the Act on co-operatives guarantees wide internal autonomy that enables co-operatives to adapt their organisation and operation to the changing market environment and members' expectations. The fact that a major part of

market-oriented farmers are members of farmer co-operatives is also a strength of these co-operatives. On the other hand, the concentration in processing sector and retail trade has, in last three decades, advanced at incomparable speed. In 2019, the largest food retailer in Slovenia had a 34-percent market share, and the largest five companies in this sector a 90-percent market share. In the atmosphere of increasing preference for domestically produced food, processors and retailers try to establish direct business relationships with large farmers. Therefore, the Slovenian farmer co-operatives will be able to improve their market position provided that they concentrate their supply (also through the formation of recognised producer organisations and groups) and that their operation to the benefit and under the control of farmer members is practically confirmed as their distinctive advantage (Franci Avsec).

Moving on to agricultural producer organisations, it needs to be highlighted that the EU legislator classifies them as one of the main market instruments of the Common Agricultural Policy. They fit into the execution of the CAP in the years 2014–2020, which means that they ensure food security, enhance the production capabilities of EU agriculture and its competitiveness, and increase farmers' income. Additionally, they support the sustainable management of natural resources, which means that they support agricultural activity run by means of environmentally-friendly methods, they continue the actions designed to mitigate the results of climate change and, finally, they promote employment in rural areas.[525]

The activity of the organisations responds to the challenges of modern agriculture and the agri-food economy. Legal regulations relating to agricultural producer organisations are included in the EU and national regulations. In France, the issues in question are regulated in Article L. 551-1 and the next provisions, as well as in Article D. 551-1 of the French Agricultural Code. They encourage the recognition of associations of agricultural producers as agricultural producer organisations. The broad activity of organisations specified in EU regulations is supposed to lead the development of local farmers' associations or groups of agricultural producers towards larger and more powerful agricultural producer organisations. Agricultural producer organisations, in turn, are supposed to strive to enhance the market position of a farmer, not only on the European market, but also on the international one. Legal regulations aim at ensuring the democratic system and economic development of agricultural farms. They also affect both regional and global international markets.

On June 1, 2018, the European Commission put forward a package of three draft regulations on carrying out the Common Agricultural Policy for the years of

[525] See e.g. the Communication of the European Commission to the European Parliament, Council, European Economic and Social Committee and the European Committee of the Regions of 13 February 2012 and draw laws by CAP for the years 2014-2020, Available on-line at: <http://ec.europa.eu/agriculture/cap-post-2013/index_en.htm> [accessed 22.03.2020].

2021–2027, for example, the Proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products[526]. The new CAP after 2020 is going to aim at meeting the many objectives, such as: supporting viable farm income and resilience across the Union to enhance food security; enhancing market orientation and increasing competitiveness, including greater focus on research, technology and digitalisation; improving the farmers' position in the value chain; and contributing to climate change mitigation and adaptation, as well as sustainable energy. On the one hand, co-operatives can help achieve these objectives and, on the other, these new tasks will contribute to the development and expansion of the objectives of some co-operatives or the creation of new entities.[527]

As has already been pointed out, groups of agricultural producers are very common in Poland, which is absolutely not the case for the agricultural producer organisations. Except for the fruit and vegetable market, such organisations have not been set up. One of the possible explanations might be the high number of agricultural producers (as many as 20 in the milk market) as well as of supplied agricultural products (for example two million kilograms of milk and milk products). What is more, it was not until May 2020 that amended Polish legal regulations came into force classifying organisations as entities which, together with groups of agricultural producers, are allowed to apply for EU funds under the "Formation of Producer Groups and Producer Organisations Programme" included in the Rural Development Programme for the years of 2014-2020. A financial factor might make agricultural producers consider setting up an organisation, but it is difficult to say if this is enough. It is also through amending other legal regulations that the Polish legislator tries to incentivize agricultural producers to register agricultural producer organisations. As has been highlighted, in the years 2019–2020, the secondary legislation (Ministry Regulation) to the Act of 20 April 2004 on Organising Milk and Milk Product Market, and the Act of 11 March 2004 on the Organisation of Certain Agricultural Markets relating to selected aspects of forming agricultural producer organisations, including the milk ones, were amended (Aneta Suchoń).

[526] Available on-line at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0394> [accessed 22.03.2020].

[527] Art. 6 draft of Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

The situation in Germany with regard to agricultural producer organisations is somewhat different to that in Poland. In particular, the special legal rules existing in German law and in EU law on recognized agricultural organisations seem to be well established, and in general they provide a sufficient framework. They are open to all agricultural sectors and legal entities. The recognition procedure is not very complicated and can principally be followed without legal consultants. In Germany, the minimum number of producers needed for establishing a recognized producer organisation is very low, and this is in order to promote the instrument also for small groups of farmers (producing, for example, high quality cheese or cultivating a special plant). The relatively high number of recognized producer organisations in Germany indicates the success of the instrument. The possibility of sponsoring the founding of a recognized agricultural producer organisation with EU and German funds seems to be a good complement of the instrument. The fact that recognized producer organisations cannot be found on a wide scale in all sectors of German agriculture is more a question of mentality and agricultural structures than of the suitability of the existing legal rules. The same applies in Germany to the instrument of recognized inter-branch organisations. Despite some recent efforts, the relationship to the general and the agricultural competition rules, as well as the connection to the agricultural intervention system, are in need of improvement. In addition, the existing rules could be phrased in more simply, thereby also abolishing the particularities still existing for some agricultural sectors. While in its reform proposals of 2018 for the CAP after 2021 the European Commission did not address this subject, its "Farm-to-Fork"-strategy of 2020 touches on that point (Christian Busse).

Assessing the situation of agricultural producer organisations in France, the obstacles that impede the proper functioning of producer associations are not new in this country. The legal framework of their activities still remains unsatisfactory in terms of the objectives they are supposed to fulfil, in particular with respect to negotiating and setting prices. It should be noted that the most significant changes can be made through European law. The COVID-19 crisis has highlighted the crucial role of producers and their organisations in the supply of food, not only in rural areas but—above all—in urban ones. Producer organisations, recognized or not, organized the direct delivery of fruit and vegetables, unprocessed agricultural products, and even products processed directly by producers. The direct delivery was intended either for professional retailers or for direct sale to individuals.

Producers used, above all, the already existing organisations. It is worth emphasizing, however, that during the 2020 crisis, new types of associations emerged: producers have associated outside the existing co-operatives and created independent structures to promote their production, concentrate supply and ensure marketing. To do that, they have created independent digital platforms.

This experience has shown that producer organisations, owing to their diversity and irrespective of whether or not they are recognized, are essential entities for guaranteeing the effectiveness of the CAP objectives: ensuring the supply of high-quality food in line with consumer requirements, at a fair price that guarantees a decent income for agricultural producers. The experience shows that producer organisations can and must play a key role in the transition from agriculture to sustainable agriculture, responding to food and environmental challenges as well as meeting the ethical and social expectations of consumers. All groups, irrespective of their legal form, must be able to concentrate supply in order to strengthen their position in the food chain and obtain favourable prices. Hopefully, due to the new situation related to COVID-19, the call of agriculture producers for a change in the regulations will be heard. The change must be made both from a structural and a contractual perspective. It is high time (Catherine Del Cont, Allison Macé).

Italian legislation stipulates that the marketing activity of producer organisations is a necessary condition for recognition, firstly assessed in 2005 on the basis of the model of the fruit and vegetable sector. The basic idea is that all national producer organisations must play an active role for the commercialization on the market. Therefore, the legislation undoubtedly included a regulative framework for the phenomenon of the economic association in agriculture: the national legal provision dates back to the period when the EU legislation did not provide such a comprehensive regulation of producer organisations as introduced by Reg. 1308/2013, since 2014. Furthermore, several ministerial decrees recently implemented the rules of EU regulation no. 1308/13 in order to facilitate the recognition of the organisations. However, it has been pointed out that the general national provision (legislative decree 102/2005) requires that the producers organisations have to carry out marketing activities as compulsory requirement for recognition: this provision limits the possibility to enhance the legal tools also for further goals in the framework of the broad perspective of agricultural production activities. Indeed the "regulatory function" of producer organisation is not taken into consideration by the national legislative decree of 2005. As far as the development opportunity in Italy is concerned, economic studies pointed out that the presence of producers' organisations is mostly concentrated in some productive sectors (fruit and vegetables; milk) and in specific geographical areas. Therefore, the most relevant goal for the implementation is to spread this legislative tool through the whole country (Irene Canfora).

Assessing the situation of agricultural producer organisations in Slovakia, the EU supports the establishment of producer organisations in its internal market. In Slovakia, the criteria are very similar to those relating to the legal form of a co-operative, in spite of the fact that no particular legal form is prescribed for pro-

ducer organisations. Therefore, many of these organisations have the legal form of a co-operative in Slovakia. However, only a few producer organisations were established before the accession of the Slovak Republic into the EU. Most of them were established during the period 2007–2013, mainly in the dairy, cereals, pig meat, oilseed and fruit and vegetables sectors. There are still no producer organisations focused on beef, sugar, wine or other commodities. In addition, only a few producer organisations have survived up to the present. Most producer organisations were abolished in 2014 and 2015, after the expiration of the project period and the exhaustion of the available financial support. More than 50% of all producer organisations were abolished as a result of bankruptcy (Jarmila Lazíková).

One of the reasons for the lack of success of producer organisations in Slovakia is the lack of financial support available after the exhaustion of the EU financial resources. Another reason may be the leadership, which is considered to be a crucial factor determining the performance of co-operatives. According to Slovak law, leadership is in the hands of a statutory body called the Board of Directors. This body must be created from the members of a co-operative only. The members may be good at agriculture and agricultural economics, but if they have lack knowledge and skills relating to marketing in producer organisations, the success of the organisation is threatened. Therefore, it is possible that other legal forms might be more suitable for producer organisations, where the statutory body is not linked with membership. Nowadays, most producer organisations are active in the milk, cereals, and fruit and vegetable sectors (including the potato sector).. There are only two producer organisations for oilseed, two producer organisations for poultry and eggs, and one producer organisation for lamb, tobacco, hops and honey (and other bee products). Agricultural producers are not willing to be involved in a producer organisation, especially individual farmers, in spite of the fact that the main role of a producer organisation should be to promote small farmers via integration in the market. The reason for this has its roots in the history of Slovakia. It is very difficult to persuade Slovak agricultural producers that it is a good idea to be involved with producer organisations, because the negative effects of collectivization and the socialist period still persist. The situation is aggravated by the fact that producer organisations have, in most cases, the legal form of co-operatives. This is another reason for considering whether the legal form of a co-operative is suitable for producer organisations in Slovakia. The interest of agricultural producers in selling their products through producer organisations is greater in the sectors with a higher labour intensity. This is also a signal for policymakers to introduce adequate financial incentives and other forms of support (Jarmila Lazíková).

Summarizing the economic issues, the attractive features common to co-operatives, resulting from the so-called co-operative principles, mean that the co-

operative movement is flourishing. Indeed, according to ICA data, there are currently 3 million co-operatives that provide work for 10% of the world's employed population, moreover, 12% of all people on the earth belong to co-operatives. Co-operatives exist in almost every country in the world and they are very well represented in both developed and emerging economies. One of the basic types of co-operatives is that of agricultural co-operatives. These are present in numerous countries. Most of the largest agricultural co-operatives are found in the US and France (40 in total in 2017). Furthermore, the largest agricultural co-operatives are dominated by those dealing in dairy (26.8%), cereal (23.7%) and mixed (17.5%) production. In the case of dairy and cereal production, their share in the turnover of the entire agricultural co-operative industry (25.8% and 24.5%, respectively) is relatively proportional to their numerical share. A few years ago there were over 51,000 agricultural co-operatives in Europe. These have almost 10 million farmers as members, while the number of employees amounted to nearly 680 thousand. Agricultural co-operatives generate the highest turnover (from 12 to 86 billion euro) in France, Germany, Italy, the Netherlands, Spain, Denmark, Ireland and Finland.

The most effective agricultural co-operatives (average economic productivity from 189 to 893 million euro) operate in Denmark, the Netherlands, Norway, Finland, Sweden and Ireland, while Belgium, Germany and the UK have a slightly lower productivity (from 13 to 29 million euro). In other countries, this figure is much lower (from 0.2 to 8 million euro). Factors that affect the level of agricultural co-operative turnover in the respective countries include not only the number of agricultural co-operatives, but also the economic productivity of individual agricultural co-operatives and the number of members within each agricultural co-operative. If both these factors are at a very high level, they eliminate the negative impact of a low number of co-operatives (such as in Denmark, Finland, Ireland, and the Netherlands). Similarly, the existence of a very large number of co-operatives eliminates the negative impact of low levels of productivity and a low number of members (as in France, Germany, Italy and Spain). In the first case, therefore, we can talk about the intensive growth of the agricultural co-operative movement in the country, but extensive growth in the second case (Maria Zuba-Ciszewska).

To sum up the book, it needs to be concluded that the associating of agricultural producers is of high significance in terms of the development of agriculture and the agri-food industry throughout the whole world. The considerations conducted herein confirmed the preliminary research hypothesis that the assessment of legal regulations concerning the association of agricultural producers is varied. On the one hand, legal instruments encouraging farmers at the national level in many countries of the world, and at the EU level, are praiseworthy, but,

on the other hand, they are also insufficient. In many cases the legal regulations are in need of adaptation to the current socio-economic requirements and needs.

The analyses and final conclusions put forward in the chapters have shown that associations may take various forms, but co-operatives are the most common. They can be found in all continents (except Antarctica). The legal provisions regulating how to set them up and the way they operate are varied and there is a need to make further legislative changes in this area. Some countries have amended their legal regulations in recent years. For instance, a national act on co-operativeness has been enacted in Australia, serving as a basis for amending regulations in particular states. Some changes have been made made to the regulations in China and Nepal. In Europe, new regulations have been introduced, for example in Poland.

Co-operativeness also plays a part in creating groups and agricultural producer organisations, which are common in Europe and promoted by the European Union. The analyses and remarks of the grant participants give rise to the conclusion that agricultural producer associations are developing within the EU in a way that is not uniform, and calls for changes have started to emerge. Even France, being home to numerous organisations and having complex co-operative regulations, points out the need for changes. If the European Union supports and finances the activity of associations of agricultural producers (and rightly so), it might be necessary to adopt more extensive legal provisions in the EU legal acts which regulate the setting up and functioning of such entities. The goal is to create lasting units which, having benefited from the EU funds, will conduct their activity for many years. On the other hand, it seems necessary to make administrative simplifications, especially in the times of COVID-19. It might be said that as far as the EU law making process for the new budget window after the year 2021 is concerned, it is a good time for the EU legislator to have a closer look at agricultural producer associations.

In a global context, in order to make the most of the experiences gained by various countries relating to associations of agricultural producers, taking into account both regional and global approaches, it would be advisable to create a world organisation that would support agricultural producer associations. Such an entity could associate not only agricultural producers but also lawyers and economists dealing with the issues in question. The first stage could include an on-line platform enabling the mutual exchange of experience, comments, and comparisons of legal regulations, as well as identifying and handling problems. The conclusions drawn based on such collaboration could turn out to be beneficial to both domestic and EU legislators, for example, and may enable them to draft more effective legal regulations on agricultural producer associations (Aneta Suchoń).

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SUMMARY

THE LEGAL AND ECONOMIC ASPECTS OF ASSOCIATIONS OF AGRICULTURAL PRODUCERS IN SELECTED COUNTRIES OF THE WORLD

The book discusses the legal and economic aspects of associations of agricultural producers in selected countries in the world. Collaboration between agricultural producers is needed at different stages of farming, from purchasing the means of production, through the use of agricultural machinery, sale of crops and consultancy, to processing. Various forms of collaboration between agricultural producers exist in different countries in the world. It would seem that the development of agriculture and the economy requires discussion, with regard to different producer organisation structures and the challenges they face, associated with, for example, increasing the capacity of their holdings and producing more food of better quality. It is also essential to enhance the competitiveness of agricultural producers and to increase their income, as well as to create workplaces in rural areas. Alongside co-operatives set up by farmers, agricultural producer groups and organisations are also growing in significance, which is encouraged by the EU legislation. In the light of the EU Common Agricultural Policy legislation, producer organisations are obliged to contribute to the empowerment of farmers in the food supply chain, farm development and agricultural markets. However, it should be stressed that in the literature on the subject (for example the World Bank and the FAO) the term 'producer organisations' (POs) denotes a wider range of collective actions undertaken by farmers and does not only refer to those fulfilling the requirements of the EU Regulations.

The need for research is also justified by cognitive, social and economic aspects, as well as practical, legal and theoretical ones. Moreover, what the European Union needs currently to focus on is the implementation of the European Commission's "Farm to Fork" Strategy for a fair, healthy and environmentally friendly food

system (F2F) of 20 May 2020. The aim of the document is to bring about a holistic change in the approach to food production. The strategy underlines that the COVID-19 pandemic, the increasing incidence of droughts, floods, forest fires and new pests, are reminders that the food system is under threat and must become more sustainable and resilient.

The aim of this book is, firstly, to assess whether the legal regulations concerning agricultural producer associations in Argentina, France, Germany, Italy, Poland, Slovakia, Slovenia and Spain, as well as in other countries, encourage or hinder their collaboration; and secondly, to identify legal instruments that make it easier for organisations, cooperatives or other forms of association of agricultural producers to influence the development of farms and agriculture (agri-food management). The publication also tries to pinpoint the ways and directions of development of various forms of agricultural producer associations and to identify the factors affecting the process.

Chapter I (by Aneta Suchoń) is an introduction containing, among other things, an explanation of the title, a justification of the choice of research subject, the objectives of the book, the structure of the book, and the research methods.

Chapter II (by Aneta Suchoń) traces the genesis and development of legal regulations concerning the association of agricultural producers throughout the world, for example the USA, Germany, France, Italy, Netherland, Denmark and Poland. Cooperativeness in the US has a long history, since it was as early as in the XIXth century that the first co-operatives were created. Nevertheless, American cooperative law does not stem from a uniform legal act that regulates all aspects pertaining to the creation of co-operatives and the way they functioned in the country. From the very beginning, the regulations related to particular states. Cooperative law in the USA is a multifaceted and complex legislative area composed of both state and federal law. The book refers to some of those regulations. The beginnings of the cooperative movement in New Zealand, known for its milk co-operatives, are briefly discussed as well. Some of those milk cooperatives have been operating since the nineteenth century. In second chapter, the publication points out the impact of the European Union on the development of associations of agricultural producers. The EU legislation encourages agricultural producers to collaborate and build a stable organisational structure. First of all, there are regulations concerning agricultural markets, particularly milk and fruit and vegetables ones. The organisations connected with agricultural producer associations are mentioned as well, including the National Council of Farmer Co-operatives (NCFC) from the USA, COPA (Committee of Professional Agricultural Organisations), and the General Committee for Agricultural Co-operatives of the European Union (COGECA).

Chapter III to XII present the legal solutions for the associations of agricultural producers in Argentina, France, Germany, Italy, Poland, Slovakia, Slovenia and Spain. There is no doubt that the subject matter is very broad and, therefore,

only selected issues can be addressed. Considerations focus mainly on co-operatives, agricultural producer groups and agricultural producer organisations. The third chapter (by Alfredo Gustavo Diloreto) is devoted to Argentina and focuses on legal provisions regulating companies and cooperatives. It also briefly covers collaboration groups, transitory unions and consortia regulated in the Civil and Commercial Code dedicated to people from the same sector or activity that allows the acquisition of goods, the commercialization of production, or packaging of the products of its members. It emphasizes and points out various forms of collaboration on a contractual basis.

Chapter IV fourth (by Catherine Del Cont, Allison Macé) discusses producer associations in France, where the cooperative movement and other forms of collaboration among agricultural producers have a long history. Various issues are raised in the chapter, especially those relating to agricultural producer organisations, the contracts they make, and anti-trust regulations governing the collaboration among agricultural producers at the EU level. The chapter opens with a historical and legal background of the organisations. As indicated, the need to collaborate arose as early as in the nineteenth century and resulted from, among other things, the crises on the agricultural markets. Then, the legislation from the 1960s is referred to since it created the legal framework for the associations of agricultural producers, which was meant to strengthen their position in the area of processing and commerce. In the following years, the French legislation covered co-operatives, organisations and other forms of associations. The chapter discusses a variety of legal regulations, such as those included in the French Agricultural Code.

Chapter V (by José Martinez) and Chapter VI (by Christian Busse) describe associations of producers in Germany, where such entities are a popular. There are numerous agricultural co-operatives in this country and the fifth chapter provides an analysis of their activity and legal context. German co-operatives (Raiffeisengenossenschaften) have a long history and a significant influence on the functioning of farms, agricultural markets and the German economy. Der Deutsche Raiffeisenverband e.V (DRV), also plays an important role as an organisation associating German regional co-operatives. The chapter deals with cartel law and the issue of state aid. Reference is made to Article 101 of the Treaty on the Functioning of the European Union. There are also other forms, beside co-operatives, such as commercial companies or cooperation agreements used in agriculture. The issue of horizontal and vertical cooperation is also addressed.

Agricultural producer organisations are a vital element of the German economy, especially as they act as regional infrastructure stabilizers and central cooperative associations that can provide producers with security and stability. The activity of agricultural producer organisations in Germany involves a number of issues, which are widely discussed in the sixth chapter, entitled *Quo vadis agricul-*

tural organisation law? The chapter mentions for example the general concept of the law of recognized agricultural organisations, referring to EU and German law. The first German legal regulations allowing for the recognition and financial support of agricultural producer organisations appeared as early as the 1970s. The evolution of German law and the influence of EU legislation on German law and the practical functioning of these organisations are indicated. The German act on the structure of the agricultural market (AgrarMSG) is mentioned, which is a kind of implementing act to the EU law on agricultural market. It is emphasized that the European Commission sees agricultural organisations as a counterbalance to the liberalization of the EU agricultural market in recent decades. Instead of controlling the agricultural market through direct state intervention, agricultural producer organisations are now supposed to take over this function and, above all, it falls upon first-rate producers to control their own activity on the market. In addition, the chapter presents some interpretation problems associated with the EU regulations on agricultural producer organisations and issues connected with competition law. The chapter also discusses Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

Chapter VII (by Irene Canfora) is devoted to Italy. The author opens it by pointing out the European legal framework regulating associations of agricultural producers and she highlights the importance of those entities on agricultural markets and in the food supply chain. Further analyses center around Italian legislation, emphasizing the fact that it was as early as the end of the 1970s that legal provisions regulating producer organisations were adopted. The following years brought amendments to the regulations as a result of changes to the EU regulations. Enhancing marketing actions promoting agricultural producer organisations has hindered other legal ways producers are able to influence the agricultural market and, consequently, their ability to execute their other functions and activities.

Chapter VIII (by Aneta Suchoń) discusses Poland. The author starts by presenting some data showing fragmentation and a vast number of agricultural farms. Statistical data shows that agricultural producers and their farms constitute a small unit in Poland and, therefore, joint action is extremely important. Next, the author moves on to the legal aspects and discusses different legal types of associations of agricultural producers in Poland, and the challenges that go with them. First, the chapter presents dairy co-operatives, which have been developing since the interwar period. It refers to the Act of 16 September 1982 on co-operative law and the regulations governing the milk market. Dairy co-operatives fit into the activity of agricultural co-operatives that encompass those operating in the agricultural sector, involved in at least one stage of such activities, or operating more broadly in the sector. The members of such a co-operative are mainly agricultural producers.

Next, the author refers to the new Polish Act of 4 October 2018 on farmers' co-operatives, which incentivizes Polish agricultural producers to collaborate. Then, the author mentions the groups and organisations of agricultural producers that can run their activity on the basis of, for instance, a co-operative or a company. The latter required reference to the Code of Commercial Companies and Partnerships. Additionally, the chapter presents the basic rules of cultivation contracts concluded by associations of agricultural producers as well as financial resources allocated to associations of agricultural producers. The author also shows other forms of associations of agricultural producers in Poland, referring to the Act of 8 October 1982 on social-professional farmers' organisations. That act stipulates that social-professional organisations of farmers are: machinery rings, agricultural industry associations, farmers' unions, unions of machinery rings and agricultural organisations, and unions of agricultural industry associations. More attention is given to associations of rural women, which are currently governed by the Act of 9 November 2018 on associations of rural women. What is important is that any agricultural producer may join an association of rural women, regardless of whether they are female or male. Associations of rural women represent the interests of rural women and their families, work toward the improvement of their social and professional situation, and support the comprehensive development of rural areas, also connected with agricultural activity.

Chapter IX (by Jarmila Lazíková) relates to Slovakia and discusses numerous issues connected with the establishment and the functioning of agricultural producer organisations in this country. The chapter lists the tasks of the organisations in question, including negotiations, brand marketing, the sale of agricultural products as well as their transport and storage. Then, it presents the procedures for setting up such entities, pointing out that the minimum criteria for recognizing them as organisations are specified by the Member States. In Slovakia, the criteria are very similar to those relating to the legal form of a co-operative. At the same time, the author indicates that no particular legal form is prescribed for producer organisations. Next, the chapter refers to funding the organisations with EU funds. In Slovakia, agricultural producers are not willing to be engaged in a producer organisation. The author shows both the legal and non-legal factors contributing to such a situation.

Chapter X (by Franci Avsec), stresses at the very beginning that farmer co-operatives in Slovenia have a long and rather turbulent history (beginning in the second half of the nineteenth century). He presents the historical and legal background relating to co-operatives in the country. Then, he points to a radical break up with the former co-operative movement after the Second World War. The present period (starting from 1991) began with Slovenian independence. In 1992, the present Slovenian Co-operatives Act was adopted. Its principles are outlined in the next part of the chapter (for example farmers' co-operatives in Slovenia managed

to keep significant and, in some cases, vast shares in the market for a few agricultural products, such as milk). The author also draws attention to the challenges that agricultural cooperatives face, for example further supply concentration and adjusting production to the market demand. The development requires adequate support of the agricultural policy, higher investments in training and informing members and employees, as well as actions designed to provide effective monitoring and control, including the audits tailored to the specific nature of cooperatives. The author also mentions groups of agricultural producers in Slovenia.

Chapter XI (by Trinidad Vázquez Ruano) refers to Spain. The author analyzes Spanish legal provisions regulating ways that agricultural producers associate and highlights their advantages and disadvantages. She shows that general support for the development of cooperativeness stems from the Constitution. There are three levels of regulating the subject in question: the EU level, the national level and the provincial level. As the author highlights, the Spanish agri-food complex represents one of the basic elements of the regional economy, with a direct impact on production and employment. A wide range of legislative tools have been designed to promote the integration of those entities. Current regulations (both at the national and regional levels) together with approved initiatives (e.g Act of 13/2013) have not made the situation better. It is necessary to make further changes, relating, among other things, to making co-operatives merge and creating more powerful entities with greater financial and business capacity.

Chapter XII (by Maria Zuba-Ciszewska) presents economic data on the development of cooperatives worldwide. The author shows that in 2017, among the 300 largest cooperatives in the world, there are entities coming from 27 countries. Having analyzed statistical data, she stresses that the role of Europe in the area of the largest cooperatives is decreasing in significance, while the regions in Asia as well as in the Pacific are growing in importance. Comparing the turnover, the author points out the fact that in the period of 2008-2017 the turnover of the 300 largest cooperatives in the world rose by almost a quarter to 2035.1 billion dollars. The largest part of this turnover (over 58%) is produced in Europe, but the increase since 2008 in this group of countries was the smallest (by 3.2%), compared to Asia-Pacific countries (by 82.2%) or the Americas (by 69.2%). The chapter also includes a comparison of economic productivity of the co-operatives in question, which is defined as the ratio of the generated revenues to the number of co-operatives in a given country. The highest average productivity of the entities in question is seen in Asia (8.8 billion dollars). The author compares the largest world's cooperatives in terms of the type of activity they run and analyzes the agricultural sector, showing that the biggest number of agricultural co-operatives can be found in the US and France and that they account for 27% and 45%, respectively, of the total number of the largest co-operatives

in those countries. Moreover, the author analyzes agricultural co-operatives in detail:, their industries, turnover and productivity. The largest revenues are generated statistically by the largest agricultural cooperatives in Japan and Korea. The author notes that the differences in economic performance can also be seen ac-ross countries within the same industry (for example in dairy, meat or cereal cooperatives). At the end of the chapter, the author identifies the economic characteristics of agricultural cooperatives and their role in the cooperative sector in European countries.

Chapter XIII consists of final considerations and has been prepared by Aneta Suchoń, who is the editor of the book and the head of the project, as well as by other authors who have summarized the situation in their countries. The analyses show that there are various forms of associations, but co-operatives come first among the most common ones. They can be found in all continents (except Antarctica). The legal provisions regulating how to set them up and the way they operate are diversified, and there is a need to make further legislative changes in this area. Some countries have amended their legal regulations in recent years. For instance, a national act on cooperativeness has been enacted in Australia, serving as a basis for amending regulations in particular states. There have been some changes made to the regulations in China and Nepal. The development of cooperativeness is influenced by internal legislation. In Europe, new regulations have been introduced, for example in Poland. In addition, depending on the country, sometimes commercial companies, civil associations, civil law companies, and cooperation between farmers only on the basis of a civil law contract (for example consortia), are also popular between agricultural producers.

Cooperativeness also plays a part in creating groups and agricultural producer organisations, which are common in Europe and promoted by the European Union. The analyses and remarks of the grant participants give rise to the conclusion that agricultural producer associations are not developing within the EU in a uniform way, and calls for changes have started to emerge.

If the European Union supports and finances the activity of associations of agricultural producers (and rightly so), it might be necessary to adopt more extensive legal provisions in the EU legal acts regulating the setting up and functioning of such entities. The goal is to create lasting units which, having benefited from the EU funds, will engage in activity for many years. On the other hand, it seems necessary to make administrative simplifications, especially in the times of COVID-19. It might be said that as far as the EU law making process for the new budget window after the year 2021 is concerned, it is a good time for the EU legislator to have a closer look at agricultural producer associations.

In a global context, in order to make the most of the experiences gained by various countries relating to associations of agricultural producers, taking into account both regional and global approaches, it would be advisable to create a world

organisation to support agricultural producer associations. The entity could associate not only agricultural producers but also lawyers and economists dealing with the issues in question. The first stage could include an on-line platform enabling the mutual exchange of experiences, comments, and comparisons of legal regulations, and for identifying and handling problems. The conclusions drawn based on such collaboration could be beneficial to both domestic and EU legislators, for example, in drafting more effective legal regulations on agricultural producer associations.

The following book edited by prof. UAM dr hab. Aneta Suchoń is mostly of a legal character. There is, however, a part on economic issues that highlights the practical influence of associations of agricultural producers, especially agricultural co-operatives, on the development of the agri-food industry. The chapters of the book have been written by scientists from universities in Argentina and Europe.

Social and economic changes, globalization, ensuring food security and safety, climate changes, environmental degradation, as well as the issues connected with the COVID-19 pandemic, are making the collaboration of agricultural producers in the world increase in importance. An agricultural farm, irrespective of its size, is a small unit on the agricultural market and it is necessary for agricultural producers to collaborate at different stages of agricultural activity. The issues raised in this publication focus mainly on the legal aspects of the activity conducted by co-operatives in the agri-food industry, by groups and agricultural producers organizations, and by other legal forms of agricultural producers associations in Argentina, France, Germany, Italy, Poland, Slovakia, Slovenia and Spain, as well as in some other countries in the world. The book also refers to EU legislation that promotes collaboration among agricultural producers.

"(...) The present book is very interesting and useful for researchers, practicing lawyers and economists, rural organisations and public authorities working in the field of agriculture. It is a clear win for legal science and practice (...) the present work offers, in addition to providing evidence of interesting regulations in individual countries, a good basis for additional legal comparisons and possible legal adoptions. (...) The book has a meaningful structure."

Prof. Dr. iur. Paul Richli,
The University of Basel and the University of Lucerne
(from the review)

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