



## LEGAL ASPECTS OF COOPERATION IN AGRICULTURE IN BULGARIA

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### ABSTRACT

**PURPOSE:** The purpose of the present scientific work is to examine and analyze the current legal and regulatory framework of the different forms and organization of agricultural cooperatives in Bulgaria, as well as to draw conclusions and recommendations for their improvement.

**METHODS:** The main research and analytic methods are: systematic analysis, logical approach, normative method, synthesis, etc.

**RESULTS:** Through the research and analysis of the legal framework, we have identified significant contradictions and weaknesses which impede the successful agricultural cooperatives in the country. Guidelines are provided for changes meant to contribute to solving specific problems.

**CONCLUSIONS:** The performed legal analysis of the normative regulations on agricultural cooperatives reveals the need for a normative initiative to overcome lapses and contradictions in the legislation in this field, in order to fully protect the rights and interests of all legal entities.

**Key words:** cooperation, agriculture, regulation, legal and regulatory framework, law enforcement and analysis

### INTRODUCTION

The main normative act in Bulgarian law which regulates the creation, settlement and termination of membership relations in agricultural cooperatives, is the Cooperatives Act /promulgated, State Gazette No. 113/28.12.1999/. In an economic and social aspect, at the time of its adoption and entry into force, the Cooperatives Act, as amended in 1999 (1), was a rather up-to-date legal act regulating membership relations between individual members – cooperators, owning agricultural land /most often restored according to the Ownership and Use of Farmland Law Ownership and Use of Farmland Law/ on the one hand, and the Cooperative as a business entity (a legal entity) on the other hand. At that point, in Bulgaria there still had not been any economic interest in the use and cultivation of agricultural land by subjects different from its owners. Regulations on the legal status of the “agricultural

producer” had not yet been known and created, and there had been no companies with a main activity in cultivation, use and management of agricultural lands.

At least for now, it is necessary to conclude that until 2005 the Cooperatives Act fully corresponded with the relations arising during and on the occasion of the provision of agricultural land by a member of the Cooperative to the Cooperative, who in compliance with Art. 1 of the Cooperatives Act carried out commercial activities to satisfy the economic, social and cultural interests of its members.

*The aim* of this scientific work is to examine and analyze the current legal and regulatory framework of the different forms and organization of cooperation in agriculture in Bulgaria, as well as to draw conclusions and recommendations for its improvement.

*The main research and analytical methods* in this work are: logical approach and analysis, historical approach, legal and normative analysis, etc.

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## **THE COOPERATIVE MODEL INCORPORATED IN THE COOPERATIVES ACT IN BULGARIA**

The cooperative model incorporated in the Cooperatives Act (1) is facing a potential crisis due to the global economic situation, increased competition, lack of governmental support and legislative and regulatory reforms. The rapidly developing technologies, such as digitalization threaten cooperative identity, the oftentimes weak cooperative management and the lack of public awareness regarding cooperatives. These threats represent challenges to cooperative development and thus should be turned into strategic priorities, while the cooperative business model should really be presented as a different way of doing business based on responsible consumption that contributes to a sustainable economic development amidst the dominant neoliberal market economy.

Therefore, after 2005 and especially after the adhesion of Bulgaria as a full member of the European Union on 01.01.2007, a new legal framework needed to be created in Bulgarian to regulate the relations taking into account the changed economic interests of both individuals granting the right to use their land for agricultural needs, and entities whose main activity is related to land cultivation for the purpose of profit.

In this regard, it should be pointed out that the Cooperatives Act which was adopted in 1999 (1) and has more than 150 amendments up until now/ does not correspond to the emerging new type of land relations and their economic realization, and it is not harmonized with European legislation in the discussed field.

The current organizational and economic state of cooperatives shows that their successful development depends on the overcoming of the existing diversity of members' interests, as well as on the fair distribution of benefits from activities. The solution to these problems is possible by improving the cooperative status and/or by replacing the cooperative with another form of association.

Agricultural cooperatives in Bulgaria operate under different economic conditions compared to cooperatives in the other member states of the European Union. The legal status of cooperatives is regulated by the provisions of the Cooperatives

Act. This law is incomplete and is supplemented and specified by the Statute of the cooperative.

The Cooperatives Act (1) in its current form does not contribute to the developing of new common interests between the landowner and the cooperative economic structure (other than the ground rent), such as future investments in perennial crops, irrigated areas and inter-cooperative enterprises for processing agricultural products. Problems related to decision making concerning the possibility of cooperation through cooperative unions have been observed in the process of the law's practical application. This conclusion can be drawn based on the provision of Article 54 of the Cooperatives Act. According to it, "By virtue of a decision of their general meetings, cooperatives shall be free to join into a sectorial, national or other association". In other words, this article sets a prerequisite for the establishment of cooperative associations – the legal requirement is that a decision has been taken by the general meeting of each cooperative. Practically, this complicates the procedure of uniting the cooperatives to form associations. On the one hand, there is no guarantee that each cooperative member will make a positive decision. On the other hand, there is no legal certainty whether in the event of a resolution of a cooperative to join an association, within the meaning of Art. 54, paragraph 1 of the Cooperatives Act, that resolution will not be appealed to the court in accordance with Chapter five of the same law. In the event of a complaint filed by a cooperative member seeking judicial supervision of the resolution for participation of the cooperative in an association, within the meaning of art. 54, paragraph 1 of the Cooperatives Act, the entry into force of the resolution will be postponed until the court proceedings have concluded with a final judgment on the dispute. If the court finds procedural violations in the convening and holding of the general meeting of the Cooperative and thus cancels the Cooperative's decision to join an association, the Cooperative will not be able to carry out its decision.

With a view to the current economic conditions, in land use cooperation the emphasis should be placed not only on the association of natural persons who, through mutual assistance and cooperation, carry out business activities to

satisfy their economic, social and cultural interests, but also on the association of legal entities or, in other words, on the creation of cooperative unions.

### **COOPERATION OF COOPERATIVES – LEGAL-NORMATIVE REALITY AND POSSIBLE SOLUTIONS**

In the content of the Cooperatives Act, there is almost no legal regulation on cooperative associations. According to the provision of Article 54, paragraph 1 of the Cooperatives Act, cooperatives can join into territorial, sectorial, national or other associations based on a resolution of their general meetings. Paragraph 2 states that to be constituted, a cooperative association requires at least seven cooperatives. The existing legal regulation in no way corresponds to the actual possibilities for cooperation in land use planning and to the resulting legal and financial consequences. Therefore, it should be noted that a completely new legal framework is needed to regulate the latest circumstances related to cooperation in the field of agriculture. The following two approaches can be used in this regard:

**First approach:** Creation of a completely new law, named “Agricultural Cooperation Act”, which should cover and regulate all modern forms of cooperation (“association”) in the sector /farm cooperatives, water cooperatives, producer groups and organizations, cooperative and branch associations/. Subjects of cooperation should be only legal entities – commercial companies within the meaning of the Commercial Act (2) /EOD, OOD, AD, EAD, KTD, SD, KD/ – with main business activity - agriculture /in all its forms/. In this way, through the cooperation of commercial companies in the field of agriculture, a highest market realization of the production and, accordingly, support and facilitation of individual production processes will be achieved. The idea is for the marketing cooperatives to perform not only the general realization of the production of their members, but also primary procurement, processing, storage and transport of agricultural products. The market realization of production is performed at wholesale prices where marketing cooperatives play the role of intermediaries between producers and markets which provide greater opportunities due to the larger and more regular volumes they can afford (8).

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Under this law, a national Land Management Agency should be established. Moreover, the construction of an electronic database should be provided for to achieve transparency and expedience. The database should include a national electronic land register with an up-to-date agricultural land cadaster and service portal (Agricultural e-government). This will result in a more effective management of land, livestock and forest resources and a sustainable land use model based on viable small and medium farms, especially in the fruit, vegetable and livestock sectors (7).

Another proposal is to transform a cooperative into a joint-stock cooperative where the cooperative’s share is 51% and the rest of the capital is divided into shares. This will allow attracting external capital. The effective development of agricultural cooperatives depends on changing their production structure, expanding towards more intensive manufacturing activities, as well as integrating agricultural goods production with their processing, marketing and trade. It is desirable that they focus on limiting the relative share of grain and oil-bearing crops, increasing the share of non-traditional but sought-after crops with a guaranteed market (organically grown products, herbs, etc.), as well as on the manufacturing of livestock products with the aim of eliminating the seasonality of income and ensuring employment of the workforce. In order to minimize production risks, it is necessary to increase the volume of production for which there are pre-production agreements. The successful functioning of agricultural cooperatives depends on the diversification of their main activity and/or its total replacement with service-oriented activities (10). In this way, the existing production cooperatives can gradually be transformed into producer associations like the majority of the cooperatives in other EU countries, or into comprehensive cooperatives like those that existed before 1944. Such cooperative associations have the prospect of carrying out supply, commercial, credit, insurance and other activities that are of common interest to their members – the family farmers. In such circumstances, it would become possible for individual producers to simultaneously join more than one cooperative which would provide them with an access to a variety of services, including consulting. The creation of a comprehensive

network offering diverse services in each rural area of the country would lead to improved efficiency of production activities and to a reduction of risks connected with the uncertain and multidirectional influence of the external business environment in which the agricultural producers work (3).

It is necessary to take into account the fact that a large part of the agricultural sector is supplied by local and regional markets. Most private farms in the country are small and have no real chance for strengthening of their market positions, but they have an extremely important social role in providing employment and means of livelihood for the households of their owners (5). For these reasons, there is not much interest in these local markets on the part of large trading companies, which creates a market niche for the development of cooperative activity in this sphere. This, in turn, necessitates a change in the institutional framework that can enable the advantages of cooperatives as an organizational form to be applied in practice in carrying out these activities. In this way, the private farms' production could have a sufficient degree of marketability and the necessary batch size, and economies of scale could be expected since both production and its realization at the market at higher prices could be achieved (9). The market reorientation of agricultural production cooperatives should also be directed towards their vertical integration with the processing industry by increasing investments in the agro-industry. Cooperatives could gradually buy shares or enter into other forms of associations with processing enterprises, which would bring additional added value and would provide markets for the manufactured products (4).

The future development of agricultural production cooperatives depends not only on organizational changes, but also on national policy towards this organizational form. This requires a legislative path to prepare and implement a comprehensive strategy for stabilizing the cooperative organizational form in agriculture. The elaboration and practical application of such a strategy should be carried out by the Ministry of Agriculture and Forestry, representatives of the Ministry of Labor and Social Policy, the Ministry of Finance, the Ministry of Regional Development and Public

Works, representatives of cooperative associations, branch organizations of producers and processors, researchers. The described possible solutions will create better conditions for increasing the market adaptability and efficiency of cooperatives.

*The second approach* should be considered in the light of the current version of the Cooperatives Act. It is essential to adopt the changes in the organizational status of agricultural production cooperatives with a large number of members. A legislative approach should be considered to restrict the competences of the General Meeting and respectively expand the powers of the Management Board of the Cooperative in relation to decisions on participation in cooperative associations. In this sense, the Management Board should be provided with exclusive competence to make decisions on whether the Cooperative should participate in associations. This will lead to a simplified procedure which is adequate to the modern market economy.

In the context of this topic, a third possible form of cooperation should be also analyzed - namely, that between land owners who have not given their land to third parties to cultivate and manage. In this case, it is necessary to establish special legal norms to regulate the uniting of such landowners in production cooperatives of private family farms which aim either to carry out joint cooperative production or services, or to keep land within its original boundaries and unite around the other production factors. Spending common funds and capital, these producers would organize cooperatives which provide services, commercial and credit activities using their existing common cash funds, warehouses, cold rooms, handling points, etc. of the existing production cooperatives. Many of the conflicts between different groups of cooperators can be resolved by converting the cooperatives into limited liability companies (6).

## CONCLUSION

The conducted study of the regulatory framework has identified significant contradictions and weaknesses in the legislation which hinder successful cooperation in agriculture in the country.

The performed legal analysis of the normative provisions on agricultural cooperation reveals the

need for a rule-making initiative to overcome gaps and contradictions in Bulgarian legislation in this field. The aim is to achieve and guarantee a better protection of the rights and interests of all legal entities, including member cooperators.

All things considered, currently, fifteen years after Bulgaria's adhesion to the European Union, the need arises for substantial changes in Bulgarian legislation in the field of agriculture. These include the development of new legal regulation of agrarian relations arising from the changed economic interests of both persons granting the right to use agricultural land and entities whose main activity is related to cultivation of land for the purpose of profit.

**ACKNOWLEDGEMENT:** This publication has been developed in accordance with the implementation of the work program under project "Cooperative models for doing business in Bulgaria and their potential for implementing innovative management solutions", financed by the Scientific Research Fund under competition "Fundamental Scientific Research 2022" and Contract No. KP-06-H65/1.

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