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Towards harmonizing the Greek cooperative legislation

PRESENTATION OF THE REPORTS' FINDINGS

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The structure of the report

1. Subject
2. Objectives
3. Methodology
4. Results

1. The subject of the report

- The cooperative legislation in force
- The possibility of its harmonization-unification

Key question

“Under the current conditions, is it possible to harmonize the cooperative legislation and to what extend?”

2. The objectives of the report

- a) To investigate if the various cooperative laws have enough similarities that may constitute a common regulatory basis for all cooperatives or if the differences between them are extensive that may hinder such a task;
- b) To examine if the criteria that the Law on SSE sets out are in line with the rest of the cooperative legislature and if not, in which areas conflicts occur;
- c) To suggest a framework law on cooperatives that would facilitate the harmonization and codification of the above laws

3. Methodology

In order to fulfill the above goals the following procedures were performed:

- i. Horizontal comparison
- ii. Vertical comparison
- iii. *Evaluation of findings- suggestion of a framework law*

i. Horizontal comparison

The laws on agricultural cooperatives, forest cooperatives, civil cooperatives, limited liability social cooperatives, social cooperative enterprises, workers' cooperatives and energy communities were compared based on the following aspects :

- Formation and registration
- Membership – rights and duties
- Organs/bodies and management
- Capital formation and surplus distribution
- Audit – Supervision
- Dissolution
- Horizontal and vertical integration

ii. Vertical comparison

- It was examined whether the conditions of ar. 3 L. 4430/2016 for the acknowledgement of a social solidarity economy actor were reflected in each cooperative law or if divergences were noted and in which cooperative types

iii. Evaluation of findings- suggestion of a framework law

Evaluation of findings- suggestions based on:

- the cooperative values and principles,
- the ILO R. 193/2002,
- the Guidance Notes to the Co-operative Principles, ICA
- The Principles of European Cooperative Law- PECOL
- Henry, H, Guidelines for Cooperative Legislation, ILO.

4. Results



The deep and ongoing fragmentation of the cooperative legislation

- Cooperatives in Greece are subjected to a plethora of specific laws that regulate different types of cooperatives.
- In the above numbers new laws are added frequently, a phenomenon, which escalated since the 2008 crisis. Such laws regulate new forms of cooperation in areas, where little or no cooperative presence was previously noted (e.g. L. 4513/2018 on energy communities), or they amend/abolish previous laws.
- Consequently, the legal landscape on cooperatives, as it has been thus far formed, remains deeply fragmented, constantly changing, non codified and with regards to its content in many aspects overly detailed.

Is polynomia (:poly-many, nomia-laws) in cooperatives justified?

- One of the main findings of the report was that the cooperative laws in force have a **common structure** and **similar provisions** regarding fundamental aspects of their function and organization (e.g. the process of their formation, their democratic governance, the reasons for their dissolution). There are, thus, some common rules that could potentially be used as a basis for drafting a general cooperative law, applied to all types of cooperatives.
- Most of the differences, which are noted between the cooperative laws, are **rarely justifiable** by the particularity of the cooperative type (e.g. *the provision of unlimited liability of civil cooperatives' members*). Instead, such differences often occur due to the **highly detailed provisions** that the legislation includes in the legal text on issues related to cooperatives' internal affairs and entrepreneurial strategy that should be left to be addressed by their by-laws (such as the obligation of agricultural cooperative members to submit the 80% of their annual production to their cooperative).

The proposal to unify the cooperative legislation

The main reasons why the unification of the cooperative legislation is suggested are the following:

- The promotion of the cooperative identity,
- the simplification and codification of the legal framework,
- the connection with the legal tradition of the country, since the first cooperative law (L. 602/1915) was a framework law applicable to all cooperatives,
- enabling the collaboration between cooperatives, independent of their type or sector of activity in second tier and third tier cooperative associations, which is primordial in our globalized economy,
- the formation of a Panhellenic cooperative association that would represent the cooperative movement,
- enabling in principle a unified legal treatment of cooperatives, as well as their distinct legal treatment from investor-owned enterprises.

Drafting the framework law

- Based on the report's findings and on the previous L. 2810/2000, which was considered as one of the longest-lived and adequate laws on cooperatives, a framework law was drafted, as a suggestive model for the harmonization and codification of the cooperative laws.

Structure of the framework law

- First part – general provisions, applicable in principle to all cooperatives
- Second part- special provisions, which specify or diverge from the general provisions of the first part.

The framework law prescribes for -among other provisions- :

- the international definition of cooperatives, the cooperative values and principles,
- the formation of cooperatives under the same process, conditions and deadline and the decrease of the required number of membership,
- a supervisory authority, in which all cooperatives shall be subjected and a cooperative-oriented audit by auditors with special training,
- the introduction of tools of internal funding for the cooperative by its members (e.g. additional voluntary shares),
- the formation of second tier and third tier cooperative associations with members from the same or different cooperative types and the formation of a PanHellenic confederation of cooperatives, representative of the cooperative movement as a whole.

The objectives of the framework law

- Enhancing the constitutionally stipulated self-governance of cooperatives, by abstaining from prescribing intrusive and highly detailed rules and, introducing instead, general and flexible norms, leaving, thus, many aspects to be decided in the cooperative by-laws.
- Mandatory provisions are prescribed only when deemed necessary in order to safeguard the cooperatives' distinctive identity.
- Strengthening the cooperative movement's unity and through the implementation of the framework law, promoting the perception that the cooperative is not a group of heterogeneous parts, but, instead, it is an institution with shared values and principles.

Why the unification of the cooperative law may be an innovative idea?

- The significance of such legislative initiative may exceed the national borders of Greece, since it would provide a positive precedent for other countries within and outside Europe (e.g. Spain, Japan), where discussions on the fragmented legal framework and its impact on cooperatives currently take place.

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- Consequently, the transition from a fragmented legal framework to a unified cooperative law is viewed as a significant step forward not only for the Greek case, but also for the foreigner national legislator of countries, where the legal framework on cooperatives has been deemed rather complex and ineffective.
 - Finally, the 2011-2020 cooperative decade slowly comes to an end, for which the ICA has formed the 2020 vision. The latter is also addressed to national governments, so that they establish an enabling environment proper for the development of cooperatives in line with their values and principles.
 - Therefore, the unification of the cooperative laws is considered as a fulfillment of the above goal in a time when the interest in cooperatives has been revitalized, aspiring in that manner to contribute to strengthening cooperatives as a unified and independent movement.