

MAIN DIRECTIONS FOR IMPROVING THE LEGISLATION OF UKRAINE DEDICATED TO AGRICULTURAL COOPERATION

ОСНОВНІ НАПРЯМИ ВДОСКОНАЛЕННЯ ЗАКОНОДАВСТВА УКРАЇНИ, ПРИСВЯЧЕНОГО СІЛЬСЬКОГОСПОДАРСЬКІЙ КООПЕРАЦІЇ

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The article is devoted to the study of the main directions for improving the legislation of Ukraine dedicated to agricultural cooperation. It was established that in the context of the implementation of European integration processes, cooperative legislation was updated, first of all, significant changes affected the Law of Ukraine "On Agricultural Cooperation", adopted on July 21, 2020 in a new edition, which has experienced a significant corporatization (introduction of such corporate categories as "authorized capital", "share in the authorized capital", "dividends" etc.), which is not typical for agricultural cooperation and goes against its essence. In the course of the study, it was determined that with the adoption of the Law of Ukraine "On Agricultural Cooperation" in the new edition, the formation of a corporate-cooperative model of agricultural cooperation with focus on a corporate attitude is taking place, and the transformation of the cooperative relations into corporate-cooperative ones is being traced. It was determined that legal acts, which regulate the activity of agricultural cooperatives, have some shortcomings and need improvement. The author's definitions of "agricultural cooperation" and "cooperative education" are formed in the article. The need to improve tax legislation in the context of the terminological novelties of the Law of Ukraine "On Agricultural Cooperation" in the new edition is emphasized. Proposals for improving the Law of Ukraine "On Agricultural Advisory Activities", which has a significant impact on ensuring the functioning of agricultural cooperation, and other legal acts are presented. A conclusion was made about the feasibility of systematization of the cooperative legislation and introducing the cooperative code of Ukraine. The need to pay special attention to the issue of the state support for agricultural cooperation in Ukraine is accented.

Key words: agricultural cooperation, agricultural cooperative, cooperative, corporate relations, cooperative relations, advisory activity, advisory, cooperative legislation, systematization of the legislation, state support.

Статтю присвячено дослідженню основних напрямів вдосконалення законодавства України, присвяченого сільськогосподарській кооперації. Встановлено, що в умовах реалізації євроінтеграційних процесів відбулось оновлення кооперативного законодавства, насамперед суттєві зміни торкнулись Закону України «Про сільськогосподарську кооперацію», прийнятого 21 липня 2020 року у новій редакції, який зазнав значного корпоративного забарвлення, яке не притаманне сільськогосподарській кооперації та йде врозрід із її сутністю. Про набуття Законом України «Про сільськогосподарську кооперацію» корпоративних рис свідчить, зокрема, відсутність у новій редакції понять «пай», «пайовий внесок», «пайовий фонд», «кооперативні виплати» та запровадження таких корпоративних категорій як «статутний капітал», «частка у статутному капіталі», «дивіденди» тощо. У ході дослідження визначено, що із прийняттям Закону України «Про сільськогосподарську кооперацію» у новій редакції відбувається формування корпоративно-кооперативної моделі сільськогосподарської кооперації із акцентом саме на корпоративність, простежується трансформація кооперативних правовідносин у корпоративно-кооперативні. Визначено, що нормативно-правові акти, які регламентують діяльність сільськогосподарських кооперативів, не позбавлені низки недоопрацювань та потребують удосконалення. У статті сформовано авторське визначення поняття «сільськогосподарська кооперація» та поняття «кооперативна освіта». Наголошено на необхідності вдосконалення податкового-кооперативної моделі сільськогосподарської новел Закону України «Про сільськогосподарську кооперацію» у новій редакції. Наведено пропозиції щодо вдосконалення Закону України «Про сільськогосподарську дорадчу діяльність», який має значний вплив на забезпечення функціонування сільськогосподарської кооперації, та інших нормативно-правових актів. Зроблено висновок про доцільність здійснення систематизації кооперативного законодавства та запровадження кооперативного кодексу України. Акцентовано на необхідності приділення особливої уваги до питання державної підтримки сільськогосподарської кооперації на теренах України.

Ключові слова: сільськогосподарська кооперація, сільськогосподарський кооператив, кооператив, корпоративні правовідносини, кооперативні правовідносини, дорадча діяльність, дорадництво, кооперативне законодавство, систематизація законодавства, державна підтримка.

Formulation of the problem. At the current stage, which is characterized by a significant number of reasons that prevent the rise of agricultural cooperation in Ukraine, in particular, insufficient financial resources of the cooperators to ensure the efficiency of the economic activity of agricultural cooperatives, the imperfection of the legal framework for the functioning of agricultural cooperation, the unbranched system of agricultural advisory services, the lack of proper state support for the cooperative sector, etc., when the war has a destructive influence on the country's economy and the agriculture in particular, there is an urgent need to study the prospects (main directions) for the development of Ukrainian legislation dedicated to agricultural cooperation.

The state of the study. Various aspects of the legal framework for the activity of agricultural cooperatives were investigated in works of O. V. Gafurova, S. I. Marchenko, V. M. Masin, H. A. Grigorieva, A. V. Smityukh, O. M. Pashchenko and other scientists. At the same time, since the adoption of the Law of Ukraine "On Agricultural Cooperation" in the new edition, insufficient attention has been paid to the legal aspects of agricultural cooperative activity and to prospects for improving the cooperative legislation in science of agrarian law.

The aim of the article. The aim of the article is to research and identify prospects (main directions) for the development of Ukrainian legislation dedicated to agricultural cooperation.

Presentation of the main material. It should be noted that in the context of the implementation of European integration processes, cooperative legislation was updated, first of all, significant changes affected the Law of Ukraine "On Agricultural Cooperation", adopted on July 21, 2020 in a new edition, that provides for a significant number of novelties, which, in particular, relate to the classification division of agricultural cooperatives, membership relations, management relations, investment relations, etc.

In our opinion, the specified legal act has experienced a significant corporatization, which is not typical for agricultural cooperation and goes against its essence.

The acquisition of corporate features by the Law of Ukraine "On Agricultural Cooperation" is evidenced, in particular, by the introduction in the new edition of law of such corporate categories as "authorized capital", "share in the authorized capital", "dividends" (in the Law of Ukraine "On Agricultural Cooperation", which has lost its force, – "share payments"), "patronage dividends" (in the Law of Ukraine "On Agricultural Cooperation", which has lost its force, – "cooperative payments"), etc.

N. O. Bagai claims that “the adoption of the new Law of Ukraine “On Agricultural Cooperation” indicates a significant expansion of the field of agrarian and legal regulation of internal cooperative relations, which is a positive phenomenon” [1, p. 16].

According to M. Dolynska, “the new agricultural cooperative law... better and more comprehensively regulates the activity of agricultural cooperatives in the state and directed them in a new “progressive” direction” [2, p. 145].

At the same time, O. V. Gafurova and S. I. Marchenko note that “on the one hand, the Law of Ukraine of July 21, 2020 “On Agricultural Cooperation” (new Law) describes in detail the basis of the functioning of the specified business entities, but, on the other hand, its content almost completely eliminates the basic principles of agricultural cooperation established by domestic legislation...” [3, p. 34].

The issue of corporatization of the legislation on agricultural cooperation was studied in the work of H. A. Grigorieva, who notes that “the path chosen by the legislator consists in implementing a “corporate injection”, i.e. reforming the legislation due to the introduction of mechanisms and requirements of a corporate nature” [4, p. 73].

O. I. Melnyk expresses the position that “in the strategic perspective, corporatization will contribute to increasing the competitiveness of corporate-type agrarian entities and the agrarian sector of the national economy as a whole” [5].

However, we believe that the significant corporatization of the special Law of Ukraine “On Agricultural Cooperation” is in a certain way a negative phenomenon, as it transforms the traditional approach to the essence of agricultural cooperation, which, as a result, may gradually lead to the loss of cooperative identity, the cultural identity of agricultural cooperatives.

Unfortunately, “cooperatives are becoming less “real” and closer to corporate enterprises” [4, p. 74].

O. M. Pashchenko also notes that “the transformation of special agricultural legislation, which determines the legal status of agricultural cooperatives, followed the path of corporatization and, in fact, the weakening of the classical principles on which the cooperative system is based” [6, p. 57].

H. A. Grigorieva emphasizes that “steps to modernize the institution of membership in an agricultural cooperative bring the legal status of a member of cooperative closer to the legal status of a participant of business entity” [4, p. 75].

In our opinion, the novels of the Law of Ukraine “On Agricultural Cooperation” testify to the formation of a corporate-cooperative model of agricultural cooperation with focus on corporate attitude.

A. V. Smityukh, researching the corporate and membership rights and legal relations in the light of the practice of the Grand Chamber of the Supreme Court of 2019–2020, notes that “from the analysis of the practice of the Grand Chamber of the Supreme Court of 2019–2020, a steady tendency to expand the range of corporate subjects through the consumer societies (cooperatives), service cooperatives and bar associations” [7, p. 56].

So, for example, the decision of the Grand Chamber of the Supreme Court (December 17, 2019) in case № 904/4887/18 sets out the following legal position: “corporate rights are characterized, in particular, by the fact that a person who is a participant (founder, shareholder, member) of a legal entity has the right to participate in the management of an economic organization and other powers provided for by law and statutory documents. Accordingly, members of the service cooperative, regardless of the direction of its activity, are the bearers of corporate rights, and the relations between its members and the cooperative, which are related to the creation, activity, management or termination of the activity of such a legal entity, are corporate” [8].

The Grand Chamber of the Supreme Court also commented on the corporate nature of legal relations in service cooperatives in its decision in case № 509/577/18 (April 24, 2019).

In our opinion, the above-mentioned legal position of the Grand Chamber of the Supreme Court cannot be considered as undisputed.

We agree with the opinion of B.O. Solovyov that “in principle, corporate legal relations cannot arise in a service cooperative due to its legal status” [9, p. 293].

The judge of the Grand Chamber of the Supreme Court N. P. Lyashchenko, whose position we share, in a separate opinion on the decision of April 24, 2019 in case № 509/577/18 emphasizes that “corporate rights are characterized by the following features: a person has a share in the authorized capital (property) of the economic organization, has the right to participate in the management of the economic organization and to receive a certain part of the profit (dividends) of the economic organization. Thus...given the non-profit nature of the service cooperative's activity (members) do not have the right to receive a certain share of the profit of this organization and do not have a share in the property of the service cooperative” [10].

In our opinion, the members of a service cooperative, an agricultural cooperative, which carries out activity without the purpose of making a profit, are not the bearers of corporate rights, and the relations between its members and the cooperative due to its legal status are not corporate.

V. Smityukh expresses the opinion that “an important common feature that unites all types of cooperatives with business entities and allows us to characterize the relations that arise between them and their participants (shareholders, members) as corporate is the presence of their participants (members) property investment interest, which arises in connection with making a contribution, and, accordingly, the property right to receive certain property in case of termination of membership (participation)” [11, p. 529].

The author emphasizes that “cooperative relations appear as a type of corporate relations, the feature of which is that they are based on certain additional principles defined in Article 4 of the Law of Ukraine “On Cooperation” and Article 4 of the Law of Ukraine “On Agricultural Cooperation” [11, p. 530].

In our opinion, taking into account the legislative changes, at the current stage of the functioning of agricultural cooperatives, the cooperative legal relationship is being transformed into a corporate-cooperative one, which is not typical for agricultural cooperatives.

The concept of “agricultural cooperation”, defined by the relevant law, does not fully reveal the essence of agricultural cooperation, which, in our opinion, is shortcoming. We propose to enshrine at the legislative level in Part 1 of Article 1 of the Law of Ukraine “On Agricultural Cooperation” the author's definition of the concept “agricultural cooperation”: “agricultural cooperation is a set of autonomous and independent cooperative organizations (agricultural cooperatives and agricultural cooperative associations), whose members, connected with financial, material and technical resources, carry out joint economic and other activities aimed at ensuring sustainable agriculture, as well as achieving economic, food and environmental security of the state, on the basis of voluntariness, democracy and equality in order to satisfy their economic, social and other needs”.

Consolidation of provisions devoted to cooperative education is the novelty of the Law of Ukraine “On Agricultural Cooperation” in the new edition.

It should be emphasized that cooperative education is an important prerequisite for the effective development of agricultural cooperation in Ukraine, particularly in the post-war period.

Cooperative education is considered as “implementation of measures for study and professional development of members of agricultural cooperatives, members of the management bodies and employees of such cooperatives in the field of activity of an agricultural cooperative to improve the efficiency of its economic activity” [12].

In our opinion, the specified normative definition is rather superficial and does not reveal the essence of cooperative education.

We propose to amend Part 1 of Article 1 of the Law of Ukraine “On Agricultural Cooperation” and provide that cooperative education is “a set of measures aimed at study, professional training, retraining and professional development of members of agricultural cooperatives, members of the management bodies and employees of such cooperatives, which are organized and carried out in order to increase the efficiency of the economic activity of agricultural cooperatives by ensuring awareness of the specifics of the procedure for the creation and registration of agricultural cooperatives, as well as the rights and obligations of their members, informing about amendments to the legislation of Ukraine that are relevant for agricultural cooperatives, familiarization with the latest agricultural technologies, international experience of agricultural cooperation, clarification of the specifics of the organization of cooperative marketing and logistics, notification of programs and conditions for obtaining state support, etc.”.

We emphasize the need to improve tax legislation in the context of the terminological novelties of the Law of Ukraine “On Agricultural Cooperation” in the new edition, since the Tax Code of Ukraine still contains outdated terminology that does not correspond to special cooperative legislation, in particular the terms: “agricultural production cooperative”, “agricultural service cooperative”, “cooperative association of agricultural service cooperatives”.

There is an urgent need to introduce into the Tax Code of Ukraine such concepts as: “agricultural cooperative operating without the purpose of making a profit”, “agricultural cooperative operating with the purpose of making a profit”, “agricultural cooperative association”.

Also, the Tax Code of Ukraine should provide for the category “patronage dividends”.

The Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine dated April 6, 2021 № 703 approved the Model Rules for the internal economic activity of an agricultural cooperative, developed in accordance with the requirements of the Law of Ukraine “On Agricultural Cooperation”.

At the same time, the current legislation does not fix the definition of the term “internal economic activity”.

The Economic Code of Ukraine operates in such categories as: “economic relations”, “internal economic relations”, “economic activity”.

In our opinion, the absence of a legislative definition of the term “internal economic activity” leads to polysemy in understanding, free interpretation of the specified concept and is a theoretical gap, which indicates the need to enshrine in Article 3 of the Economic Code of Ukraine the definition of the concept of “internal economic activity” in order to level differences on the semantic level and to implement the same interpretation of the specified category on the same level as the terms: “economic relations”, “internal economic relations”, “economic activity”.

We consider it necessary to improve the Law of Ukraine “On Agricultural Advisory Activities”.

Despite the fact that agricultural cooperatives are one of the main entities that need advisory services, the Law of Ukraine “On Agricultural Advisory Activities” does not contain the concept of “agricultural cooperative”, while operating under the category of “farming enterprises”.

According to Article 1 of the Law of Ukraine “On Agricultural Advisory Activities” “agricultural advisory activity is a set of actions and measures aimed at meeting the needs of individual farms and farming enterprises, business associations, other agricultural enterprises of all forms of ownership and management, as well as the rural population in raising the level of knowledge and improving the practical skills of profitable farming” [13].

In our opinion, this norm should be expanded by including agricultural cooperatives among the list of recipients of advisory services.

We also believe that in the post-war period there is a need to revise the principle of financing advisory activity in Ukraine, since “the low level of development of the domestic advisory system reduces the competitiveness of small and medium-sized businesses in rural areas”, in particular agricultural cooperatives [14, p. 54].

Financing of agricultural advisory activity, in our opinion, should be carried out on a combined basis.

In order to reduce the financial burden on the recipients of advisory services, we propose to amend Article 5 of the Law of Ukraine “On Agricultural Advisory Activities” and establish an updated system of financing advisory activity, which provides for the use of various sources with a fixed percentage expression of the amount of funding.

Therefore, we propose to set out Article 5 of the Law of Ukraine “On Agricultural Advisory Activities” in the following version:

“Advisory activity is carried out at the expense of funds:

– state budget – 25%;

– local budgets: regional budget – 40% and budget of the territorial community – 35%.

Grants, projects and programs of international technical assistance, charitable contributions of individuals and legal entities, and other sources not prohibited by the law are an additional (due to their non-permanent nature) source of funding for advisory activity”.

We believe that one of the main directions for improving the legislation of Ukraine dedicated to cooperation, agricultural cooperation in particular, is a need for the systematization of cooperative legislation.

In our opinion, codification is the most suitable way (form) of systematization of legislative acts in the sphere of cooperation, agricultural cooperation. Introduction of the cooperative code of Ukraine will provide completeness and clarity regarding the legal regulation of all types of cooperatives in Ukraine, including agricultural ones.

In order to support the agricultural cooperatives in Ukraine and bring them to the European and world level, it is advisable to create a separate specialized Department for promoting the development of agricultural cooperatives within the Ministry of Agrarian Policy and Food of Ukraine, whose activity will be aimed at ensuring the effective functioning of the agricultural cooperatives.

We agree with the opinion that “farmers also need long-term stable state financial support for the formation of the material and technical base of service cooperatives at the stage of their formation” [15, p. 96].

At the current stage, the level of support for agricultural cooperation, in particular financial, informational and advisory, etc., from the state and local governments is insufficient for the successful development of agricultural cooperatives.

In our view, there is currently an urgent need for the Ministry of Agrarian Policy and Food of Ukraine to develop, as well as the subsequent approval by the Cabinet of Ministers of Ukraine of a separate State target program for the development of agricultural cooperatives for the period until 2030.

Also, we consider it expedient to supplement the Law of Ukraine “On State Support for Agriculture in Ukraine” with a separate section dedicated to agricultural cooperation, in which a wide range of state support measures for agricultural cooperatives will be provided.

Conclusions. Summarizing the abovementioned, we can conclude that with the adoption of the Law of Ukraine “On Agricultural Cooperation” in the new edition, the formation of a corporate-cooperative model of agricultural cooperation with focus on corporate attitude is taking place, and the transformation of cooperative legal relations into corporate-cooperative ones is being traced. Legal acts, which regulate the activity

of agricultural cooperatives, have some shortcomings and need improvement. The author's definition of "agricultural cooperation" and "cooperative education" is formed in the article. The need to supplement the Economic Code of Ukraine with the definition of the concept of "internal economic activity" and to improve tax legislation in the context of terminological novelties of the Law of Ukraine "On Agricultural Cooperation" in the new edition was emphasized. Amendments to the Law of Ukraine "On Agricultural Advisory Activities", regarding the system of financing advisory activity and the expansion

of the list of recipients of advisory services, have been proposed. A conclusion about the feasibility of systematization of the cooperative legislation and introducing the cooperative code of Ukraine was made. The need to create a specialized Department for promoting the development of agricultural cooperatives, to develop and approval the State target program for the development of agricultural cooperatives for the period until 2030, as well as to supplement the Law "On State Support for Agriculture in Ukraine" with a separate section dedicated to agricultural cooperation was emphasized in the article.

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