

Comments on the Law of Social Economy - no. 219/2015 from Economic Efficiency and Ethics Points of View

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Abstract. *The Law on Social Economy was recently enacted in Romania (August 2015), followed by its related enforcement guidelines, one year later (August 2016). Hereinafter, I have analysed the way in which this legislative document defines the Third Sector compared to previous definitions given by national legislation and the directions set out by the European Union. Even though the law complies with European definitions and criteria, the impact of this legislative initiative will depend, in my opinion, on classic Social Economy aspects (which occurred in the 19th century) which are not, however, stressed by the Law no. 219/2015: economic efficiency of social enterprises, the significance of complying with moral values, not just social goals, in the practice of economy, the self-help and entrepreneurial spirit which must be developed among the members themselves of vulnerable groups involved. This article points out the possible traps of the adopted approach and proposes a wider view over the social purpose that Social Economy could serve.*

Keywords: Romanian Law of Social Economy; Social economy; Social Enterprise; Cooperative; Associations; Foundations; Mutuals

JEL Codes: L31, L13.

1. Introduction

The Law no. 219/2015 was initiated by the Romanian Government and was submitted for Senate debate analysis at the end of 2013. The 4th quarter of 2012 was stipulated by the National Reform Program 2011-2013 as the deadline for the submission by the Ministry of Labour, Family, Social Protection and Elderly of the draft Law on Social Economy (Camera Deputatilor, 2016). According to the substantiation report submitted by the Government in December 2013, the need for the draft law was supported by three European documents: The Lisbon Strategy for Growth and Employment (2004), The Resolution 2008/2250 (INI) of the European Parliament (2009) and the Europe's Growth Strategy Europe 2020 (2010). These documents recommended to the Member States to acknowledge and support Social Economy as a means for fighting poverty by facilitating the access to funding and tax exemptions offered to the participatory and inclusive organizations like foundations, associations, cooperatives and mutual societies. The Government also notes that, despite repeated recommendations, in the Romanian legislation in force during 2012 this term occurred

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only sporadically and inconsequentially. (Government Decision no. 829/2002 and Law no. 292/2011 on Social Security). Meanwhile, in 2008, Social Economy had already become an area eligible for funding within the framework of POSDRU 2007-2013 program. The legislative proposal on Social Economy was passed by the Senate in June 2014, following several delays in submitting the necessary reports by specialized commissions (the Labour, Family and Social Protection Commission, the Economic, Services and Industries Commission, the Public Administration, Territorial Planning and Environmental Protection Commission) and, a year later (on June 30th 2015) also by the Chamber of Deputies (decision-making forum). It was published in the Official Gazette no. 561 from 28 of July, 2015. The legislative document defines the term of Social Economy and sets the criteria and principles that the interested organizations must fulfil in order to receive the Social Enterprise certificate and the Social Insertion Enterprise certificate.

2. Social Economy definition

In defining the field, European policies for Social Economy are grounded on two studies published in 2012 by the social research networks International Centre of Research and Information on the Public, Social and Cooperative Economy (C.I.R.I.E.C.) and The Emergence of Social Enterprises in Europe International Research Network (E.M.E.S.).

The former proposes the following definition: **Social Economy** is “*the set of private, formally-organised enterprises, with autonomy of decision and freedom of membership, created to meet their members’ needs through the market by producing goods and providing services, insurance and finance, where decision-making and any distribution of profits or surpluses among the members are not directly linked to the capital or fees contributed by each member, each of whom has one vote, or at all events take place through democratic and participative decision-making processes. The social economy also includes private, formally organized organisations with autonomy of decision and freedom of membership that produce non-market services for households and whose surpluses, if any, cannot be appropriated by the economic agents that create, control or finance them.*” (Campos & Ávila, 2012, p. 22)

E.M.E.S. formulates some **criteria** that the Social Economy organizations must fulfil in order to be able to become a part of the Social Economy field. These are: **economic and entrepreneurial** (“*a continuous activity producing goods and/or selling services; a significant level of economic risk, a minimum amount of paid work*”), **social** (“*an explicit aim to benefit the community; an initiative launched by a group of citizens or civil society organisations; a limited profit distribution*”) and **related to management** (“*a high degree of autonomy; a decision-making power not based on capital ownership, a participatory nature, which involves various parties affected by the activity*” (Defourny & Nyssens, 2012, pp. 12-15)

Generally, the Law no. 219/ 2015 follows the criteria and the manner in which the Social Economy field is defined at the level of the European Union. Thus, article 2 states: “*Social Economy is based on private, voluntary and solitary initiative, with a high degree of autonomy and responsibility, as well as limited distribution of profit to the associates.*” Article 4 sets the **principles of Social Economy**, which are: “*priority given to the individual and to social objectives rather than to profit increase; collective solidarity and responsibility; convergence between the interest of associated members and the general interest...; democratic control of members over the activities performed; the voluntary and free character of the association; legal personality different and independent from public authorities; allocation of most of the*

profit/ financial surplus in order to reach the general interest objectives of a collectivity or in the personal and non-patrimonial interest of the members.” Article 5 stipulates that the way in which the objectives of this field can be met is “the production of goods, the provision of services and/or the execution of works which contribute to the community or its members’ well-being.”

Related to the definition of Social Economy, article 2 (1) states: “*Social Economy is the tout ensemble of activities organized independently from the public sector with the purpose of serving the general interest, the interest of a collectivity and/or personal non-patrimonial interest, by increasing the employment degree of the persons which are part of the vulnerable group and/or the production and delivery of goods, the provision of services and/or the execution of works.*” (Law no. 219 regarding the Social Economy, July 23, 2015)

Romanian legislation already stipulated a definition of Social Economy, within the Law no. 292/2011 (Law on Social Security), at article 6, letter 1: “*Social Economy is a sector which comprises economic activities which subsidiarily and on condition that economic performance is maintained, includes social objectives.*” (Law no. 292 on Social Assistance, December 20th, 2011) This definition seems based on a paradigm of Social Economy in which the importance of profit is not diminished, this being an indicator of economic performance. Furthermore, the Law on Social Security conditioned the introduction of social objectives on the agenda of an organization to the maintenance of its economic performance that is actually measured, in the national accounting system by profitability. Low 219/2015 proposes a different definition compared to Law 292/2011 Article 2 states: “*Social Economy is the sum of activities organized independently from the public sector, activities aiming to serve the general interest, the interests of a community and/ or one persons non patrimonial interests by increasing the degree of occupation of the persons belonging to vulnerable groups and/ or by producing and supplying goods, services.*” Profit is not forbidden but its importance decreases. Why? Because Low 292/2011 was submitting the social goal to the condition of “maintaining the economic performance”, usually taking the form of profit, while the Law 219/2016 only limits the distribution of profit, but says nothing about the economic performance and its relation to the social goal assumed by the organization. The new definition favours the social objective without conditioning it on economic performance, including also non-patrimonial organizations that may also not be economically efficient in classical terms as possible Social Enterprises. However, the primacy of a social goal inside an organization without necessarily targeting profit often implies the existence of financing resources from external sources to the target group (state aid, charity and so on). Traditionally (19th century), Social Economy is defined by the **self-aid principle**. Starting from the cooperatives of the 19th century (for instance: Rochdale Pioneers, Raiffeisen Cooperatives) until E.M.E.S. study from 2012, “*The SE does not just see people in need as the passive beneficiaries of social philanthropy, it also raises citizens to the status of active protagonists of their own destiny.*” (Campos & Ávila, 2012, p. 37) If we respect this spirit of the SE, the economic performance remains one of the key factors that guarantees the continuity of social enterprises, their autonomy and their democratic and participative management. Even though the increase of employment can lead to self-aid by obtaining income based on the work executed, this principle is not mandatory for any organization in Romania, in order to be included into the Social Economy. Even though it does not textually link social goals to profit and it definitely does not impose that the orientation towards social objectives take place only if economic performances be kept, the Law no. 219/2015 does not exclude the possibility to obtain profit or economic performance within Social Economy entities. It imposes, however, a limited allocation of surplus to the stakeholders in favour of the allocation of a minimum share of

90% of the profit to social investments (art 8, 3.b) and mentions that “social economy is based on the private, volunteer and solidary initiative with a high degree of autonomy and responsibility and the limited distribution of profit towards the associates.” (art 2, 2). As we previously noticed in the definition offered by the Law, this social objective is defined exclusively by two aspects: the increase of employment and provision of goods and services without mentioning if these are to be offered on the market, in order to obtain income, or to disadvantaged groups, outside the market and possibly free of charge. (art 2, 1)

3. A different perspective

What if we were to change the perspective and consider the increase of the income obtained by the members of vulnerable groups, as a result of the work provided by themselves, a social objective in itself, a way to avoid the risk of poverty and social exclusion? If we accept this perspective, stakeholders can help themselves more by having extended access to dividends, proportionally with the performance of the organization and their own contribution. This approach was considered by classical Social Economy organizations in the 19th century, especially within credit, handicraft and consumer unions. This is why, part of the current cooperatives in Romania do not identify themselves with the Social Economy field or with the principles and criteria stipulated by the Law no. 219/2015. On the other hand, the “*increase of employment*” refers to the fulfilment of an activity in an organized set-up. Members of an organization can get involved as volunteers, associates, employees, or positions which combine these responsibilities. While volunteering is not remunerated, the employees are repaid in salaries and associates with dividends.

In the first case, creating an organization in which stakeholders get involved, free of charge, only to offer certain goods and services to each other or to other vulnerable groups instead of some sources of income, can create a monopoly for that organization, as supplier. In this situation, beneficiaries are restricted in choosing the goods and services they wish. Basically, they cannot choose between different suppliers or different goods and services which meet the same needs, but only between benefiting or not of the services/goods of an organization which supplies for them. The allocation of income obtained by performing an economically viable activity to which they contribute, offers them greater freedom of choice on a free and competitive market. The bigger the income, the higher their capacity to meet their needs.

In the second case, if the increase of vulnerable groups’ income is targeted mainly by creating remunerated jobs, the principle of democratic and participative management is not necessary involved and the development of entrepreneurial spirit and opening to social innovation of those involved in the performance of the activity is neglected.

As opposed to this, the allocation of income through dividends involves a high degree of engagement of the organization’s members, as dividends are dependent on the performance achieved and thus encourages participative management in a bigger extent than salary. Also, from a financial point of view, due to the Romanian tax legislation, the remuneration of people involved in the activity rather through salaries than through dividends leads to higher expenses for the organization, due to the different rate of taxation. This generates the need of social enterprises for higher income, compared to ordinary trading companies, in order to allocate the same amount of money to the persons involved. If, for example, an organization wants to allocate to the people involved in its activity a net income of 11100 lei/year in the form of salaries, the tax payable to the State is 7356 lei and the total amount necessary is 18456 lei. However, if it wants to distribute the same amount as dividends (net), the taxes amount only to 2783.39 lei (including 5.5% contribution to the health insurance benefits as of 2017) and the total amount necessary is only 13858 lei, i.e. 25% less. Thus, a

paradoxical situation is created, in which social enterprises must pay higher taxes because they are forced to allocate salaries instead of dividends to the people involved. It must be mentioned that the present paragraph compares the system of salaries versus dividends as models of remuneration, generally speaking. The Law also mentions limitations in the allocations of salaries by a maximum ration of 1:8 between the minimum and the maximum wage inside an organization. If both dividends and salaries' distribution are limited, most of the over plus going to a social goal means this social goal is not the same with the direct and immediate increase in the income of the vulnerable groups involved in the activity, based on their own efforts. Traditional Social Economy (of the people who help themselves) is characterized, at least in theory, by the participation of vulnerable groups as associates with equal decisional rights and less as employees subordinated to an employer. It is mainly this third case analysed that requires the development of initiative and entrepreneurial spirit and taking on the responsibility for the development policies of the organization, to a great extent then volunteer work or employment working contracts. As J.S. Mill mentioned, the classical model proposed by Social Economy *"is not that which can exist between a capitalist as chief, and work-people without a voice in the management, but the association of the labourers themselves on terms of equality, collectively owning the capital with which they carry on their operations, and working under managers elected and removable by themselves."* (Mill, 1909, p. paragraph IV.7.21)

The third situation analysed is a theoretical situation. In reality, organizations mix the three kinds of stakeholders' engagement mentioned, prioritising one of them that they consider more suitable for their vision, mission and values. Considering that volunteer work only cannot satisfy all the needs of the people involved, the income cashed in as dividends do not contribute to the pension and other social security benefits, as well as the fact that dividends are allocated annually whereas salaries are paid monthly, I consider that the interests of disadvantaged groups involved in the activity performed by the social economy organizations would be best protected through a mixed system of involvement that produces an income paid both as salaries and dividends. Taking into account the high degree of risk and the need for capitalization of these organizations as well as their social commitment, the percentage of profit reserved for risk coverage, investments and other social purposes could be higher than in the case of trading companies (e.g.: 50%), but its rate should depend on the development strategy chosen and the will of the members of the organization following the principle of each person is a vote. In my opinion, it should not be imposed by the Law and the maximum percentage could be also much less than 90% without altering the spirit of Social Economy.

4. Conclusions

Law no. 219/2015 on Social Economy addresses the groups threatened by poverty and social exclusion as defined by the enforcement guidelines. The document identifies 18 such categories. (art. 2, HG 585/2016) According to The National Institute of Statistics, the population exposed to the risk of poverty and social exclusion in 2014 was 39.5%. According to The Country Report Romania 2015, *paid employment does not always safeguard against this risk.* (European Commission, 2015, p. 59) The data supplied by Eurostat for 2015 confirm that 18.8% of the Romanian employees still have "an equivalized disposable income below the risk-of-poverty threshold." Among children, the percentage of those exposed to poverty is 51% (European Parliament, 2015) and *"the poverty risk for children in rural environment was considered three times higher than in the urban area."* (Bădescu, Petre, Angi, Buzducea, & Gazibar, 2014, p. 84) Based on these numbers, Romania seems to have a large percentage of its population (39,5% adults and 51% children) as part of "a vulnerable groups". In this situation, the need for a wider national strategy dedicated to avoiding poverty risk at the level of the entire population, is vital. The approach should be global, should include multiple social

and economic layers. The Government's Anti-Poverty package is a significant step in this direction but because it is too recent, the impact of these measures will be subject for future articles and debates. Social Economy can play an important role in this context, as long as the principle of self-aid is promoted instead of a policy of inefficient governmental social transfers. Many entrepreneurs, companies and NGOs complain about the lack of involvement and interest of socially assisted categories in proactive activities and blame the social security system which encourages passivity rather than participative spirit. That is why I consider that the measures for the stimulation of social economy must target less subventions and allocation of funds and more fiscal facilities granted on short and medium term which become effective only if the economic activity truly develops and it is productive (e.g.: decrease of income tax/ tax on profit, decrease of taxes for the salaries of the employed persons who are part of a disadvantaged category and so on).

The theorists and practitioners of Social Economy insisted over the time on the major importance the education has in fighting against poverty; an education which grants practical competencies and the capacity to adapt to market requirements. I consider that efficient investments in education are the best way to fight against poverty and social exclusion and the best help the government can give to Social Economy or the Social Economy can offer itself for its own future.

Additionally, from its early beginnings (19th century), Social Economy drew the attention on the importance of practising the economy by following some moral principles and values: fair trade, solidarity, involvement, transparency of the organizations which became true learning centres for those who wanted to participate or set-up similar cooperatives. The moral aspect is no longer an explicit part of the definition of Social Economy. The Ethics field is not entirely covered by "social aims" or "activities with social features". The current economic and even political crisis seems to have its origins in a moral crisis. Often, "work" is not seen as an ethic value in itself anymore and the wish to obtain an income is not always correlated with the need of making a constant effort in this regard. Following moral and even legal rules is not always seen as an obligation or necessity. Communities have lost their cohesion, the society has become atomized. But the atomisation of our society seems to have not only social, but also moral reasons residing in an inconsistent axiological individual system. The critical spirit seems many times excessive, but the capacity to propose solutions is often diminished. Social economy cannot be separated from promoting the moral values which turn into social conduct norms.

In my opinion, in the absence of economic efficiency achieved by respecting the self-aid condition and by promoting and obeying ethic rules, Social Economy will not be sustainable and will not succeed to diminish the risk of poverty for disadvantaged groups on medium and long term, regardless of the financial aid that national and international bodies will assign to this field.

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6. References

- [1] Bădescu, G., Petre, N., Angi, D., Buzducea, D., Gazibar, M.. *Bunăstarea copilului din mediul rural 2014*. W. V. Romania, Ed. Risoprint. Cluj-Napoca. 2014 retrieved from <http://www.worldvision.ro/bunastare2014.pdf>

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- [2] Chamber of Deputies. May 28th 2016. Retrieved from <http://www.cdep.ro/proiecte/2014/300/30/5/em486.pdf>
- [3] Campos, J. L. and Ávila, R. C.. The Social economy in the European Union. *International Centre of Research and Information on the Public, Social and Cooperative Economy (CIRIEC)*. Bruxelles: European Economic and Social Committee. 2012. Retrieved from <http://www.eesc.europa.eu/resources/docs/qe-30-12-790-en-c.pdf>
- [4] Defourny, J. and Nyssens, M.. The EMES approach of social enterprise in a comparative perspective. *EMES Working Paper 12/03*. 2012. Retrieved from http://www.emes.net/site/wp-content/uploads/EMES-WP-12-03_Defourny-Nyssens.pdf
- [5] European Commission. Country Report Romania 2015. Including an In-Depth Review on the prevention and correction of macroeconomic imbalances. Bruxelles. 2015. Retrieved from http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_romania_en.pdf
- [6] European Parliament. One in four children at risk of poverty in Europe. 2015. Retrieved from http://www.europarl.europa.eu/pdfs/news/public/story/20151116STO02883/20151116STO02883_en.pdf
- [7] Guillot, J. D.. One in four children at risk of poverty in Europe. *European Parliament Press Service*. Bruxelles. November 2015, Retrieved from http://www.europarl.europa.eu/pdfs/news/public/story/20151116STO02883/20151116STO02883_en.pdf
- [8] Law no. 219 regarding the social economy (2015, July 23), Official Gazette no. 561/ July 28th 2015 (Romanian Parliament). Retrieved from <http://legislatie.just.ro/Public/DetaliiDocument/170086>
- [9] Law no. 292 on Social Assistance from Official Gazette no. 905 of December 20th 2011 (Romanian Parliament). Retrieved from <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L292-2011.pdf>
- [10] Mill, J. S.. Principles of Political Economy with some of their Applications to Social Philosophy, 7th ed., Vol *Library of Economics and Liberty*, 2016.
- [11] Vol *Library of Economics and Liberty*, Vol *Library of Economics and Liberty*, Vol. *Library of Economics and Liberty*, 1909.