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The Greek Law 4430/2016 on Social and Solidarity Economy: Breakthroughs and Backdrops

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Abstract

Herein, we present the key provisions of the currently adopted Greek Law 4430/2016 on Social and Solidarity Economy. Pertaining a general abolishment of the previous regulatory framework under Law 4019/2011, the new legislation is attempting to redefine the boundaries and inner constitution of Social and Solidarity Economy in Greece, to reform the public scrutiny context over existing Social Cooperative Enterprises, to introduce new social business vehicles, such as the Workers' Cooperatives, to enhance access to public finance for related organizations and empower the public bureaucracy regulating the sector. Our discussion acknowledges a peculiar equilibrium of breakthroughs and backdrops, whose shifts are expected to shape the field of social economy in Greece in times of intense fiscal and economic duress.

The Legacy of Law 4019/2011

A basic characteristic of Law 4430/2016 on Social and Solidarity Economy is that it abolishes Articles 1 to 17 of the Law 4019/2011 on Social Economy and Social Entrepreneurship (Art 35, §1):

- Art 1. Definitions
- Art 2. Social Cooperative Enterprise
- Art 3. Establishment of the Social Cooperative Enterprise
- Art 4. Relations of the members to the Social Cooperative Enterprise
- Art 5. General Assembly
- Art 6. Managing Committee
- Art 7. Distribution of Profits
- Art 8. Resources
- Art 9. Financing Tools
- Art 10. Economic Incentives and Support Measures for the Social Cooperative Enterprises
- Art 11. Audit and Sanctions on the Social Cooperative Enterprises
- Art 12. Cooperation Networks, Collaboration Ability and Contractual Agreements
- Art 13. Dissolution and Liquidation
- Art 14. Social Economy General Registry
- Art 15. Coordinating Authority for Development Policies on Social Economy
- Art 16. Social Reference Public Contracts
- Art 17. Enabling Provisions

It's evident that Legislators put forth a generalized reform of the existing regulatory framework on social economy and social entrepreneurship in Greece. The way the social economy and social business market has functioned so far and the dynamics that Law 4019/2011 allowed to emerge have already been discussed in great length and considerable depth.

Basic elements of this discourse, where a wider consensus is documented, are that Law 4019/2011:

- Formally introduced the concepts of social economy and social entrepreneurship in Greece and favored the recognition potentials of their main actors: in considerable extend regarding the Social Cooperative Enterprises and actually not at all when considering all other social economy constituents as such: cooperatives, associations, foundations, mutual funds and non-profit companies.
- It laid the ground for the formation of a generalized anticipation that access to European Union financing is closer, through the Social Cooperative Enterprise vehicle.
- It allowed for the establishment of over one thousand two hundred Social Cooperative Enterprises, posing core questions on the incentives and calculations behind this intriguing market response.

- It hasn’t contributed to the rendering of any noteworthy, positive, verifiable and sustainable social impact, through the operation of the existing Social Cooperative Enterprises to an extent meaningful when taking into account the regulatory burden undertaken and the resources dedicated to this exercise by both the European Union and Greece.
- It was utilized by citizens as an emergency response business vehicle, involving intense tax-evasion, illegal and atypical labor and insurance contributions evasion.
- It has not at all contributed to the creation of social enterprises by notable charitable donors, foundations, corporate philanthropy actors, capital aggregators or regular businesses (Νασιούλας, 2012, Nasioulas, 2012, CIRIEC, 2012, Nasioulas, 2013, Νασιούλας, 2013, Nasioulas & Mavoeidis, 2013, Γεώρμας, 2014).

Law 4430/2016 on Social and Solidarity Economy

CHAPTER ONE. PREAMBLE

Art 1. Scope

In Art 1, the concept of Solidarity Economy is introduced in the Greek legislative order. Included in the legislative scope are the concepts of:

- Productive Self-Management Projects («Παραγωγικά εγχειρήματα αυτοδιαχείρισης»)
- Collective Social Entrepreneurship («Συλλογική κοινωνική επιχειρηματικότητα»)
- Social and Solidarity Economy Organizations («Φορείς Κοινωνικής και Αλληλέγγυας Οικονομίας»).

Art 2. Definitions

"*The Social and Solidarity Economy is defined as the sum of economic activities which are based on an alternative form of organization of the relations of production, distribution, consumption and re-investment, founded on the principles of democracy, equality, solidarity, cooperation along with the respect towards man and the environment*" (*§*1).

This definition is more sound and clearer in comparison to that adopted by Law 4019/2011; it reflects the conceptualization formulated in the greater extend of the bibliography, but does not include two critical attributes, for which a generalized consensus is featured in the scientific discourse:

- No direct reference is made to "private economic activities": to the fact that the social economy is private in nature and does not represent an initiative of the public sector or a version of public policy. This deficit is remedied with the provisions of Art 3, §1, στστ, whereby a Social and Solidarity Economy Organization is not allowed to "*have been founded or managed directly or indirectly by public law juridical entities or organizations of self-government of the first of second level or by other juridical entities of the greater public sector*".
- No direct reference is being made to "relations of investment"
- Or to the principle of "philanthropy"
- Along, no distinction is being made between the two major components of the social economy: the corporate and the non-profit (Νασιούλας 2012, Nasioulas, 2012, CIRIEC, 2012, Νασιούλας 2013).

Various other definitions follow, but the Law 4430/2016 does not feature a definition of "collective social entrepreneurship" (Art 1§2); it does not define social entrepreneurship per se nor does it provide a definition of social enterprise. The absence of social entrepreneurship and social business is very striking in the legal text.

Regarded as very positive and useful are the definitions given for collective benefit with emphasis on equal production relations (§2) and the distinction made in relation to social benefit, for which the importance of social innovation is pronounced in the text (§3). These distinctions provide the methodological basis for the recognition of activities bearing benefits between members of a single organization and those initiatives that are undertaken by members of an organization for the benefit of third parties. It has already been discussed that the definition of "charitable" is embedded in the national juridical context; in contradiction to the novelty of Law 4019/2011 introducing the term "collective purpose" which raised not few technical and conceptual issues (Νασιούλας, 2013).

It could be regarded as a serious omission that no direct reference is being made to public causes of the social economy, restricting the recognition scope to collective and social only. Social economy organization and the corporate ones share public causes with the state. This is the case of general interest services. As social economy institutions share social causes with conventional corporations (Νασιούλας, 2012, CIRIEC, 2012).

A very promising contribution is being made with the definition of sustainable development and the stress on intergenerational and multicultural issues (§5), both considered crucial for social reproduction in Greece, in light of the intense economic, fiscal and insurance crisis along with the demographic upheaval taking place due to the influx of voluminous populations of refugees and illegal migrants for some time now.

A direct reference to fair trade is introduced in the Greek juridical context as is equally beneficial along with that made to innovative and free digital goods and services, bringing to the fore the practices of what we have coined as the Digital Social Economy (Nasioulas & Maris, 2011).

By defining social general interest services and stressing that state support does not supplant state obligations, Law 4430/2016 bridges domestic dynamics of the social economy with the wider debate on the reformation and enrichment of supply and demand lines for general interest services in the European level.

Economic migrants, refugees and asylum seekers, for as long their file is pending, are enumerated as also belonging to special population groups which merit support and are given the right to participate in social economy initiatives, in the context of the rights provided to them by formal law and international conventions (§8).

"Social impact is the collective and social benefit produced by the activity of a Social and Solidarity Economy Organization, as defined in Art 3, in regard to economic, environmental and social terms in the local societies" (§9). Having already defined collective and social benefit renders the definition of social impact sound and the direct inclusion of the term in the text can be considered a breakthrough. A potential unfolding of the term could involve the elaboration of the following components of social impact:

- It is intended and not subsequent (Attribution).
- It is positive in greater extent than negative and thus there exists the ability to document any eventual negative social impact (Positive Impact).
- It is laid down as such in the Articles of Association (Statutory).
- It is sustainable, with the major part of the resources that sustain it coming from the profit making activities (in case of corporations) and contributions (in case of non-profits) (Institutional Sustainability) (Νασιούλας, 2013, COM, 2014).

Finally, but not of least value is the introduction of a Social Impact Measurement Tool, whose methodological architecture, span of coverage and terms of use will eventually provide for the basis of its evaluation.

CHAPTER TWO. SOCIAL AND SOLIDARITY ECONOMY ORGANIZATIONS

Art 3. Concept

§1 enumerates as Social and Solidarity Economy Organizations the following:

- The Social Cooperative Enterprises (re) introduced herein
- The Limited Liability Social Enterprises of Law 2716/1999
- The Workers' Cooperatives introduced herein and
- Under given prerequisites, the Agricultural Cooperatives of Law 4384/2016, Civil Cooperatives of Law 1667/1986 and Civil Companies of Art 741 of the Civil Code.

All the above are corporations, according to the national-accounting provisions at force (Νασιούλας, 2012, 2013).

The prerequisites of eligibility of an entity for recognition as a Social and Solidarity Economy Organization are as follows:

1. It is a non single-member juridical entity,
2. It has acquired juridical personality,
3. It employs activities of collective and social benefit, as provided in §2 and §3 of Art 2,
4. It caters for the information and participation of its members and employs a democratic system of decision-making, according to the principle 'one member, one vote', irrespectively of the contribution of each member,
5. Its Articles of Association foresee restriction in distribution (authors note: "of profit" – the wording is not included in the official text, possibly due to typographical error) as follows:
   i. a minimum 5% for reserve formation,

   ii. a maximum of 35% is distributed to the employees, unless the 2/3 of the General Assembly members decide for its allocation to activities of iii below,

   iii. the remaining percentage is allocated for the creation of new employment positions and the expansion of its productive activity.

6. It employs a system of remuneration convergence, according to which the top net salary does not surpass the low by three times, unless the 2/3 of the General Assembly members decide differently.
7. It aims at the empowerment of its economic activities and the maximization of the social benefit produced through the horizontal and equal networking with other Social and Solidarity Economy Organizations.
8. Is not established or managed directly or indirectly by public law juridical entities or local self-government organizations of the first or second grad or other juridical personalities of the greater public sector.

The above laid prescriptions for the eligibility of any given entity to be considered as a Social and Solidarity Economy Organization several conclusions can be raised:

FIRST. The Law 4430/2016 is expanding the regulatory coverage towards the enterprise sector of the social economy, towards including other corporate entities which have for long been its traditional pillars: agricultural and civil cooperatives, though with strict prerequisites.

SECOND. Criterion for the recognition of an entity as a Social and Solidarity Economy Organization is the acquisition of juridical personality. This is a negative characteristic of the Law. The Legislator is unaware of the existence of social economy organizations which do not possess juridical personality. This is provided by the Art 107 of the Greek Civil Code. A very striking example is some private law, mutual insurance funds in Greece , which since the beginning of the 20th century have pioneered as the most dynamic actors of the domestic social economy and acted as a credible pillar of liberalizations and organizational innovation in the industry of social insurance, dominated by the state.

This is even more striking when taking into account that the public insurance system in Greece has defaulted, the income distributed by insurance benefits and pensions is collapsing and the services provided by state insurance organizations are deteriorating, while the Greek Legislator is denying the (insurance) organizations of the social economy the opportunity to deploy their different, democratic, self-managed, inclusive and viable logic model into a domestic market so needy of it.

THIRD. We consider to be a grave theoretical and technical failure of Law 4430/2016 that it introduces criteria for the eligibility of agricultural and civil cooperatives as entities of the social economy. Specifically these juridical types are self-righteously and without any moderation or conditionality belonging to the social economy. This is a baseline throughout the expanse of domestic and international bibliography.

By introducing conditionalities for agricultural and civil cooperatives to be recognized as social economy organizations, the Legislator is practically asking them to turn into social enterprises. in fact, Law 4430/2016 confuses Social and Solidarity Economy Organizations introduced therein with social enterprises.

Social businesses can undertake the cooperative organizational type; but cooperatives are not necessarily social businesses. Nor is it grounded in any plausible theory to oblige any existing cooperative to amend its statute so as to be recognized as a social economy organization.

FOURTH. The Law 4430/2016 excludes non-profits out of the Social and Solidarity Economy. Non-profit entities are by Law restricted not to systematically produce or distribute profits. Thus it is not foreseen for them to form reserves out of profits or earmark any profits for distribution to employees. Nevertheless these are the requirements set by Art 3 §1δ as discussed above.

Entities abiding by Art 3 §1δ are de facto (social) enterprises. Identifying them as Social and Solidarity Economy Organizations is a major failure of the Law 4430/2016, leading to a confusion between the concept of Social and Solidarity Economy with social entrepreneurship. In contrast to the dominant theoretical context describing social economy as comprised by business and non-profit entities along.

Thus, it can be said that Law 4430/2016 erroneously contains the juridical expanse of the social economy by excluding the private non-profit sector. It's not hard to understand that such a provision is highly toxic since the financing dynamism of the social economy stems from its two protagonists: the mutual insurance funds and charitable foundations, both non-profit entities de jure and de facto.

To its abolishment, the Law 4019/2011 provided for a distinction between social business entities and other entities, not excluding non-profits. This methodology was unfortunately not replicated ore even so elaborated in the Law 4430/2016. Such a backdrop could be remedied by introducing a concept of "social enterprise" and the explicit inclusion of non-profits in the scope of the Social and Solidarity Economy as conceptualized therein.

FIFTH. At the same time the Law 4430/2016 does not provide a fundamental definition of social entrepreneurship or the term "collective social entrepreneurship" given in Art 1 and found nowhere else in the text. In fact, the total absence of the terms "social enterprise" and "social entrepreneurship" is very striking.

No confidence can emerge from the already well-documented distortions of competition, the waste and mismanagement of European Union and national public funds, the non-equal provided support and the active exclusion of certain entities by state aid. Such failures in the social economy sector, if to be continued uninterrupted, will increase the very negative consequences of ill lawmaking. Indeed, we have persistently advocated in favor of introducing the definition of "social business" as provided by the European Commission's SOCIAL BUSINESS INITIATIVE (Νασιούλας, 2013, Nasioulas & Mavroeidis, 2013):

"*A social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.*

The Commission uses the term 'social enterprise' to cover the following types of business:

Those for who the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation.

Those where profits are mainly reinvested with a view to achieving this social objective.

Those where the method of organisation or ownership system reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice" (COM. Social Business Initiative, 2011, 2-3).

SIXTH. Restrictions upon profit-distribution applying to agricultural or civil cooperatives are a counter-incentive for their members, whose initial statutory purpose was the pursuit of collective and not social benefit per se.

SEVENTH. The introduction of a system of remuneration convergence and the elasticity in its internal application is a very positive contribution of the Law 4430/2016. It is expected to promote wage justice, to channel the added valued produced more fairly to the benefit of employees and deter the abusive ownership of proportionally unequal benefit by the few or only one individual among the members of the Social and Solidarity Economy Organizations.

EIGHTH. Provided by §3, the Social and Solidarity Economy Organization upkeeps a Volunteers' Registry for those voluntarily assisting the statutory activities of the entity. Art 8, §1 provides for an exemption of the Organization off insurance contribution for the volunteers and this is expected to favor the participation of volunteers. Nevertheless it might as well act as an incentive for illegal or clandestine employment through an abuse of the volunteer capacity.

As already discussed in great length (Nasioulas and Mavoeidis, 2013), the Law 4019/2011 had also allowed for incentives that eventually contributed to the maximization of abuses and clandestine employment of member of the therein called Social Cooperative Enterprises. The Law 4430/2016 attempts to apply some restrictions into this trend through Art 17 §9.

NINTH. §4 provides that: "*the Social and Solidarity Economy Organization is obliged, from the second fiscal year, to present annual wage expenses equal at least to the 25% of its turnover of the previous fiscal year. This obligation applies to Organizations with an annual turnover and income from subsidies of the previous fiscal year not exceeding the 300% of the annual wage costs of a full-time employee, calculated according to the stipulated minimum wage without benefits*".

This provision can be considered as restrictive of the economic and managerial liberty of the eligible organizations. Nevertheless the room left allows for ill-efficient entities to be exempt of any burden or obligation. The basic positive contribution of this provision is that active counter-incentives are stipulated for the abuses of capitalization.

CHAPTER C. SUPPORT MEASURES

Art 5. Participation of the Social and Solidarity Economy Organizations in support measures

With §3, public authorities can make available movable and immovable property to Social and Solidarity Economy Organizations for the enhancement of their collective and social benefit activities. The objective criteria are to be laid down with a common Ministerial Decision.

Issues of preferential treatment and sound competition could be discusses once the specifics are published. Throughout the ongoing fiscal consolidation in Greece, a vast array of central and municipal public organizations and enterprises were abolished and a ban on the establishment of new ones is at force. The provisions of this Article create an even demanding context upon the procedures introduced by the Law 4430/2016 on identifying eligible organizations to be benefited by this Article. And this in turn leads the discussion back to the failures and exclusions from which the legislative text suffers.

CHAPTER D. SOCIAL COOPERATIVE ENTERPRISES AND WORKERS' COOPERATIVES

Art 14. Social Cooperative Enterprises

With §2, the types of Social Cooperative Enterprises at first introduced by Law 4019/2011 are deduced into two, taking into account the abolishment of the "Care" type:

- Social Cooperative Enterprises for the Integration of Vulnerable and Special Groups
- Social Cooperative Enterprises of Collective and Social Benefit.

In comparison to the Law 4019/2011 which practically allowed for any kind of activity, there is herein introduced a restriction to sustainable development activities and provision of general interest social services only.

§ 8 stipulates that the percentage of the mixed income derived of public entities is not allowed to surpass the 65% of the gross income of the Social Cooperative Enterprise, calculated in a three-year period. This is a provision restricting the exclusive dependency of social enterprises by public funding; it aims at inculcating the principle of economic viability and independency and deter phenomena of substitution of public organizations by social economy ones.

All beneficial provisions for individuals belonging to vulnerable groups of the population remain (Art 34, 2).

Art 18 introduces the obligation of employing members of the cooperative at a minimum of 60% of the sum of employees, including non-members. This provision is in tune with the effort of ensuring jobs for members; it acts as an incentive for becoming a member of the cooperative when being employed by it; it can finally be said that it renders Social Cooperative Enterprises of Law 4430/2016 active producers of democratic employment.

CHAPTER E. WORKERS' COOPERATIVES

The 4430/2016 introduces an innovative business type, the Workers' Cooperative; a form of civil cooperative with the explicit statutory purpose of collective benefit. Only physical persons can become its member (Art 24, §1). A restriction applies whereas an individual can only take part into one Workers' Cooperative (Art 24, §2), which is set up by at least three natural persons (A25, §2).

Members are enrolled and insured in the Insurance Organization of Freelance Professionals ("OAEE" in Greek). Insured members are not subject to any other insurance obligation stemming from any other capacity as professionals or via a personal activity. The abovementioned insurance obligation is the only one foreseen and it absolves members from any other previous or forthcoming obligation. The insurance expenses sit with the Workers' Cooperative and are deductible by its income (A26, §6, β).

The insurance obligations rest with the cooperative and this is could act as a counter incentive for those presiding, since it becomes their personal obligation also. Failure of members to serve their insurance obligations is directly charged to the member in charge.

The number of non-member employees is restricted to the 25% of the total members, with an option of 50% in special, justified, cases (Art 28, §2).

Art 31, reserves the same benefits for Workers' Cooperatives' members as is the case with Social Cooperative Enterprises, when they belong to vulnerable social groups and receive insurance or other welfare benefits at the same time (Art 34, 2).

CHAPTER F. TRANSITIONAL PROVISIONS

Art 35. Transitional Provisions

With the Law entering into force, the existing Social Cooperative Entities under the Law 4019/2011, types of Collective - Productive Purpose and Care can transform into Social Cooperative Enterprises of Collective and Social Benefit or into Workers' Cooperatives (§2).

The main criterion for their recognition will be the pursuit of goals related to viable development and general interest social services provision. It rests with the Social Economy General Registry to set the standards. The official procedures will judge the extent to which existing social enterprises will be forced to switch into Worker's Cooperatives, having said that the later are subject to strict insurance obligations of their members in contrast with Social Cooperative Enterprises.

Conclusions

1. The Law 4430/2016 introduces theoretically unfounded regulatory toxic provisions against non-profits, organizations without juridical personality, cooperatives and especially mutual funds and charitable foundations, by excluding them from its scope and support measures foreseen.

2. It expands the regulatory interest towards part of the business sector.

3. It erroneously confuses the concept of Social and Solidarity Economy with activities featuring a business character only and presented only by entities which can be regarded as social enterprises.

4. It does not specify the meaning of collective social entrepreneurship, social entrepreneurship or social enterprise nor does it adopt the European Commission's Social Business Initiative definition.

5. Its innovative and positive contributions include the sounder description of collective and social benefit, the social impact measurement, the introduction of a system of remuneration convergence, a system of channeling income from business activity into employees' remuneration and the introduction of incentives for employees to become members of the social cooperatives.

7. Law 4430/2016 introduces an innovative type: the Workers' Cooperative. Insurance obligations for its members discern it from the existing Social Cooperative Enterprises with which they resemble in many other aspects. Taking into account the extremely few positive incentives provided in comparison with other juridical types, it remains to be seen whether it introduction is linked to the clean-up of the existing population of Social Cooperative Enterprises.

8. Critical importance lies with the extent of the conditionalities to be set for the concession of state property to Social and Solidarity Economy Organizations.

9. Of equal importance will be the practical procedure to be followed by the Social Economy General Registry for checking the dedication of entities to sustainable development or provision of general interest social services, which constitute the only allowed activities thereof.

10. The Law 4430/2016 is characterized by strict and intense public intervention into market issues and trajectories of the Social and Solidarity Economy Organizations.

11. Striking is the fact that the legal text does not make any direct reference to social entrepreneurship or social enterprises, but in one and only one instance in the introductory part.

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