Economic Analysis of Law in European Legal Scholarship 8

Georg Miribung

The Agricultural Cooperative in the Framework of the European Cooperative Society

Discussing and Comparing Issues of Cooperative Governance and Finance in Italy and Austria

Springer

Economic Analysis of Law in European Legal Scholarship

Volume 8

The purpose of this book series is to publish high quality volumes in the growing field of law and economics research in Europe, from a comprehensive theoretical and practical vantage point. In particular, the series will place great emphasis on foundational and theoretical aspects of economic analysis of law and on interdisciplinary approaches in European Legal Scholarship. Following Nobel laureate Ronald Coase's famous essay "The Problem of Social Cost" (1960) fifty years ago law and economics has become the lingua franca of American jurisprudence. In recent decades, law and economics has also gained widespread popularity in Europe and its influence on Legal Scholarship is growing significantly.

Therefore, the economic analysis of law in European Legal Scholarship academic book series illustrates how law and economics is developing in Europe and what opportunities and problems – both in general and in specific legal fields – are associated with this approach within the legal traditions of European countries. Rather than further exploring economic analysis as such, the main focus of this series lies on the implementation of economic methods in legislation and legal adjudication from a European perspective. It takes into account the particular challenges the European legal systems face. Volumes will address law and economics research in Europe from a critical and comparative viewpoint. The studies in this series are strong and bold narratives of the development of economic analysis of law in European Legal Scholarship. Some are suitable for a very broad readership.

Contributions in this series primarily come from scholars in Europe. The purpose is to provide the next generation of European lawyers with the models and skills needed to understand and improve the economic analysis of law in their own legal field. The series includes monographs focusing on specific topics as well as collections of essays covering specific themes.

More information about this series at http://www.springer.com/series/11927

Georg Miribung

The Agricultural Cooperative in the Framework of the European Cooperative Society

Discussing and Comparing Issues of Cooperative Governance and Finance in Italy and Austria

Springer

Georg Miribung
Faculty of Science and Technology
Free University of Bozen-Bolzano
Bozen, Italy

Economic Analysis of Law in European Legal Scholarship
ISBN 978-3-030-44153-1 ISBN 978-3-030-44154-8 (eBook)
https://doi.org/10.1007/978-3-030-44154-8

This Springer imprint is published by the registered company Springer Nature Switzerland AG.
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

For Tobias and Klara

Preface

This study is an important component of my academic path, which is linked mainly to the University of Innsbruck in Austria and the Free University of Bozen-Bolzano in Italy. Accordingly, it will come as no surprise that this transnational orientation is reflected in this work. Yet, whereas the research concerning cooperatives was mainly accomplished in Innsbruck, the aspects concerning agricultural law are the results from my research done in Bozen-Bolzano. My interest in carrying out this research was fuelled by the fact that, in the regions where the mentioned universities are located, agricultural cooperatives play an essential role in local development and economic prosperity. In regard to this subject matter, other specific studies have been previously conducted, using methods concerning the sociology of law.[1] The insights obtained from that research have helped to better conceptualise this study and to better discuss the results obtained.

As some readers might know, Bozen-Bolzano is the provincial capital of South Tyrol, a region in the very north of Italy close to Austria, with which it has cultural ties. The chosen approach for this study, which is based on comparative legal techniques, tries to reflect this reality. To do so, it compares legal norms from Italy with those from Austria and attempts to evaluate their differences. This comparison is embedded in a pre-determined legal structure, one pre-determined by European law. Thus, this study considers three legal systems: the European, as well as the Italian and Austrian legal systems. For evaluating those legal norms, this study uses an economic analysis of law. In this way, it takes an interdisciplinary approach.

Doing research on agricultural law is, at least for me, interesting and complex because it encompasses, due to the regulated object, i.e., agriculture, not only public and private law but also a phenomenon whose essence is based on nature. From this perspective, one can affirm that agriculture is the cultivation of nature. Interestingly, whereas all over the world this social and natural phenomenon is similar, if not equal, the juridical approach to it often differs. This is demonstrated by the legal

[1] Miribung (2016).

systems considered in this study and by how they conceive agriculture and, with it, agricultural law. Yet, the study also shows that the differences are often more formal than substantial. Consequently, one of this study's aims is to compare various national and EU norms of agricultural law. This is important because little research has been done on this topic, in particular concerning the Italian and Austrian legal systems. Similarly, it is generally acknowledged that there is little research on cooperative law. This is even truer if one considers comparative legal research. In general, one can affirm, as Professor *Antonio Fici*[2] states, that "comparative legal studies are necessary at least to increase cooperative visibility."[3] One aim of this study is to contribute to this necessity.

That agricultural cooperatives are part of a specific market regulated at the European Union level required a combination of legal methods to develop specific insights into the functioning of agricultural cooperatives. To make comparisons viable, it was necessary to think about what a cooperative might be, primarily from a legal perspective. To this end, I used, as guidelines to define what a cooperative is, newly developed principles that specifically deal with cooperative identity.[4] It is probably the mixture of scientific methods and legal topics, i.e., comparative law and an economic analysis of law, agricultural law and cooperative law, that produces this study's uniqueness.

The period of time I needed to conduct this study and publish it with Springer Publishing House was both professionally and privately challenging and demanding. It was full of joy, especially as my children were in their early years, but also determined by change. Ultimately, this made life, as such, more visible and perceivable. During this period, people came, people went, others entered and then left, like on a ferry. All of them gave, in their unique ways, their support. To all of them—family, friends and acquaintances—I want to express my especial gratitude. One source of particular motivation, especially in moments when things were difficult, came from my children, who due to their simple existence helped to keep me motivated.

This study could not have been accomplished without financial support. In this regard, I am very grateful to *Heiner Nicolussi-Leck*, former president of the administrative organ of the Raiffeisen Federation South Tyrol (RVS), *Paul Gasser* General Manager of RVS, and *Zenone Giacomuzzi* General Manager of Raiffeisen Landesbank Bozen-Bolzano, for their strong financial support. I would like to express my gratitude for their cooperation and for all the opportunities they offered me.

Last, but definitely not least, I am especially grateful to my academic teachers. In Innsbruck, the development of this study was mentored by Professor emeritus *Bernhard Eccher* and Professor *Andreas Schwartze*: thank you for your wise counsel and the sympathetic and valuable guidance. In Bozen-Bolzano, I had the opportunity

[2]University of Molise (Italy).

[3]See Fici (2013), p. 11.

[4]Principles on European Cooperative Law (PECOL).

to be counselled by Professor emeritus *Alberto Germanò*, who, even though not affiliated with my university, critically assessed my findings and helped me to reconsider some aspects, which I otherwise—probably—would not have noticed. I also offer my thanks to Professor *Alberto Germanò*.

I dedicate this study to my children, Tobias and Klara.

Bozen, Italy Georg Miribung

References

Fici A (2013) Pan-European Cooperative Law: where do we stand? SSRN Electron J:1–12. https://doi.org/10.2139/ssrn.2198283

Miribung G (2016) Genossenschaftliche Netzwerke in Südtirol - Versuch einer rechtssoziologischen Betrachtung. In: Ganner M, Voithofer C, Dahlvik J, Fritsche A, Fuchs W, Mayrhofer H, Pohn-Weidinger A (eds) Rechtstatsachenforschung - heute. Tagungsband 2016: Recht & Gesellschaft: Forschungsstand, Perspektiven, Zukunft. Innsbruck University Press, Innsbruck, pp 179–218

Contents

Chapter 1
Research Background

1.1 Aim of This Study

The EU introduced the European Cooperative Society (SCE), i.e., a cooperative with cross-border activities[1] that aims to adapt cooperatives' production structures to the Community dimension, so that, as "groups of companies from different member states",[2] they are not limited solely to meeting local needs,[3] but also those of members living or situated in different EU member states.

The legislative act regulating SCEs, i.e., Council Regulation (EC) No. 1435/2003, of 22 July 2003, on the Statute for a European Cooperative Society (SCE) (henceforth SCE-R[4]), is part of other regulations, such as the Regulation on the Statute for a European company (SE-R)[5] or the proposed Regulation on the Statute for a European Private Company (SPE-R),[6] which draft specific forms of enterprises for capitalist enterprises (SE-R) and small and medium-sized enterprises (SPE-R) in order to provide interested parties with better access to the internal market and, in particular, to promote their cross-border activities. In principle, all these types of companies follow a similar pattern: a strict framework outlined under EU law is combined with the obligation and the possibility of adapting these types of companies specifically to the particular needs of the member states. In contrast to these

[1] See recitals 6, 11 and 12 SCE-R.

[2] See recital 3 SCE-R.

[3] See recital 2 SCE-R.

[4] See OJ L 2003/207, 1.

[5] Council Regulation (EC) No. 2157/2001 of 8 October 2001on the Statute for a European company (SE). See OJ L 294/1.

[6] Proposal for a Council Regulation on the statute for a European private company, COM(2008) 396 final, 25.06.2008. See also the proposed directive on single-member private limited liability companies (2014/0120(COD).

G. Miribung, *The Agricultural Cooperative in the Framework of the European Cooperative Society*, Economic Analysis of Law in European Legal Scholarship 8,
https://doi.org/10.1007/978-3-030-44154-8_1

regulations, however, the SCE-R contains special rules for membership, which also give the SCE-R its special character. In fact, none of the other regulations has an equivalent set of rules.[7] The concept of members' needs is crucial to the whole discussion conducted in this research, like a sun surrounded by planets. As will be seen,[8] this concept can be described legally in different ways by also allowing a more stringent approach (as determined by Austrian law) or a more open approach (as determined by Italian law). However, the essence is the same and refers to meeting members' 'common economic, social and cultural needs and aspirations'.[9]

The aforementioned pattern implies that a cooperative with cross-border activities is regulated in a very complex way by a hierarchy of norms (as defined in the SCE-R) because national legislation and the SCE regulation's provisions apply.[10] This means that for this study's purposes, EU member states Italy and Austria's laws shall be presented in a comparative manner, particularly rules on cooperatives as laid down in the Italian Civil Code (CC) on one hand and in the Austrian Cooperative Act (*Genossenschaftsgesetz*, *GenG*) on the other. To varying degrees, these supplement the provisions contained in the SCE-R if cooperative activities are to be carried out across borders within an SCE's framework.

Since the European legislature has employed regulation as a technical means to create law, it is natural to assume that a consistent and coherent framework has been established, one which determines clear rights and duties that are applicable unilaterally throughout the entire European Union (EU).[11] However, as will be explained later,[12] this is only true to a certain extent. In fact, the SCE-R creates a framework of legal norms that strongly interfere with national legislation. As a result, instead of creating a single new type of business organisation, one can assume that there are at least as many different types of SCE as there are EU members. Interestingly, though, and this is what these analyses show, this is not entirely true.

As this study focuses on agricultural cooperatives, it is also necessary to examine whether these national legal systems contain specific legal provisions on agricultural cooperatives. This implies that it is necessary to assess how case law and doctrine conceive agricultural cooperatives.

It generally is proved that agricultural cooperatives are important tools to keep farmers competitive as they try to sell their products in an international market that increasingly has become globalised through the integration of various national markets. Several studies demonstrate the various dynamics of this market integration and its consequences for local farmers, who often operate as small (and not yet medium-sized) enterprises. These studies are typically anchored in the social

[7]See Alfandari and Piot (2004). Also consider Cusa (2004), p. 145 et seq.

[8]See Sects. 3.2 and 3.4.

[9]See the International Cooperative Alliance's definition of cooperatives. On this issue, see also Pönkä (2018).

[10]See Art. 8 SCE-R. On this issue, see Sect. 2.4.

[11]See Art. 288 TFEU (Treaty on the Functioning of the European Union).

[12]See Sect. 2.4.

sciences (including economics), but also in law. Many legal topics were addressed from a national perspective, but less from an international and European perspective.[13] Considering European law as it pertains to agricultural cooperatives is, as will be shown, central to the present work. This is, however, not so easy from a legal point of view, because it requires one to compare certain aspects of economic, commercial or private law, and—to complicate things further—agricultural law.

This is particularly challenging for at least two reasons. From a national point of view, agricultural law is generally conceptualised as a cross-cutting subject and is, therefore, not always easy to define as such. In addition, there are different schools of thought at the national level that adopt different approaches to determining what agriculture and agricultural law actually is.[14] It will be shown from a legal point of view that Italy and Austria—the two national legal systems considered here—have used both similar and different approaches to anchor cooperatives in law; the same applies to the notion of agriculture and the subject of agricultural law. This research may partially close this gap.

Thus, it is possible to set up agricultural cooperatives that operate across borders through SCEs. This **study's aim** is to analyse this particular type of SCE by comparing how specific questions arising in this context must be dealt with under the Italian and Austrian legal systems. In this study, the SCE-R is used, therefore, as a tool for the structured analysis of agricultural cooperatives' various aspects. However, a comparison is only meaningful if the results are made comparable on the basis of a previously defined standard. For this purpose, this study uses, on one hand, a cooperative model developed by European legal scholars that defines general guidelines on how a cooperative should function.[15] On the other hand, the results are presented in connection with economic considerations to discuss how efficient rules can be developed.[16] Again, the concept of members' needs is central because it helps differentiate cooperatives from other types of enterprises.

Basically, I use the SCE-R here to analyse agricultural cooperatives' specific problems.[17] Because of personal interest, I focus on governance and financial **issues**. The results ultimately (also) show how an agricultural cooperative can be used as an

[13]On these issues, see Van der Sangen (2012), p. 18 et seq.; Ecorys, Wageningen Economic Research (2018), p. 8 et seq.; Amat et al. (2019). See also COPA-COGECA (2015). For a specific literature analysis on legal aspects, see Van der Sangen (2012), 10 et seq.

[14]See Sect. 1.2.2.

[15]See Sect. 1.2.1.

[16]See Sect. 1.3.

[17]However, the SCE-R is not specifically designed as an agricultural cooperative which would not be reasonable and actually possible. In scope and application, it is of a general nature. Yet, it is stressed that the SCE seems more appropriate as a secondary cooperative: that is, a cooperative with other (primary) cooperatives (or companies) as its members. See Fici (2013b), p. 120. The latter are called primary cooperatives and mostly have natural persons as members. One specific argument that favours this assumption is the minimum capital required by Art. 3 para. 2 SCE-R, but this argument alone is not convincing enough. In fact, no specific reason exists to explain why an SCE primarily shall be considered a secondary cooperative.

SCE. These specific issues will be discussed in the second part of this research. But before we analyse these specific questions—which are particularly important to farmers who are part of a modern food production chain—we must clarify what an agricultural cooperative is. Accordingly, part one of this research defines *cooperative* (Sect. 3.2) and how it can be defined as an *agricultural cooperative* (Sects. 3.3 et seq.). This process requires an examination of the legal notions of agriculture, agricultural activities and agricultural entrepreneurs, i.e., farmers. Given the nature of cross-border activities, it also is appropriate to explain how an agricultural cooperative could carry out such activities and whether specific legal aspects exist and should be considered.

All these questions ultimately require a clear—or at least as clear as possible—determination of what shall be compared. Although such a comparison is not an easy undertaking, it is ultimately fruitful because it helps us better understand agricultural law as an area of law which, also because of its economic importance, is anchored in several legislative levels and therefore needs to interact in theory and practice between European requirements and national interests. The fact that national agricultural laws are conceived differently in various member states makes it difficult to develop/implement a uniform approach at the European level. These aspects become visible during this study.

It will become clear that the special character of an agricultural cooperative must be conceived from the national legal order, at least in principle. In fact, in this context, it can also be ascertained that the various legal terms that are relevant here—referring to agriculture, agricultural activity and/or the agricultural entrepreneur/farmer—are determined by national law. These terms, then, also determine the field of activity of an agricultural cooperative. Also in this context, European integration is visible; therefore, these (in principle) national terms relating to content, formalism and systematisation are strongly influenced by European law. Therefore, viewing an agricultural cooperative as an SCE means being aware of various legal rules that often contradict, or are at least inconsistent with, each other. The reasons for this are not only that the SCE-R refers strongly to national law, but also that agricultural law (as a cross-sectional matter) is a rather heterogeneous area of law. This complexity concerns national rules and becomes even stronger if one bears in mind that EU law can also be conceived as a common platform for different legal traditions and approaches.

This study aims to shed light on this jungle of norms. To achieve this, I first analyse and compare the legal frameworks that surround the process of establishing an SCE as an agricultural cooperative in Italy and Austria, then compare and evaluate differing national approaches concerning questions of cooperative governance and finance. As will be seen,[18] to better understand the Austrian legal system, it is also helpful to consider German cooperative law.[19] In addition, as many of the

[18]See Sect. 1.2.1.

[19]This is a common approach when analysing Austrian law in general, and commercial and cooperative law in particular. A reason for this approach is definitely the same language, but also

provisions contained in the SCE-R are similar, if not equal, to those of the SE-R,[20] comments interpreting the provisions of the SE-R are often used as a first indication for interpreting the provisions of the SCE-R. Furthermore, I focused on differences between SCEs and their national counterparts by exploring the content, form and limits of existing law.[21]

The research design is thus 'vertical', which implies a top-down study that accounts for EU law and its application in the member states. The research is also 'horizontal' in that the set of rules established by EU law in conjunction with the applicable national law is compared with the mere national rules (thus excluding the European perspective). In other words, this requires questioning: What law applies to an Italian/Austrian SCE compared with an Italian/Austrian cooperative? This leads us to the important observation that throughout the regulation, the law of the member state in which the SCE has its registered office applies. Thus, in order to simplify reading, this study generally uses the simple terms 'applicable national law' and 'relevant national law' instead of the commonly used formula, 'in accordance with the law of the Member State in which the SCE has its registered office'.

To determine which national law applies, the European legislatures that drafted the SCE-R had to decide whether an SCE should be linked to a legal system based on where the SCE was founded (incorporation theory) or on its headquarters' location (real seat theory). According to the former, the applicable law is determined by the country where the cooperative is registered. Thus, incorporation theory considers neither the nationality nor the legal residence of the SCE's members or the members of an SCE's organs. According to real seat theory, the applicable law is determined by the country in which the cooperative has its headquarters. Hence, the relevant factor is the country where the cooperative has its corporate seat and not the country where it is incorporated.[22]

---

some common developments. A good example is provided by the Austrian Cooperative Act itself, which, when it was introduced in 1873, was based strongly on its German counterpart. See also Sects. 2.1 and 1.2.2.

[20]For a comparison of the options contained therein, see Fici (2010), Appencix 1a.

[21]See Sect. 1.2.1.

[22]See Snaith (2004), p. 37 et seq. For the SE, see Kellerhals and Truten (2002), p. 71; Arnò et al. (2007), p. 26 et seq.; Iengo (2006). Generally, Lutter et al. (2012), p. 69 et seq.; Bianca and Zanardo (2016), p. 206 et seq.; Münkner (2006), p. 17.

The SCE-R contains three specific provisions dealing with this issue: Art. 6 SCE-R, Art. 7 SCE-R and Art. 73 SCE-R. According to Art. 6 SCE-R, an SCE's registered office must be located within the member state where it has its head office. In addition, the member states may require that an SCE locate its head office and registered office in the same place. In brief, the term "headquarters" refers to the SCE's effective place of management, whereas the registered office must be located in the member state in which the SCE is registered, according to the law applicable to public limited-liability companies within that member state. As the head office is located in the same member state as the registered office, the law hereby determined corresponds to the law of the actual place of management. As a result, as long as an SCE does not infringe Art. 6 SCE-R, no conflict can arise between the laws determined according to the real seat theory and between laws determined according to the theory of incorporation. See Snaith (2004), p. 38 et seq. Also consider Schöpflin (2018b), p. 1255. In this context, Recital 14 SCE-R states: "In view of the specific

As mentioned above, this study also concentrates on issues of cooperative governance and finance, with many issues discussed in detail. However, it quickly became clear that without strict academic limitations the study's discussions could spiral out of control. Thus, this study does not provide an exhaustive comparison between Italian and Austrian SCEs. Instead, it focuses on the most important differences and similarities between these two entities.[23] To be more precise, I analyse the specific rights and obligations explicitly provided by the SCE-R and examine how they are implemented by national laws, while choosing not to consider in detail the rights and obligations not explicitly mentioned by the SCE-R.[24]

Therefore, this study inevitably contains **gaps**,[25] which might be considered a weakness, as these gaps often concern specific details. For instance, when considering the issue of expelling members of an SCE, it would be interesting to conduct a detailed analysis of the applicable factors to determine how the expulsion process differs between the two legal systems. Moreover, I also ignore issues concerning

---

Community character of an SCE, the 'real seat' arrangement adopted by this Regulation in respect of SCEs is without prejudice to member states' laws and does not pre-empt the choices to be made for other Community texts on company law." Also consider Snaith (2004), p. 40. For the SE, Ringe (2015a), p. 138 et seq.; Urbani (2008), p. 323 et seq. Art. 7 SCE-R defines how an SCE can transfer its registered office to another member state without winding up the SCE or forming a new legal person. It requires publishing a proposal for transfer which contains the details required by the SCE-R. As well as the members of the SCE, this procedure particularly aims to safeguard its creditors and the holders of other rights. See Schöpflin (2018c), p. 1258; Snaith (2004), p. 39. In general, Genco (2006), p. 124 et seq. The SCE-R requires a competent authority in the member state where the SCE has its registered office to issue a "certificate attesting to the completion of the acts and formalities to be accomplished before the transfer." In addition, the member state can allow its authorities to deny the transfer if it is in the public interest, but it must be possible to review this opposition under judicial authority. In addition, if proceedings for winding up (including voluntary winding up), liquidation, insolvency or suspension of payments (or other similar proceedings) have been brought against an SCE, the transfer cannot be carried out. See Art. 7 para. 15 SCE-R. Also consider Snaith (2004), p. 39 et seq.; Schöpflin (2018c), p. 1258 et seq. For the SE, see Ringe (2015b), p. 168 et seq. Next, Art. 73 SCE-R provides an enforcement mechanism if an SCE's headquarters is no longer situated in the same member state as its registered office. According to para. 2, the member state in which the SCE's registered office is situated must take appropriate measures and oblige the SCE to regularise the situation within a specified period. The SCE must then either re-establish its headquarters in the same member state as its registered office or transfer its registered office via the procedure laid down in Art. 7 SCE-R. If the SCE fails to regularise its position, the authorised member state must ensure the SCE is liquidated. The member states have to provide judicial or other appropriate remedy with regard to any established infringement of Art. 6 SCE-R (Art. 73 para. 3 SCE-R). Art. 73 para. 4 SCE-R adds that such a remedy has to have a suspensory effect on the procedures laid down in para. 2 and para. 3 (procedures to oblige the SCE to regularise its situation). For details, see Snaith (2004), p. 39; Schöpflin (2018a), p. 1341 et seq.

[23] I often had to decide whether to continue to pursue details or move forward to preserve the broader picture. In general, I have favoured the latter approach.

[24] Consider in this context Alfandari and Piot (2004), p. 83. Specific rules and restrictions governing the nature of an SCE's business could include national provisions in the banking, insurance or financial services sector. These provisions must be applied in full if an SCE carries out business activity in one of these fields and thus must be considered.

[25] However, this also shall be understood as a call for further specific research.

winding up or bankruptcy[26] and about how employee participation[27] might complement the SCE-R. This study is further limited by the inevitable involvement of other legal rules which are not, strictly speaking, part of agricultural law and/or cooperative law. These rules will be mentioned without further in-depth analysis. In addition, depending on the legal system, sub-national level rules might be addressed.[28] An analysis of SCEs could also consider these rules. However, because of the limited scope of this study, these specific issues will not be discussed.

The study will be conducted using a multifaceted **methodological approach** based on comparative and economic analyses of the law. Because of the various methodologies employed, this study can be considered *interdisciplinary research*.[29] But it is important to stress that the study is still profoundly rooted in law as a field of research, with the economic perspective only supplying specific aspects giving an idea of how, ultimately, the rules should be applied. These matters are only covered as far as necessary.

When conducting any kind of interdisciplinary research, the same research object will be described and analysed from different perspectives.[30] Inevitably, the analyses will use the same or similar notions, albeit with a different content; i.e., the same terms may differ in content, based on the context (i.e., field of research) in which it is used. For example, in the context of ownership, terms may differ in content, as content is determined by the field of research to which a specific term is linked when it is actually used.[31] In order to tackle this problem, *Raiser* stresses that different scientific fields have different aims.[32] Thus, the terms provided by the various scientific fields are also different. Where legal terms refer to values and contain orders, terms taken from sociology, for example, are used to describe things and facts. Thus the reader must bear in mind that the chapters referring to the economic

[26]Further research could concentrate on the civil liability of members of the management, administrative or supervisory organ, specific legal impediments to becoming a member of these organs or the general competence of these organs.

[27]The European legislator adopted a specific directive (Council Directive 2003/72/EC of 22 July 2003, OJ L207/25). On this issue, see Ales (2008), ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=213 (15.08.2006) and Marhold (2008), ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=213 (01.12.2019). Also consider Kisker (2006), p. 208 et seq.

[28]For example, see Ibáñez (2011).

[29]See Baer (2011), pp. 50 et seq. and 78 et seq. For an example, see Kalss and Schauer (2006).

For a precise introduction to interdisciplinary research methods in law, see Baer (2011), pp. 78 et seq. and 133 et seq. In general Tushnet and Cane (2012); Cane and Kritzer (2013). Also consider Raiser (2011, 2013); Hill and McDonnell (2012), p. 3 et seq.; Fleischer (2000); Denozza (2002), pp. 1 et seq. and 11 et seq.; Richter (2015c); Gallo (2001), p. 13 et seq.; Mattei (1999), p. 505 et seq.; Krimphove (2006), p. 13 et seq.

[30]See Baer (2011), p. 50.

[31]See Sect. 1.3.2.

[32]See Raiser (2011), p. 160 et seq. See also Baer (2011), p. 50 et seq.

perspective also contain specific terms embedded in economic theory (and in particular in new institutional economics).[33]

1.2 About Comparing Agricultural and Cooperative Law: Issues of Method

1.2.1 About Comparative Law

This research focuses on the Italian and Austrian legal systems' diversity concerning cooperatives in general and agricultural cooperatives in particular. To compare the two systems, this study uses comparative law[34] techniques to compare Italian and Austrian agricultural SCEs. Legal science, in the sense of comparative law, is regarded as the science of comparing national legal systems.[35] Accordingly, it is an outward-looking perspective and not an inward-looking perspective. In the latter case, there is only the comparison between old and new national law.[36] With comparative law, conversely, one compares legal norms and then objectively examines the interactions between different legal systems. Thus, differences can be worked out, common features found and similar structures and approaches or methods identified.[37] Then, comparative law is also a matter of finding gaps in the other legal sphere in comparison to one's own. Accordingly, it is also a matter of comparing the applications of the law.[38]

From a conceptual point of view, one can distinguish between a macro- and a micro-comparison. In the former, comparison is done between legal systems or legal cultures according to defined legal circles or families, whereas the latter's object of research involves individual legal rules, judgments or individual legal institutions.[39] The criteria for the legal families are, in particular, legal history, major legal works,

[33]Different terms have to be understood in the context of their respective disciplines, and it is inadvisable to apply terms from outside disciplines without outlining their specific context. See Raiser (2011), p. 160 et seq.

[34]For details Zweigert and Kötz (1996), p. 62 et seq. In this context also consider Glenn (2019), p. 423 et seq.; Danneman (2019), p. 393 et seq. Generally, Gallo (2001), p. 3 et seq. and in particular 16 et seq.; Gambaro and Sacco (2014); Mattei (2001); Sacco (1991, 1992); Schlesinger et al. (2009); Gorla (1981); Monateri (2012), Regarding the development of this method in Austria and Italy see Schwenzer (2019) and Grande (2019). See also Guarneri (2003), p. 15 et seq.

[35]See Zweigert et al. (1998), p. 5; Siems (2014), p. 2; Moccia (2005), p. 3 et seq.; Sacco (1994), p. 11 et seq. See also Guarneri (2003), p. 1 et seq.; Gallo (2001), p. 13.

[36]However, overlapping areas exist, e.g., in the internal comparison of a federal state's legal norms.

[37]The valuations hidden behind the law also can be worked out. See Zweigert et al. (1998), p. 5 et seq.; Sacco (1994), p. 11 et seq.; Siems (2014), pp. 2 et seq. and 287 et seq. See also Moccia (2005), p. 12 et seq.

[38]See Siems (2014), p. 3 et seq.; Sacco (1994), p. 19 et seq. See also Moccia (2005), p. 95 et seq.

[39]See Zweigert et al. (1998), p. 5 et seq.

the systematics used, common core elements, common legal methods (e.g., the role of jurisprudence), specific legal branches or norms or a legal cultural background.[40] The legal systems analysed here are part of the Germanic and Roman legal families; they are compared by adding the European perspective.[41]

A core element of comparative law is the functional comparison of laws through which one gains knowledge about the purpose of a foreign legal norm and learns how to deal with specific regulations abroad.[42] Additionally, one evaluates the differences that result from the comparison between one's own norm and the foreign legal norm. It is important to emphasise that the comparison extends beyond pure legal knowledge and allows one to construct common lines of reasoning and essential differences, and to include appropriate evaluations of the differences.[43]

The following steps can be taken during the comparison. First, the applicable legal provisions and/or the relevant case law must be identified. Similarities and differences between these provisions can then be identified. Next, one can identify the different value concepts on which these rules are based. Finally, scholars can evaluate these results with a scientific framework, draw conclusions, and determine how these conclusions might change the legal situation.[44]

Various tasks of comparative law can be derived: among others, this method can fulfil both a mere scientific function and a legislative function.[45] The scientific function helps gaining knowledge about the different functions and structures of law, also because of different legal cultures, and understanding them accordingly. The legislative function supports the legislature as he fulfils his tasks at the national

[40]See Sacco (1994), p. 187 et seq. However, it also should be noted that this formation of the legal circle is fraught with problems. For example, one can ask oneself why civil law should be used as a yardstick. In addition, it can be seen that legal systems often have mixed elements and, therefore, cannot be assigned clearly to just one legal system. It also can be argued that legal norms occasionally are overemphasised in contrast with the application of law. See Guarneri (2003), p. 15 et seq.; Glenn (2019); Zweigert et al. (1998), p. 76 et seq. See also Pargendler (2012).

[41]The methodology of comparative law requires that foreign law must be recognised first and foremost. Accordingly, a basic prerequisite is work on foreign sources. The basic requirement is that the work should be carried out in the original language as often as possible. See Zweigert and Kötz (1996), p. 62 et seq. In this context also consider Glenn (2019), p. 423 et seq.; Danneman (2019), p. 392 et seq. Generally, Gallo (2001), p. 3 et seq. and in particular 16 et seq. Regarding the development of this method in Austria and Italy see Schwenzer (2019); Grande (2019); Guarneri (2003), p. 15 et seq.

[42]See Michaels (2019), p. 348 et seq.; Zweigert and Kötz (1996). Also see Guarneri (2003), p. 10 et seq.; Graziadei (2003), p. 100 et seq.

[43]The essential prerequisite is knowledge of one's own law: Only under these circumstances can the right question be asked. At the same time, the researcher also must be aware that he or she must be careful when using his own terms and thought patterns. See Guarneri (2003), p. 10 et seq.; Zweigert et al. (1998), p. 34 et seq. See also Sacco (1994), pp. 11 et seq. and 24 et seq.

[44]See Siems (2014), p. 13 et seq. See also Guarneri (2003), p. 10 et seq.

[45]Here comparative law serves as an information basis for lawyers and courts. I.e. it is about legal advice and support in the case decision. See Siems (2014), p. 2 et seq. See also Guarneri (2003), p. 10 et seq.

and international levels.[46] Although this research does not perform a legislative function, it nevertheless contains relevant points in this regard. For example, concerning cooperatives, it proved helpful to use a model based on the Principles of European Cooperative Law (PECOL)[47] to compare the rules of the various legal systems (the PECOL generally depict the legal characteristics of a cooperative[48]). With this model, the differences resulting from the comparison can then be evaluated in depth. If one accepts this model as an ideal case, he/she can use any results that deviate from this model to identify possible changes in the law.[49]

The PECOL have been put together by the Study Group on European Cooperative Law (SGECOL) to provide better knowledge of cooperative law.[50] Unlike the Principles of the International Cooperative Alliance (ICA), which are internationally accepted principles about how cooperatives function,[51] the PECOL try to describe cooperative law norms. These norms are the diverse regulations that govern cooperatives. The aim of the PECOL is providing a better understanding of cooperatives and the legal principles on which they are based.[52] Yet, the 'PECOL provisions, in their authors' view, must not be regarded as 'legal principles' in the sense of legal philosophy, but as 'ideal' provisions of cooperative law. Therefore, they will not

[46]See Siems (2014), p. 2 et seq.

[47]See Hiez (2017), p. 1 et seq.

[48]See Hiez (2017), p. 11 et seq.

[49]Of course, comparing things is not that easy. See Zweigert and Kötz (1996), p. 33; Danneman (2019), pp. 391 et seq. and 413. Also consider Kalss and Schauer (2006), p. 26. Conducting research into cooperatives first requires defining what a cooperative is. As well as the wide range of different types of SCE which can be found in the EU, one must also bear in mind that cooperative systems within the EU have developed differently and are based on different theoretical concepts (see Sect. 2.2). Thus, it is very difficult to provide a clear definition of a cooperative, at least from a legal standpoint. Instead, one must consider key attributes or features within or outside a legal definition. See Fici (2017), p. 21. This study considers such attributes by utilising the latest insights from a group of leading European scholars, who have worked to identify the common features of cooperatives across the various legal systems of different EU member states. The result are the PECOL. However, this task is a constantly evolving process, and therefore falls outside the scope of this study. Nevertheless, it clearly provides further insights needed to better conceptualise a common cooperative identity.

[50]See Hiez (2017), p. 14 et seq. "SGECOL will use comparative research on cooperative law to explore differences and commonalities across jurisdictions, with a view to considering the feasibility of a ius commune cooperativum." See Study Group on the European Cooperative Law (2012), p. 5. The commission drafting the PECOL is made up of eminent scholars of cooperative law: Gemma Fajardo, Antonio Fici, Hagen Henrÿ, David Hiez, Deolinda Aparício Meira, Hans Münckner and Ian Snaith. See Hiez (2017), p. 2 et seq. However, this initiative is not new: Since 1982, various European jurists have come together to develop uniform European principles of private law. A famous example is the Lando Commission (originally founded in 1982) and the Principles of European Contract Law (PECL, published in three parts in 1995, 1999 and 2003). See Lando et al. (2019). Since then, numerous such projects have been launched, e.g., in European tort law, European family law, European security law, European company law and European insolvency law. See Zimmermann (2019), p. 588 et seq. See also Adar and Sirena (2013).

[51]See Sect. 2.1.

[52]See Hiez (2017), p. 11 et seq. In this context also consider Ringle (2007).

necessarily reproduce rules (or the 'better' rules) found in the existing cooperative law, although the latter constitutes the main source of inspiration for the drafters. In this sense, the approach taken in the drafting of the PECOL is 'normative' rather than descriptive, in line with the methodology that, in general, SGECOL intends to use in its comparative analysis of cooperative law.'[53]

Based on a structure that takes into account the main cooperatives' organisational issues, the members of the drafting commission analysed their national legal systems and drafted national reports describing how these legal systems dealt with specific issues. Their efforts yielded data on what kinds of legal rules exist, how they are structured and so on. The results were then used to identify shared features and principles, based on existing national law.[54] Yet, the PECOL do not promote further European Union legislation in the area of cooperative law, but instead should function as a coherent body of cooperative law. In particular, it should guide cooperative law expansion and reform throughout Europe by advising legislatures on best practices.[55]

As mentioned, this research's starting point is the Italian and Austrian legal systems' diversity with respect to how cooperatives and agricultural cooperatives are regulated. The national laws in question are contained in the *GenG*, the Austrian trade regulation (*Gewerbeordnung*, *GewO*) and the CC.[56] The conducted analyses are thus anchored in private law, because cooperatives are, first of all, a matter of private law; yet the framework that determines the functioning of these forms of organisations, is strongly influenced by public law, specifically European agricultural law. Accordingly, there are clear interactions between public law and private law.[57] Here, too, the question may arise as to how these interactions function, what interdependencies exist and what differences exist in national law as a result of imposing European law onto national law.[58] From a European point of view, this research therefore considers, in addition to the SCE-R, rules contained in specific

[53]See Study Group on the European Cooperative Law (2012), p. 9.

[54]See Hiez (2017), p. 6 et seq. The PECOL contain five chapters which address the following issues: (1) Definition and objectives of cooperatives: This chapter defines cooperatives and their objectives, outlines applicable law, statutes and membership requirements and addresses transactions with members and non-members. (2) Cooperative governance: This chapter contains general principles of governance and open membership and covers the obligations and rights of members, direct member control and governance issues like management and internal control as well as information rights and transparency requirements. (3) Cooperative financial structure: This chapter contains general financial principles, deals with share capital, members' capital contributions, cooperatives' reserves, limited liability and distribution of economic results. (4) Cooperative auditing: This chapter contains general auditing principles and covers the scope and forms of audit, audit entities and auditors, as well as the conclusion of cooperative audits and their effects. (5) Cooperation among cooperatives: This chapter contains general cooperation principles and concentrates on forms of cooperation and social political cooperation.

[55]See Hiez (2017), p. 11 et seq.

[56]For details, see also Sect. 3.2.

[57]See Part I of this study. On this issue, see also Carrozza (2001d), p. 304 et seq.

[58]See Sect. 3.3.3.

regulations—such as Reg. No. 1308[59] or 1307[60]—and, in general, the rules determined by the Common Agricultural Policy (CAP).

The reference to the CAP makes it useful to repeat that my comparison of national cooperative laws also includes agricultural cooperatives and, thus, agricultural law. However, comparing the laws in these sources is a complex task because agricultural law is subject to different approaches. Therefore, as a starting point in this comparison, I refer to the different legal concepts of agriculture.[61] The legal definitions that already exist illustrate the fragmentation of the various concepts.[62] This is true if one compares the approaches adopted by national sources. EU law also offers a similar picture of fragmentation. Especially because of the dynamic nature of relevant terms (decoupling, direct marketing and, finally, new phenomena) conceptual consistency is not possible. Next, agricultural law is cross-sectional,[63] which is a further reason for the difficulties in defining a consistent approach.

1.2.2 About Agricultural Law

Agricultural law presents a mixed picture. There is no question that a systematic structuring of this branch of law would improve clarity and consistency, thereby facilitating legislation and its implementation. I consider two possible ways of determining the subject matter of agricultural law.[64] First, such determination can occur through induction, by which the specific legal norms of a positive legal system can be examined in light of a common core, which can be extended or limited in accordance with the legislature's objectives. This basically corresponds to the

[59]Regulation No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007. See OJ L 347/671.

[60]Regulation No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. See OJ L 347/608.

[61]On this issue, see, among others, Norer (2012), p. 4 et seq.; Norer (2005), p. 37 et seq.; Holzer (2018), p. 31 et seq.; Grimm and Norer (2015), p. 14 et seq.; Bodiguel and Cardwell (2006); Winkler (2018b), p. 164 et seq.; Iannarelli (2007); Germanò and Rook Basile (2014), p. 111 et seq. See also Pernthaler (2007), Leidwein (2007), Welan (2017), Grossi (2016), Budzinowski (2013), Budzinowski (2018), Iannarelli (2013), Costato (2012) and Galloni (2014). In general, Martínez (2018).

[62]See Sect. 3.3.

[63]See Norer (2005), p. 37 et seq.; Norer (2012), p. 6. See also Grimm and Norer (2015), p. 14 et seq.; Norer (2018), p. 114 et seq.; Costato and Russo (2015), p. 3 et seq. See also Rook Basile (1995), p. 19 et seq.

[64]See Norer (2005), p. 141.

approach taken by Austrian doctrine and the Austrian legal system.[65] Second, a strongly codified approach is possible for interpreting the particularities of legal developments in the agricultural sector.[66] Such an approach is based on the *agrarietà* doctrine developed by *Antonio Carrozza*, which roots agricultural law in the biological cycles of plant and animal production by using nature's forces and resources, with resulting products that may be intended for human consumption after processing.[67] The concept of *agrarietà* has strongly influenced French[68] and Italian legislation. In fact, in 2001, *agrarietà* was incorporated into Italian legislation by Decree-Law No. 228 of 18 May 2001, which amended Article 2135 of the Civil Code on the agricultural entrepreneur.[69] The agricultural entrepreneur is assigned activities for land management as well as forestry and animal husbandry, which are directly linked to the management and development of a biological cycle—whether that of a plant or an animal.[70] Additional activities linked to these agricultural activities include the provision of goods and services, such as agri-environmental measures and, in the case of agri-tourism, the use of farm equipment and resources.[71]

The *agrarietà* approach seems particularly interesting because it refers to the given phenomena of reality as the basis for the special rights of agriculture.[72] Furthermore, a distinction is made between a*grarietà territoriale* and *agrarietà non territoriale* to account for soil-independent forms of agricultural production.[73] Yet, for defining agriculture, it is not only the exploitation of biological processes that is decisive but also the fact that it fulfils tasks for society and that the production

[65]See Holzer (2018), p. 62 et seq.; Norer (2012), p. 7 et seq.; Holzer (2017). See also Norer (2018).

[66]On this issue, see Norer (2005), p. 76 et seq.

[67]See Carrozza (1988), p. 10 et seq. See also Carrozza (2001d), p. 301 et seq.; Carrozza (2001b), p. 379 et seq.; Carrozza (2001e), p. 712 et seq. See also Winkler (2018b) and Bolognini (2019), p. 305 et seq.

[68]In France, Law No 88-1202 of 30 December 1988 established a definition of agricultural activity, which was inserted as Article L 311-1 into the rural code, the French Code. Agricultural activities are considered to be all activities that serve to manage and exploit a biological cycle of plant and animal life, comprising one or more necessary stages in the course of this cycle, as well as a farmer's activity in the extension of the production process, i.e., in the working, processing and marketing of agricultural products. On this issue, see, among others, Bodiguel and Cardwell (2006).

[69]On this issue, see, among others, Iannarelli (2002b), p. 213 et seq.; Costato (2006). See also Germanò (2019), Lamanna Di Salvo (2003), p. 15 et seq. and Goldoni (2019), p. 372 et seq.

[70]It is an almost literal translation of the definition of agricultural activities introduced by French law.

[71]For details, see Sect. 3.3.1.

[72]See Casadei (2009), p. 329 et seq. See also Winkler (2018b), p. 171 et seq.

[73]See Carrozza (2001a), p. 785 et seq.; Carrozza (2001e), p. 715 et seq.; Costato (2001), p. 142. See also Winkler (2018b), p. 187; Cigarini (1977), p. 694; Winkler (2018a), p. 216; Carrozza (2001e), p. 715 et seq.; Carrozza (2001a), p. 780 et seq.

process is socially organised.[74] Agriculture represents a close link between natural processes and their organisation in the social and economic spheres; it thus determines human activity and behaviour, institutions, and economic and social conditions.[75] We must remember that the biological cycles underpinning the doctrine of *agrarietà* are ultimately unhistorical and repeat themselves over a long period of time, while social processes are integrated into history and change constantly. Thus, *agrarietà* only does justice to agricultural law if the law is not perceived as being static or repetitive, but rather as something changeable; this mutability makes it possible to integrate social factors and biological conditions.[76]

Contrary to the Italian approach, Austrian agricultural law lacks a strict dogma; this fact has prompted scholars to develop definitions and subject-matter provisions.[77] The Austrian legal system contains a number of norms that, according to their content, represent special laws applicable exclusively to agriculture and forestry, such as inheritance law, land reform law, land lease law and agricultural labour law. Accordingly, agricultural law is a special branch of law to which all those norms are assigned that are connected to the peculiar living and economic conditions in agriculture, forestry and their subsidiary branches, as well as to the special relationships which have developed in this environment. Today, the approach defining agricultural law as a special branch of rules dominates German agricultural law.[78] However, especially in Austria from the 1970s onwards, the so-called functional concept of agricultural law developed as an extension of the traditional notion of special law. This functional approach looks for a common core, which can then be extended or limited in accordance with the legislature's objectives.[79] Functional ideas, when applied to agricultural law, include any norm that has specific effects upon agriculture and forestry.[80] This approach analyses those normative structures

[74]See also Carrozza (2001c), p. 650 et seq.; Germanò (2016), p. 12; Casadei (2009), p. 332 et seq.

[75]See Germanò (2016), p. 12.

[76]See Winkler (2018b), p. 187; Germanò (2016), p. 12 et seq. Furthermore, it should be noted that criteria for proper law cannot be derived directly from real factors, as mere existence never can justify a determined purpose. It is obvious that real factors do not become decisive for the legal order in their mere factuality, but only in their relation to the meaning of human beings and their behaviour, as well as their spiritual and moral world. From this, it follows that a relationship of derivation cannot exist between the nature of the matter and what is legally normed as 'should', but only a relationship of correspondence in which the requirement of reason for an appropriate regulation results from the elements of the order of reality. See Winkler (2018b), p. 209 et seq.

[77]See Holzer (2018), p. 62 et seq.; Holzer (2017); Norer (2005), p. 120 et seq.; Grimm and Norer (2015), p. 14 et seq.; Norer (2017); Norer (2012), p. 5 et seq.

[78]See Busse (2018) and Norer (2018).

[79]See Holzer (2017); Norer (2005), p. 120 et seq.; Norer (2018), p. 117 et seq.

[80]May it now originate from a legal area shaped by typical agricultural interests or from an area that is predominantly dominated by administrative interests other than those determined by agriculture. It is stressed that with the functional approach, the fragmentation of agricultural law into other legal areas can be countered effectively. These relevant norms, e.g., environmental or planning law norms, are (also) understood as part of agricultural law and summarised under the terms agri-environmental law or agricultural spatial planning law. See Norer (2005), p. 136 et seq.

that make agriculture and forestry the object of legal regulations.[81] The limits of such a system—which ultimately cannot be clearly delimited and is thus open in its systematic references and not closed to other sub-disciplines—are governed by those norms that cover agriculture and forestry in their specific structure of being. It is stressed that the blurred and movable boundaries of this functional notion are countered by the gain of a broad definition of the object corresponding to today's modern necessities.[82]

Regardless of the approach adopted, agricultural law is characterised by numerous legal peculiarities that distinguish it from both general law, and company law. In addition, there are regulations and institutions in the agricultural sector that cannot be found in other sectors of the economy.[83] For agriculture, there are special arrangements for legislation, for the organisation of administration and courts as well as for case law. Accordingly, quite complex agricultural law has arisen at the state and sub-state levels as well as the level of the European Union.[84] In addition, there is the international level, which includes agriculture in the world trade system.[85] These special arrangements are not, however, combined into a single regulatory or systematic unit. In addition to numerous special laws for agriculture, specific regulations permeate the generally applicable laws. At the same time, there are special institutional regulations for agriculture, such as special authorities, self-governing bodies (such as the Chambers of Agriculture), funds from the European Union, special procedural rules for the decision-making processes as determined by Art. 43 of the Treaty on the Functioning of the European Union (*TFEU*), etc.[86]

Agricultural law is not static but, rather, is in a process of constant development and change; this is influenced by two opposing trends. First, certain aspects of

[81]This also includes standards that do not constitute a special right, but that generally are valid in their wording, even if, for objective reasons, they are applied almost exclusively in the field of agriculture and forestry. See Norer (2012).

[82]See Norer (2012), p. 7 et seq.; Norer (2018), p. 116; Holzer (1982), p. 306. See also Winkler (2018a), p. 215 et seq.

[83]E.g., tax law, inheritance law. See, e.g., Germanò (2016), p. 177 et seq.; Bäck (2012); Grimm and Norer (2015), p. 4 et seq. On these issues, see also Miribung (2019) and Ferrucci (2011).

[84]See Norer (2005), p. 284 et seq.; Albisinni (2011b), p. 279 et seq.; Albisinni (2011a); Albisinni (2010). See also Rook Basile (1995), p. 75 et seq.

[85]See Holzer (2018), p. 87 et seq.; Norer (2005), p. 276 et seq. In general, Iannarelli (2001), Costato and Russo (2015), p. 105 et seq.

[86]It may come as a surprise that it was not until the twentieth century that the science of law actually recognised agricultural law as a special area of the legal order, and efforts were made to establish and penetrate it scientifically. It is to Giangastone Bolla's credit that he founded agricultural law as a special branch of jurisprudence, and many countries have embraced and built on his work. See Germanò (2017), p. 7 et seq.; Capizzano (1991), p. 25 et seq. Even in former socialist countries, the agricultural law was recognised as a special branch of law. The complexity of agricultural law is not only limited to certain countries—such as Italy, Austria, Germany and the European Union—but also applies to other countries, including Western industrialised countries and Third World countries. It predates its modern application by hundreds of years; during earlier epochs of history, there were special regulations for agriculture (e.g., the leges agrariae in Rome). See Norer (2005), pp. 24 and 212, see also Capizzano (1991), p. 25 et seq.

agricultural law converge and approximate with the law of commercial entrepreneurs,[87] such that agriculture could lose its special legal status and be subject to a legal status common to all businesses. This would cause agriculture to become integrated into society as a whole and, at the same time, would create new forms of production and new ways to organise agricultural holdings. Consequently, the differences between agriculture and the wider economy would become blurry.[88] Under these circumstances, land will no longer be the main factor of production but merely the location of production. Second, agricultural law could not only establish itself as a special law for agriculture, but could even be extended to new regulatory material. In this context, reference should be made to various provisions of agri-economic law and to special provisions of agri-environmental law.[89] All these topics are strongly influenced by European law, which, as a legal system, must be distinguished from national systems, each of which holds different systematisations and conceptualisations about what agriculture is. Various aspects governed by agricultural law are, therefore, not only determined by national rules but also, to a strong extent, by European law. Hence, it seems appropriate to refer to this interplay of rules as a polycentric system.[90]

1.2.3 About Cooperative Law

Similar observations can be made concerning cooperative law, which is the second aspect[91] of this research. National legal sources have never developed independently of other legal systems: As a matter of fact, the *GenG* (adopted in 1873), was initially strongly influenced by the German Cooperative Act from 1867,[92] but it has been amended several times since.[93] Similarly, the Italian Civil Code, which was adopted in 1942 and contains specific norms regarding cooperatives, was also influenced by

[87]Imprenditore commerciale or Gewerbetreibender.

[88]See also Carrozza (2001c), p. 659 et seq.; Costato (2001), p. 142 et seq. Regarding latest developments, see Bolognini (2019), Goldoni (2019) and Iannarelli (2019). Critically, Alessi (2019).

[89]See Norer (2012), p. 18 et seq.; Holzer (2018), p. 87 et seq.; Norer (2005), p. 250 et seq.; Norer (2009), p. 242 et seq.; Magno (2006); Iannarelli (2002a); Adornato (2007); Costato (2004), p. 119 et seq.; Adornato (2004); Costato (2008b); Salaris (2002), p. 72. See also Albisinni (2013), p. 9 et seq.; Di Lauro (2007), p. 584.

[90]See Albisinni (2011b), p. 275 et seq.; Holzer (2018), p. 87 et seq.; Iannarelli (2007). See also Albisinni (2014), pp. 968 et seq. and 971 et seq.; Albisinni (2010), pp. 225 and 234; Vecchione (2004), p. 139 et seq.; Rook Basile (1995), p. 73 et seq.; Alessi (2006), p. 1244 et seq.; Adornato (2004); Costato (2008a), p. 458 et seq.

[91]The first aspect concerns agricultural law.

[92]See Kastner (1986), p. 121. See also Brendel (2011), p. 23 et seq.; Miribung and Reiner (2013), p. 232; Schaschko (2010), p. 41 et seq.

[93]See Tomanek (2014); Miribung and Reiner (2013), p. 231 et seq.

German doctrine.[94] However, the traditions of the cooperative schools of thought, which influence the various rules, differ in part. On the one hand, we have traditions strongly based upon the ideas of *Friedrich Wilhelm Raiffeisen* and *Hermann Schultze-Delitzsch*; on the other hand, there are traditions anchored in the social democratic and labour movement. These different approaches are important for this study because the SCE-R is a compromise based on different traditions.[95] Section 2.1 shortly explains the various developments.

Researching the legal sources of cooperative law is a complex process, but also interesting and challenging. The laws covered in the Italian Civil Code provide a good example here. The specific provisions for cooperatives are complemented by laws drafted for private (*srl*) and public limited-liability companies (*spa*).[96] Conversely, the Austrian legal system provides with the *GenG* a specific and coherent act. Additional laws are only applied if the *GenG* contains a gap that must be closed.[97] Moreover, the development of Austrian law is, to some extent, connected to the development of German law. Therefore, it is helpful to consider German doctrine.

1.2.4 Comparative Law: Limits of This Method

This research shows that the various national solutions regulating cooperatives often can function as examples for statutory provisions of SCEs. In addition, the provisions that national cooperatives (that is, Austrian and Italian cooperatives as opposed to Austrian and Italian SCEs) apply, can be used to identify the specific limits of a given law. In fact, comparing national cooperative law with EU law helps us to better grasp the legal framework that is applicable to an SCE. National law provisions and the issues they deal with are used to consider these very issues in context with the SCE-R. We can thus deepen our understanding of the applicable law.

A solution applied by the SCE-R might be better or worse than the national solution, thus making an SCE more or less attractive compared with a national cooperative. Of course, 'better' and 'worse' are vague terms. In this context, they refer to different levels of flexibility given to those drafting the statute of an SCE or cooperative. In other words, they refer to the degree of statutory freedom when it is

[94]See Cian (1998), p. 218. Also consider Grande (2019), p. 88; Gallo (2001), pp. 196 and 202 et seq.

[95]See Schulze (2004), p. 10 et seq. In general, Münkner (2006), p. 10 et seq.; Engelhardt (1990), p. 10. Also consider Sects. 2.2 and 3.2.

[96]See in this context Art. 2519 CC.

[97]Compare for example Sect. 4.4.3.

used as a tool for enhancing efficiency.[98] This does not imply that increased flexibility is always better, given that certain rules must be used to determine what a cooperative is. At least from a legal perspective, there is no standard definition of what a cooperative is; however, the various legal systems contain similar features, which can be used to derive a standard cooperative identity useful for legal research.[99]

Terminological confusion is typical for comparative law techniques, as specific terms do not always have to have the same definition. This is true for terms in a single national legal system. Terminological issues become more pronounced when one compares different legal systems and are clearer when one better understands the results by applying different scientific disciplines to the research.[100] Yet, different scholars use different terms to translate or explain specific terms; I exclusively use the terms from the SCE-R to translate specific terms from the Italian and Austrian legal systems. Thus, the terminology used by this study deviates to a certain extent from the terminology contained in the English versions of the *GenG* and the Italian Civil Code. For example, while translators use the term 'management board', the SCE-R uses the term 'management organ' instead.[101]

One terminological problem is explicitly solved by the SCE-R. According to Art. 5 SCE-R, the term "statutes of an SCE' shall mean both the instrument of incorporation and, when they are the subject of a separate document, the statutes of the SCE'. Therefore, for the sake of simplicity, the term 'statutes' is used to translate the term 'articles of association', even though both national legal systems differ in the use of these terms.[102]

Another problem is the proper translation of the terms '*Aktiengesellschaft*' (*AG*) or '*società per azioni*' (*spa*) and '*Gesellschaft mit beschränkter Haftung*' (*GmbH*) or '*società a responsabilità limitata*' (*srl*). Again, different scholars use different terms.[103] In addition to the German and Italian acronyms, this study uses the terms 'public limited-liability company' (or simply 'company') and 'private limited-liability company'. The term corporation serves as a generic term.

An additional problem is that the SCE-R allows national legislatures to adopt specific national provisions in order to implement, complement or amend specific provisions of the SCE-R. In the various linguistic versions of the SCE-R, terms are

[98]See Faust (2019), p. 834 et seq.; Gelter and Grechenig (2007), p. 40 et seq. Also consider Zweigert and Kötz (1996), p. 46; Krimphove (1998), p. 189. See also Bellantuono (2000, 2016), Marchetti (2000, 2014) and Pardolesi (2015).

[99]See Sect. 3.2.

[100]See Guarneri (2003), pp. 12 et seq. and 119 et seq.; Gallo (2001), p. 46 et seq.; Sacco (1994), p. 27 et seq. On this issue, see Ajani et al. (2007), Pozzo and Timoteo (2008) and Ferreri (2010).

[101]See Art. 36 SCE-R, Sec. 15 of the Austrian Co-operative Act (unofficial translation) and Piacentini (2014), Art. 2409 octies.

[102]See Art. 2521 CC and Sec. 5a GenG.

[103]See Fruehmann and Nagy (2005), which refers to a "stock corporation", and the translation of Art. 2325 of the Italian Civil Code, where the term "company limited by shares" is used. See Piacentini (2014).