

ANALYTICAL FRAMEWORK OF THE CONTRACTS IN BULGARIAN AGRICULTURE – NEW INSTITUTIONAL ECONOMICS (NIE)

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Abstract

This article analyzes the agricultural contract through the eyes of the NIE. The article has built its analytical framework on contracts in agriculture. This choice was dictated by the presence of more than 40 enumerated forms of the types of contracts, and the research realizes that such an enumeration is conditional and not exhaustive. The need to find specific forms of management of common resources - water, land; of general products - for example the "quality schemes" known by the CAP; the need for rapid deployment of specific technologies that are needed to derive synergistic benefits from ecology and agriculture; solving the food and farming problem. The agricultural contract is defined as a social category combining: (1) a system of interconnected institutions, uniting common rules and contractual clauses; (2) market and non-market, contractual and non-contractual processes; (3) a hierarchical structure combining heterogeneous, hybrid economic mechanisms of exchange. Relying on the theory of Governance structure (GS) and the theory of the hybrid contract, the study matches the classical understanding of contract law and the procedural nature of the neoclassical organization, with the modern understanding of the economy as a system of contractual and non-market relations. A unified analytical toolkit is proposed for the subordination of relationships between companies, administrative hierarchies, hierarchies including arbitrators, in property rights disputes; market and non-market contracts, the hybridity of the technological process and the essence of the organization as a type of procedure.

Key words: contract, institutions, legal forms, governance structure, agriculture

INTRODUCTION

This article aims to clarify the nature of the agricultural contract in the New Institutional Economics (NIE) context. This means analyzing contracts as part of legal, economic and organizational theory, and at the same time explaining the specifics of contracts in agriculture. According to the NIE, a contract can be both an organizational structure, a system order, a process and together with this a rule of conduct.

Institution has a dualistic meaning, it can be both a rule of conduct and an organizational structure, but if we look at the contract, we will see that it has the same characteristics. Because of the dualism of contracts, rules and organizations, is it necessary to develop a universal, comprehensible, easy-to-use analytical structure? We must ask ourselves: what exactly is a "contract"? The legal approach differentiates the contract according to its legal forms. For example: sale, lease, donation, division, etc. It is suitable for a fragmentary analysis of the means of

acquiring property and its protection. In reality however, contracts prevail, often informal, with a difficult-to-define form, for which the legal form implies a multitude of desired and undesired effects, most of which are not only legal.

Externalities accompany every contract, and in the translation of subjective rights, there is a real diversity defined by the forms generated especially in some of the quasi-markets. For example, those related to servicing fee payments, indirect costs related to the actions of supplying some document or additional actions to secure available information. The question arises: how to analyze and compare contracts with different functions, different durations, which overflow into other legal forms, and sometimes become institutions of a new type. When is it more appropriate to use the different market forms of contracts, such as those of lease and sale? In which case is the legal form more effective? How to make objective comparisons if, due to the different time frames of the sale and the lease, it is difficult to compare the actual cash flows?

The same applies in cases of comparison of market and non-market contracts, for example: donation and division of agricultural property. Or contracts containing one legal relationship with contracts containing multiple legal relationships but with a different legal form, for example: a contract of sale between one buyer and one seller, to be compared with a contract with assignment of company property between several partners.

On the other hand, it is important to mention that many of the contracts merge with other unilateral legal transactions, which are protected by actions similar to administrative processes, and sometimes, the same pass into disputes about subjective rights. All this indirectly affects not only the original contractors but also third parties. For example, in the purchase and sale, we can have an authorization, from which follows a preliminary contract of purchase and sale, in turn leads to the conclusion of a final contract, during which a series of documents are drawn up (these are administrative processes that themselves can be part of a separate quasi-contract) and finally even lead to a new trial, this time a judicial one.

Formally usable for analysis contract forms that use individuals, firms, households, public and private entities, classical type investors - all other institutional actors usually do not create conditions for balancing different interests - all kinds of issues. That is, very often modern legal doctrines allow to be seen as a single alternative in which both rules and process effects are integrated to see a larger overall picture of the social structure in a long-term horizon.

In agriculture, the assessment of these relationships is further complicated by the difference in governance of the assessment of contractual frameworks arising from the employment of family farms, and the assessment of subjective property rights as homogeneous, when in fact, the dependence of contractual frameworks on natural resources and the natural environment, on the other hand, the inhomogeneity of the goods. Developing an appropriate analytical framework for agricultural contracts is of key

importance for the analysis, respectively, for solving the food and farming problem.

NIE tries to adapt it to such frameworks by including in the analysis and management of public costs. It is a challenge to bring together horizontal and vertical organizations with mixed functions representing a mix of hierarchies, market and hybrid forms. Governance structure (GS) theory helps with this. Public relations occurring in the territory of Bulgaria have been chosen as the subject of the article. However, this is conditional because the cross-border element of modern contracts/contracting organizations cannot be avoided.

The study goes through:

- Identification of the available legal, economic, and organizational theory.
- Comparison between different contract forms.
- Description of the agricultural contract in the NIE context.
- Analyzing the dependence of the agricultural contract on transaction costs.

MATERIALS AND METHODS

The methods used are: (1) positive legal analysis, which serves to describe some of the legal acts; (2) a combination of comparative legal and comparative institutional analysis to compare institutions, rules and different forms of contracts; (3) discrete structural analysis to compare the characteristics of different contractual forms, as part of some longer-term and effects-integrated institutional alternatives.

RESULTS AND DISCUSSIONS

The contract from the point of view of law, economics, and organizational theory

From a legal point of view, a contract is an agreement between two or more parties with the aim of settling, changing, or terminating a legal relationship between them. At the same time, theories of the state and law allow general rules, such as the basic laws of states - constitutions - to be analyzed as a kind of "social contract". This 'technology' of public relations has also been adopted by EU legal

doctrine. The founding treaties of the EU impose a public legal order in which the method of equality, characteristic in the principle of private contractual relations, is combined with an imperative approach known from the way in which legislative acts operate. On the other hand, at the level of market exchange, the contract has the character of agreed rules, clauses, thanks to which the interests of the subjects are realized, the same infiltrated in a narrower framework of relations, but dependent on the general legal order and public rules.

With the Treaty of Rome, for example, the agricultural policies of the Member States are introduced, and as for the agricultural market contracts, including those through which the daily relations between farmers are carried out, they are perceived as relations of a

secondary nature. There is a conflation of general rules with those that determine the order between private subjects.

The types of private contracts from the point of view of law are unilateral, bilateral, multilateral, causal, consensual, aleatory, and accessory. Legal theory also divides them into civil, commercial and others, formally distinguishing the economic from the other functionality of relations. The speculative purpose of any commercial contract may not establish a level playing field between the contracting parties. Who and what exactly gained and whether someone did not lose from the exchange of property rights transfer - cannot always be determined. Therefore, the contractual organization should be known discreetly, simultaneously in a legal, organizational and economic aspect (Table 1).

Table 1. Contracts according to Law, Neoclassical Economics, and NIE

	Law	Neoclassical Economics	NIE
Nature	Agreement to initiate, terminate, change legal relationship	Exchange of assets	Exchange of assets Institution; Company; Hierarchy; Market; Exchange of subjective property rights in process
Structure	Legal structure	Market perspective	Governance Structure (GS)
Types	Written, oral; notarized, registered, etc. Consensual, remunerative, aleatory. One-sided, two-sided, multi-sided, etc.	Bilateral	Formal; informal Classical, neoclassical, relational (behavioral). Hybrid contract
Forms	Purchase and sale, lease, rent, service loan, mortgage, donation, division, etc.	Sale or lease	Completed contract. Incomplete contract.
Number of parties	Two parties or more	Always two parties	One or more parties involved in the proceedings
Relationships	Obligation (performances)	Goods are exchanged, and specific relations in services	Bilateral or quasi-relations
Actors Contractors	Buyer – Seller. Tenant – Lessor. Donor – Gifted. Partners, etc.	Buyer – Seller.	Rights holders. Actors Agents Arbitrators

Source: Own research.

A combined understanding of the contract because of economics, law and organization is the foundation of the WE approach [80].

[49] believes that a special distinction should be made between contracts in which goods are exchanged, for example, commercial contracts and labor contracts. These differences follow not only from differences in the method of legal regulation. The differences are both in the *ex-ante* moment of conclusion, and in the ways of terminating a contract *ex-postas* a consequence not only of the execution but also of the legal framework, show that the

economic goals characteristic of contracts with the exchange of property rights [2, 3] goods cannot to be applied analogously.

[77] makes a further distinction between intra-firm and extra-firm contracts [81], but in his explanation, this distinction is related to the idea of the problem of organizational boundaries. By the law, some companies can enter into agreements with the administrative body, that is, to move from *relations* of an orderly nature to those of a market type [57]. In some multilateral contracts - owners of one legal entity-company participate in a

partnership with managers of the public. The spillover of egalitarian, hierarchical legal regulation forms the basis of an instrumental explanation of the boundary processes of market and organization [19, 20].

[34] states that the abdication of courts of regulatory authority through business judgment rules can be seen as a significant contribution to corporate governance. The courts are sometimes substituted in deciding the legal dispute. The institutional environment has imposed a new role for arbitrators to guide understanding [41, 31]. However, the idea of them resolving their legal disputes is an idea of blending contract types into a single [33] framework, which not only reduces opportunism but also evaluates long-term alternatives. To this concept, we can also include contracts imposed by administrative or judicial order [67].

The NIE directs the meaning of what a contract is to an integrated process in which different alternatives are more easily evaluated.

The contract as a Governance structure (GS). Types of contracts.

[76] considers the contract to be an institution in which the exchange takes place. As already explained according to the theory of state and

law, contracts are a unit of measurement of the whole social structure [79]. On the other hand, they are an economic organization [78] and which allows relations to be analyzed discretely and bilaterally. The contract combines the idea of a single structure - GS - a symbiosis between different forms of "markets, hybrids, hierarchies" [78], vertically integrated [75], subject to a single governance [78]. The GS describes the contract approach, as a way of unifying relations in GS according to the idea of [78].

According to [48] and [36] the firm is a structure creating a hierarchy through which power is exercised. The firm is an indivisible process-technological set of competencies [22, 23, 74].

[37] argued that the firm is an artificial order. [73] considers the firm to be a corporate actor-institution.

[4, 46, 27, 61] consider the firm as a contractual form. Apart from the firm-market dichotomy, the authors gradually move us towards the thesis that the firm is not just a collection of assets and property, but a structure in which hierarchical control is exercised through certain contractual relationships [39, 40].

Table 2. Governance structure

	Market	Hierarchies	Hybrids
Essence	Contract processes and market mechanisms	Companies, Administrative and Judicial bodies	Institutions; organization. Actors and organization.
Integration	Looking for subordination of transactions horizontally	Looking for subordination of transactions vertically	Looking for subordination of transactions horizontally and vertically. The possible trade-off between physical and e-transactions is being sought.
Forms of exchange	Exchange of subjective rights in contracts. Exchange of subjective rights in quasi-trials	ST; Companies; Cooperatives; Incorporated companies. Rights in administrative and judicial processes	Assignment of rights (franchise). Technological. Related to the management of general property management. In the conditions of new analytical frameworks in which legal forms merge
Analytical framework	According to the legal form	According to the organizational form	Time (process) analytical framework

Source: Own research.

Hybrid relations are observed in association and interfirm cooperation [1, 55, 26].

Cheung (1969b) examines agreements that mix the form of the contract as well as its physical and technological nature [17, 18].

[14, 35, 60] in their research consider the contracts that are characteristic of the joint

sharing and management of resources and also the management of common property [25].

Hybrid contracts can merge economic and legal organization, unite opposing functions and create a "balance" in the analysis of institutional and technological structures, that is, compare alternatives as a special type of contract.

Contracts in agriculture. Examples from the Bulgarian reality.

Agricultural contracting has been studied by [5, 6, 7, 16, 17, 58, 62, 65, 68].

As a coordination management structure it was studied by [8, 9, 10, 11, 13, 15].

These authors use NIE as a tool to solve production, system and other, for example, political problems of the agricultural environment.

Due to the instability of the markets caused by the inelasticity of the demand for food and the inflexible factors of production, as well as the excesses in the supply which means a strong rise in prices. The EU introduced numerous policies (CAP) in which it applied the contractual-dispositive principle and the administrative-imperative regulation of agricultural processes. The EU has left member states to regulate their markets for production factors relevant to agriculture, intervening only where EU law is breached

On the other hand, to increase competition, regulations related to commodity markets (food markets) (*EU Regulation 1308/2013 on competition in agricultural markets*) [29] were introduced, as well as special mechanisms for these markets to function through more effective contractual forms (*Regulation EU 1151/2012 on food quality scheme*) [30].

Along with standard contractual forms such as: lease, rent, donation, division, establishment of the right to use land, agricultural lands, special hybrids were created, such as: (a) *official establishment of servitudes in the sense of Art. 24 para. 13 and Art. 25 Art. 4 of Law on Ownership and Use of Agricultural Land (LOUAL), 1991* [44]; (b) *the agreements under Art. 37c, LOUAL, 1991 as well as a number of mechanisms such as the one for the conversion of transactions (Resolution of the Cassation Court, 2015)* [59], *with which they facilitated horizontal integration. Similar were the motives for building type-specific contracts for agricultural goods and food, such as the quality "schemes": (a) for the protected designation of origin (PDO); (b) the protected geographical indication (PGI); (c) food with a traditionally specific character (HTSC), etc.*

To these agricultural contracts, we should also add some classic organizational forms for doing agriculture, such as agricultural cooperatives [63], food production companies and trusts for the management of agricultural lands - under the Law on companies with a special investment purpose and securitization - most often functioning as companies, as well as some specific entities from the sector, working as Agricultural Associations with registration under the Law on Non-Profit Legal Entities (NLA) [45]. Mainly for these organizations, their management structure, like other relationships, is a complex mixture of other bilateral relationships and increasingly - it would easily fit through their analysis, as the contract organization, which is a kind of hybrid.

Along with them, almost a whole range of types of employment contracts are used, including one-day contracts under *Art. 114a Labour Code (LC), 1987* [42], some of them combined with other contracts even aleatory insurance contracts and others.

Insurance contracts for agricultural produce, livestock and other property are characterized by premiums that are paid for higher risk than other sectors. Neither the random event nor the payment of the premium has anything to do with the duration of the contract. These contractual frameworks are often combined with contractual alternatives for financing agricultural production or project forms for participation in the process of subsidizing from EU funds. Table 3 presents the subordination between institutions and contracts in agriculture. The interaction between legal formal institutions and contractual forms is shown in gray. In practice, this means representations of the hierarchy of legal sources and the corresponding use of legal forms with which rights are transferred and contracts are implemented. In the northern part of the table, contracts with classic legal forms known from the law are shown in part. From the perspective of governance structure theory, these agricultural contracts are market-based. In the northwest corner, administrative and other processes are represented, which according to the governance structure theory

are hierarchies. In many cases, these processes do not exist separately, but as part of market processes. In the southeast corner are represented the different types of companies, which are implemented another type of hierarchy. At the same time, the modern

agrarian company is a real mixture of different functionality and can also be considered as a hybrid contract. In the southern part of the table are the typical hybrids. In the western part are the institutions.

Table 3. Contracts in agriculture – NIE perspective (examples from Bulgaria)

	Classical	Neoclassical	Behavioral	Hybrids
Law (perspective)	Unilateral transactions (refusal of inheritance, will, power of attorney)	Purchase and sale. Agricultural land lease Insurance contracts ¹	Employment contract. Tolling agreement ² . Loan for service between relatives. Membership in an organization of agricultural producers.	Procedures: Art. 37c of the LOUAL (1991) [44] Organizations under Regulation 1308/2013 (EU Law) [29] EU Law (infringement procedure) ³ [28] Other Procedures ⁴
Process (perspective)	Processes and administrative proceedings for extracting documents. Registration and entry processes.	Trades on the commodity exchange. Bargaining. Futures and forward contracts, Options, etc.	Opportunism in contracts of any type. Transactions in shares of agricultural enterprises Lawsuits	Common trademarks. Common property (resources). Virtual organizations (hubs). Electronic systems for applying for a given measure (for example a measure under the National program "Beekeeping") "Quality" schemes (EU Law) [30] Virtual organizations(hubs). Judicial process: Art. 108 of the Property Act (1951) [72] Art. 14 (3) of the LOUAL (1991) [44] .
Actors (perspective)	Holders of subjective property rights: Administrative services. Notaries. Lawyers. Intermediators ⁶	Holders of subjective property rights: Institutional Intermediaries: Stock Exchanges. NLA(NGO). Associations.	Holders of subjective property rights: Institutional Arbitrators. BG Courts. EU Court of Justice. Other type jurisdictions: testing laboratories and CIRAD ⁶ .	Holders of subjective property rights: All

¹See aleatory - an uncertain, random event.

²These contracts can also be considered as manufacturing contracts (See Art. 258-269, Law of Obligations, 1951) [43].

³French Agricultural Research Centre for International Development (CIRAD).

⁴See the agreements under Art. 9 of the APC, 2006, which substituted the commencement. On the basis of Art. 20 of APC, 2006, administrative bodies may enter into agreements. See also the possibilities for agreements under Art. 16 of the Administrative Procedural Code (APC) [69], carried out by the Prosecutor. Agreements are also concluded by the financial authorities, as well as by virtue of membership in international organizations (Articles 134e-134g of Financial Tax Procedure Code, FTPC 2006); between the financial authorities Code FTPC, 2006). between the financial authorities of the state (art. 143 para. 6, para. 7 of (FTPC, 2006) and by virtue of a legal relationship occurring between the financial authority and the addressee - subject of obligations (Art. 154 of FIPC, 2006). Such are also the substitutions for the agreements, which terminate the process and operate with the force of res judicata, replacing the legal dispute (Art. 140a and 140b; Art. 330 of the Penal Procedure Code (PPC, 2006) and Art. 384 para. 2 of the CPC, 2008; art. 24 paragraph 3 of PPC, 2006 and art. 330 of PPC, 2006).

⁵See the parties to the agreements Art. 145 of the Code of Civil Procedure (CPC, 2008) [70] , part 149 of the CPC, 2008 Art. 384 par. 1 of CPC, 2008; to settlement by arbitration agreement (Art. 19 of CPC, 2008), referral to mediation (Art. 143 b of CPC, 2008)).

⁶Procedure for agricultural lands against 5 countries including Bulgaria.

Source: Own research.

In the event that their subordinate character is accepted, the impact of imposing some order on the other forms - that is, the institutions can be considered both as a prerequisite and as a continuation of the listed contracts. In the lower, southern part of the figure, the effect of part of the integrated contractual frameworks - the transaction costs - is placed.

Such an approach combining agricultural institutions, simultaneously with contractual forms, which in turn are woven into markets, hybrids, and hierarchies, allows the

deployment of a systematic analysis of agricultural contracts.

Agricultural contracts and transaction costs.

Transaction costs are dependent on the degree of integration in the contract [64, 50]. On the other hand, the degree of integration in the contract is always determined by its uncertainty [56, 60]. According to such a paradigm, market contracts will impose the highest transaction costs, which will decrease in hybrid contracts and will be lowest in

hierarchies [51]. However, the latter should be true only in a classical analytical framework that does not include the time factor in which a given contract unfolds. We do not see an obstacle when switching from one contract form to another, that is, in the case of "plural forms" [52, 53], some forms such as those of hybrid contracts have higher transaction costs than market contracts.

Transaction costs in agricultural contracts provide information about the price of different contract alternatives. Their discrete structural analysis directs the types of contract forms - how to use a contract, and how to plan the overall economic activity [12, 32].

Table 4. Governance between institutions and contract forms = Effects = Transaction costs

		North															
		CONTRACTS Examples:	Purchase and sale	Rent	Lease	Donation	Division of agricultural land	Easement of property	Right of use	Notarial deed on Circumstantial verification	Bequest of property/agricultural land	Disinheritance	Mortgage in consequence loan	Inheritance	others		
INSTITUTIONS Examples:			a	b	c	D	e	f	g	h	i	j	k	l	m	HIERARCHIES Examples:	
West	PA(1951) ¹ [72]	1														Procurement of documents	
	LOUAL (1991) [44]	2														Acquisition of information	
	CPC (2008) ³ [70]	3														Agricultural farm - household	
	SPL (1996) ⁴ [66]	4														Ltd.	
	MPA (1996) ⁵ [54]	5														General partnership	
	IA (1949) ⁶ [38]	6														Joint-stock company	
	EU Law ⁷ [26]	7														Non-profit legal entity (NPE)	
	Tariffs ⁸ [71]	8														Agricultural cooperatives	
	DCC, 2014 ⁹ [21]	9															
		Procedure / Agreement Contract														HYBRIDS Examples:	
		EU Quality schemes Digital forms Law Disputes															
Transaction costs																	
South																	

¹Property Act, 1951 [72].

²Law on Ownership and Use of Agricultural Land, 1991 [44]

³CPC, 2008 - Civile Procedure Code [70]

⁴State Property Law [66]

⁵Municipal Property Act 1996 [54]

⁶Inheritance Act, 1949 [38]

⁷EU Law – EU Regulation 1308/2013 (Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 [29] establishing a common organization 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

⁸Tariff for Notary Fees under the Law on Notaries and Notarial Activities, 1998 [71].

⁹DCC, 2014 -See Decision No. 1 of January 28, 2014 of the Constitutional Court in Constitutional Case No. 22 of 2013 [21], SG No. issue 10 of 4.2.2014 in connection with a violation of Art. 22 par. 1 of the Constitution and of § 3 "Free movement of capital", item 2 of Annex VI: The list under Article 20 of the Accession Protocol, Transitional Measures, Bulgaria from the Treaty of Accession of the Republic of Bulgaria and Romania to the European Union (TARBREU).

Source: Own research.

Sometimes it would be more profitable to use activities with completed contracts (sales) and in other cases - unfinished (leases), but this is only one side of the question [7, 16]. Transaction costs can be used to justify a decision in choosing the most appropriate legal form of a company (Ltd.; SA) that will

carry out a certain activity (Table 4). Their measurement would make more effective both the decisions to start a business (regulation entry) and the costs of (exit) - the exit of a given economic entity from a certain agricultural market or the economic system upon termination of the activity of an

agricultural company [24]. The amount of transaction costs can be the reason for the existence or the transition from one to another contractual form [47].

CONCLUSIONS

A contract can be thought of as an institution and a system of rules of conduct. On the other hand, it can be like a legal form, but also a social technology (mechanism) through which process alternatives are measured. Firms and other hierarchical structures can be analyzed in a bilateral context, as a special type of contract. Agricultural contracts can be considered as a hybrid, and their analysis takes into account:

(1) Specificity of resources. For example, contracts for the lease of agricultural land, which have a strictly separate subject, which, despite the analogy, are different from similar contracts for the use of property in other spheres. They should combine an administrative approach and the dispositive principle (see again the procedure under Art. 37c, LOUAL, 1991) [44]. The situation is similar with quality schemes and others. The hybrid contract is suitable for the analysis of cases with common ownership or a mixture of standard and e-technologies.

(2) Employment contracts. Of particular importance are family and farm employment contracts, the latter of which can be considered in a bilateral context but taking into account the differences from typical firms and seasonal activities in the sector. Contracts serving to reduce risk - cannot be applied, such as contracts for insurance of agricultural inventory and agricultural production but can be part of a system of a general alternative framework with financing contracts or labor contracts.

(3) Market agricultural organizations, as well as their accompanying hierarchies, can be analyzed as a system of steps and procedures. At the same time, they can combine administrative, judicial processes and market mechanisms in a common framework. The situation with organizations registered as companies is similar. They can be part of a system of contracts with a market and a non-

market element, in which ordinary bargaining and an administrative hierarchical approach to problem solving can "coexist" in parallel.

(4) Transaction costs are influenced by the form of the agricultural contract. They are consequences of the chosen legal forms but can determine the decisions related to the use of certain types of contracts. There is a lack of indisputable evidence, including empirical evidence, that a given legal form leads to lower or, on the contrary, to higher transaction costs.

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