

THE LEGAL SUSTAINABILITY OF SHORT FOOD SUPPLY CHAINS

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ABSTRACT

Este artículo, que es una versión más detallada de una conferencia proferida en el IV Fórum Mediterráneo de Derecho Agrario en la Universidades de Sevilla el día 25 de Enero de 2019, tiene como objetivo analizar las principales dificultades legales de las Cadenas Cortas Agroalimentarias en Europa y concretamente en Portugal. El fomento de las cadenas cortas permite reducir el desperdicio de alimentos, aumentar el rendimiento de la explotación agraria y promover sistemas agrícolas más sostenibles, contribuyendo asimismo para el desarrollo económico local. No obstante sus beneficios, se encuentran todavía diversas barreras legales y de mercado que dificultan la adopción de cadenas cortas por parte de los productores y de los consumidores de gran escala, como el sector público o los supermercados. Fundamentados en la legislación nacional y en informes comunitarios sobre las experiencias más recientes de cadenas cortas, pretendemos sintetizar los principales problemas y algunas de las soluciones adoptadas en casos concretos.

1. INTRODUCTION

In a world increasingly saturated with fast food and constantly seeking a healthier and environmentally more sustainable diet, it is quite pertinent to discuss the potentialities of Short Food Supply Chains (SFCs) as mechanisms to increase farm incomes, promote ecological farming systems and contribute to local economic development.

However, this concept of SFCs raises complex issues that need to be examined. For example, how to define “short” and the mechanisms to control the origin of food? What are the limitations to the supply of local products? What legal and physical barriers to direct selling of local products to consumers need to be overturned? Does this approach work in all types of communities?

The first approach to these problems is given by the Regulation (EU) No 1305/2013: “*Short supply chain’ means a supply chain involving a limited number of economic operators, committed to co-operation, local economic development, and close geographical and social relations between producers, processors and consumers*”.¹ It is very important for understanding how collaborative SFCs operate the recognition by this regulation of the importance of social relationships between people involved in the food chain.

Further details on the meaning of “limited number of economic operators” are given by the Commission Delegated Regulation (EU) No 807/2014 which stipulates that “*Support for the establishment and development of short supply chains, as referred to in Article 35(2)(d) of*

¹ Article 2.1.(m)

Regulation (EU) No 1305/2013 shall cover only supply chains involving no more than one intermediary between farmer and consumer".² It is clearly understandable that the definition of SFCs is concerned primarily with the nature of the relationships between all the actors involved in food systems.

In line with that legislation, and as an attempt to systematize some of these ideas, the Portuguese Ministry of Agriculture promoted the elaboration of the "Strategy for the valorisation of local agricultural production"³. This document establishes the definition of SFCs as a method of marketing which is carried out either by direct sale from the producer to the consumer or by indirect sale, provided that there is only one intermediary.

2. MAIN FEATURES

The main reason for shortening food chains is to reduce the number of intermediaries, having as few links as possible between the food producer and the citizen who eats the food.

Although there are many models of SFCs, all share the same main characteristics:⁴ (i) a reduced number of intermediaries between the producer and the consumer, (ii) the food chain is transparent because the consumer knows exactly where the food comes from and how it has been produced, (iii) the food chain is structured in a way that ensures the retention by the producer of a greater share of the value of the food that is sold, (iv) intermediaries become partners in SFCs, fully committed to sharing information on the origins of the food, the producer and the production techniques, and (v) geographical proximity between the origin of the products and the place of sale to the final consumer.

Another aspect to be aware of is the expansion of SFCs, which probably will be better achieved through the co-ordination of small and micro-sized businesses than through individual enterprises increasing their size.

Collaborative measures may bring many benefits to all the participant entities. For instance, the product range can be improved so that more producers can be involved and more jobs can be created through retaining the added value in each territory. Resources such as equipment, tools and knowledge also can be shared in order to improve efficiency and share costs, fighting at the same time against the isolation felt by small-scale producers. Additionally, the negotiation power is increased, giving more weight in contract negotiations, ensuring fair terms and conditions and, gaining access to public and larger scale markets.⁵

3. KEY ISSUES

According to the EIP-AGRI Focus Group Final Report, dated 30 November 2015, it is possible to identify the main key issues related to SFCs, which involved regulatory and financial barriers to setting up and getting support and some marketing obstacles to develop the products, among others.

² Article 11.1

³ "*Estratégia para a valorização da produção agrícola local*" (Despacho n.º 4680/2012, dated April 3)

⁴ (Ilhéu, Maria José (Direcção-Geral de Agricultura e Desenvolvimento Rural), p. 16)

⁵ (EIP-AGRI Focus Group, 2015, p. 6)

It is possible that either national or EU regulations and tax systems may act as an obstacle to the development of SFCs. Although it is conceivable to implement rules with a certain degree of flexibility, all European countries do not apply the same criteria on their regulations. For example, EU hygiene rules were identified⁶ as the most important point to address as they pose considerable challenges to small and traditional food production systems in general.

Another problem is related to the access to finance in order to invest, because it is not easy to SFCs to secure bank finance⁷. How can small, often family businesses borrow from banks without being charged a high interest rate, as they are considered to be high risk? Or, for example, how to secure investment and share the rewards amongst a group of small companies? Some businesses would share immediately the profits and others would like the funds to be reinvested.⁸

The lack of relevant skills is also a major challenge since it is essential to understand how collaborative SFCs can acquire or exchange skills adapted to new and collective projects. Two examples given by EIP-AGRI Report illustrate the type of solutions that can improve skills: (i) as in France butchers are not trained any longer to buy animals directly from the farm, one idea that has been tried was 'speed dating' or show rooms, which have been organised to facilitate meetings between farmers and caterers; (ii) in Hungary it has been suggested adult training to school assistants that do not know how to prepare some fruits and vegetables (e.g. how to peel, cut, cook, etc.) in order to facilitate the use of farmers' products.⁹

Another aspect to be aware of is the importance of a good branding to promote the products, give them economic value and communicate SFCs values to potential buyers. The consumer understands and is prepared to pay for the qualities of the product, such as its taste, health properties or freshness, without being necessarily more expensive than middle-range industrial products.¹⁰

However, one of the biggest barriers to technology adoption for SFCs is the high cost and low availability of small-scale equipment, since much technological research has been focused on agro-industrial equipment of large-scale.

Furthermore, it is essential to gain a better understanding of how to access to markets and consumers; i.e., how consumer lifestyles affect the food they purchase and where, when and how they wish to purchase it so that this can inform product development and marketing. Nevertheless, the development of markets has several challenges when facing the different types of product categories, localities (urban, peri-urban, rural, sparse), food cultures and lifestyles and markets (local communities, online customers, public sector catering, hotels, restaurants or supermarkets).

4. PORTUGUESE REALITY

In Portugal, for instance, the only type of market duly regulated in which SFCs can access is local communities and that can be achieved through a variety of small and medium-sized economic units

⁶ (EIP-AGRI Focus Group, 2015, p. 8)

⁷ (EIP-AGRI Focus Group, 2015, p. 10)

⁸ (Tibério, 2013, p. 7)

⁹ (EIP-AGRI Focus Group, 2015, p. 11)

¹⁰ (EIP-AGRI Focus Group, 2015, p. 14)

co-operating to enable consumers to buy products from SFCs either individually or through a group and at convenient times and places.¹¹

Some of the most significant examples are constituted by the following cooperatives/informal groups of producers and consumers:¹²

NAME	TYPE	DETAILS
PROVE	Informal group of producers and consumers	Model inspired in the French AMAP (Associations pour le Maintien d'une Agriculture Paysanne). A group of producers regularly supplies a group of consumers. The PROVE nucleus are dispersed in the country, gather about 70 producers, and distribute 1000 baskets per week.
COOPRaízes	Cooperative of Producers	Group of producers organized in a cooperative to distribute weekly baskets to a regular group of consumers.
Cabaz da Horta	Informal group of producers and consumers	A project to home deliver agricultural products from small farms in the region of Setúbal and Palmela. Consumers partially volunteer in the distribution process.
ReCíProCo	Cooperative of Producers	Intends to establish relations of citizenship between producers and consumers. It is based on the creation of direct local agreements between producers and consumers in nearby localities, adding to this idea a territorial, collective and social dimension that has a very positive impact from a social, environmental, health, economic, patrimonial and pedagogical perspective.

¹¹ (Teixeira, 2014, p. 30)

¹² (Tibério, 2013, p. 8)

Cabaz do Peixe	Association of artisanal fisherman	<p>Selling fresh fish baskets from Sesimbra directly from the local fisherman's association to the final consumer.</p> <p>The basket has about 3 kg of gross weight and includes 3 or more different species for 25 €.</p> <p>The fish already comes scalped and gutted, ready for their cooking.</p>
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Only in 2015, and as a direct consequence of the European rural development regulation, the Portuguese Ministry of Agriculture and Sea legislated on SFCs, establishing the legal regime applicable to local producers' markets (Decree-law no. 85/2015, May 21).

The establishment of a local producers' market may be the initiative of a local authority, a group of local authorities, a group or association of producers, local development associations and partnerships between these entities. It is also possible to be the initiative of private entities, subject to authorization of the local authority.

The local producers' market is for the participation of natural or legal persons for the marketing of products of local production resulting from their farming and agricultural activity or for the marketing of processed products, produced in-house, with raw material exclusively resulting from agricultural production of local origin.¹³

This regulation also foresees the markets' duties and obligations, such as its subordination to internal regulation from the local authority (Art. 6), the mandatory presence of the producer at the place of sale (Art. 7) or the compliance with the applicable legislation on marketing standards and food hygiene and safety as well as consumer rights.

One specific characteristic of local communities marketing approach is the variety of ways in which local producers can serve local consumers, either through farmers markets, farmer-owned retail outlets, pop-up stalls, box delivery schemes, online sales and sales to artisans or small retailers.

In many countries, whilst selling at farmers markets generates high margins per unit, these do not offset the low volumes sold. Although direct selling in this way does have other advantages such as contact with customers and opportunities for building customer loyalty and gaining regular feedback on product quality, in most cases, success comes from having multiple outlets in order to achieve scale.

¹³ Decree-law no. 85/2015, May 21, Article 5.1.

5. PUBLIC SECTOR CATERING AND TERRITORIAL DEVELOPMENT

Besides the fact that in Portugal Local Markets are virtually the sole relevant model of SFCs, there is a collective effort (by the Government itself, producers and local communities) to promote Public food procurement of local products.¹⁴

By the entities that make up the public sector (schools, universities, councils, prisons, hospitals, military, etc.) it is clearly perceivable its relevance as a major consumer of goods and services. Governments spend on average 12% of their GDP in public procurement in OECD countries, and a little less in developing countries.

Furthermore, Public procurement is regarded as a powerful strategic tool for connecting growth with sustainability, for investing in local resilience and supporting innovations.

In mainland Portugal, 93% of the farms are family owned and are responsible for the exploitation of almost half of the agricultural and forest area, where 47% of the Value of Production is generated.¹⁵ This productive universe gives employment to 81% of agricultural labour units.

Despite the efforts made by local authorities and producers, the Public Sector is still an extremely difficult market to access. There is usually too much bureaucracy, and because costs still often take precedence over quality, prices and margins are low. Procurement officers tend to see sourcing of local food as an intimidating challenge and caterers are rarely involved directly in projects to increase sourcing of food through SFCs.

If the customer is a large buyer such as in the public sector or a supermarket, then issues around consistency, quality and quantity of supply have the most importance. This is also a key market in which collaborative behaviour can enable small farmers and food producers to work together to provide a more comprehensive and consistent offer for the larger customers.

Notwithstanding all the difficulties in implementing and disseminating SFCs in Portugal, this is an area that begins to attract the attention of the Ministry of Agriculture, either as a way to flow local production, decrease food waste or improve food diet, as well as by encouraging less intensive and more environmentally sustainable cultural practices, contributing to the reduction of greenhouse gas emissions (by reducing the costs of storage, refrigeration and transportation of products to the distribution centres).

Therefore, specific measures to support investment in SFCs were included in the PDR 2020 (2014-2020 Rural Development Program), which, although it is not yet widely accepted, will certainly stimulate local production and markets and open a door to the future of Portuguese Agriculture.

¹⁴ (FEC - Fundação Fé e Cooperação, 2015, p. 8)

¹⁵ (Cordovil, 2014, p. 14)

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