



LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: POLAND

ICA-EU PARTNERSHIP



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I. Introduction

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- provide general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organizations, notably the for-profit shareholder corporation (the *sociedad anónima lucrativa* in Spanish; the *société anonyme à but lucratif* in French).
- to evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore “cooperative friendly” or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).
- to provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of “cooperative friendliness”, which is to say, to make the legislation more favourable to cooperatives, also in consideration of their specific identity.

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contacted for contributions to the latter sections, with additional input provided by the National Cooperative Council, who represent the Polish cooperative movement at the national level and abroad, and the National Auditing Union of Workers Cooperatives, a voluntary organisation which associates labour cooperatives and cooperative organisations in Poland.

II. National cooperative law: Poland

i. General Context

The **Constitution of the Republic of Poland of April 2, 1997**¹ does not contain provisions specific to cooperatives, although some of them, e.g. on the right of association, protection of property, equal treatment, etc. also apply to cooperatives. However, in practice, the significance of the Polish Constitution for cooperatives is momentous because it sets the boundaries for creating and applying regulations to cooperatives. **The Constitutional Tribunal** removes unconstitutional provisions and thus significantly influences the shape of cooperative law, setting the direction for future legislative work in this area. For example, an important amendment to the Act on housing cooperatives of 20/07/2017 resulted from the Tribunal's judgment of 5/02/2015.² Another example is the judgment of 31/07/2015 in which the Tribunal was in favour of taking up cooperative savings and credit unions, known as the resolution procedure resulting from EU Directive 2014/59/EU.

In Poland, the cooperative is a type of legal entity separate from commercial companies and associations.³ It is regulated in the first place by a separate act of 16.08.1982, **the Cooperative Law**.⁴ It regulates the establishment, functioning and dissolution of the cooperative. The Commercial Companies Code Act of 15.09.2000⁵ does not apply to cooperatives, but the Civil Code Act of 23.04.1964⁶ may apply.

The Cooperative Law is of a general nature in the sense that it applies to all types of cooperatives, unless specific provisions addressed to some of these cooperatives provide otherwise. At present, apart from the general act, there are several special acts regulating only particular types of cooperatives.

The Cooperative Law of 16.08.1982 was created during the period in which the command and distribution economy was in force in Poland and so is often considered to be not adapted to contemporary economic and social challenges that cooperatives face.

In the Cooperative Law, apart from general provisions that apply to all cooperatives, there are special provisions for the regulation of specialised types of cooperatives. These

¹ *Official Journal* from 1997, No. 78/483, z 2001 r. No. 28/319, z 2006 r. No. 200/1471, z 2009 r., No. 114/946.

² K 60/13, OTK ZU A 2015, nr. 2, poz. 11.

³ P. Zakrzewski, „Z zagadnień konstrukcji prawnej spółdzielni” [On issues of the legal structure of the cooperative], Rejent, nr 9 (2004).

⁴ *Official Journal* from 2020, No. 275, 568, 695.

⁵ *Official Journal* from 2019, No. 505, 1543, 1655, 1798, 2217, from 2020, No. 288, 568, 695.

⁶ *Official Journal* from 2019, No. 1145, 1495.

are agricultural production cooperatives, agricultural service cooperatives⁷ and labour cooperatives.

Those types of cooperatives that do not have a separate statutory regulation operate on the basis of the general provisions of the Cooperative Law, e.g. consumer cooperatives, dairy cooperatives, gardening and bee-keeping cooperatives.

In addition, there are separate specific laws addressed to specialised types of cooperatives, which have been specified by the legislator most often for functional reasons based on the criterion of a particular purpose or object of activity. These are housing cooperatives, cooperative banks, cooperative savings and credit unions, social cooperatives, farmers' cooperatives, craftsmen cooperatives and energy cooperatives.

The European Cooperative Society Act of 22.07.2006⁸ regulates the establishment, organisation and operation of a European cooperative society, to an extent not regulated in Council Regulation No. 1435/2003/EC.

The relatively large variety of cooperative types stems from the fact that after the political changes in 1990, the legislator left the existing types of cooperatives free to change their goals and subject of activity, e.g. agricultural production cooperatives, agricultural circle cooperatives, cooperative banks. At the same time, new types of cooperatives have appeared in recent years. The table below provides a list of these laws.

Table 1 “List of laws”

Type of law	Denomination & Date of approval	Date of last update/legal act	Purpose and subject of the cooperative
The basic law regulating all cooperatives, agricultural production cooperatives, other agricultural production cooperatives, agricultural service cooperatives and labour cooperatives	Cooperative Law, 16.09.1982 r.	Official Journal from 2020 No. 275, 568, 695.	"The subject of the agricultural cooperative's production activity is running a joint agricultural holding and activities for individual farms of members. The cooperative may also conduct other business activities. " (Article 138 Cooperative Law). The subject of activity of other cooperatives involved in agricultural production is running a joint agricultural holding (Article 178 of the Cooperative Law). The subject of activity of the agricultural service cooperatives is the provision of services for agriculture and other services resulting from the needs of the rural environment (Article 180 of the Cooperative Law). The subject of the economic activity of the labour cooperative is running a joint enterprise based on the personal work of the members (Article 181 of the Cooperative Law).
Special Act on Housing Cooperatives	Act on Housing Cooperatives (HCA), 15.12.2000 r.	Official Journal from 2018 No. 845, 1230, from 2019 1309.	The purpose of a housing association is to meet the housing and other needs of members and their families, by providing members with independent residential premises or single-family houses, as well as premises for other purposes (Article 1 HCA ⁹).

⁷ The exact translated name is the cooperatives of agricultural circles (agricultural services).

⁸ *Official Journal* from 2018, No. 2043.

⁹ Act of 15 December 2000 on housing cooperatives, *Official Journal* from 2018, No. 845, 1230, form 2019 No. 1309.

Special Act on Cooperative Banks	Act on the Functioning of Cooperative Banks, their Association and Affiliating Banks (FCBA), 7.12.2000 r.	Official Journal from 2020, No. 449.	A cooperative bank is a bank that is a cooperative, the object of which is to carry out banking activities regulated by the Act of August 29, 1997, Banking Law Official Journal from 2019 r. poz. 2357, z 2020 r. poz. 284, 288, 321, 1086 (see Art. 2 point 1 FCBA).
Special Act on Cooperative Savings and Credit Unions	Act on Cooperative Savings and Credit Unions (CUA) 5.11.2009 r.	Official Journal from 2019 No. 2412, from 2020, No. 288, 321.	The purpose of cooperative savings and credit unions is to collect only their members' cash, grant them loans and credits, conduct financial settlements on their behalf and carry out insurance distribution (Article 3 paragraph 1 CUA).
Special Act on Social Cooperatives	Act on Social Cooperatives (SCA), 27.04.2006 r.	Official Journal from 2018, No 1205 from 2019, No. 2020.	The subject of activity of a social cooperative is running a joint enterprise based on the personal work of members and employees of a social cooperative. A social cooperative also works for: 1) social reintegration of its members and employees of a social cooperative, 2) professional reintegration of its members and employees of a social cooperative (Article 2 paragraph 1 of the SCA ¹⁰)
Special Law Governing the Functioning of the European Cooperative Society	European Cooperative Act (SCE), 22.06.2006 r.	Official Journal from 2018, No. 2043.	The law does not contain its own definition of a European cooperative
Special Act on Farmers' Cooperatives	Act on Farmers' Cooperatives (FCA)	Official Journal from 2018, No. 2073.	The object of the farmers' cooperative is conducting business for the members of the farmers' cooperative in the field of: 1) planning the production of products or groups of products by farmers and adapting them to market conditions, with particular regard to its quantity and quality; 2) concentration of supply and organizing the sale of products or groups of products produced by farmers; 3) concentration of demand and organising the acquisition of the necessary means for farmers to produce products or groups of products "(Article 6 paragraph 1 FCA ¹¹).
Act defining craft cooperatives, among others	Craft Act (CA)	Official Journal from 2018 No. 1267 from 2019 No. 1495.	The task of craft cooperatives is, in particular, to organise craft service and manufacturing activities, to assist members in carrying out their tasks and to run their own business and social or educational activities (Article 10 paragraph 2 CA ¹²).
Act on the Principles and Conditions of Performing Activities in the Field of Generating Energy from Renewable Energy Sources	Act on Renewable Energy Sources (RNS)	Official Journal from 2020 r. No. 261, 284, 568, 695, 1086.	Energy cooperative - a cooperative within the meaning of the Act of September 16, 1982 - Cooperative Law (Journal of Laws of 2018, item 1285 and of 2019, items 730, 1080 and 1100) or the Act of October 4, 2018 on farmers' cooperatives (Journal of Laws, item 2073), the object of which is the production of electricity or biogas or heat in renewable energy sources and balancing the demand for electricity or biogas or heat, solely for the energy cooperative's own needs and its members, connected to an area-defined electricity distribution network or a gas distribution network, or a heating network (Article 2 point 33a and Article 38c RNS ¹³)

¹⁰ Act of 27 April 2006 on social cooperatives, Official Journal from 2018, No. 1205, from 2019, No. 2020.

¹¹ Act of 4 October 2018 on farmers' cooperatives, Official Journal forms 2018, No. 2073.

¹² The Act of 22.03.1989 on crafts, Official Journal from 2018, No. 1267, from 2019, No. 1495.

¹³ Law of 20 February 2015 on renewable energy sources, Official Journal from 2020 r. No. 261, 284, 568, 695, 1086.

ICA Principles in the law

Polish Cooperative law does not expressly make reference to the ICA Principles. The Principles, however, "apply" to a large extent through Polish law, which is consistent with their content and purposes. The cooperative laws can therefore be said to implement the ICA Principles in practice.¹⁴

Cooperative membership in Poland is voluntary and open. This means that anyone can join the cooperative, but there is no legally enforceable claim for admission. Only specific types of cooperatives, e.g. farmers' cooperatives and social cooperatives limit the list of their members to certain categories of persons, e.g. to farmers and the unemployed. Cooperatives are also subject to democratic control. This is expressed in the principle of one member - one vote. An exception to this rule may occur in cooperatives consisting only of legal persons.

Members provide cooperatives with the capital that is necessary for their activities. The obligatory reserve fund is created from a part of the profit and is indivisible during the existence of the cooperative. The purpose of the cooperative's profit is varied and depends on the type and purpose of the cooperative. Generally, however, profit is distributed by members in any manner, subject to a mandatory contribution to the resource fund. Profits can also be allocated to reserve funds and also be paid out to members. However, in housing cooperatives, cooperative savings and credit unions and social cooperatives, profit cannot be paid to members.

Cooperatives are autonomous organisations. If the specific object of their activity so requires, they are subject to control by administrative bodies, for example cooperative banks and cooperative savings and credit unions.

The ICA principles of education, training and information, cooperation among cooperatives and concern for community are implemented by cooperative audit associations (cooperatives that administer other cooperatives). Their tasks include conducting annual inspections of cooperatives, engaging in instructional, advisory, cultural and educational, training and publishing activities for associated cooperatives, as well as initiating and developing cooperation among cooperatives (Article 240 of the Cooperative Law). The National Cooperative Council also deals with the organisation of scientific and research, training and information activities, supports the development of student cooperatives, initiates and develops inter-cooperative activities, and promotes the idea of cooperative cooperation (Article 259 of the Cooperative Law). The implementation of the principles of education, training and information, cooperation among cooperatives and concern for community by other cooperatives is voluntary, and cooperatives in Poland may incorporate these principles into their statutes.

¹⁴ M. Wrzolek-Romańczuk, „Pojęcie spółdzielni” [The concept of cooperative], w System prawa prywatnego. Prawo spółdzielcze, [Private Law System. Cooperative Law] red. K. Pietrzykowski, t. 21 (Warszawa, 2020), 38–40; P. Zakrzewski, „Zasady Międzynarodowego Związku Spółdzielczego” [Principles of the International Cooperative Association], Kwartalnik Prawa Prywatnego, nr 1 (2005): 277–296.

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

Definition

The Cooperative Law provides a general definition of cooperatives. According to this law, the cooperative is: “...a voluntary association of an unlimited number of persons, of variable membership and variable share fund, which conducts joint economic activity in the interests of its members. A cooperative may conduct social, educational and cultural activities for the benefit of its members and their community” (Article 1 §1 and 2 of the Cooperative Law). The meaning of this general definition of a cooperative is that it defines the most important features of each cooperative. These cooperative features - unlimited number of persons and variable composition - distinguish cooperatives from commercial companies. However, the purpose of the cooperative is expressed in a general way and does not allow us to make such a distinction between cooperatives and commercial companies.

Special provisions that apply to specialised types of cooperatives often specify their purpose and sometimes also the subject of activity. There are currently eight specific definitions for cooperatives. The purpose of such specialised cooperatives most often distinguishes them from commercial companies.

As indicated above, the cooperative's purpose within the meaning of Article 1 of the Cooperative Law is an economic activity "in the interest of members." This is an imprecise definition of the cooperative's purpose. It does not show how the cooperative works for members. Nor does it impose an obligation on cooperatives to enter into transactions only with their members. On the contrary, the cooperative may offer its services to any interested person without restrictions.

Cooperatives that operate based on Article 1 of the Cooperative Law may act in the interest of members in such a way that they seek to make a profit and its distribution among members and direct their activities to any interested person. This is how many food cooperatives and cooperative banks operate. Agricultural service cooperatives also operate in this way (Article 180 of the Cooperative Law).

The general purpose of the cooperative and the specific purposes of other types of cooperatives

The general definition of the cooperative's purpose from Article 1 of the Cooperative Law also allows cooperatives to conduct business involving direct economic support for the members' household, their agricultural holding, or small enterprise. The purpose of such cooperatives is therefore to promote their members. Such cooperative activity means that they make transactions only or mainly with their members who are the cooperative's suppliers, recipients, etc. For example, dairy cooperatives deal with the processing of milk from their members' farms and thus support the development of these individual farms. Which of these two business models is adopted by the cooperative is determined

by the provisions of its statute, which specifies the general purpose of the cooperative under Article 1 of the Cooperative Law.

The above definitions of specific types of cooperative show that their purpose is precisely defined. This purpose may be supporting a household, a small enterprise, or a farm of a member. Therefore, these cooperatives have a purpose of promoting their members. They have no income goals but meet the economic needs of their members. Such cooperatives may operate only for members (cooperative savings and credit unions, farmers' cooperatives, labour cooperatives, social cooperatives) or primarily for members (housing cooperatives). Members in these cooperatives are consumers of cooperative services (cooperative savings and credit unions, housing cooperatives, energy cooperatives), cooperative suppliers (farmers' cooperatives) or employees of cooperatives (labour cooperatives, social cooperatives, agricultural production cooperatives). Cooperative members benefit from obtaining affordable services or goods, a favourable reception of their products by the cooperative or the opportunity to work in the cooperative.

In such cooperatives, however, there is usually no remuneration of members in proportion to the value of transactions between members and cooperatives ("patronage refunds"), because the law does not explicitly provide for such solutions. As a result, they are not popular in practice except for dairy cooperatives. Profit in such cooperatives is used to reduce the costs incurred by members (housing cooperatives) or indivisible reserve funds (cooperative savings and credit unions and social cooperatives).

Members of the cooperative are never required to make transactions with the cooperative. There are also cooperatives that, apart from private goals, pursue social and public goals.

Activities of cooperatives for the benefit of members and exceptions

The rule in Polish law is that cooperatives conduct business activities for the benefit of members, which may also be a gainful activity. Cooperatives pursuing mainly social goals are therefore an exception.

For example, there are cooperatives of agricultural circles (or services). Their subject of activity is the provision of services for agriculture, i.e. acting for the benefit of all farmers (Article 180 of the Cooperative Law). These cooperatives work to increase the productivity of farms and improve the material and cultural standard of living in the countryside.

As mentioned above, cooperatives that base their activities on the Cooperative Law also aim at offering their services and products to non-members. In addition, cooperatives can also conduct optional social, educational and cultural activities, which are addressed to members and their community, e.g. their families and neighbours (Article 1 of the Cooperative Law). For example, housing cooperatives run community centres that carry out social and cultural activities for young people and adults, e.g. cultural workshops, performances, games, or exhibitions.

Some types of cooperatives carry out activities for the benefit of the entire community or pursue wider social goals alongside activities for members. Examples of cooperatives of

this variety are cooperatives for disabled and visually impaired persons (Article 181a of the Cooperative Law). These are specialised sub-categories of labour cooperatives, which enable the performance of work by their members in the cooperative enterprise and are aimed at the social and professional rehabilitation of disabled and visually impaired persons.

Due to the activities conducted within worker cooperatives, members are able to play an active role and become further integrated in society, as well as develop their professional skills. There were 184 such cooperatives in Poland as of 2013. However, many of these cooperatives are currently facing a difficult economic situation due to the competitive economy.¹⁵

Social cooperatives have similar social goals in the form of social and professional re-integration of unemployed and disabled persons. A specialised sub-category of labour cooperatives are folk and artistic handicrafts cooperatives. These cooperatives create and cultivate traditional values of artisan culture. They further organise and develop folk and artistic handicrafts, art and the artistic industry (Article 181a § 2 of the Cooperative Law).¹⁶

The areas of activity of the cooperative

The rule is that cooperatives can operate in any economic area, except insurance. An insurance undertaking may carry out insurance activity only in the form of a joint-stock company, mutual society or European company as defined in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the statute of a European company (SE).¹⁷

Activities of cooperatives, like other enterprises, are subject to restrictions regarding regulated activities, e.g. banking activities. Establishment of a cooperative bank or cooperative savings and credit union therefore requires the permission of the Polish Financial Supervision Authority, which also constantly supervises and controls such cooperatives.

b) Establishment, cooperative membership and governance

Establishment

The cooperative is a legal entity and entrepreneur (Article 11 § 1 of the Cooperative Law). A cooperative is formed after a constitutive entry in the National Court Register. There is currently no separate register of cooperatives.

Cooperatives, as entrepreneurs, are entered into a uniform, public register of nationwide entrepreneurs called the National Court Register (Article 1 UKRS¹⁸). The European

¹⁵ M. Grzymkowska, Powolna agonia spółdzielni inwalidów, [Slow agony of the invalid cooperative] [access 20.04.2020 r.] www.watchdogpfron.pl/powolna-agonia-spoldzielni-inwalidow

¹⁶ <https://www.ceramika-artystyczna.pl/> [access 1.05.2020].

¹⁷ Official Journal of the European Union L 294 z 10.11.2001, s. 1, z późn. zm.; Dz. Urz. UE Polskie wydanie specjalne, rozdz. 6, t. 4, s. 251.

¹⁸ Act of 20.08.1997 on the National Court Register, Official Journal from 2019, No. 1500, 1655, 1798, from 2020 No. 288.

Cooperative Society ("SCE") is subject to entry in the register on the terms specified for joint-stock companies (Article 318 CCC¹⁹).

In order to establish cooperatives, the founders must also adopt and sign the statute and select the bodies whose choice falls within the competence of the general meeting or the organising committee (Article 6 of the Cooperative Law).

The rule is that at least 10 natural persons or 3 legal persons are needed to create a cooperative. In agricultural cooperatives, the number of founders - natural persons - cannot be less than 5. The number of founders of a social cooperative cannot be less than 3 if the founders are natural persons, and 2 if the founders are legal persons. Such a cooperative may not generally have more than 50 members. The cooperative's statute may specify a higher than statutory minimum number of members.

In addition to these general conditions necessary to set up a cooperative, the special provisions provide for other requirements, e.g. the authorisation of the Polish Financial Supervision Authority to establish a cooperative bank or a cooperative savings and credit union. Sometimes it is necessary for founders and new members to possess certain qualities, e.g. the founder of a farmers' cooperative must run a farm, and the founder of a social cooperative must usually be an unemployed or disabled person (Article 4 FCA, Article 4 SCA). As another example, cooperative members of savings and credit unions can only be people connected by professional or organisational ties (Article 10 CUA).

Special rules apply when establishing a European Cooperative Society as well as a social cooperative. If the number of members of the cooperative is lower than specified in the provisions or the statute of the cooperative, then by law it is subject to liquidation, unless during the year the number of members increases to the required size (Article 113 § 1.3 of the Cooperative Law).

Cooperative membership

The regulation regarding the admission of new members to a cooperative states that a third party shall submit a membership declaration i.e. an offer to join the cooperative, in writing. Its content specifies: the full name and place of residence, or name and address of a third party, as well as the number of shares and contributions, if the statute provides for them. The cooperative body indicated in the statute (supervisory board or general meeting) accepts a third party to the cooperative or refuses such admission in principle within one month of the declaration by the third party. The cooperative is not obliged to accept a third party. Sometimes exceptions to this rule result from the cooperative's regulations or statute.

A member can withdraw from the cooperative, though the withdrawal must be made in writing. Withdrawal does not require the consent of the cooperative. The only restrictions are that the cooperative's statute specifies the notice period - i.e. the time during which a member may submit a notice of termination, e.g. November - December and the notice period - i.e. the time that must elapse from the member's submission of the notice of termination until the termination of membership. (Article 22 of the Cooperative Law).

¹⁹ Act of 15.09.2000 Commercial Companies Code, Official Journal from 2019, No. 505, 1543, 1655, 1798, 2217, from 2020, No. 288, 568, 695.

Significant changes in the acquisition and loss of membership in housing cooperatives were brought by the amendment to the Act on Housing Cooperatives (HCA) of 20 July 2017. Prior to this amendment, it was assumed that a third party would join the cooperative and then acquire the right to a housing premises. The new regulation assumes that a third party who acquires the right to the premises becomes a member of the cooperative by law (Article 3 paragraph 1 HCA). However, this does not apply to the acquisition by a third party of the right to a separate ownership of the premises. Such a person has a claim for admission to the cooperative, which follows by submitting a membership declaration and its acceptance by the cooperative (Article 3 paragraph 31 HCA).

Withdrawal from a housing cooperative by notice is generally excluded. Membership in a housing association is also terminated by law upon the loss of the right to a dwelling. By way of exception, only members who were founders of the cooperative or who are owners of premises may leave a housing cooperative (Article 1 paragraph 8 HCA).

The rule is that each member at the general meeting has one vote regardless of their capital involvement in the cooperative ("one member, one vote" principle). This rule has no derogations in cooperatives of which only natural persons or natural and legal persons are members (Article 36 § 2 of the Cooperative Law).

An exception to this rule may be stipulated only in the statute of the cooperative of which only legal persons are members (Article 36 § 2 sentence 2 of the Cooperative Law). In this case, it is possible to specify the rules for determining the number of members' votes at the general meeting. Through this exception, it is also possible to link the number of votes of a member with his capital involvement in a cooperative of legal persons.

In cooperatives of associated farmers made up only of legal persons, none of the members may have more than 20% of the total number of votes at the general meeting. This limit also applies to indirect participation, such as through a lien or through another member (Article 7 paragraph 4 FCA).

Governance of the cooperative

Polish cooperative law employs the principle of a three-tier governance system.²⁰ It assumes, as a rule, three cooperative bodies; the General Meeting, the Supervisory Board and the Management Board. In addition to these usual mandatory bodies, the statute may provide for the establishment of other bodies that are composed of cooperative members. In addition, specific provisions regarding cooperative savings and credit unions provide for an obligatory body - a Credit Committee.

The first cooperative body is the General Meeting (of members). If the statute so provides, in the event of exceeding a certain number of members, this body may be replaced by a Meeting of Representatives - but then the Meeting of Member Groups (see further discussion below) becomes the obligatory body. General remedies cannot be replaced by a meeting of representatives in housing associations. If the number of

²⁰ This term is not referred to in the law. It is inspired by SCE.

members of such cooperatives exceeds 500 persons, the General Meeting is divided into parts (Article 8a paragraph 1 HCA).

Secondly, there is a Supervisory Board. However, it may not be established in farmers' cooperatives and agricultural cooperatives where the number of members does not exceed 10, and the statute provides otherwise. In this case, the competence of the board is exercised by the General Meeting of members (Article 46a of the Cooperative Law). The same is true in a social cooperative if the number of members does not exceed 15 persons (Article 7 SCA).

Thirdly, there is the Management Board, an obligatory body. It may be a single or multi-person body (Article 49 of the Cooperative Law). Members of the Management Board are dismissed by the Supervisory Board or General Meeting. They may grant one member of the Management Board or another person a power of attorney to direct the current activity or a part of the activity of the cooperative (Article 55 of the Cooperative Law).

The shape of the internal organisational structure of the European Cooperative based in Poland depends on its statute. It can be a three-tier governance model, in which case the European Cooperative then has three obligatory bodies: a General Meeting, a Supervisory Board and a Management Board (Article 36 SCEA).²¹ Alternatively, it can also be a two-tier system, which presupposes the existence of the Management Body and the General Meeting (Article 37 SCEA).

The General Meeting is the highest body of the cooperative. Its exclusive competence includes the most important decisions in cooperative matters including:

- consideration and approval of financial statements;
- distribution of profit or coverage of loss;
- sale of real estate or an enterprise, amendment of the statute; and
- mergers with other cooperatives (Article 38 of the Cooperative Law).

If the General Meeting is replaced by a Meeting of Representatives, it is the Meeting of Representatives that adopts resolutions on these matters. The main authority of the body - the Meeting of Member Groups - is to elect and dismiss representatives to the body of the Meeting of Representatives (Article 59 of the Cooperative Law).

The tasks of the supervisory board include control and supervision over the cooperative's activities as well as other tasks resulting from the statute, e.g. the admission of new members (Articles 44 and 46 of the Cooperative Law). The Management Board manages the cooperative's activity and also represents the cooperative externally (Article 48 of the Cooperative Law).

Only members of the cooperative can be members of the cooperative bodies such as the Supervisory Board, the Meeting of Representatives and other optional cooperative bodies. Exceptionally, a legal person who is a member of a cooperative may appoint a

²¹Act of 22.07.2006 on the European Cooperative Society, Official Journal from 2018, No. 2043.

person who is not a member of the cooperative to the Supervisory Board (Article 35 § 3 and Article 45 § 2 of the Cooperative Law). Members of the Management Board do not have to be members of the cooperative, unless the statute provides otherwise (Article 49 of the Cooperative Law).

Members of cooperative bodies, e.g. the Supervisory Board and the Management Board, are responsible for organisational compensation and criminal liability provided for in specific provisions for violation of legal and ethical standards. The former (organisational responsibility) manifests itself in the dismissal from the position occupied by the body that elected them. The liability for damages consists in the obligation to repair the damage caused to the cooperative (Article 58 of the Cooperative Law).

The right of a member to control the activities of cooperative bodies is implemented by means of voting rights and the right to elect and be elected to the cooperative's organs, as well as dismissal of members of bodies from their positions. In addition, a General meeting is convened at the request of a minority of the members (Article 39 § 2 item 2 of the Cooperative Law). There are also provisions excluding the simultaneous performance of several functions in a cooperative by the same person, e.g. a member of the Management Board who also acts as a representative at a Meeting of Representatives (Article 56 1 of the Cooperative Law), and limiting the holding of a position by persons belonging to a board member's family (Article 57 of the Cooperative Law).

c) Cooperative financial structure and taxation

Formation of cooperative capital by members

A cooperative in Polish law is an association of persons, not capital, therefore the introduction of a minimum share capital is not a condition for establishing a cooperative or joining a cooperative as a new member. The obligation of members to contribute share capital and so-called entry fees (except for housing cooperatives, see Article 1 paragraph 9 HCA) arises as a consequence of the establishment of a cooperative by the founders or joining a cooperative as a third party (Article 19 § 1 and Article 20 § 1 of the Cooperative Law).

Each member contributes one share to the cooperative, which has the same amount specified in the statute. However, the statute may provide for the submission of more mandatory shares. The rule is that each member must take up the same number of mandatory shares. Departure from this rule is possible in the statute based on an objective criterion, e.g. the volume of transactions with the cooperative. The statute may also provide for membership consisting of optional shares. The statute may specify the maximum number of these shares.

The statute of a cooperative of farmers may provide for the option of setting the number of shares to which individual members are entitled to each year. This is calculated in proportion to their percentage share of the total value of products acquired by the cooperative from its members, in the financial year immediately preceding the year in which the number of shares is determined.

The cooperative's statute may establish an additional property obligation, which is to make property contributions.

The entry fee is not refundable in the event of the member's resignation from the cooperative or its dissolution. On the other hand, shares and property contributions are always refundable in such situations (Article 26, 20 § 2 of the Cooperative Law). The return of shares and property contribution is limited by the cooperative's property situation. This means that if the shares were used to cover the balance sheet loss, the member cannot demand the return of the shares in whole or in part.

Cooperative profit

The normative principles of profit distribution fall within the general Act on Cooperative Law and some provisions regarding specific types of cooperatives, e.g. agricultural cooperatives, housing cooperatives, and cooperative savings and credit unions. The main normative regulation regarding the distribution of profit from the Cooperative Law is limited to the obligatory allocation of 5% of the cooperative's profit to the reserve fund, until it reaches the amount of the share fund arising from shares contributed to the cooperative by members (Article 76 of the Cooperative Law).

In other respects, the distribution of profit is decided by the cooperative statute and the resolutions of the general meeting (Article 77 § 1 of the Cooperative Law). Therefore, these normative regulations regarding the principles of profit distribution give cooperatives significant freedom in the manner and principles of using its profit.

The regulations show that it is possible to divide cooperative profit among members in proportion to the subscribed capital. Article 77 § 4 of the Cooperative Law shows that part of the surplus may be divided in the form of interest on shares. Therefore, there are no obstacles for the statute to provide for the distribution of profits in proportion to the capital taken up. This happens in practice in cooperatives that offer their services and products to all persons, e.g. cooperative banks and food cooperatives.

There is no distribution of profit according to the volume of cooperative transactions in the legal regulations (except for the SCE). There is also no distinction between profits from cooperative transactions with members and profits deriving from other sources (including from transactions with non-members). Patronage refunds are not distinguished by the law from dividends.

Closer to such a distinction are the rules for the distribution of profit among members and employees of agricultural cooperatives. In accordance with Article 171 of the Cooperative Law, income is divided between members and their household members in accordance with the work performed.

The cooperative's articles of association may, however, provide for the distribution of the cooperative's profit (patronage refunds) among members in accordance with the member's transactions with the cooperative. However, this occurs infrequently. As previously stated, an example of this can be found in dairy cooperatives, where members supply milk to the cooperative.

Special provisions for cooperatives that offer their services and products only or mainly to their members, such as housing cooperatives, cooperative savings and credit unions and social cooperatives, generally exclude the distribution of profits among members. The profit is almost entirely allocated to reserve funds (cooperative savings and credit unions, Article 26 paragraph 1 CUA); or to reserve funds and deduction of the costs of maintaining the real estate in which the premises of the members are located (housing cooperatives, Article 5 paragraph 2 HCA); or for reserve funds and social purposes, e.g. social and professional reintegration of members (Article 10 paragraph 1 and Article 2 paragraph 1 SCA). The distribution of profit in a cooperative of farmers is determined by the statute and resolution of the General Meeting. It may also allocate part of the profit to interest on shares, the amount of which is limited (Article 13 paragraph 8 and Article 14 FCA).

Unavailability of other sources of financing the activities of the cooperative

Cooperatives may not issue financial instruments except for the issue of bonds (Article 2 of the Act of 15.1.2015 on Bonds). Cooperatives cannot admit “investor members”, namely, members who do not participate for transacting with the cooperative (as cooperative members do) but only for financing them through their capital contribution. In general, there are no other specific instruments for cooperative financing, such as member loans.

In the case of cooperative savings and credit unions, the statute may allow a member to make additional payments of up to double the value of the share in the event of a cooperative loss. This solution has been negatively assessed by members and therefore these cooperatives are reluctant to use this solution. Initially, the legislator also provided for such solutions for cooperative banks, but then quickly abandoned this approach.

Designation of assets after the dissolution of the cooperative

After the liquidation of a cooperative, there is normally a division of the remaining cooperative capital and assets among former members. The transformation of a cooperative into a commercial company or other entity is not allowed, except for the "transformation" by the voluntary liquidation of the cooperative and the distribution of its capital and assets among members.

The allocation of cooperative capital and assets in the case of cooperative dissolution is resolved by the last resolution of the General Meeting. In particular, they may be divided in whole or in part between members or contributed to a commercial company formed by former members (Article 125 § 5 of the Cooperative Law). This is known as the transformation of a cooperative into a commercial company by voluntary liquidation of the cooperative. In this way, many labour cooperatives have transformed into commercial companies.

If the last General Meeting of the cooperative has not decided what will happen to the other cooperative capital and assets, these are transferred free of charge for cooperative or social purposes (Article 125 § 6 of the Cooperative Law).

Special provisions change these rules. For instance, cooperative capital and assets remaining after the liquidation of farmers' cooperatives are divided among members in proportion to the shares held by the members (Article 17 FCA).

In the event of the liquidation of a social cooperative, the creation of which was financed from public funds, a maximum of 20% of the cooperative capital and assets can be divided among members, and the remainder is transferred to the Labour Fund. If the social cooperative did not use public funds, the cooperative capital and assets are wholly divided among former members or transferred to non-governmental organisations (Article 19 paragraph 1-2 SCA).

Cooperative capital and assets of housing cooperatives may not be divided among members (Article 125 § 5b of the Cooperative Law).

Cooperative taxation

When characterising cooperative tax liability issues, it is reasonable to formulate two observations:

- 1) cooperatives are subject to the general tax regime applicable to all the other business organisations
- 2) the tax regime of cooperatives is not consistent with their particular legal nature. It is not supportive of cooperatives, with the exception of housing law.

Tax law does not recognise patronage refunds as different from dividends and treats them in the same way. On this basis, tax law in Poland is not cooperative friendly overall.

Cooperative profits, regardless of whether they arise – even those which arise only through transactions with members – are subject to the standard 19% corporation income tax rate. It does not matter whether the profit is paid to cooperative members, whether it is used to increase shares or intended for a reserve fund.

If the cooperative pays a part of the profit to the member as a dividend, then it is subject to personal income tax at either 17.75% or 32% of income depending on the amount of a member's annual income.

Cooperatives are treated unfavourably in two cases with regard to tax compared to commercial companies. Commercial companies can reduce their income by the amount of its previous loss within five tax years (Article 7 paragraph 5 of the Income Tax Act²²). Cooperatives do not have this option and must cover the incurred balance sheet loss (Article 90 of the Cooperative Law). Secondly, the income of a commercial company which arises as a result of a dividend payment by its subsidiary company is exempt from corporate income tax. The cooperative is also excluded from such an exemption and its dividends paid by the subsidiary are taxable.

Despite the fact that there are cooperatives whose income arises as a result of transactions with members, e.g. dairy cooperatives, cooperative savings and credit unions, housing cooperatives, they are not exempt from corporate income tax. Only the income of the housing cooperative in the part in which the income is intended for the maintenance of housing stock is tax-exempt (Article 17 (1) (44) of the Income Tax Act).

²² The Act of February 15, 1992 on corporate income tax, Official Journal from 2019, No. 865, 1018, 1309, 1358, 1495, 1571, 1572, 1649, 1655, 1798, 1978, 2020, 2200, 2217, 2473, from 2020, No. 183, 288, 568, 695.

The law does not provide for a tax exemption of profits allocated to legal reserves or non-distributable assets.

On the other hand, the regulations allow public support for social cooperatives by granting them subsidies, loans, or sureties. (Article 15 SCA).

iii. Other specific features

d) Cooperative internal and external control and cooperation among cooperatives

Cooperative external control

Cooperatives are not subject to external control by the State or any other public authority. The law establishes self-control by representative organisations of cooperatives (known as lustration).²³ In principle, cooperatives are subject to self-control once every three years. Cooperative control is carried out by cooperative audit associations or the National Cooperative Council, which is discussed further below (see Article 91 of the Cooperative Law).

There is a small exception in the case of the Minister for Construction. They may demand from housing associations information, data and documents regarding the organisation and its activities necessary to assess the lawfulness and economy of the cooperative's activity. If it finds an irregularity in the cooperative's operation, it may apply to the appropriate audit association for an inspection (Article 93a of the Cooperative Law).

In addition, cooperatives are subject to control, like other enterprises, on general principles, e.g. by a certified auditor or specialised entities due to the subject of their activity. In particular, the credit and lending activity of cooperative banks and cooperative savings and credit unions is supervised and controlled by the Polish Financial Supervision Authority.

Cooperation among cooperatives

The ICA principle of cooperation among cooperatives is implemented in the general Cooperative Law. This Act provides for cooperation between cooperatives in a vertical aspect, i.e. the creation of secondary cooperatives (i.e. cooperatives composed of cooperatives). These are voluntary cooperative audit associations with legal personality that must be made up of at least 10 cooperatives. As a rule, cooperatives that run the same enterprise, for example, dairy cooperatives, farmers, etc. form an association. The purpose of the audit association is to provide support for the activities of cooperatives associated in the cooperative association. Such activities include:

- cooperative control
- instructional, advisory, cultural and educational, training and publishing activities

²³ Cooperatives are lustrated by audit cooperatives in which the cooperatives are associated. Cooperatives not associated in auditing cooperatives are lustrated by the National Cooperative Council (Article 91 § 4 of the Cooperative Law).

- representation of associated cooperatives before state administration bodies and local government
- representation of associated cooperatives abroad
- development of cooperation between cooperatives and other tasks that result from the Act.

Audit associations do not have authority over affiliated cooperatives (Article 240 of the Cooperative Law). Audit associations may not conduct business activities.

In addition, cooperatives may form economic unions whose purpose is to conduct business activities for or in the interest of associated cooperatives (Article 243 of the Cooperative Law).

The Cooperative Law also provides for the existence of the National Cooperative Council, which is the supreme body of cooperative self-government in Poland. The National Cooperative Council convenes the Cooperative Congress every four years, which is the highest body of cooperative self-government (Article 258 and 259 of the Cooperative Law).

In addition, some specific provisions provide for other forms of cooperative cooperation. Social cooperatives, where the number of members is limited to 50 persons, may form cooperative consortia in order to increase their economic and social potential, jointly organise production, trade and services networks, organise joint promotion of cooperative or economic activities, promote a common trademark and apply for public contracts (Article 15b SCA).

Cooperative banks may form cooperative affiliating banks. The functions of an affiliating bank consist primarily in creating systems between cooperative banks to ensure their safe functioning in the form of maintaining their liquidity, solvency, preventing bankruptcy, service consulting and providing banking services for cooperative banks (Articles 16 and 19 CBA).

The National Credit Union (National Cooperative Savings and Credit Union) is a legal person. It compulsorily unites all cooperative savings and credit unions. It conducts activities for the benefit of members and ensures the financial stability of credit unions and exercises control over cooperative savings and credit unions to ensure the safety of members' accumulated savings. The activities of the National Credit Union are specified in detail in the regulations. It is not permitted to conduct other activities (Articles 41 to 44 CUA).

III. Degree of 'cooperative friendliness' of the national legislation

Legal obstacles or barriers to the development of cooperatives

The national expert notes that the general law on cooperative law was adopted on 16 August 1982, in a different period from the current political, economic and social context. Not counting the relatively numerous but minor changes, the most significant amendment to the Cooperative Law took place on 7 July 1994. In many areas, cooperative law is therefore not adapted to the current economic and social challenges faced by cooperatives. The situation is fundamentally different for commercial companies, which are better served by the Commercial Companies Code adopted in 2000.

As mentioned previously, the general purpose of the Polish cooperative is not centred on transactions with members. The result of this is that it is not only difficult to define cooperatives, but it is also difficult to distinguish the cooperative from commercial companies. Thus, it is not possible for lawyers or others to precisely designate areas where the cooperative may prove useful. In addition, specific definitions of types of cooperatives correctly define their purpose, e.g. housing cooperatives, cooperative savings and credit unions, labour cooperatives and farmers' cooperatives. Other cooperatives such as agricultural production cooperatives and agricultural service cooperatives do not define their purpose. This only adds to the difficulty of defining a cooperative.

Cooperative law therefore requires urgent modernisation and the creation of a coherent legal and tax concept addressed to cooperatives.

The lack of a precise definition of the cooperative's purpose is followed by the lack of a distinction between cooperative patronage refunds and dividends. A further consequence of this is the unfavourable taxation of patronage refunds. This weakens the attractiveness and competitive ability of the cooperative.

Polish cooperative law has often relied upon traditional solutions, with a lack of innovation, for example, the non-transferability of shares among cooperative members (with the exception of farmers' cooperatives, Article 11 paragraphs 6 and 7 FCA). There are no new instruments for raising capital by cooperatives, e.g. member-investors without voting rights, membership loans, etc.

The internal structure is often rigid, which in most cases is reflected by the obligatory presence of the Supervisory Board, even for small cooperatives.

Cooperative merger processes are hampered by the existence of only one form of cooperative merger, i.e. by the takeover of one cooperative by another. Unlike commercial companies, the merger of cooperatives to establish a new cooperative is not foreseen by the law.

The socio-economic environment in which the regulations are created is also a barrier to good cooperative law. In particular, the provisions on housing cooperatives and cooperative savings banks are the subject of sharp social and political dispute, which is harmful to the final shape of cooperative law. In this context, it is worth pointing out that

after 1994, four attempts were made to enact a new cooperative law, none of which were successful.

Unfortunately, some judgments of the Constitutional Tribunal concerning cooperatives are also unfavourable to them. Firstly, because the Constitutional Tribunal rejected complaints against public law provisions which violated the principles of freedom of conducting business activity by cooperative unions. Secondly, the judgments of the Constitutional Tribunal undermine the validity of the key solutions for the cooperative. This includes, for example, the principle of binding the legal title to the premises from membership in a cooperative.

In recent years, the legislator's creation of specific regulations concerning cooperatives is on the one hand an expression of his concern for the development of these cooperatives (housing cooperatives, cooperative savings and credit unions, cooperative banks, social cooperatives, farmers' cooperatives). On the other hand, they are not always successful from a legislative point of view.

Comments on legal obstacles and barriers to the development of cooperatives were also made by the **National Cooperative Council (NCC)**. According to NCC, these legal obstacles and barriers are mainly present in tax law.

NCC notes that a general problem is the complexity and instability of tax interpretations, which do not always take the cooperative nature of the activity into account. The same applies to the national implementation of EU directives which the contributing member organisation considers to be introduced too strictly (e.g. in relation to the agricultural and cooperative financial sectors). One solution would be to re-establish the position of a senior officer (plenipotentiary) for cooperatives in government, which was abolished in the late 1990s.

As previously mentioned, for housing cooperatives only the part of the income intended for the maintenance of housing stock is tax-exempt (Article 17 (1) (44) of the Income Tax Act). According to NCC, the exemption is not favourable because this part of the housing cooperative activity actually runs on a not-for-profit basis, often at a loss. When a cooperative incurs a loss on the activity of managing housing (residential) resources, it cannot reduce by that loss the taxable income from other activities. As a result, cooperatives pay higher taxes. NCC state that removing this exemption would ensure equality and reduce the fiscal burden on housing cooperatives.²⁴

NCC also proposes to recognise agricultural production cooperatives, whose members are farmers (Article 138 and Article 139 1 of the Cooperative Law) as multi-family farms and to introduce such a definition into the Cooperative Law. Currently these cooperatives have limited access to EU funds in the current legislation. Further, there is discrimination against agricultural production cooperative members, as compared to individual farmers, who individually are subject to the limits set for a given support - the same limit is applied to a group of farming families, which means that they often do not qualify for support due to having exceeded the limit.

²⁴ See Annex I below for a more in-depth explanation of this issue, provided by NCC.

Best practices of Polish cooperative legislation

The national expert identifies several best practices of Polish cooperative legislation. These include the formation of a cooperative as a type of entrepreneur separate from commercial companies, with legal personality along with complete regulation of the establishment, functioning and dissolution of this legal person. The characteristic features of cooperative law in Poland in comparison to other countries were and remain the lack of personal liability of members for the cooperative's obligations and the formalisation of admitting new members, already in existence since the first Polish Act for Cooperatives of 19 October 1920. These provisions have always been in line with the ICA principles.

It is worth noting that some specific types of cooperatives established since the 1990s have a well-defined purpose of activity, understood as supporting a member by providing them services and products of the cooperative with the exclusion of a gainful purpose. Examples include housing cooperatives, cooperative savings and credit unions, farmers' cooperatives and social cooperatives. Some of these new specific types of cooperatives, especially cooperative savings and settlement societies and social cooperatives are experiencing a high rate of growth,²⁵ although the former experienced a significant period of decline.²⁶ Another advantage is the support from public funds for social cooperatives and recently the financing of housing construction by housing cooperatives.

In the opinion of the national expert, an interesting Polish cooperative institution is the cooperative legal title to the premises, giving cooperative tenants the right to the premises that a member of a housing cooperative may have.²⁷ In simple terms, this law is a "cooperative tenancy" regulated by law and statute. The member co-finances the construction of the premises, and the rest is covered by public funds. The member also has the option of transforming this right into ownership.

One further difficulty noted by the national expert is that the promotion of cooperatives is not a public function. There are no incentives given to cooperatives in the legislation on public procurement or elsewhere.

According to NCC, it is difficult to identify many specific examples of good practices regarding cooperatives in Poland. The same is true for legal remedies that can set an example for legislators.

Among the few examples of good practices it identifies, NCC highlights the example of a cooperative that runs a farm (e.g. an agricultural production cooperative), which can

²⁵ Since the entry into force of the Act of December 14, 1995 on cooperative savings and credit unions (Official Journal from 1996, no. 1, item 2), credit unions developed very dynamically - the number of credit unions, members and equity of credit unions grew. (see M. M. Golec, Rozwój sektora spółdzielczych kas oszczędnościowo-kredytowych [Development of the cooperative cash and credit sector], [access 2.09.2020 r.] http://www.pim.wzr.ug.edu.pl/pim/2013_2_1_13.pdf).

²⁶ The act of November 5, 2009 on cooperative savings and credit unions came into force on October 27, 2012. Credit unions would become subject to supervision by the Polish Financial Supervision Authority. 11 credit unions were subject to reorganisation proceedings and the administration of receivership filed for bankruptcy, 10 credit unions were taken over by commercial banks and 1 credit union prepared an effective recovery program. The number of credit unions, members and value of equity has significantly decreased. Critics of the new law accuse it of not giving credit unions time to prepare for new, stricter financial requirements. The new act entered into force three months after its publication in the official journal. See: Biała Księga Instytutu Staszica poświęcona regulacjom dotyczącym SKOK, [The White Book of the Staszic Institute devoted to the regulations concerning SKOK] Warszawa, 2019, [access 2.09.2020] <http://instytutstaszica.org/wp-content/uploads/2019/06/Regulacja-nadregulacja-misja.pdf>.

²⁷ P. Zakrzewski, Status prawny członka spółdzielni mieszkaniowej w spółdzielczych stosunkach lokatorskich [Legal status of a member of a housing cooperative in cooperative tenant relations] (Warszawa, 2010).

benefit from support measures under the Rural Development Program 2014-2020. There are provisions in the public procurement law known as "social clauses". These clauses give preference to social cooperatives when awarding public contracts by public entities. However, NCC notes that little use is made of these clauses in practice.

NCC also notes that promotion of cooperatives is not emphasised by the legislative and executive authorities. NCC argues that this is largely because Poland has only been a free market economy for a relatively short period of time.

According to the **National Auditing Union of Workers Cooperatives (NAUWC)**, the best practices can be seen in the Cooperative Law or the Act on Agricultural Production Groups. When it comes to public procurement, NAUWC also points out that social cooperatives in Poland have better treatment and incentives. Moreover, NAUWC believes that Poland has very good audit practices, which are a significant achievement of the Polish cooperative movement.

In conclusion, in light of the points raised above, the national expert believes that Polish cooperative legislation is *more cooperative friendly than unfriendly*.

Such an assessment results from the fact that on the one hand cooperatives have a stable, comprehensively defined legal framework for their activities in accordance with ICA principles where the legislator tries to respond to the current needs of cooperatives. The recent adoption of the Act on Farmers' Cooperatives and the granting of financial support from public funds for housing cooperatives, is one example. On the other hand, in selected areas, such as the precise definition of the cooperative's purpose, the creation of cooperative capital, the proper qualification of "patronage refunds" and their taxation, as well as barriers existing towards some cooperative industries, the law requires changes.

NCC and NAUWC present a more severe assessment. Both organisations consider Polish legal frameworks on cooperatives to be *more cooperative unfriendly than friendly*.

Best practices from foreign legislation

The national expert notes that Polish cooperative law is worth comparing with the Principles of European Cooperative Law (PECOL) developed by the Study Group on European Cooperative Law. These principles were the result of a comparison between seven European jurisdictions (Germany, Spain, Finland, France, Italy, Portugal and United Kingdom).²⁸ These principles are interesting for three reasons. First, they are in part a response to the shortcomings of national cooperative law, which have already been pointed out. Secondly, they contain valuable and interesting legal proposals that strongly emphasise the specificity of a cooperative as a separate type of enterprise. Thirdly, they are flexible in their approach to certain features of cooperatives, which may prove attractive to cooperatives and their members.

For the indicated reasons, particular attention is paid to the PECOL provisions regarding:

²⁸ Gemma Fajardo, Antonio Fici, Hagen Henrÿ, David Hiez, Deolinda Meira, Hans-H. Münkner and Ian Snaith (eds.), Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge et al.: intersentia 2017.

- the purpose of the cooperative
- classification of members as cooperating and not cooperating with the cooperative.
- departure from the rule of one member one vote where this improves the functioning of the cooperative (but excluding the appeal to the degree of capital involvement).
- minimum cooperative capital
- the contribution of capital to the cooperative by a member in proportion to its turnover with the cooperative.
- an obligation for a new cooperative member to raise capital and dispose of shares among members
- return on shares and divisible reserves, as well as divisible and indivisible funds
- differentiate the surplus arising from transactions with members and the profit arising from transactions with third parties,
- cooperative auditing
- cooperation among cooperatives.

NCC highlights legal solutions that appear in foreign regulations, especially in Italian and French cooperative law, which have already been incorporated into Polish legislation. At the same time, these foreign patterns have not always been adapted to Polish conditions.

The general postulate formulated by the NCC is to anchor the cooperative in the Constitution of the Republic of Poland, similarly to the Italian Constitution (Article 45 of the Italian Constitution). NCC also argues that it is necessary to create a single, structured law, the scope of which would include provisions applicable to all cooperatives. Such a law would therefore be a cooperative code, an example of which already exists in Portugal. It is also proposed to incorporate into the Cooperative Law the cooperative principles and values formulated by the ICA, as is the case in Portugal.²⁹

In addition, NCC cites best practices from Italian cooperative law, which distinguishes two types of cooperatives: 1) cooperatives with at least 50% of their turnover with members, and 2) cooperatives that do not meet this condition. This should be followed by tax solutions appropriate for these cooperatives.

NCC also proposes the creation of an inter-cooperative fund for the safety and development of cooperatives, including the obligatory payment of a part of each cooperative's balance sheet surplus to this fund. NCC notes that such a practice is found in Spain.

NCC also considers it advisable to adopt legal solutions that support cooperatives by local, regional and national authorities. As an example of this they cite the Italian Act No. 328 of 2000. NCC is also in favour of introducing two categories of social cooperatives into Polish law - a type "A" providing social, health and educational services, and a type "B", creating jobs for people excluded from the labour market. NCC note the current Polish law on social cooperatives provides only for type "B" cooperatives.

²⁹ Deolinda Meira and Maria Elisabete Ramos, 'Legal Framework Analysis National Report: Portugal', Cooperatives Europe, ICA-EU Partnership, 2020.

In the NCC's opinion, French law may also be an inspiration for Polish law. Citing French cooperative law, NCC proposes introducing tax breaks for cooperatives where most of the capital is owned by members and transactions with non-members account for less than 20% of turnover (differentiated tax rules regarding the treatment of transactions between members and non-members already exist in Spain³⁰ and Germany³¹).

Continuing with French examples, NCC also cite the "*sociétés coopératives d'intérêt collectif* - SCIC", which bring together many different types of stakeholders, and as well as "civic cooperatives" ("*coopératives d'habitants*"), covered by the Act on Accessible Housing and Urban Renewal, which bring together people who want to buy, manage and live together in the building in which they live. Finally, NCC note that French provisions on the transformation of liquidated enterprises into cooperatives under the Social Economy Act are also a best practice from foreign legislation (they also cite similar Italian and Spanish solutions).

For its part, NAUWC also highlights French legislation dedicated to social economy enterprises.

IV. Recommendations for the improvement of the national legal framework

According to the national expert, Polish cooperative legislation requires urgent and profound reform, because in several key areas it does not meet the challenges of today, which means that the legal form of the cooperative is not attractive.³² First of all, the future structure of cooperative legislation requires consideration. It may assume the existence of one act on cooperatives, which will consist of general provisions - addressed to all cooperatives and a specific part - addressed to specific types of cooperatives. Another solution would be the existence of a general law on cooperatives, the provisions of which would be addressed to all cooperatives, with separate specific laws addressed to specific types of cooperatives. The current Cooperative Law includes general and special provisions for only a few types of cooperatives and several separate special laws for separate cooperatives. From a legislative and practical point of view, the national expert believes that this is not the right solution.

There are several areas of cooperative law that require fundamental reform. The changes should comply with ICA Principles. The purpose of the cooperative should change in such a way that it implies that the cooperative provides economic support to the members by providing them with goods and services. At the same time, due to the fact that in practice there are "earning cooperatives" in Poland offering their services and products to third parties, the purpose of the cooperative must be flexibly understood to include such cooperatives.

³⁰ Ley 20/1990, de 19 de diciembre, sobre Régimen Fiscal de las Cooperativas.

³¹ Münkner H-H. 'Legal Framework Analysis National Report: Germany', Cooperatives Europe, ICA-EU Partnership, 2020.

³² See P. Zakrzewski, „Stan aktualny i perspektywy rozwoju polskiego prawa spółdzielczego” [Current status and prospects for the development of Polish cooperative law], *Roczniki Nauk Prawnych XXVII*, nr 4 (2017), 88-105, [access 2.05.2020 https://www.kul.pl/files/632/gfx/RNP/2017/nr_4/s_087_108_art_zakrzewski.pdf].

Membership acquisition should be facilitated, in particular in electronic form. The rules should distinguish between a member who uses the services of a cooperative and one who does not do so with further consequences. Consideration should be given to changes in the position of a cooperative member, in particular allowing the number of votes to be proportional to the value of trading with the cooperative.

The principles of creating, functioning and dissolving cooperative capital should be subjected to significant reform.³³ It is necessary to distinguish the surplus arising from the transaction between the member and the cooperative from the profit arising from the transaction of the cooperative with third parties together with the corresponding tax regulation. The changes should also include transformations of the cooperative, i.e. merging with another cooperative and enabling the transformation of associations and foundations into cooperatives. Cooperative audit also requires reform, which would strengthen its effectiveness, and at the same time the costs of conducting it would not be a burden on the cooperative. Consideration should also be given to introducing rules that would further support cooperation among cooperatives. In order to avoid the tax burden on cooperatives under corporate tax, it is necessary to consider introducing into Polish law a cooperative that has no legal personality.³⁴

NCC have drawn attention to the need for other legislative changes concerning Polish cooperatives. NCC notes that cooperatives are usually engaged in non-profit activities, which means they have no development capital. Therefore, it is necessary to introduce tax breaks for cooperatives, to facilitate access to EU funds and to remove existing barriers, e.g. the "double taxation" of cooperative profits by corporate tax and dividends paid to members by personal income tax. NCC further proposes the introduction of favourable tax solutions for cooperatives at the level of EU law and an indication of the minimum share of EU aid funds allocated solely to investment, innovative, environmental protection activities, and information and training activities of cooperatives.

On the other hand, NAUWC proposes to strengthen the protection of members in the Polish Labour Code.

The national expert notes that changes are also necessary regarding specific sectors or types of cooperatives. This applies above all to agricultural cooperatives in a broad sense. On the one hand, there are cooperatives of agricultural production and cooperatives of agricultural circles or service, which were established during the period of a command and distribution economy, and after the political changes of the 1990s they had to adapt to new conditions. On the other, there are newer farmers' cooperatives created in 2018.

The national expert also argues that regulations on cooperative savings and credit unions need to be changed. Compared to banks, they have a limited scope of business, but very similar public obligations. Further, patronage refunds of surplus arising from

³³ See V. Beuthien, *Genossenschaftsgesetz mit Umwandlungsrecht und Kartellrecht sowie Statut der Europäischen Genossenschaft* (München, 2004), XLVI-XZVII; FICI, *An introduction to Cooperative Law*, [w:] *International Handbook of Cooperative Law*, red. D. Cracogna, A. Fici, H. Hagen, Heidelberg 2013, 36-38; A.M. ANDREWS, *Analiza kapitału spółdzielczego*, Raport, VI, [Cooperative capital analysis, Report, VI], (2015) nr 1, dodatek kwartalnika naukowego *Pieniądze i Wież*, 28-29.

³⁴ See P. Zakrzewski, „Stan aktualny i perspektywy rozwoju polskiego prawa spółdzielczego” [Current status and prospects for the development of Polish cooperative law], *Roczniki Nauk Prawnych XXVII*, nr 4 (2017), 105, [access 2.05.2020 https://www.kul.pl/files/632/gfx/RNP/2017/nr_4/s_087_108_art_zakrzewski.pdf].

transactions with members should be allowed. Cooperative savings and credit unions and cooperative banks should have changed the rules for creating, operating and liquidating capital.

In housing cooperatives, the principle of dependence of premises rights on membership should be returned. According to the national expert, the rules under which a housing cooperative meets the housing needs of non-members must also be changed.

NCC proposes that the law and the Polish Financial Supervision Authority implement the "proportionality principle" towards cooperative banks and cooperative savings and credit unions, understood in such a way that the supervision measures are adjusted to the scale, size and specificity of the cooperative's operation. Currently, NCC argues that there is an excessive burden on financial cooperatives with public law obligations and very extensive reporting obligations.

V. Conclusions

The national expert is of the opinion that the ICA-EU Partnership Legal Frameworks Analysis research, which provides for the preparation of national reports on cooperatives including the Polish national report, is absolutely necessary both from the EU and the national perspective.

As part of the EU perspective, national reports will constitute the basis for formulating an overview on the condition of cooperatives across the EU Member States, in particular the existing legal status, the current development barriers of cooperatives, as well as good legislative practices in this area in individual countries. National reports may therefore prove to be a convenient basis for undertaking legislative actions supporting the development of cooperatives in the Member States in the corporate and tax areas. Such action by the EU should also be encouraged.

Within the national perspective, the national report also provides a convenient starting point for assessing the legal status of cooperatives from the perspective of the national legislator. The development, current state of art and existing challenges faced by Polish cooperatives may provide the impetus for the urgent preparation of a new cooperative act, which will support the development of Polish cooperatives.

For its concluding remarks, NCC highlights the low level of social awareness in Poland that cooperatives can effectively solve economic and social problems of local communities. They therefore argue that, a wide-ranging social campaign in the media and social media is necessary, supported by the European Union. NCC also believes that it is very important for the development of Polish cooperatives to obtain financial and technical support from the EU. According to NCC, the current procedures for obtaining EU funds are very complicated, which is a barrier to obtaining financial support by cooperatives. Therefore, NCC calls for the simplification of procedures in this regard.

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VI. Annex

The following is an overview provided by NCC on the treatment of housing cooperatives under the Corporate Income Tax (CIT) Act:

“Deletion of the word “housing cooperatives” in point 44 of Article 17(1), according to which, inter alia, the income of housing cooperatives obtained from the management of housing resources in the part intended for the purposes related to the maintenance of these resources, excluding income obtained from economic activity other than the management of housing resources, is excluded from taxation.

In our housing cooperatives, the CIT exemption does not actually exist because, as a rule, housing cooperatives do not receive any income from the management of housing (residential) resources because they conduct their business on a "not-for-profit" basis and often incur a loss. As a result, when incurring a loss, they do not benefit from the exemption and, additionally, they must exclude income and costs from the management of housing (residential) resources from their taxable income because, in accordance with the principle of determining taxable income, such income does not include income and costs from the activities covered by the subjective exemption (including those specified in the point 44 of Article 17 (1) of the CIT Act). When a cooperative incurs a loss on the activity of managing housing (residential) resources, it cannot reduce by that loss the taxable income from other activities.

Resignation from this exemption - which is not a privilege but results in the obligation for housing cooperatives to pay a greater amount of CIT - would ensure constitutional equality of economic taxpayers. This change would reduce the fiscal burden on housing cooperatives by allowing the loss of housing (residential) resources to be included in the income of the housing cooperative.”

Example:

A housing cooperative for 2019 obtained the following tax results (in PLN):

		Housing (residential)resources management	Other operations, including commercial premises	Total
1	Revenue	5,200,000	4,900,000	10,100,000
2	Costs	5,700,000	4,200,000	9,900,000
3	Income (+) / Loss (-)	(-) 500,000	(+) 700,000	(+) 200,000
4	CIT 19 %	0.00	133,000	38,000

“The division of tax revenues and costs into two types of activity in housing cooperatives is enforced by the tax exemption provided for in the CIT Act - point 44 of Article 17 (1).

When the CIT act provides for an exemption - as in the case of housing cooperatives - then, in accordance with the principle of determining taxable income, the income does not include revenues and costs from the activities covered by the subjective exemption (including those specified in point 44 of Article 17 (1) of the CIT act), i.e. as in the example, revenues and costs from the management of housing (residential) resources are not included. This results in a relatively higher taxable income (in our case PLN 133,000). It is not possible to reduce it by the loss incurred on "income" from the management of housing (residential) resources.

If there was no such exemption, then the cooperative would pay tax in the amount of 38,000 PLN.

Moreover, establishing the result on the activity of housing (residential) resources management requires the introduction of additional tax records and is extremely complicated and time consuming.”