



LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: BULGARIA

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.

This report was written by Teodora Kuzmanova, Director General of the Legal Department at Bulgaria's Central Cooperative Union (hereafter CCU), an ICA member. Founded in 1947, CCU is an apex organisation which unites and protects the interests of 132 230 individual cooperative members, united in 750 cooperative societies, which are members of 31 cooperative unions. In preparation of this report, support and coordination was also provided by staff from Cooperatives Europe and the ICA.

II. National cooperative law: Bulgaria

i. General context

The foundation of the cooperative law is set out in the Constitution of the Republic of Bulgaria – Article 12 and Article 44, paragraph 1 of the Constitution, which makes provisions for the fundamental rights of citizens to associate freely, to meet their needs and to protect their interests. The right to association is further developed within the Cooperative Law.

The first Cooperative Law was adopted back in 1907 under the title Law on Cooperative Associations. An entirely new Cooperative Law was adopted in 1999. It remains in effect to date and to a large extent it reflects the specific features of cooperative organisations.

Significant amendments to the Law were made in 2007 – a mandatory guarantee was envisaged, which the President and the members of the Management Board and Supervisory Board should present in relation to their activities. A prohibition for performing competitive activities to those of the cooperative was also introduced with respect to the President and the members of the Management Board. The liability borne by the members of the Supervisory Board was also stipulated.

The effective Cooperative Law stipulates the legal definition of a cooperative society, the constitution and membership relations, the bodies of the cooperative, the property, establishment of cooperative enterprises and cooperative unions, and the accounting, financial supervision and court control.

On a subsidiary basis the Commercial Act (CA) also applies to cooperatives (Article 1, paragraph 2, item 2 of the CA). In addition to the above-mentioned regulations, the cooperative relations are also regulated by the Statutes of the respective cooperatives.

Of course, cooperatives are mentioned in a number of other regulations, but without providing for a specific regime or other significant exceptions, therefore their consideration is not the subject of this report. When considering the normative base in the country, it is not possible to indicate the existence of sectoral legislation regarding cooperatives, as they are regulated only by the Cooperative Law.

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

A legal definition of the term "cooperative" is provided in Article 1 of the Cooperative Law, according to which a cooperative is:

“an association of natural persons with variable capital and variable number of members, who engage in activities based on mutual assistance and cooperation to satisfy their economic, social and cultural interests. The cooperative is a legal entity”.

It is evident from the legal definition that members of the cooperative may only be natural persons and the minimum number required is seven. The legislator has provided a

possibility to establish a cooperative organisation in which the members are legal entities in Article 54 of the Cooperative Law.

The cooperative union is an independent legal entity with the status of a cooperative. At least seven cooperative societies are required to establish a cooperative union.

A cooperative union:

- assists its members in attaining their goals and objectives
- provides guidelines for the development of the cooperative activities
- represents and protects the interests of its members before international, state, public and other authorities and organisations
- performs other functions as set out in the Statutes

ICA Principles in the law

In theory, all cooperative organisations abide by the ICA cooperative values and principles. The cooperative values and principles are not stated explicitly in the Cooperative Law, but since they reflect the fullest the essence of cooperative organisations, which the Law embodies, we can provide some examples, although not directly within their regulatory setting:

- **Democratic governance by the members** – each member has one vote and thus they all participate with equal rights in the governance of the cooperative (Art. 19 of the Cooperative Law).
- **Education, training and information** – each cooperative member has the right to request information from the cooperative bodies regarding the implementation of resolutions adopted and to request information on matters affecting their interests as well as the interests of the cooperative (Art. 9 of the Cooperative Law).
- **Cooperation among cooperatives** – cooperatives may form cooperative unions (Art. 54 and 55 of the Cooperative Law).
- **Mutual assistance** – the members of the cooperative attain their goals through mutual assistance (Art. 1 of the Cooperative Law).
- **Equality** - (Art. 19 of the Cooperative Law).

These principles and values are explicitly included in the statutes of most cooperative organisations, but nevertheless neither the statutes nor the law provide rules for their implementation and, accordingly, sanctions for non-compliance. This, in turn, makes them optional, and their implementation in practice depends only on the will of the cooperative members.

The above-mentioned principles and values are what best distinguishes the cooperative organisations from commercial entities (limited liability companies, joint-stock companies, etc.). Unlike commercial entities, where capital is given top priority and is of fundamental importance, for cooperatives the focal point of the organisation and its activities is the human being and the best interest of each cooperative member.

Furthermore, there is a significant difference in exercising the right to vote in the governance of the respective organisations. While in joint-stock companies and limited liability companies the number of the votes is equal to the number of the shares held, in a cooperative all members have the right to one vote, and they participate equally in the governance of their organisation.

The composition of the members is also an important distinction – individuals as well as legal entities may be members of a limited liability companies and joint-stock companies, whilst only individuals have the right to participate in a cooperative, as evident from its legal definition.

b) Establishment, cooperative membership and governance

Establishment

The procedure for the constitution of a cooperative is stipulated in Section I of Chapter 2 of the Cooperative Law. As stated above, a cooperative shall be established by at least seven natural persons. They shall make a decision of establishment at a Constituent Assembly. The Constituent Assembly shall adopt the Statutes and shall elect a President of the cooperative, the Management Board, and a Supervisory Board.

The Statutes of the cooperative are its fundamental document, one that regulates the relations between the cooperative members, the management bodies, their rights and obligations, their property relations, among other elements. The Statutes of the cooperative may not contradict the Law but may introduce specific procedures for its implementation.

The Statutes of the cooperative regulate and stipulate:

- its fundamental legal distinctions – the name, headquarters, etc.
- the terms for acceptance of members, their rights and obligations
- the bodies of the cooperative and their rights and obligations and the procedure for the adoption of resolutions
- the amount of the affiliation fee and the size of the shareholding, the procedure for the profit and loss distribution
- the procedure for disposal of the cooperative's property

The Statutes may also stipulate other matters to the extent that these are not regulated by the Law.

The cooperative is entered into the Commercial Register at the Registry Agency. The registration is based on a request by the members of the Management Board, and certain documents are enclosed to support the request, some of which include transcripts from the minutes of the Constituent Assembly and the Statutes, samples from the signatures of the individuals representing the cooperative, criminal record certificates of the members of the Management Board, the Supervisory Board, the President, etc.

The name, registered address, headquarters and scope of activities of the cooperative, the names of the members of the bodies, the name and personal identification number of the President of the cooperative, as well as the liability of the cooperative members in excess of their shareholding (when such liability is envisaged in the Statutes), are subject

to entry in the Register. The identification data of the beneficial owners and the data of the legal entities or other legal subjects through which control is exercised, directly or indirectly, are also entered in the Commercial Register in accordance with the requirements of the Law on Measures Against Money Laundering. This is a new aspect in the legal provisions for cooperatives in Bulgaria since 2019. A cooperative comes into existence as of the date of its registration in the Commercial Register.

The legislation in Bulgaria does not include a list of economic activities that can be carried out by the cooperative and does not contain explicit provisions in this regard, but follows the principle that the cooperative can perform any activity not prohibited by law.

However, certain limitations apply to this principle:

- a cooperative society may not operate as a reinsurer – according to Art. 12 of the Insurance Code (promulgated in SG, issue 102 of 29 December 2015, latest amendments, issue 83 of 22 October 2019) only a joint-stock company or a European entity may be a "reinsurer".
- a cooperative society may not carry out banking operations – Art. 7, para. 1 of the Credit Institutions Law (promulgated SG, issue 59 of 21 July 2006, latest amendments and supplementations, SG, issue 18 of 28 February 2020) stipulates that a bank may be established only as a joint-stock company. However, this joint stock company can be owned by a cooperative organization.
- a cooperative may not be registered as a financial institution – according to Art. 3a, para. 1, item 1 of the Credit Institutions Law (promulgated SG, issue 59 of 21 July 2006, latest amendments and supplementations, SG, issue 18 of 28 February 2020) a financial institution may only be established as a joint-stock company, or a limited liability company or partnership limited by shares.

However, the possibility for a cooperative to establish a mutual assistance fund for the cooperative members is retained. Its activity is explicitly excluded from the scope of the Credit Institutions Law (Art. 4 of the Credit Institutions Law), as it is limited to extending loans only to cooperative members, at the expense of the contributions paid by them at their own risk.

Cooperative membership

As mentioned above, members of the cooperative may only be **natural persons** who are above the age of 16, who have legal capacity and who accept the Statutes. Therefore, the Law excludes legal persons from becoming members of a cooperative. However, an individual can be a member of more than one cooperative.

Admission to an already established cooperative is made on the basis of a written application from the person concerned. The application is reviewed at the first meeting of the Management Board following receipt of the application. Once the new member is admitted by virtue of a resolution of the Management Board, the cooperative member shall pay the share and the affiliation fees due.

Membership to the cooperative shall arise from a Management Board resolution. It is subject to approval by the GA and is reviewed at the next meeting as the first item on the Agenda. In the period between the resolution of the Management Board and the GA,

the cooperative member shall benefit from all of the rights stipulated in the Cooperative Law.

The cooperative member has the right to:

- participate in (and benefit from) the cooperative activity
- participate in and vote at the GA of the cooperative – in person or through another person authorised by the member
- be elected in the managing bodies of the cooperative society and in the bodies of the cooperative unions
- request information from the managing bodies regarding the implementation of the adopted resolutions and to request details on matters concerning their own interest and the interests of the cooperative
- request revocation of any resolutions and actions by the cooperative's bodies which are illegal, contrary to the Statutes, or inappropriate
- receive dividends
- receive their shareholding upon termination of their membership in conformity with the procedure of Article 14
- to access, for reference, information from the Register of the Cooperative Members.
- to social security and health insurance in conformity with a separate law

Membership of a cooperative is terminated upon withdrawal from the cooperative, expulsion or death. Upon termination of membership (due to withdrawal, expulsion or death), the former cooperators or their heirs are entitled to the paid share, additional and target contributions, to the dividend due, as well as to the loans granted to the cooperative, including the accrued interest. Membership is also terminated upon liquidation of the cooperative, except for cases of restructuring (see page 13).

Withdrawal from the cooperative is subject to a one-month notice in writing addressed to the Management Board, unless otherwise provided for by the Statutes.

Governance and management

A cooperative is managed and governed by its bodies – the General Assembly, the Management Board, the President and the Supervisory Board.

General Assembly

The General Assembly (GA) of a cooperative consists of all its members. It may be replaced by an Assembly of Representatives, elected in conformity with the norm of representation, set out in the Statutes, when the cooperative comprises more than 200 members. In this case the number of representatives may not be less than 70.

The norm of representation is most often used in cases when a large number of members are members of the cooperative and they are from different settlements. In these cases, before the GA, meetings known as "Settlement meetings" are held, during which each settlement elects proxies to represent the local cooperative members at the GA.

The Assembly of Representatives can exercise all of the rights vested in the GA.

Cooperatives and cooperative unions convene and hold regular GA meetings once a year, while national cooperative unions hold such meetings once every four years. The

GA is the supreme body of the cooperative and it makes resolutions on all matters within its exclusive competence. The rule "one member – one vote" is applied in the decision-making process of the GA.

The main powers of the GA include:

- adoption, amendment and supplementation of the Statutes
- definition of the number of the members of the Management Board and the Supervisory Board and election and dismissal by a secret ballot procedure
- election and dismissal of the President of the cooperative
- appointment of a registered auditor, when the annual financial statements of the cooperative are subject to independent financial audit under the requirements of the Accountancy Act
- approval of the report of the Management Board for the annual activity, adoption of the annual financial statements of the cooperative and the auditor's report and the distribution of the profit after hearing the conclusion of the Supervisory Board
- adoption of resolution for membership and for termination of membership in cooperative unions and commercial companies
- approval of the main development directions for the activities of the cooperative
- adoption of resolutions for acquisition and disposal of real estate and property rights
- endorsement of the resolution of the Management Board for the admission of new members
- expulsion of members
- adoption of resolution for the collection of additional and targeted cash contributions by the members
- adoption of a resolution for restructuring and termination of the cooperative and for its declaration in liquidation
- exoneration of responsibility for the President of the cooperative and the members of the Management Board and Supervisory Board.

The GA discusses and makes resolutions on all matters related to the cooperative and its activities, when the Law or the Statutes have no explicit provisions otherwise.

The GA has legal personality and may make resolutions when more than half of the members are present. An exception to this principle exists if the meeting discusses and decides on:

- amendments or supplements to the statutes
- reconstruction and liquidation of the cooperative
- electing a chairman and members of the management and supervisory boards
- acquisition and disposal of real estate and real rights over them.

In these cases, the GA can take a decision if more than two-thirds of the members are present.

If the required number of members are not present, the Assembly is held one hour later, regardless of the number of members attending, according to the provision of Art. 17, para. 2 of the Law on Cooperatives. At the GA meetings, one cooperative member may represent up to three other members, based on a written power of attorney.

One of the major differences between cooperative organisations and capital companies is the importance reserved for the personal composition of the cooperative. Therefore, the right to vote in the GA of the cooperative is not dependent on the shareholding, but each cooperative member has the right to one vote, which is an absolute and unchangeable rule. Thus, no member is able to exercise direct or indirect control over the cooperative.

Management Board

The members of the Management Board are elected by members of the cooperative for a term of four years. The Statutes of the cooperative set out the number of terms that a member of the cooperative may serve as a member of the Management Board. The law does not set a limit on the maximum number of seats.

In order to be elected President and member of the Management Board, the cooperative members should meet certain requirements, such as age, kinship, a clear criminal record, etc. They must not:

- be under 18 years of age and placed under guardianship
- be deprived of the right to hold a managerial, accounting or materially responsible position
- be married to a member of the management or the supervisory board, be related in a direct line, or be brothers or sisters
- have been dismissed from the management board due to systematic non-performance of their functions
- be in proceedings for declaring insolvency, or be declared insolvent as a debtor, sole trader, or partner
- have been convicted of premeditated crimes of a general nature and have not been rehabilitated.

The Management Board implements the resolutions of the GA and directs the activities of the cooperative. It also performs other functions set out by law and the Statutes. The Management Board reports on its activities to the GA.

A preliminary decision of the Management Board is required in some cases, which can be split into two major groups:

1. conclusion of agreements and contracts and the provision of collaterals through which the cooperative undertakes or writes off liabilities.
2. conclusion of agreements for the disposal of property or renting out property exceeding a specific value threshold.

The Management Board may form its bodies – commissions, boards, and other auxiliary bodies to assist it in its activities.

The Management Board is convened to a session by its Chairperson at least once a month. The sessions of the Management Board are regular if at least two-thirds of its members are in attendance.

The resolutions of the Management Board are adopted by open ballot and with a simple majority of its members, unless otherwise provided for by the Statutes.

Presidency

The President of the cooperative is elected amongst its members for a term of four years. They are also Chairperson of the Management Board and they participate in its work with an equal vote.

The President of the cooperative:

- represents the cooperative
- organises the implementation of the resolutions of the GA, the Management Board and the bodies of the Cooperative Union it belongs to
- manages the ongoing activities of the cooperative
- concludes and terminates labour contracts, imposes sanctions and rewards workers and employees of the cooperative and determines their employment remunerations
- also performs other functions set out in the Statutes in conformity with the Law.

Supervisory Board

The members of the Supervisory Board are elected for a term of four years amongst the members of the cooperative. The Supervisory Board elects its Chairperson amongst its members.

Cooperative members who currently occupy or have occupied materially liable or accounting responsibility positions in the cooperative during the previous year, or who were members of the Management Board, may not be elected members of the Supervisory Board. The members of the Supervisory Board should also meet the above-mentioned requirements regarding the members of the Management Board.

The Supervisory Board controls the activities of the cooperative and reports to the GA on its work.

The members of the Supervisory Board may participate in the sessions of the Management Board with an advisory vote.

When material violations of the law or of the Statutes by the Management Board are established and when the Management Board has failed to convene an Extraordinary GA, the Supervisory Board may convene the GA.

c) Cooperative financial structure and taxation

The property of the cooperative is comprised of its right of ownership and of other real rights, claims, rights on intellectual property subjects, securities, shareholdings and other rights and obligations.

A cooperative property is managed solely by the members of the cooperative through its bodies.

The sources of funds of the cooperative include:

- affiliation subscription fees of the members
- share contributions of the members
- additional and targeted contributions by the members
- income from the activities
- loans
- other income

Each member of the cooperative must pay an affiliation fee and a share contribution, the order and form of deposits are set out in the Statutes. The minimum and/or maximum amount of the share contribution is also set out within the Statutes. The Cooperative Law does not stipulate a minimum share capital requirement to establish a cooperative.

It is not necessary for all members to make equal contributions, only for the share contribution to be compliant with the minimum or maximum amount set out in the Statutes. When the share contribution is non-monetary (real estate, equipment or other items), it is appraised by three experts appointed by the Management Board of the cooperative. The sum of the share contributions forms the share capital of the cooperative.

By virtue of a GA resolution, the cooperative members may also make supplementary and target contributions, which do not affect their share contributions. The resolution sets out the objective and the procedure for their deposit, as well as the term for their refunding.

Additionally, the members of the cooperative are free to extend funds in the form of loans, which do not affect their share contributions. Interest rates on the loans are determined by the GA.

Upon termination of membership (due to withdrawal, expulsion or death), former cooperative members or their heirs are entitled to receive the share contributions, the additional and target contributions paid, the attributable dividend, as well as the loans extended to the cooperative, including the attributable interest. Upon termination of membership, the contributions, dividends, loans and interest are paid to the former cooperative members or their heirs after the approval of the annual financial statements and if they have repaid all of their liabilities to the cooperative. If there are outstanding liabilities, these may be offset against the receivables due to the members.

The statute of limitation for receipt of the share contribution is five years, and three years for the dividend.

Upon termination of the cooperative through liquidation, the additional and target contributions and loans made by the cooperative members are subject to repayment under the provisions for repayment of the receivables of third parties and are paid pro-rata without payment privileges.

Any property left after the satisfaction of the creditors is distributed between the cooperative members in proportion to their share contributions, unless otherwise provided for in the Statutes.

The GA of the cooperative, in accordance with the provisions of the Statutes, distributes the profit and loss, and determines the nature of the cash funds and the amount of deductions for them, the procedure and manner for their fundraising and spending.

The amount of profit is determined after a deduction is made for the funds of the cooperative (the Reserve Fund and Investment Fund). The remaining profit is distributed by a resolution of the GA as dividends to the members, for investments and for other purposes in connection with the activities of the cooperative, or taken to the Reserve Fund, whose amount may not be less than 20% of the amount of share capital. The specific amount is determined by the GA.

The amount of the attributable dividend depends on the share contributions made by each member. Dividends are paid by virtue of resolution of the GA of the cooperative and the latter may also make a decision not to distribute profit, depending on the financial result for the respective year. The origin of the profit (from in-house transactions or transactions with third parties) is not important, as the Cooperative Law does not provide for a definition of the term "patronage" or for a "refunding of patronage".

The Law defines two types of dividends – Consumer and Production. Consumer dividends are dividends distributed for consumer goods which the cooperative members purchase from the cooperative¹, therefore their amount does not depend on the share participation of the cooperative members, but on the volume of goods purchased.

Production dividends are the dividends paid to the cooperative members for what is produced by them (mostly agricultural and food products) and sold to the cooperative.² Their amount does not depend on the share participation of the cooperative member but on the volume of goods submitted to the cooperative. Production dividends are taxable income for cooperative members and the tax rate is 10% on the gross amount of the income paid (Art. 35 of PITA).

Both dividends are paid at the expense of the profit within the balance sheet, i.e., from the taxed income of the cooperative. The types of dividends and the method for their distribution are set out in the Statutes of the cooperative.

In the case of termination of the cooperative through liquidation, the liquidators appointed are obliged to collect all receivables of the cooperative, to repay all of its liabilities and/or to sell the property of the cooperative, as required for the repayment of liabilities to third parties and cooperative members (through the sale of assets, regardless of whether the sale is between the cooperative and its members or third parties). Following repayment

¹ § 1, item 20 of the Miscellaneous Provisions of the Personal Income Tax Act (PITA), promulgated, SG, issue 95 of 24 November 2006, latest amendments, SG, issue 60 of 7 July 2020

² § 1, item 19 of the Miscellaneous Provisions of PITA

of all liabilities, the remaining property is distributed between the cooperative members proportionally to their share contributions, unless otherwise provided for in the Statutes.

The Bulgarian legislation does not allow the cooperative to change its legal form or a commercial entity to be transformed into a cooperative. The possible forms of restructuring of a cooperative are set out in Art. 37 of the Cooperative Law and they include: merger, pooling, demerger and spin-off. If a cooperative is restructured through a merger or pooling, the newly established or the accepting cooperative takes over all rights and obligations of the merging / pooling cooperative, as well as its members and property (assets and liabilities).

Funds of the cooperative

The cooperative is obliged to set aside a Reserve Fund and an Investment Fund. It may also set aside other funds by a resolution of the GA. When the cooperative reports a loss at the end of a calendar year, such loss is covered with funds from the Reserve Fund by virtue of a resolution of the GA of the cooperative or remains to be covered in the following years.

The amount of the Investment Fund may not be less than 10% of the share capital. The specific amount and the manners for its formation is set by the GA which also approves a regulation for its operation. As discussed above, the Reserve Fund may not be less than 20% of the amount of share capital.

According to Art. 57 of the Cooperative Law, cooperative unions may also form monetary mutual aid funds for education, qualification and other activities.

Mutual Aid Fund

A Mutual Aid Fund for the cooperative members may be formed by a resolution of the GA. The structure and activities of the mutual aid funds are stipulated in a regulation adopted by the GA. However, their activities are explicitly excluded from the scope of the Credit Institutions Law, as it is limited to extension of loans only to the cooperative members at the expense of the contributions made by them at their own risk.

iii. Other specific features

d) Cooperative internal and external control and cooperation among cooperatives

Cooperative external control

The financial control of cooperatives, cooperative unions, cooperative and inter-cooperative enterprises is exercised by specialised financial control bodies with the national cooperative unions (Art. 63 of the Cooperative Law). In accordance with Art. 63 of the Cooperative Law, every cooperative organisation is subject to such control at least once every three years, and the initiative for the review may be at the request of each cooperative member.

This financial control is also exercised at the request of the President, the Management Board or one tenth of the cooperative members.

The specialised financial control exercised by specialised bodies of the national unions is not only the business of the cooperative. During the inspections carried out, subsequent control is also exercised on the activity of the bodies of the cooperative in view of the lawfulness of the decisions made by them and in view of their compliance with the Statutes of the cooperative organisation. Some of the powers of the specialised financial control bodies include notification to the respective cooperative or state authorities to take measures to rectify the identified irregularities or breaches, and to seek responsibility from the persons at fault.

In performing its control activities, the financial control bodies give instructions and propose to a competent body (the GA of the cooperative) to stop or revoke illegal decisions or actions, as well as seeking property and disciplinary liability.³ In the case of established violations with respect to the spending of funds provided by the state or municipal budgets, under international agreements or European Union programmes, as well as from state-owned enterprises under Art. 62, para 3 of the Commercial Act, the financial control bodies file a notification to the State Financial Inspection Agency.

Every year the financial control bodies prepare an analysis of the inspections carried out. This analysis is provided to the Minister of Finance, the Minister of Interior and the Minister of Justice.

Cooperatives are not subject to other types of explicit, specific financial control by the state as, according to the Commercial Act, they are traders and as such they are subject to inspection by the respective general state financial institutions such as the National Revenue Agency. This control function may not be delegated by the state to representative organisations.

Cooperative accounts are carried out in conformity with the Accountancy Act.

The general taxation regime applies to cooperatives. There are no possibilities for reduction, exemption or refunding of some of the taxes due. No special tax reliefs are envisaged for cooperative organisations at present, which is also a clear demonstration of the lack of state policy aimed at encouraging the cooperative movement in the country. Specific tax treatment exists only with respect to consumer dividends, which represent non-taxable income for the cooperative member recipient of the income (Art. 13, para. 1, item 27 of PITA).

Cooperation among cooperatives

Another specific feature of the cooperative organisations is their right to establish cooperative enterprises for the purpose of cooperation among cooperatives.

Each cooperative may establish cooperative enterprises or form inter-cooperative enterprises with other cooperatives in order to perform business activities. The resolution for the establishment of cooperative enterprises or participation in an inter-cooperative enterprise is made by the GA, which sets out the capital or share in the capital and

³ Chapter Two, Section Four "Subsequent Measures" and Chapter Three "Property Liability" of the Law on State Financial Inspection, and Chapter Thirty One of the Civil Procedure Code "Financial Shortage Proceedings",

authorises the Management Board to establish or participate in the establishment of the enterprise.

The cooperative enterprise is a sole owner limited liability company or a sole owner joint-stock company. The inter-cooperative enterprise may be a limited liability or a joint-stock company.

The cooperative and inter-cooperative enterprises in connection with their establishment and functioning are subject to the provisions of the Commercial Law and are therefore equated as legal entities of all other types of entities, as they can be transformed and change their legal form. In essence, these companies are capital companies and the main goal they pursue is the accumulation of capital.

III. Degree of ‘cooperative friendliness’ of the national legislation

The separation and regulation of cooperatives in a separate Cooperative Law is to a large extent an expression of the recognition of cooperatives and the specific role they are given within Bulgarian legislation. This is yet another emphasis on the difference between the cooperative organisations and capital enterprises.

At present the Bulgarian legislation does not have specific regulatory provisions aimed at cooperatives that might be to their detriment, nor any real impediments to their establishment, functioning and development. At the same time, there are certain restrictions with respect to the activities that the cooperatives may be involved in (such as reinsurance) but these restrictions may be overcome through the establishment of the respective type of cooperative commercial entity (joint-stock company, sole-owner joint stock company, limited company and sole-owner limited company), which would exercise the respective activity. In other words, the national expert does not consider this to be the transformation of a cooperative into a non-cooperative enterprise, but rather the formation of a cooperative enterprise, whose legal form allows the exercise of the respective activity.

Encouragement for the development of the cooperative movement in the country may be identified in certain provisions of laws and by-law regulations, such as:

- Article 35 of the Cooperative Law, which states that cooperatives and cooperative unions are provided with financial relief while the latter are exempt from all fees related to their establishment, restructuring, termination and liquidation.
- Article 5 of the Law on Social and Solidarity Economy Enterprises adopted in November 2018, in which cooperatives are explicitly recognised as subjects of the SSE.

Unfortunately, the promotion of the cooperative movement is not a public function. This is evident from the lack of adequate and actual working financial incentives for the development of cooperatives. The above-mentioned financial relief in the form of exemptions for cooperatives and the cooperative unions from any fees related to their establishment, restructuring, termination and liquidation is not sufficient. This is because

on the one hand it is a one-off relief, and on the other hand the relatively small size of the respective fees makes it financially insignificant.

IV. Recommendations for the improvement of the national legal framework

Despite the positive aspects of the national cooperative legislation discussed above, the national expert believes that there must be further updates and development in order to meet the needs of cooperatives in the present day.

The existence of certain incentive measures for the development of cooperatives becomes meaningless due to the lack of specific mechanisms for their implementation. Such measures include the possibility provided by the Law on Cooperatives for the state to "*support and encourage cooperatives under conditions and in accordance with the special law.*" Despite the opportunity provided by the legislator, there is currently no additional law that includes support measures specifically targeted at cooperatives.

This is both a result of the increasing lack of understanding of the essence of the cooperative as a form of association and, in other cases, its gradual equalisation with commercial companies.

For example, following the Law on Measures Against Money Laundering adopted in 2019, cooperatives are also obliged to provide and publish information with the Commercial Register at the Registry Agency about their beneficial owner – a physical person, as well as information regarding the persons who exercise direct or indirect control upon the organisation. On many occasions, the CCU has expressed its opinion before the competent authorities and has drawn a lot of attention to the fact that cooperatives do not have beneficial owners, as they are managed and governed by their cooperative members through the management bodies. It expressed that all cooperative members have equal rights in the GA, in the management of the cooperative, and have the right to only one vote. Unfortunately, the opinion expressed has not been taken into account during the adoption of this Law. At present, the cooperative organisations are obliged to formally comply with the legal provisions by identifying their Presidents as beneficial owners, although this does not reflect the actual situation.

Explicit recognition is also needed for the cooperatives as social enterprises under the Law on Social and Solidarity Economy Enterprises passed in November 2018, without raising further requirements for the employment of disadvantaged persons or investment of 50% of the profits in social projects, as is the case for commercial entities.

Although regulated under a dedicated law, in some cases, the cooperative legislation fails to give answers to all relevant questions concerning the functioning of cooperative organisations. For example, the Cooperative Law does not make sufficient specific provisions regarding dividends – there is no legal definition of the term, listing of the types of dividends (beyond the definitions of consumer and production dividends specified by other laws) and the mechanisms for their distribution. The situation with regard to the distribution of property of the cooperative upon its termination (liquidation) is also similar.

The lack of financial and tax incentives for the cooperative organisations, such as tax relief, subsidies, etc., may also be highlighted as a serious gap in the national legislation. The focus of the cooperative activities on meeting the needs of the cooperative members, and not so much on the accumulation of profit, puts the cooperatives in a less favourable economic situation when compared with other enterprise forms. In order to preserve the social function of the cooperative model, the national expert recommends that certain financial relief and other support mechanisms should be provided for cooperatives. For example:

- A reinstatement of tax reliefs for investments in and financing of social activities for cooperative members of national cooperative unions.
- Simplified terms and conditions upon application to participate in public procurement.
- Exemption of the cooperatives from the obligation to pay state fees, related not only with their establishment and termination, but also their operation (for example, fees for publication of the annual financial statements and announcement of other acts in the Commercial Register).

Furthermore, it is necessary to develop specific provisions guaranteeing cooperative property and restricting the possibility for disposal of such property without the consent of the GA, as well as the regulation of the transfer of the liquidation shares upon termination of the operations to the regional or national cooperative union. Such normative rules will preserve the cooperative's property and will ensure that it will remain at the disposal of the members, making it impossible to transfer it only on the basis of a sole decision of its chairman. In addition, the practice of transferring cooperative properties to third parties at unfavourable prices will cease. In addition to the above, the creation of special provisions for the protection of cooperative property in liquidation would regulate the legal transfer of property from cooperatives to cooperative unions in cases of liquidation, instead of abandoning them by disinterested cooperative members to third parties.

At present, the law requires a decision of the GA in order to sell cooperative property, but with Interpretative Decision №3 / 2013 of 15.11.2013 on etc. 3/2013 of the Supreme Court of Cassation, this requirement was practically avoided, as the legislator decided that the lack of a decision of the GA does not make the respective disposition transaction invalid. In this way, the presidents of cooperatives were given the opportunity to sell cooperative property without the need for the consent of the cooperative members. Such a practice seriously endangers cooperative ownership, which, despite all the economic difficulties over the years, has still been preserved by cooperatives.

In addition to the need for changes in the regulatory framework relevant to cooperatives, such changes should be taken into account with respect to the Statutes of the cooperative organisations. Despite the campaign carried out by the CCU in the period 2007 – 2008 for the update and modernisation of the cooperative Statutes, at present Statutes that do not meet the currently effective provisions of the Cooperative Law continue to exist. Unfortunately, the amendment of the Statutes of each cooperative is its sovereign right and neither the cooperative union nor the national union can undertake steps to amend the latter.

V. Conclusion

The sustainable development of cooperatives is irrevocably related to their legislative regulation – both at the level of regulatory acts, and at the level of cooperative statutes. While the updating of the statutes is primary task of the cooperatives themselves, amendment of the cooperative legislation is an issue which should be considered at national and international level.

Despite the differences that may be found in the different national cooperative laws, the national expert highlights the need for special, dedicated cooperative law in every legislative framework around the world. The existence of such cooperative law may undoubtedly regulate the establishment, functioning and objectives of the cooperatives, while the fragmented and broken cooperative legislation underlying various general laws is a prerequisite for deprivation of the identity of the cooperatives and their nature, as well as their equalisation with capital companies.

In addition to updating the Bulgarian national cooperative framework, the national expert believes that it is important to harmonise international legislation in order to enhance the visibility and role of the cooperatives both at national and at global level. The existence of common international cooperative legislation which meets the current needs of the cooperative members and the modern social and economic conditions will undoubtedly facilitate the increased recognition of the cooperatives and their importance, as well as enhancement of their economic situation, and furthermore it will protect the interests of cooperative members. The application of the international cooperative principles to the national legislation may ensure the stability and longevity of the cooperatives.

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