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Francesco Tedioli
Fondazione UniverMantova:
orcid.org/0000-0002-0593-852X

Italian Agricultural Cooperatives Between Civil Law and European Regulation: A Development Perspective

Abstract

Italian agricultural cooperatives represent a distinctive economic and legal model that balances mutualistic principles with entrepreneurial strategies. This paper examines the evolving regulatory framework governing these cooperatives, with a focus on the interplay between Italian civil law and European regulations. The analysis explores key structural and functional aspects, including mutuality, governance, digital transformation, and integration with renewable-energy communities. A central objective is to assess the legal and economic challenges affecting agricultural cooperatives, particularly in relation to their internationalization and financial stability. The study highlights potential reforms aimed at enhancing competitiveness while preserving cooperative identity. By examining judicial interpretations and legislative developments, the paper provides insights into how cooperatives can adapt to emerging market and policy dynamics, ensuring long-term sustainability within the agri-food sector.

Keywords: agricultural cooperatives, mutuality principle, Italian agricultural law, renewable energy communities (RECs), blockchain in agri-food supply chains, digitalization in agriculture

Summary

Introduction

Agricultural cooperatives represent a fundamental pillar of the Italian economic and legal system, playing a strategic role in promoting sustainability, social cohesion, and economic development within the primary sector.[1] Unlike other corporate structures, agricultural cooperatives are distinguished by their mutualistic nature, aimed at meeting the economic and social needs of their members through the collective management of resources and agricultural activities. This business model,[2] governed by Articles 2511–2548 of the Italian Civil Code ("CC"), integrates economic and social objectives, ensuring a balance between the valorization of local agricultural production and the promotion of rural community well-being.[3]

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1 Verrucoli P. had already emphasized in the entry *Cooperative* in the *Enciclopedia del Diritto*, Vol. X, Milan, 1962, p. 549, that the cooperative society is primarily structured for the benefit of its members, who are natural persons, and that the "individuality of the member" plays a predominant role. He specifies that, as systematically recognized by case law, the legal personality of the cooperative society cannot override the individuality of the member to the extent of preventing the latter from achieving results that inherently require the preservation of such individuality.

2 For an in-depth analysis of agricultural enterprises, see Casadei E, *L'impresa e azienda agricola*, in Irti N. (ed.), *Manuale di diritto agrario italiano*, Turin, 1978, pp. 55–86; Casadei E., *La nozione di impresa agricola dopo la riforma del 2001*, in *Riv. dir. agr.*, 2009, I; Masi P., *L'impresa agricola tra diritto agrario e diritto commerciale*, in *Riv. dir. civ.*, 1983, II; Masi P., *Impresa agricola*, *ibidem*, 1987, II; Alessi R.,Pisciotta G., *L'impresa agricola. Artt. 2135–2140*, Turin, 2010; AA. VV., *Dell'impresa agricola: disposizioni generali artt. 2135–2139*, Galloni G. – Galgano F. (eds.), Bologna, 2003; Germanò A., *L'impresa agricola*, in *Manuale di diritto agrario*, 8th ed., Turin, 2016; Jannarelli A., *L'impresa agricola*, in Buonocore V. (ed.), *Trattato di diritto commerciale*, Turin, 2008.

3 Giuffrida G., *Le cooperative agricole (natura giuridica)*, Milan, 1981; Parizzi M., *La cooperativa agricola*, Ferrara, 1978; Massart A., entry *Cooperative agricole*, in *Noviss. Dig. It. Appendice*, Turin, 1981, p. 78; Rossi R., *La cooperativa di conduzione agraria (Premessa per una nozione*

In recent decades, agricultural cooperatives have navigated an ever-evolving landscape marked by global challenges such as the ecological transition, digitalization, and international competition.[4] While deeply rooted in a historical tradition of mutuality and solidarity, they must now adapt to the pressing demands for innovation and to new dynamics in the agri-food market. Addressing these challenges requires not only strengthening organizational and managerial capacities but also effectively integrating with European and national policies that promote sustainable development models.

Their legal and economic significance is further reinforced by the Common Agricultural Policy (CAP), which acknowledges their strategic role in improving market-supply concentration and strengthening producers' bargaining power. Through the shared management of resources and the adoption of innovative business models, agricultural cooperatives contribute to the competitiveness of the primary sector and serve as a concrete exemplar of the circular economy.[5]

At a time marked by climate change, geopolitical tensions, and an increasing demand for sustainability, the importance of agricultural cooperatives cannot be underestimated. Their ability to adapt and innovate will be crucial in addressing future challenges while upholding the mutualistic principles that define them and ensuring value creation for both their members and the broader region.

The European regulatory framework and its relationship with national legislation

Agricultural cooperatives hold a key position within European and national policies aimed at promoting sustainability, competitiveness, and the economic integration of the primary sector. Regulation (EU)

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giuridica autonoma), Naples, 1979; Goldoni, M. *Commentary on Article 1 of Legislative Decree No. 228 of May 18, 2001*, in *Riv. dir. agr.*, 2001, I, p. 213 ff.

4 Scholarly literature has highlighted that the definition of "agricultural cooperative" is entirely generic, as there is no legally established model for agricultural cooperatives. See Giuffrida G., *Le società cooperative*, in *Trattato breve di diritto agrario italiano e comunitario*, edited by Costato, 3rd ed., Padua, 2003, p. 284 ff.

5 Miribung G., *Cooperation and Shared Responsibility*, in *Trattato breve di diritto agrario e dell'Unione Europea*, Milan, 2023, p. 278.

No. 1308/2013,[6] despite being amended by Regulation (EU) 2021/2117,[7] remains a central reference for the regulation of the Common Market Organization (CMO),[8] assigning agricultural cooperatives a strategic role as producer organizations. These organizations not only enhance supply concentration and strengthen producers' bargaining power but also foster the economic and environmental sustainability of agri-food supply chains (Article 152, Regulation (EU) No. 1308/2013, as amended by Regulation (EU) 2021/2117).

A distinctive feature of European law is the balance between supporting agricultural cooperatives and applying competition rules under Articles 101–102 TFEU. This balance results in targeted exemptions for agricultural cooperatives that pursue objectives of collective interest, ensuring that such benefits do not lead to significant market distortions. The European regulatory approach thus recognizes the uniqueness of cooperatives, which combine economic efficiency with mutual solidarity, fostering inclusive and sustainable production models.

In Italy, the transposition of European norms is integrated into Legislative Decree No. 228/2001, which broadened the definition of an agricultural entrepreneur,[9] including cooperatives engaged in the processing, preservation, marketing, and enhancement of products supplied by their

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6 Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001, and (EC) No. 1234/2007.

7 Regulation of the European Parliament and of the Council amending Regulations (EU) No. 1308/2013 establishing a common organization of the markets in agricultural products, (EU) No. 1151/2012 on quality schemes for agricultural and food products, (EU) No. 251/2014 concerning the definition, designation, presentation, labeling, and protection of geographical indications for aromatized wine products, and (EU) No. 228/2013 concerning specific measures in the agricultural sector in favor of the outermost regions of the Union.

8 Pursuant to Article 40 TFEU, the Common Market Organization (CMO) is the necessary instrument to achieve the objectives of the CAP, as generally defined in Article 39 TFEU and specifically set by the EU for each reference period of the common policy. In 2007, a single Common Market Organization (Single CMO) was created in order to codify the regulatory mechanisms of the twenty-one existing Common Market Organizations (CMOs) (Reg. EC No. 1234/2007).

9 The concept of agricultural enterprise has thus been expanded, primarily due to the enlargement of the category of connected activities. See Buonocore V., *L'impresa*, in *Tratt. Buonocore*, 2, I, Turin, 2002, p. 559; Goldoni M., *L'articolo 2135 del Codice civile*, in *Tratt. Costato*, 3rd ed., Padua, 2003, p. 188.

members.[10] The decree also redefined the concept of related activities, placing particular emphasis on the prevalence requirement for products supplied by members. This criterion not only qualifies the cooperative's activity as agricultural but also exempts it from the legal framework governing commercial companies, reinforcing the mutualistic nature of its operations.

The link between European and national regulations is further strengthened through the financial instruments of the 2023–2027 Common Agricultural Policy (CAP), which supports agricultural cooperatives in projects aimed at fostering innovation, sustainability, and economic resilience. The new CAP governance model, introduced by Regulation (EU) 2021/2115,[11] grants Member States greater autonomy in managing funds and defining rural development strategies. Within this framework, agricultural cooperatives can benefit from targeted interventions for infrastructure modernization, digital technology adoption, and ecological transition. These instruments align with the European Green Deal and national climate and energy strategies, which include specific incentives for agricultural-energy communities and the circular economy.

The European and national regulatory framework thus establishes an integrated system designed to enhance the role of agricultural cooperatives as key players in rural development and the ecological transition. This system not only provides economic support through tax incentives and public funds but also ensures legal protection for contributing members. Thanks to this dual safeguard, agricultural cooperatives today stand as pillars of

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10 Article 2135 of the Civil Code ("Agricultural Entrepreneur") was significantly reformed by Legislative Decree No. 228 of 18 May 2001. The legislative intervention aims at the reorganization and modernization of the agricultural, forestry, fishing, and aquaculture sectors, also promoting their support and economic development. Specifically, the rationale behind the amendments lies in the need to distinguish the regime of the agricultural entrepreneur from the more burdensome regime of the commercial entrepreneur, while also taking into account the changed economic-social framework in which operators act, supporting the "multifunctionality of the agricultural enterprise." For doctrinal reference, see Sironi M., *Riflessioni civilistiche in materia di attività agricole connesse*, in *Agricoltura*, No. 4, 1 July 2005, p. 227; Franco S. – Senni S., *La funzione sociale delle attività agricole*, Lazio Region – University of Tuscia, *Quaderni d'informazione socio-economica*, 2005, p. 15.

11 Regulation (EU) No. 2021/2115 of the European Parliament and of the Council of 2 December 2021 laying down rules on support for the strategic plans that Member States must draw up under the common agricultural policy (CAP strategic plans), financed by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), and repealing Regulations (EU) No. 1305/2013 and (EU) No. 1307/2013, in OJ L 435 of 6 December 2021.

regional development, capable of promoting sustainable, competitive, and inclusive production models.

Mutualistic structure and objectives of agricultural cooperatives

Agricultural cooperatives constitute a distinctive corporate model founded on the principle of mutuality,[12] which represents the cornerstone of both their legal framework and internal organization. Unlike capital-based companies, whose primary objective is profit maximization, agricultural cooperatives pursue the satisfaction of their members' economic, social, and professional needs through the collective management of productive resources and the provision of goods and services under more favorable conditions than those available on the market. Moreover, agricultural cooperatives facilitate the valorization of local production and promotes a sustainable model of regional development.[13] However, the mutualistic nature of cooperatives does not preclude their entrepreneurial dimension, as they must operate according to criteria of economic efficiency to ensure the sustainability of their organizational structure.

A central element of this system is the mutualistic relationship, which entails reciprocal obligations between the members and the cooperative.[14] One of the most significant of these obligations is the mandatory conferment of agricultural products by members, a requirement that does not constitute an ancillary obligation within the meaning of Article 2345 CC, but rather a fundamental obligation essential to the cooperative's functioning.[15] This synallagmatic relationship[16] is structured as a contract with reciprocal obligations: members undertake to provide their agricultural products in

[12] Prevalent mutuality implies that economic activities are carried out primarily with and for the members, ensuring that the benefits generated are distributed equitably.

[13] Genco R., Iengo M., Morara P.L., *Mutualità: un approccio giuridico*, in *Quaderni della Fondazione Ivano Barberini*, 2023, p. 2.

[14] As emphasized by the doctrine, this model is distinguished by the absence of a clear separation between the individual interest of the members and the collective interest of the entity, as both converge in the enhancement of the agricultural product. See Bonfante G., *La natura agricola delle cooperative di trasformazione e il requisito dell'attività prevalente con i soci*, in *Giur. Comm.*, 2020, p. 146.

[15] Court of Cassation, 9 August 2023, No. 24242, in *Le società*, 2024, p. 22, with a note by Bonfante G., *La "morte" del contratto di scambio nelle cooperative secondo una sentenza del Supremo Collegio*, ibid., p. 24 et seq., which is highly critical of this ruling.

[16] Cf. Garilli, C., *Natura sinallagmatica dei rapporti mutualistici e rimedi contrattuali*, in *Le società*, 2024, p. 169.

accordance with the procedures established by the cooperative's bylaws, while the cooperative assumes the duty to process, enhance, and market the conferred products, distributing the resulting economic benefits in proportion to the contributions.[17]

This contractual framework carries significant legal implications. The cooperative is subject to the general principles of contractual obligations, allowing members to invoke the defense of non-performance (Article 1460 CC) or to request termination of the contractual relationship should the cooperative fail to fulfill its statutory obligations.[18] At the same time, the close interrelation between the mutualistic bond and the productive organization strengthens the legal position of members, ensuring a balanced interplay between obligations and rights within their relationship with the cooperative.

At the heart of the mutualistic model lies the principle of prevalent mutuality,[19] enshrined in Article 2513 CC. This principle requires that the cooperative's activities be carried out predominantly with and for its members, both in terms of supply and revenue. This is not merely a formal requisite but an essential criterion for preserving the cooperative's mutualistic identity.[20] Jurisprudence has clarified that compliance with prevalent mutuality cannot be assessed solely through a quantitative analysis; rather, it necessitates a qualitative evaluation aimed at ensuring that the benefits primarily accrue to the members.[21] Non-compliance with this principle may result in the loss of the cooperative's status as a mutualistic entity, triggering fiscal and regulatory repercussions.

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17 Court of Cassation, 16 January 2018, No. 831.

18 Court of Cassation, 2 August 2023, No. 23606.

19 On cooperatives with prevalent mutuality, without claiming exhaustiveness, see Bassi A., *Scopo mutualistico*, in *Società cooperative*, edited by Presti, *Commentario Marchetti-Bianchi-Ghezzi-Notari*, Milan, 2000, p. 1368 et seq.; Belviso U., *Scopo mutualistico e capitale variabile nelle società cooperative*, Milan, 2012, p. 124 et seq.; Id., *Le cooperative a mutualità prevalente*, in *Il nuovo diritto delle società, Liber amicorum Gian Franco Campobasso*, edited by Abbadessa-Portale, 4, Turin, 2007, p. 651 et seq.; Marasà G., *L'odierno significato della mutualità prevalente nelle cooperative*, in *Società, banche e crisi di impresa, Liber amicorum Pietro Abbadessa*, 2, 2014, p. 2001 et seq.; Rocchi E., *Cooperativa a mutualità prevalente. Criteri per la definizione della prevalenza. Requisiti delle Cooperative a mutualità prevalente*, in *Società cooperative*, edited by Presti, *Commentario Marchetti-Bianchi-Ghezzi-Notari*, Milan, 2006, p. 27 et seq.

20 This principle, in addition to defining the nature of the cooperative, conditions access to the fiscal and regulatory benefits reserved for agricultural enterprises.

21 Court of Appeal of Bologna, Section III, 7 June 2022; Court of Cassation, 10 July 2019, No. 18245.

Another distinguishing feature of agricultural cooperatives is the sharing of entrepreneurial risk among members. Unlike capital-based companies, where the risk is limited to the invested capital, cooperative members actively participate in the entity's economic risks. Specifically, the remuneration of conferments is not automatically guaranteed but is contingent upon the cooperative's economic performance and market conditions. This system reinforces the mutualistic bond and promotes economically responsible, and sustainability-oriented management.

From a regulatory standpoint, agricultural cooperatives benefit from favorable legal and fiscal treatment due to their social function and strategic importance in rural development. Italian legislation, in conjunction with European Union regulations, encourages the adoption of sustainable agricultural practices, technological innovation, and the advancement of circular-economic models. In particular, Regulation (EU) No. 1308/2013 acknowledges the role of agricultural cooperatives in improving supply concentration, enhancing producers' bargaining power, and fostering greater economic and environmental sustainability within agri-food supply chains. Furthermore, economic support mechanisms derived from rural development policies, including structural funds and preferential tax regimes, further consolidate the role of cooperatives as key actors within the productive and regional fabric.

The relationship between agricultural cooperatives and related activities

The link between agricultural cooperatives and related activities is essential for understanding their legal nature and strategic role within the economic system. Pursuant to Article 2135 CC, agricultural activities include not only cultivation, livestock farming, and forestry but also related activities such as the processing, preservation, marketing, and enhancement of agricultural products, provided that these products originate predominantly from the members' farms. This legal framework enables cooperatives to operate across the entire agri-food supply chain, fostering an integrated model that combines economic development with regional sustainability.

Related activities are closely linked to the biological cycle of the land, as stipulated in Article 2135(3) CC. The requirement of prevalence should not be interpreted solely in quantitative terms but must reflect a functional and substantive connection with the agricultural production cycle. In

this context, agricultural cooperatives serve as intermediaries between members' labor and the market, transforming the supplied products and enhancing their value through commercialization.

Jurisprudence has clarified that agricultural transformation cooperatives retain their status as agricultural entrepreneurs when the related activity is predominantly directed toward products supplied by their members. In this regard, the principle of predominant mutuality, enshrined in Article 2513 CC, plays a crucial role, requiring that at least 50% of the cooperative's economic transactions be conducted with its members, whether in the form of contributions or member-generated revenue.[22] Not only does this principle preserve the connection between related activities and the agricultural production cycle, but it also ensures that the cooperative remains faithful to its mutualistic purpose, preventing its transformation into a purely commercial enterprise.

However, the Italian Supreme Court has specified that not every processing and marketing activity can automatically be considered agricultural.[23] This principle highlights the necessity for a concrete and substantive link between related activities and the biological cycle, thereby preventing agricultural cooperatives from becoming mere commercial intermediaries.

Related activities also play a strategic role in enhancing the value of products supplied by members. The ability to process and market agricultural products on a large scale strengthens producers' bargaining power, improving their competitiveness in the market.[24] Moreover, this model supports the creation of more sustainable and resilient agri-food supply chains, in line with the objectives of the Common Agricultural Policy (CAP).

A further distinctive aspect of agricultural cooperatives is that related activities do not constitute independent commercial operations but rather an expression of the mutualistic relationship between members and the cooperative. On this point, case law has clarified that the contribution of agricultural products by members does not constitute an exchange-based

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22 This requirement is, in fact, essential to distinguish agricultural cooperatives from commercial enterprises and to access the fiscal and regulatory benefits provided for the agricultural sector. See Court of Cassation, 9 August 2023, No. 24242, cited.

23 Court of Cassation, 10 November 2016, No. 22978 excluded the qualification of agricultural entrepreneur for a cooperative engaged in slaughtering, processing, and selling livestock products, noting that such operations were not aimed at the care and development of the biological cycle, but were instead classified as typically industrial and commercial activities.

24 Miribung G., *Trattato breve di diritto agrario e dell'Unione Europea*, cited, 2023, Milan, p. 225.

contract but rather an obligation deriving from the social contract, intrinsically linked to the mutualistic purpose of the cooperative.[25] This legal framework allows cooperatives to maintain their mutualistic identity, ensuring a balance between statutory obligations and economic benefits.

This arrangement strengthens the role of cooperatives as instruments of economic and social integration, where members are not mere suppliers but actively participate in the management of activities and the distribution of benefits.

Related activities acquire particular importance at the European level, especially in relation to the objectives of ecological transition. Agricultural cooperatives are encouraged to integrate innovative activities into their production processes, such as the generation of alternative energy[26] or participation in renewable-energy communities.[27] These initiatives, supported by European and national programs, offer new opportunities to combine environmental sustainability with the economic valorization of member-supplied agricultural products.

Democratic governance in agricultural cooperatives

Democratic governance is a fundamental principle distinguishing agricultural cooperatives from other corporate structures, as it is based on the "one member, one vote" mechanism established by Article 2538 CC. Unlike capital-based companies, where decision-making power is proportional to the shares held, agricultural cooperatives ensure that each member has equal voting rights, regardless of their economic capacity or the volume of their contributions. This model reflects the mutualistic nature of cooperatives, aiming to guarantee equal participation among members and preserve collective interests.

The principle of equal decision-making translates into a governance system that fosters active participation and meaningful member engagement in the cooperative's management. Judicial rulings have consistently

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25 Court of Cassation, 9 August 2023, No. 24242.

26 Cf. Tedioli F., *Agrivoltaico avanzato: innovazione, sostenibilità e regolamentazione per il futuro dell'energia rurale*, in *Riv. per la consulenza in agr.*, n. 100/2025, p. 12; Tedioli F., *La produzione di energia da fonti rinnovabili quale attività connessa a quella agricola*, ibidem, n. 53/2020.

27 See infra paragraph 10. Agricultural Cooperatives and Renewable Energy Communities (RECs).

emphasized that any attempt to deviate from this rule, even through statutory agreements, would contravene the cooperative's mutualistic purpose and compromise its identity.[28] Consequently, democratic governance not only safeguards internal democracy but also ensures that control remains equitably distributed, preventing the undue concentration of power.

The organizational structure of agricultural cooperatives comprises three main governing bodies. The general assembly, recognized as the cooperative's supreme body, is responsible for strategic decisions such as approving financial statements, appointing directors, and amending the bylaws. Operating under the majority principle, in accordance with Article 2538 CC,[29] the assembly ensures a balance between participation and decision-making efficiency.

The board of directors, elected by the assembly, oversees both ordinary and extraordinary management, representing the collective interests of the members. It is tasked with ensuring transparent and responsible governance, upholding mutualistic principles, and promoting participatory management.[30]

Where applicable, the board of statutory auditors performs supervisory functions, ensuring compliance with administrative regulations and statutory provisions.

Beyond formal equality, democratic governance fosters informed participation in the cooperative's activities. Article 2545-quater CC mandates that members contribute to the cooperative's mutualistic purpose not only through financial contributions but also by actively participating in assembly decisions. Non-participation or failure to fulfill social obligations may lead to the exclusion of a member.[31]

However, the democratic model of agricultural cooperatives is not without challenges. Collective decision-making processes can slow down operations, particularly in competitive markets that require rapid action. Additionally, balancing individual and collective interests may lead to internal conflicts, potentially affecting organizational cohesion. Furthermore,

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28 Court of Cassation, 28 May 2024, No. 14850.

29 Bassi A., *Le società cooperative*, in Bassi, Buonocore, Pescatore, *Commento ai D.Lgs. n. 5-6 del 17 gennaio 2003*, Torino, 2003, p. 264; Bonfante G., *La società cooperativa*, in *Trattato di Diritto Commerciale*, Bologna, 2014; Id., sub art. 2538, in *Comm. Cottino, Bonfante, Cagnasso, Montalenti*, Bologna, 2004, p. 2560.

30 Chiusoli R., *La riforma del diritto societario per le cooperative*, Milano, 2003, p. 42; Tatarano M.C., *La nuova impresa cooperativa*, Milano, 2011, p. 538.

31 Trib. Firenze, 8 maggio 2019; in dottrina, Casale F., *Scambio e mutualità nella società cooperativa*, Milano, 2005, p. 18.

the increasing complexity of regulatory frameworks necessitates specialized administrative expertise.

To address these challenges, cooperatives are adopting innovative solutions, integrating democratic principles with technological tools and more adaptable governance models to enhance operational efficiency while preserving their mutualistic identity.

Agricultural cooperatives and the protection of the contributing member's position

Digitalization is transforming the internal governance of agricultural cooperatives, making decision-making processes both more efficient and more inclusive. Tools such as digital platforms for managing general meetings, electronic voting systems, and applications for information sharing promote greater transparency and member participation while simultaneously reducing administrative complexity.

One of the main benefits of digitalization concerns the management of meetings and decision-making processes. Agricultural cooperatives, often characterized by a large and geographically dispersed membership base, can benefit from online meeting management platforms and electronic voting systems, allowing members to participate actively without the need for physical presence. The adoption of software for managing meeting minutes and the integration of digital signature tools streamline bureaucratic procedures while ensuring greater security and traceability in decision-making.

Another key aspect is the use of cloud-based document management systems, which allow essential documents such as financial statements, regulations, contracts, and production-activity reports to be stored, updated, and shared in real time.[32] This eliminates issues related to information dispersion and significantly reduces costs associated with paper-based management. Additionally, immediate access to data enables governing bodies to operate with greater timeliness, avoiding delays in resolutions and improving the cooperative's strategic planning.

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[32] For example, digital platforms such as Hubfarm, developed by Confagricoltura in collaboration with xFarm Technologies, allow agricultural cooperatives to centralize the management of activities, improve operational efficiency, and promote sustainable practices (https://www.hubfarm.eu).

Digitalization as a tool for internal governance

The role of the contributing member plays a central role in the system of agricultural cooperatives, as it is through contributions that these entities fulfill their mutualistic purpose and ensure their economic sustainability. The contribution represents not only the key element of the mutualistic relationship but also the cornerstone of the cooperative's internal regulation, which is based on a dynamic balance between reciprocal rights and obligations.

As previously mentioned, under Article 2135 CC, the contribution does not constitute an ancillary service pursuant to Article 2345 CC but rather a fundamental obligation arising from the social contract, closely linked to the mutualistic purpose. The Court of Cassation has clarified that this obligation cannot be equated with an autonomous exchange contract,[33] but instead reflects the peculiar nature of the associative bond between members and the cooperative.[34] This interpretation confirms that the relationship between the member and the cooperative is aimed not only at enhancing the value of the member-contributed products but also at promoting a collective and solidarity-based management of resources.

The contribution generates a synallagmatic relationship between the member and the cooperative. On the one hand, the member undertakes to contribute their agricultural products according to the terms established by the statute; on the other, the cooperative is obligated to process, store, and market these products, distributing the economic benefits derived from the mutualistic activity to its members. However, remuneration does not constitute an immediate and guaranteed right but rather a mere expectation, subject to the cooperative's economic performance and financial results.[35]

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33 Regarding the configuration of mutualistic relationships as exchange contracts distinct from the social bond, see Buonocore V., *Rapporto mutualistico e parità di trattamento*, in *Il nuovo diritto delle società*, Liber amicorum Gianfranco Campobasso, edited by Abbadessa – Portale, 4, Turin, 2007, p. 579 et seq.; Casale F., *Scambio e mutualità nella società cooperativa*, op. cit., passim; Bonfante G., *La società cooperativa, Itinerari di giurisprudenza*, in *Le Società*, 2023, p. 102 et seq.; Bassi A., *Scopo mutualistico – Società cooperative, Profili tipologici e causali*, in *Trattato delle società*, edited by Donativi V., Milan, IV, p. 1361; Petrelli G., *I profili della mutualità nella riforma delle società cooperative*, CNN Studio n. 5308/I, 2004, https://notariato.it/wp-content/uploads/5308.pdf; Piras A., *Profili mutualistici della governance delle società cooperative*, in *Società, banche e crisi di impresa*, Liber amicorum Pietro Abbadessa, 2, 2014, p. 2023 et seq. In the case law of the Court of Cassation, see, among others, Cass. 12 January 2023, no. 770, Cass. 13 May 2021, no. 12949.

34 Court of Cassation, 9 August 2023, no. 24242.

35 Court of Cassation, 2 August 2023, no. 23606.

This structure reflects the principle of mutuality, whereby members not only share the benefits arising from the entity's management but also participate in the economic risks associated with its activities. Such a balance is essential to preserving the cooperative's mutualistic nature and ensuring an equitable distribution of resources.

The position of the contributing member is protected both by the provisions of the CC and by the cooperative's statute, which plays a crucial role in regulating relationships between members and the entity. The statute, in fact, governs fundamental aspects such as the criteria for remuneration, the redistribution of benefits, and risk management. In this context, proportional rebate mechanisms[36] based on contributions serve as an essential tool to ensure fairness in the redistribution of economic advantages. Similarly, the statute may establish procedural safeguards for the potential exclusion of a member, such as the obligation to provide reasons for decisions and the right to challenge them, in accordance with Article 2533 CC. Moreover, democratic participation of members is encouraged through mechanisms that allow them to directly influence decisions concerning the management of contributions and the cooperative's strategic planning.

Despite the legal protections available, the position of the contributing member is not without significant issues. A significant concern is information asymmetry, which can limit the member's ability to access complete and transparent information regarding the cooperative's management, thereby compromising their ability to assess the adequacy of remuneration. In addition, the economic risk inherent in the mutualistic structure means that remuneration for contributions depends on the cooperative's economic performance and is therefore not always guaranteed. This issue becomes particularly problematic in times of crisis within the agricultural sector. Furthermore, the collective management of resources and the redistribution of benefits may generate internal conflicts between contributing members and administrators, particularly in cases of disagreement over operational strategies or methods of distributing economic outcomes.

To address these challenges, it is essential to promote member training, enhancing their skills and fostering greater awareness of the cooperative's operational mechanisms. At the same time, the adoption of independent monitoring tools is necessary to ensure transparent management in line

36 The refund is the mutual advantage granted to the cooperative member on a deferred and contingent basis, following the identification of a surplus in the annual financial statement.

with mutualistic principles, reducing the risk of internal tensions and information asymmetries. These measures would not only strengthen the protection of the contributing member but also contribute to consolidating the economic and social sustainability of the cooperative model.

The protection of the contributing member is not limited to statutory provisions or regulations governing the redistribution of benefits but also extends to legal remedies in cases of nonperformance by the cooperative. If the cooperative fails to fulfill its obligations regarding the processing and valorization of contributed products, the member may avail themselves of protective instruments such as the defense of nonperformance under Article 1460 CC or, in more severe cases, seek the termination of the mutualistic relationship. Case law has repeatedly emphasized the importance of these remedies, underscoring their fundamental role in ensuring compliance with the cooperative's obligations toward contributing members.[37]

At the same time, the cooperative has self-protective mechanisms to manage potential breaches by members, such as the application of sanctions provided for in the statute or, in extreme cases, exclusion from the social contract, always in compliance with statutory and regulatory provisions. This balance of rights and obligations helps preserve the sustainability of the mutualistic relationship, ensuring a system that protects both the individual interests of members and the overall effective functioning of the entity.

The right of pre-emption and agricultural cooperatives

The right of agricultural pre-emption represents one of the cornerstones of agricultural law, aimed at safeguarding the continuity of land cultivation and promoting the stability of rural enterprises. Its original legislative framework, outlined by Law No. 590/1965 and Law No. 817/1971, initially granted this right exclusively to direct farmers, in accordance with the principle of favor for the active farmer, designed to strengthen agricultural ownership in the hands of those who actually cultivate the land.[38] However, the legislation has undergone significant evolution, culminating

37 See Court of Cassation, August 2, 2023, No. 23606, cit.

38 Casarotto G., *Profili sistematici della prelazione agraria*, in *Uno studio e due note in tema di prelazione agraria*, in *Riv. dir. civ.*, 1976, II, p. 400.

in the extension of pre-emption rights to other collective entities, including agricultural cooperatives, subject to specific legal requirements.

The first recognition of agricultural pre-emption rights for agricultural cooperatives came with Article 16(5) of Law No. 817/1971, which allowed agricultural cooperatives formed by farmers to exercise pre-emption in their capacity as tenants of the land. Subsequent case law consolidated this approach, affirming that the mutualistic function of agricultural cooperatives, based on collective land management and the aggregation of small producers, aligns with the protective purposes of the pre-emption system.[39]

A further step forward was made with the enactment of Legislative Decree No. 228/2001 and Legislative Decree No. 99/2004, which expanded the range of subjects entitled to exercise pre-emption, including agricultural partnerships, provided that at least half of their members qualify as direct farmers and are duly registered in the special section of the business registry.[40] The rationale behind this extension lies in the legislator's intention to adapt pre-emption regulations to the evolving reality of collective agricultural enterprises, recognizing that agricultural cooperatives, when operating in line with the direct farming model, pursue the objective of ensuring the continuity of agricultural activities.

However, for an agricultural cooperative to exercise the right of agricultural pre-emption, it must meet strict legal requirements, both substantively and procedurally. The first criterion concerns the agricultural nature of the cooperative, which must be established in compliance with Articles 2511 et seq. CC, with an exclusively agricultural corporate purpose and activities directly related to cultivation, livestock farming, or forestry. Additionally, at least half of the cooperative's members must hold the status of direct farmers, as evidenced by their registration in the special section of the business registry. Case law has interpreted this requirement strictly, emphasizing that the registration must be valid and up to date at the time of the land sale.[41]

Despite the legislator's clear intention to grant pre-emption rights to agricultural cooperatives under specific conditions, the practical application of this right has raised several interpretive issues. One of the main concerns is the legal significance of business-registry entries in determining

39 Cf. Court of Cassation, 18 June 1996, No. 5577; Court of Cassation, 13 January 1986, No. 151.

40 See Article 2(3), Legislative Decree No. 99/2004; Court of Cassation, 7 August 2023, No. 23989.

41 Court of Cassation, 5 March 2019, No. 6302.

whether a cooperative's members qualify as direct farmers. Courts have ruled that such registration is not constitutive but merely declaratory, meaning that the pre-empting cooperative may be required to provide additional documentary evidence of its effective agricultural activity.[42] This has led to considerable litigation, as in some cases sellers have challenged the validity of pre-emption exercised by agricultural cooperatives, arguing that they lacked effective direct cultivation.

Another critical issue concerns the exercise of pre-emption by farm-management cooperatives, which cultivate land belonging to their members through lease or loan agreements. According to prevailing case law, pre-emption can only be exercised by cooperatives that own adjacent land, excluding those managing land under contractual arrangements.[43] This restrictive interpretation has been criticized by scholars, who argue that it risks undermining the objective of agricultural continuity and hindering the consolidation of agricultural cooperatives as instruments of collective land management.[44]

Thus, while the extension of agricultural pre-emption rights to cooperatives represents an important recognition of their role in the sector, it remains characterized by application limits and a complex regulatory framework. In conclusion, the excessive rigidity of formal requirements and restrictive judicial interpretations call for a reconsideration of the legal framework to ensure that the institution effectively contributes to strengthening agricultural cooperatives and preserving the continuity of land cultivation.[45]

The insolvency of agricultural cooperatives: legal nature and applicability limits

The issue of the insolvency of agricultural cooperatives is a highly relevant legal matter situated at the intersection of agricultural and commercial law. The complexity arises from the dual legal status of these entities: while they operate as agricultural enterprises under Article 2135 CC, they are incorporated as cooperatives, thereby subject to the regulations applicable

42 Court of Cassation, 7 August 2023, No. 23989.

43 Court of Cassation, 25 March 2016, No. 5952; Court of Cassation, 16 June 2016, No. 20642

44 Tonalini P., *Prelazione agraria e società agricole* in *Riv. Notariato*, 2022, p. 637.

45 Cf. Di Cerbo L., *Il diritto di prelazione agraria in favore delle società agricole* in *Riv. Notariato*, 2024, p. 88.

to corporations.[46] This legal framework has significant implications for their subjection to insolvency proceedings, particularly judicial liquidation (formerly bankruptcy).

Article 33 of the Italian Business Crisis and Insolvency Code ("CCII"), introduced by Legislative Decree No. 14 of January 12, 2019, reaffirmed[47] the exclusion of agricultural entrepreneurs from insolvency proceedings, recognizing the unique characteristics of agricultural activities, which are marked by irregular production cycles and heightened exposure to market and environmental risks. However, this exemption does not automatically extend to agricultural cooperatives, which may be classified as commercial enterprises and thus subject to judicial liquidation. Their exclusion from insolvency proceedings depends on demonstrating that they effectively fall within the category of agricultural entrepreneurs, in accordance with the requirements set out in Article 2135 CC.

Case law has consistently emphasized that the agricultural nature of a cooperative cannot be assessed merely on a formal basis but must be determined in concrete terms, taking into account the actual activities carried out.[48] In particular, the Italian Supreme Court has clarified that, to benefit from exclusion from judicial liquidation, a cooperative must demonstrate that its agricultural activity is predominant over its commercial activity and that its production cycle aligns more closely with an agricultural rather than an industrial model.[49]

Specifically, the criterion of agricultural predominance, as outlined in Article 2135 CC, requires that activities connected to agricultural production (such as processing, preservation, and marketing) be functionally linked to the biological cycle and that the majority of raw materials used originate from members' contributions. Failure to meet this requirement may

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46 De Gaetano D., *Non è esclusa dal fallimento l'impresa agricola che svolga anche attività di carattere commerciale*, in *IUS, Crisi d'impresa*, 29 aprile 2022.

47 Article 1 of the Bankruptcy Law (Royal Decree of March 16, 1942, No. 267) explicitly provides that agricultural entrepreneurs are excluded from the application of bankruptcy procedures.

48 The case law has reiterated that the judge, when evaluating the agricultural nature of a cooperative, must examine not only the statutory clauses but also the actual activity carried out, verifying the presence of the requirements set forth in Article 2135 CC and Legislative Decree No. 228/2001. The requirement for agricultural predominance must be assessed on a case-by-case basis, based on an analysis of the accounting documentation, the operational methods of the entity, and the destination of the processed products. See Trib. Gela, July 7, 2023; Court of Appeal of Palermo, Section III, July 22, 2021.

49 Court of Cassation, May 20, 2024, No. 13997; Court of Cassation, Civil Section III, March 22, 2022, No. 9351

result in the reclassification of the cooperative as a commercial enterprise, leading to its subjection to insolvency proceedings.[50]

Another key aspect is registration in the special section of the business registry reserved for agricultural entrepreneurs, which serves as an indication of the agricultural nature of the activity. However, case law has repeatedly held that such registration is merely declaratory and not constitutive.[51] Therefore, even when such registration is present, courts retain authority to verify in concrete terms whether agricultural activities prevail over commercial ones. This interpretation aims to prevent abuses intended to shield the cooperative from insolvency proceedings through a purely formal claim of agricultural entrepreneur status.

A particular case concerns agricultural cooperatives that qualify as social enterprises[52] under Legislative Decree No. 112/2017. According to lower court jurisprudence,[53] these cooperatives are not subject to judicial liquidation applicable to commercial companies but rather to compulsory administrative liquidation. This legal framework distinguishes them both from individual agricultural enterprises, which are inherently excluded from insolvency proceedings, and from ordinary agricultural cooperatives, whose insolvency status depends on meeting the criterion of agricultural predominance.

In light of these considerations, it is clear that the current legal framework creates a disparity between individual agricultural enterprises, which are automatically excluded from judicial liquidation, and agricultural cooperatives, which must provide detailed evidence of meeting the agricultural predominance requirements. This regulatory uncertainty not only leads to a high level of litigation but also creates operational challenges for cooperatives, which risk being reclassified as commercial enterprises.

A legislative intervention clarifying the boundaries between agricultural and commercial activities for agricultural cooperatives could help reduce uncertainty and ensure a more consistent application of insolvency rules. In the meantime, the negotiated crisis-settlement tools,[54] introduced by the

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50 Court of Cassation, March 22, 2022, No. 9351.

51 Court of Cassation, June 25, 2020, No. 12859.

52 Cf Tedioli F. *Agricoltura sociale e l'impresa agricola multifunzionale*, in *Cons. Agr.*, No. 11/2021, pp. 7–12.

53 Court of Siracusa, Bankruptcy Section, May 5, 2021.

54 The negotiated composition for the resolution of business crises is a new institution regulated by Title II of Legislative Decree 14/2019 (Code of Business Crisis). For further insights, see D'Alonzo R., *La composizione negoziata nell'era del D.Lgs. 136 del 2024*, in Dirittodellacrisi.it, September 30, 2024; Bonfatti S., *La procedura di Composizione Negoziata per la*

CCII, provide agricultural cooperatives with an opportunity to prevent judicial liquidation through restructuring and business-continuity strategies.

This mechanism allows struggling agricultural cooperatives to initiate a debt-restructuring process and preserve business continuity without resorting to insolvency proceedings. Its effectiveness depends on the cooperative's ability to develop a sustainable recovery plan and demonstrate the predominance of agricultural activities. In particular, case law has clarified that the qualification of a cooperative as agricultural, and the consequent exemption from insolvency proceedings, must be assessed based on objective criteria, evaluating the predominance of agricultural activities over commercial ones and their strict connection to the primary production cycle.[55]

The uncertainty regarding the legal classification of agricultural cooperatives, arising from the interplay between agricultural and commercial activities, remains a significant issue. The need to distinguish between these two categories has been repeatedly emphasized by both legal scholars and case law to ensure a consistent application of the rules and avoid conflicting judicial interpretations.[56]

The insolvency of agricultural cooperatives, therefore, remains a highly relevant issue that requires a balance between safeguarding the specificities of the agricultural sector and ensuring transparency and equitable treatment in the market. Once again, a legislative intervention aimed at further clarifying the criteria for qualifying agricultural activities and assessing their predominance could help reduce litigation in this area and provide greater legal certainty for sector operators.

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soluzione della Crisi d'Impresa: funzione, natura, presupposti ed incentivi, Dirittodellacrisi.it, September 20, 2023; Ghedini A. and Russotto M.L., *L'istituto della composizione negoziata della crisi*, in Dirittodellacrisi.it, October 19, 2021; Iorio A., *Alcune riflessioni sulle misure urgenti: un forte vento di maestrale soffia sulla riforma!*, in Dirittodellacrisi.it, October 1, 2021; Leuzzi S., *Allerta e composizione negoziata nel sistema concorsuale ridisegnato dal D.L. n.118 del 2021*, in Dirittodellacrisi.it, September 27, 2021; Santangeli F., *Il D.L. 118/2021. Spunti per la conversione*, in Dirittodellacrisi.it, September 21, 2021; Liccardo P., *Neoliberismo concorsuale e le svalutazioni competitive: il mercato delle regole*, in Ilfallimentarista.it, 2021; Farolfi A., *Le novità del D.L. 118/2021: considerazioni sparse "a prima lettura"*, in Dirittodellacrisi.it, September 6, 2021; Panzani L., *Il D.L. "Pagni" ovvero la lezione (positiva) del covid*, in Dirittodellacrisi.it, August 25, 2021; Santangeli F., *Le finalità della composizione negoziata per le soluzioni della crisi d'impresa*, in Dirittodellacrisi.it, January 4, 2022.

55 Court of Cassation, May 20, 2024, No. 13997.

56 Court of Cassation, March 22, 2022, No. 9351.

Agricultural cooperatives and Renewable Energy Communities (RECs)

Renewable Energy Communities (RECs) represent an innovative model that integrates effectively with the nature and objectives of agricultural cooperatives. Introduced by Directive (EU) 2018/2001 (RED II)[57] and transposed into the Italian legal system through Legislative Decree No. 199/2021, the RECs aim to promote the production, consumption, and sharing of renewable energy, strengthening energy self-sufficiency and fostering the sustainable development of local communities.[58] The ability of agricultural cooperatives to aggregate resources, coordinate members, and manage shared projects makes them key instruments for the success of the RECs, especially in rural areas.[59]

The involvement of agricultural cooperatives in the RECs is based on a close synergy between the enhancement of territorial resources and the pursuit of environmental sustainability objectives. In particular, these entities offer agricultural producers the opportunity to fully capitalize on the economic and social benefits associated with renewable energy production. Unused or marginal lands, warehouses, and other agricultural structures become ideal spaces for the installation of photovoltaic systems or for the production of biogas and biomass, thereby transforming energy into a shared and sustainable resource.

However, the RECs do not merely address energy needs; their regulatory and organizational structure aligns perfectly with the mutualistic principles characterizing agricultural cooperatives. As highlighted by the RED II, the RECs must be autonomous legal entities based on voluntary participation and oriented not towards profit but towards achieving social, economic,

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57 This directive was initially transposed at the national level through Law No. 8/2020, which tested its potential, and later through Legislative Decree No. 199 of November 8, 2021, which consolidated the regulatory framework by introducing substantial innovations. In particular, Article 31 of Legislative Decree No. 199/2021 outlines the characteristics that Renewable Energy Communities (RECs) must possess: they self-produce renewable energy intended for sharing among their members, and, within the limits of the underlying purpose, are allowed to sell the self-produced and stored energy to third parties external to the RECs.

58 In this regard, see Romeo M., *Produzione di agroenergie, autoconsumo collettivo e comunità energetiche*, in *Dir. giur. agr. alim, amb.*, no. 4/2021.

59 See Cappelli V., *Appunti per un inquadramento privatistico dell'autoconsumo di energia rinnovabile nel mercato elettrico: il caso delle comunità energetiche*, in *Nuova giur. civ. com.*, 2023, p. 381; ead., *Profili privatistici delle nuove discipline in materia di promozione dell'energia rinnovabile e regolazione del mercato elettrico*, in *Nuova giur. civ. com.*, 2022, p. 1202.

and environmental benefits. In this context, agricultural cooperatives are ideally positioned to assume a leading role, as their primary purpose, governed by Articles 2511 et seq. CC, is closely linked to the creation of shared value for members and the territory.

Article 30 of Legislative Decree No. 199/2021 stipulates that the RECs must be autonomous legal entities, non-profit in nature, and oriented toward generating economic, social, and environmental benefits for the local community.[60] Although the regulation does not mandate a specific legal form, the cooperative structure proves particularly suitable for combining energy production with a participatory resource management, in line with the mutualistic and democratic principles typical of the RECs.[61] This type of organization allows for the integration of agricultural activities with energy projects, with a particular focus on economic and environmental sustainability. In many cases, the energy produced is primarily allocated for self-consumption within the cooperatives themselves, thereby reducing operational costs and strengthening the competitiveness of agri-food supply chains.

A striking example of the effectiveness of this synergy is provided by advanced agrivoltaic systems, which combine energy production with agricultural land use. This solution involves the installation of elevated or crop-integrated structures, allowing for reduced land consumption while preserving agricultural productivity and generating renewable energy. The REC model can become the cornerstone for the collective management of such systems, ensuring that the energy produced remains within the communities and is used to enhance agricultural activities.

The regulatory flexibility characterizing the RECs represents an additional strength for agricultural cooperatives. By transposing European provisions, the legislator has granted the RECs a broad margin of statutory autonomy, allowing them to adapt to the needs of their territories and members. This approach is particularly evident in the regulation of relationships between the RECs and their members, governed by private-law contracts that enable the structuring of management and energy-distribution

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60 The Implementing Decree provided for by Article 8 of Legislative Decree 199/2021 outlines the criteria for accessing incentives, specifying both the methods for granting premium tariffs and the requirements for grants. Together, these measures encourage the creation of robust and Renewable Energy Communities (RECs), integrating advanced renewable technologies and actively engaging local communities.

61 Cf. Tedioli, F., *Advanced Agrivoltaics: Innovation, Sustainability, and Regulation for the Future of Rural Energy*, in *Rivista per la consulenza in agricoltura*, n. 100/2025, p. 12.

mechanisms based on the specificities of local communities. Such flexibility strengthens the RECs' ability to provide tangible benefits to rural areas while simultaneously contributing to the ecological transition and the fight against climate change.

Despite the significant opportunities offered by the RECs, agricultural cooperatives must address several notable challenges. These include the bureaucratic complexity associated with accessing incentives, the need to coordinate the diverse requirements of members, and the importance of ensuring transparent and efficient management of energy resources. However, the incentive framework introduced by the National Recovery and Resilience Plan ("NRRP") and Ministerial Decree No. 414/2023 provides concrete tools to overcome these difficulties, making the creation of renewable-energy systems more accessible and promoting widespread energy self-consumption.

In conclusion, agricultural cooperatives and the RECs represent a powerful combination for integrating rural development, environmental sustainability, and innovation. Thanks to their ability to merge agricultural activities with energy projects, cooperatives can not only reduce their energy dependence but also become key players in a more inclusive development model rooted in the region. To fully realize this potential, it will be essential to continue supporting agricultural cooperatives through targeted incentive policies, dedicated training for members, and a clear and stable regulatory framework.

The impact of Agriculture 4.0 on agricultural cooperatives

In the context of the digital evolution of the primary sector, Agriculture 4.0 has emerged as a revolutionary paradigm based on the integration of advanced technologies such as the Internet of Things (IoT), artificial intelligence (AI), blockchain, and satellite-monitoring systems.[62] According to the 2023 Smart AgriFood Report, by the Politecnico of Milan Observatory,[63]

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[62] Cf. Casa, R., *Agricoltura di precisione*, Bologna, 2017; European Commission, *Agricultural Knowledge and Innovation Systems Towards the Future – A Foresight Paper*, Directorate-General for Research and Innovation, Luxembourg, 2016; Schrijver, R., *Precision Agriculture and The Future of Farming in Europe*, Scientific Foresight Study, EPRS (European Parliamentary Research Service), Scientific Foresight Unit (STOA), Brussels, 2016.

[63] The Smart AgriFood Observatory of the Politecnico di Milano and the University of Brescia analyzes digital innovations in the agricultural and agri-food supply chain, from

the Agriculture 4.0 market in Italy reached a value of approximately EUR 2.1 billion in 2022, with an annual growth rate of 31%, driven by crop-monitoring systems, connected machinery, and data-analysis platforms. The digitalization of agriculture is also one of the central objectives of the new Common Agricultural Policy (CAP) 2023–2027,[64] within the framework of the Farm to Fork[65] strategy and Regulation (EU) No. 2021/2115, which recognize the role of technology in environmental sustainability and in the optimization of productive resources.

Agricultural cooperatives, by their very nature as collective and mutualistic entities, are strategically positioned to leverage the potential of new technologies. The IoT, for instance, enables real-time data collection on essential parameters such as soil moisture, climatic conditions, crop status, and animal health.[66] Connected sensors also provide the opportunity to

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Agriculture 4.0 to digital food traceability.

[64] According to Recital 23, "A smarter, more modern, and sustainable CAP must encompass research and innovation in order to fulfill the multifunctional role of agriculture, forestry, and food systems in the Union, investing in technological development and digitalization, as well as improving the dissemination and effective use of technologies, particularly digital technologies, and access to impartial, solid, relevant, and new knowledge, intensifying their sharing."

[65] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, "A 'Farm to Fork' Strategy for a Fair, Healthy and Environmentally-Friendly Food System," Brussels, 20 May 2020 COM(2020) 381 final. The Farm to Fork strategy includes significant references to digitalization, emphasizing the need for investments both in human and financial resources to support farmers in improving environmental and climate performance, as well as optimizing the use of production factors. In this perspective, digitalization and technological innovation play a central role in facilitating the transition to a more sustainable, efficient, and resilient agricultural model, contributing to the achievement of the objectives set out by the European Green Deal. See Rolandi S., *The Role of Digitalization in the EU Farm to Fork Strategy: Between Explicit and Implicit References. What Legislative Actions in Four Years?* in *Riv. dir agr.*, 2024, 1, p. 636–658.

[66] Recent studies show that precision irrigation based on IoT data can reduce water consumption by up to 25%, with a 10–15% increase in productivity. The EPRS – European Parliamentary Research Service, *Precision Agriculture in Europe: Legal, Social and Ethical Considerations*, European Union, Brussels, 2017, p. 4, defines precision agriculture as a management approach based on the use of data, characterized by the collection and processing of specific information about individual plots. These data allow for the adjustment of the use of production factors according to the characteristics of the cultivated areas, with the goal of optimizing resource consumption and reducing waste, thereby limiting environmental impact. This model relies on technological transfers from other sectors and makes use of various infrastructures and technologies, including data collection and management systems, geographic information systems (GIS), global positioning systems (GPS), microelectronics, wireless sensor networks (WSNs), and radio frequency identification (RFID) technologies. The primary aim of precision agriculture is, therefore, to optimize the use of production

certify events automatically and without human intervention. Through these insights, cooperatives can optimize resource usage, reduce waste, and improve production profitability.[67] Digitalization extends beyond business management to the development of the entire rural ecosystem, enhancing connections between producers and strengthening the agri-food supply chain.[68] The IoT can also have a significant impact on food safety management during transportation, through the advanced use of interconnected – even biodegradable – sensors that, via the internet, facilitate timely data exchange and collection, as well as the monitoring of essential parameters such as storage temperature and product location.[69]

Additionally, cloud computing can facilitate coordinated collaboration among food producers, retailers, testing laboratories, and regulatory authorities. It is also worth noting that cloud technology is highly scalable, meaning it can adapt to evolving organizational needs, which makes it particularly beneficial for businesses operating in markets characterized by seasonal demand peaks or cyclical production.

However, the use of these technologies also raises legal and organizational concerns, particularly regarding the management and ownership of data collected by sensors and connected equipment. Data regulation in agriculture is indeed a crucial issue, as data not only enhances operational efficiency but also influences market dynamics and relationships among cooperative members.[70]

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factors, such as fertilizers, pesticides, and irrigation water. On the topic, see, among others, Lattanzi P., *L'agricoltura di fronte alla sfida della digitalizzazione. Opportunità e rischi di una nuova rivoluzione*, in *Riv. dir. agr.*, 2017, 4, p. 555, and M. Ferrari, *Fattori di produzione, innovazione e distribuzione di valore nella filiera agroalimentare*, Milan, 2023.

67 The use of digital platforms for monitoring agricultural practices, as demonstrated by the SOS QualiTec system developed by a wine cooperative, provides a concrete example of how digitalization can support quality and production efficiency. In this regard, the Innovarurale portal (https://www.innovarurale.it/), developed by the CREA Center for Policies and Bioeconomy in collaboration with ISMEA as part of the National Rural Network (RRN) program 2014–2020, offers numerous examples of innovation and digitalization in agriculture, promoted by individual enterprises, agricultural cooperatives, or consortia.

68 See Regulation (EU) No. 2115 of December 2, 2021, Article 6(2), Article 6(2).

69 Schiaehli S., *Biodegradable microsensors for food monitoring*, 2017, in hitps://phys.org/news/2017-09-biodegradable-microsensors-food. html

70 Cf. Versaci G., *La regolazione dei dati per l'agricoltura di precisione tra questioni generali ed esigenze settoriali*, in *Dir. Agrol.* 2024, p. 619; Leone L., *Big data e intelligenza artificiale nell'agricoltura europea 4.0: una lettura etico-giuridica*, *ibid.*, 2024, p. 505.

Artificial intelligence and machine learning[71] offer additional tools for optimizing agricultural production. Cooperatives can leverage predictive algorithms to anticipate adverse weather events, monitor the spread of plant diseases, and optimize distribution logistics.[72] These tools are especially valuable for large cooperatives, which must coordinate production across multiple associated farms and respond swiftly to market-demand fluctuations. However, the value of these technologies depends on the quality and management of the data collected: the distinction between input data (directly generated by agricultural machinery) and output data (processed by algorithms and AI systems) highlights how digitalization is redefining decision-making roles within cooperatives, posing new challenges in terms of governance and information control.

Blockchain technology is emerging as a transformative tool in the agri-food sector, offering advanced solutions for traceability, transparency, and efficiency throughout the entire production chain.[73] This technology functions as an open, shared, decentralized, and distributed digital ledger in which data is recorded and integrated chronologically to ensure the creation of immutable and tamper-resistant records.[74] Its operation is based on four fundamental principles: (a) decentralization; (b) security; (c) verifiability; and (d) automation through the execution of smart contracts.[75]

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71 For a general analysis of the relationship between law and digital technologies, see Faini F., Pietropaoli S., *Scienza giuridica e tecnologie informatiche. Temi e problemi*, Torino, 2021.

72 The European strategy emphasizes the role of digitalization in reducing environmental impact and optimizing the use of production factors, such as water and fertilizers, through advanced monitoring systems. See Canfora I., *Politica Agricola Comune e digitalizzazione del comparto agroalimentare*, in *Riv. dir. alim.*, Quaderno No. 1, 2023, p. 11.

73 See Tripoli M., Schmidhuber J., *Emerging Opportunities for the Application of Blockchain in the Agri-food Industry*, FAO and ICTSD: Rome and Geneva, 2018, highlighting the growing importance of blockchain technology in the agri-food sector. This technology is not only a tool for ensuring product safety and quality but also a catalyst for greater sustainability.

74 On the topic, see Matera P. – Benincampi A., *voce Blockchain*, in *Dig discipl. priv. sez. comm.*, agg. IX, Turin, 2022, p. 24; Gambino A.M. – Bomprezzi C., *Blockchain e criptovalute*, in Finocchiaro G. – Falce V. (ed.), *Fintech: diritti, concorrenza, regole. Le operazioni di finanziamento tecnologico*, Bologna, 2019, p. 276 ff.

75 Blockchain infrastructures are composed of "nodes" distributed within a network that operates based on shared communication protocols. Each node holds an integral copy of the chain, ensuring its immutability. Each block is cryptographically linked to the previous and next, forming an irreversible sequence of data (hence the term "blockchain"). This system is configured as a distributed server capable of storing a potentially unlimited amount of information without the need for a central memory. See O'Lerary D.E., *Configuring blockchain architectures for transaction information in blockchain consortiums: The case of accounting and supply chain systems*, in *Intelligent Systems in Accounting, Finance and Management*, 24, 2017, p. 138–147.

Blockchain allows for the immutable and verifiable recording of every phase of the production process,[76] from sowing to distribution, providing consumers with detailed information on the origin and quality of products. This level of transparency not only strengthens consumer trust but also protects producers from fraudulent practices and counterfeiting.

For agricultural cooperatives,[77] adopting blockchain represents a significant opportunity to improve internal management and relationships with members.[78] However, it is important to highlight the tension between blockchain technology and data protection regulations under Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR).[79] The former inherently ensures data immutability, processed in a distributed and decentralized manner, whereas the latter imposes, when applicable, the right to data erasure at the request of the data subject. This creates a potential conflict between blockchain's transparency and integrity requirements and the privacy protection principles enshrined in the GDPR.[80]

The implementation of smart contracts can automate and ensure the execution of agreements between parties.[81] These are autonomous systems

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76 Specifically, every step of a food product is monitored, recording it each time in a new block, which is added to the previous one, thereby creating an immutable and easily verifiable ledger.

77 In Italy, the Agrichainitalia project stands out as an innovative initiative aimed at implementing blockchain technology in the national agri-food supply chain. Promoted by Legacoop Romagna, this project seeks to ensure product traceability, improve transparency for consumers, and enhance the value of local products, strengthening the competitiveness of Italian agricultural cooperatives in the global market.

78 A prominent example of blockchain application in the agricultural sector is the collaboration among the four major global agricultural companies – Archer Daniels Midland Co., Bunge Ltd., Cargill Inc., and Louis Dreyfus Co. – which have launched a project to digitalize the trade of grains using blockchain technology. This initiative aims to make transactions more efficient, transparent, and cost-effective, reducing the need for paper documentation and minimizing delays in logistics processes.

79 Regulation (EU) No. 2016/679, of April 27, 2016, commonly known as the "GDPR," which stands for General Data Protection Regulation.

80 Battelli, E., *Innovazione tecnologica e gestione della filiera agroalimentare*, in *Dir. Agroalim.*, 2024, p. 473.

81 Cf. Gallo, P., *DLT, Blockchain e Smart Contract*, in M. Cian – C. Sandei (a cura di), *Diritto del Fintech*, Padova, 2020, p. 137 ss.; Remotti, G., *Blockchain smart contract. Un primo inquadramento*, in *ODCC*, 2020, p. 189 ss.; Maugeri, M., *Smart Contracts e disciplina dei contratti – Smart Contracts and Contract Law*, Bologna, 2021; Id., *Smart contracts e disciplina dei contratti*, in *Oss. dir. civ. e comm.*, 2020, p. 382 ss.; Pellegrini, T., *Gli smart contract*, in E. Battelli (a cura di), *Diritto privato digitale*, p. 261; Barr, E. – Incutti, E.M., *Gli smart contracts nel diritto bancario tra esigenze di tutela e innovativi profili di applicazione*, in *Contr. impr.*, 2019, p. 930 ss.; Campagna, M.F., *Gli scambi attraverso algoritmi e il problema del linguaggio. Appunti minimi*, in *Analisi*

capable of self-managing, as once established, they do not require human intervention for execution. Upon the fulfillment of predetermined conditions, they ensure the automatic execution of economic transactions in accordance with the contractual framework formalized in the operational algorithm. For instance, payments to members can be made automatically when specific predefined conditions are met, reducing settlement times and ensuring a more equitable distribution of revenues. This approach not only enhances operational efficiency but also mitigates the risk of disputes, as contractual terms are encoded and transparent to all parties involved.

However, the adoption of blockchain in the agricultural sector is not without challenges. It is crucial to address legal and contractual issues related to the use of smart contracts, ensuring compliance with existing regulations and ensuring that all parties fully understand the implications of such tools. Additionally, it is essential to guarantee interoperability among different blockchain systems and promote common standards to facilitate widespread adoption.

At the same time, robotics is also profoundly transforming the agricultural sector, offering innovative solutions that enhance operational efficiency and address the growing shortage of skilled labor. For agricultural cooperatives, integrating robotic technologies into production processes represents a strategic opportunity to optimize activities, reduce costs, and improve the sustainability of agricultural practices. The adoption of such technology helps overcome some of the sector's typical challenges, including the high reliance on manual labor and dependence on workforce availability.

The applications of robotics in agriculture are numerous, ranging from sowing to harvesting, including pruning and weeding.[82] Agricultural robots, equipped with artificial intelligence and advanced sensors, can constantly monitor crop conditions and intervene precisely to optimize resource use. Robotic sowing systems ensure uniform seed distribution, improving soil yield and reducing waste. In pruning operations, intelligent machines can accurately identify branches to be cut, contributing to plant health

giuridica dell'economia, 2019, p. 156 ss.; Travia, N., *Profili internazionali del diritto degli smart contract*, in R. Battaglini e M.T. Giordano (a cura di), *Blockchain e smart contract*, p. 389 ss.

82 The interest in agricultural robotics is steadily growing, as evidenced by the numerous international competitions dedicated to the development of advanced solutions for the primary sector. The Agri-food Competition for Robot Evaluation (ACRE), for example, recently showcased robots specialized in precision weeding, highlighting the rapid progress of these technologies. Additionally, Italy hosted one of the main European competitions for agricultural robots in 2023, underscoring the key role that technological innovation is playing in the agro-food landscape of the continent.

and increasing crop productivity. In harvesting, robots equipped with artificial-vision systems and mechanical arms carefully select ripe fruits, minimizing waste and ensuring a higher-quality product.

A particularly relevant aspect for agricultural cooperatives is the positive impact of robotics on environmental sustainability. The use of robots for weeding, for example, significantly reduces the need for chemical herbicides, promoting more eco-friendly farming practices. Similarly, automated irrigation-management machines, through real-time soil-parameter analysis, optimize water consumption, reducing waste and improving resource efficiency.

However, integrating robotics into agricultural cooperatives presents some challenges. One of the main obstacles is the high investment cost, which can be prohibitive for small and medium-sized enterprises. To overcome these difficulties, the NRRP,[83] the Transition 4.0 Plan, and the Horizon Europe[84] program provide specific incentives for the agricultural sector, allocating funds for the purchase of smart machinery, drones, digital platforms, and integrated farm-management systems. Another crucial aspect is the need to adequately train personnel in the use and maintenance of robots, so that cooperatives can fully exploit the potential of new technologies without encountering operational or technical problems.

Due to their collective and mutualistic structure, agricultural cooperatives can greatly benefit from adopting robotics, not only in terms of increased productivity and efficiency but also by strengthening their competitiveness in international markets. The ability to integrate advanced technologies while sharing investment and training costs among members provides a significant advantage over individual agricultural enterprises. In a context where global demand for food products is growing and environmental

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83 Digitalization is listed as one of the needs in Chapter 2, which addresses the Assessments of Needs and Intervention Strategies ("Improving market orientation and increasing agricultural business competitiveness in the short and long term, also through greater focus on research, technology, and digitalization", 2.1.SO2).

84 Horizon Europe is the European Union's framework program for research and innovation for the period 2021–2027. It is the successor to Horizon 2020. The program has a duration of seven years, corresponding to the EU's long-term budget, and a total financial allocation of €95.5 billion (at current prices), which includes €5.4 billion allocated to the Next Generation EU recovery plan. It is the largest transnational research and innovation program in the world. Horizon Europe finances research and innovation activities – or activities supporting R&I – mainly through open and competitive calls for proposals. The program is directly managed by the European Commission. The research and innovation activities financed by Horizon Europe must focus exclusively on civilian applications.

challenges require a more rational use of resources, robotics emerges as an essential tool for ensuring more sustainable and innovative agriculture.

Digitalization[85] also enhances the economic and financial management of cooperatives.[86] Automated accounting software enables real-time monitoring of revenues, expenses, and member contributions, reducing the risk of accounting errors and improving financial forecasting. The integration of business-intelligence tools allows for the analysis of economic and production data, identifying market trends, optimizing pricing strategies, and planning targeted investments.[87] This approach, known as the Agricultural Knowledge and Innovation System ("AKIS"), not only enhances the cooperative's reputation but also facilitates access to markets requiring specific certifications, such as organic products or protected-designation-of-origin (PDO) products.

Despite the advantages offered by digitalization, the digital transition of agricultural cooperatives presents significant challenges. Key obstacles include the high initial costs of technology implementation, which are often prohibitive for small and medium-sized cooperatives, and the resistance to change among some members. Additionally, the low level of digital literacy among many agricultural operators necessitates investment in training programs, so that members and employees can fully leverage the potential of Agriculture 4.0 and digital cooperative management.[88]

Agriculture 4.0 represents a major opportunity for agricultural cooperatives, allowing them to use new technologies to improve operational efficiency, reduce costs, and make their activities more sustainable. However,

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85 In this regard, see Gernone C., *Digitalizzazione dell'agricoltura e cooperative agricole*, in *Dir. giur. agr. alim amb.*, no. 2025; Albisini F., *Agricoltura e digitalizzazione: l'impresa agricola nel tempo presente*, in *Quaderni della Riv. dir. alim.*, 2023, 1, pp. 92–106.

86 Brunori G., *Agriculture and rural areas facing the "twin transition": principles for a sustainable rural digitalization, in Italian Review of Agricultural Economics*, 77(3): 3–14. DOI: 10.36253/rea-13983; Rijswijk K. – Bulten W. – Klerkx L.W.A. – Dessein J. – Debruyne L. – Brunori G.: *Digitalisation: Economic and Social Impacts in Rural Areas: Digital Transformation of Agriculture, Forestry and Rural Areas*, Wageningen, 2020, p. 6.

87 Cf. D'Avanzo W., *Smart Farming. La quarta rivoluzione industriale e la digitalizzazione del settore agricolo*, in *Dir. Agroalim.*, 2022, 2, p. 279–299; Scandola S., *La "piattaformizzazione" dell'agricoltura tra rischi e benefici: prime riflessioni*, in *Quaderni della Riv. dir. alim.*, 2023, 1, p. 72–91; Soto I. et al., *The Contribution of Precision Agriculture Technologies to Farm Productivity and The Mitigation of Greenhouse Gas Emissions in the EU*, EUR 29320 EN, Luxembourg, 2019.

88 Digitalization is, in fact, recognized as a key tool for strengthening the bargaining power of farmers within the agri-food supply chain, particularly through producer organizations. Cf. Barabanova Y. – Krzysztofowicz M., *Digital Transition: Long-term Implications for EU Farmers and Rural Communities*, Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/093463, JRC134571.

the success of the digital transition will depend on the cooperatives' ability to overcome economic and cultural barriers, adopting innovation strategies that promote collaboration among members and ensure balanced growth in the agricultural sector.

The internationalization of agricultural cooperatives and access to global markets

Internationalization represents one of the main challenges and opportunities for Italian agricultural cooperatives. Participation in global markets allows for risk diversification, increased competitiveness, and the enhancement of Italian agri-food excellence. However, agricultural cooperatives, on average, export only 8% of their production, compared to 10% in traditional agriculture and 13% in the food industry as a whole.[89] This limited export propensity results from a series of structural and organizational factors that hinder the international expansion of Italian cooperatives.

One of the primary constraints is the fragmentation of the cooperative system, which is predominantly composed of small and medium-sized enterprises that, unlike large agri-industrial groups, do not benefit from economies of scale or from adequate logistical and commercial structures to compete globally. The small size and territorial dispersion of cooperatives complicate the coordination of export strategies and make it more difficult to access foreign markets characterized by intense competition. Additionally, limited familiarity with financial instruments for exports and challenges in managing international commercial relations constitute further obstacles to the international projection of cooperatives.[90]

Despite these challenges, the Italian cooperative system has enormous competitive potential, driven by the quality and reputation of the Made in Italy agri-food sector.[91] To strengthen their presence in international mar-

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89 Observatory of Italian Agricultural Cooperation, Report 2023

90 According to the study commissioned by the European Commission: Directorate General for Agriculture and Rural Development, 50% of producer organizations or associations of producer organizations are recognized in the European Union as cooperatives, in accordance with the rules established by individual Member States. On this topic, see Montanari F., Chlebicka A., Szalbo G., Amat L.et al., *Study of the Best Ways for Producer Organisations to Be Formed, Carry Out Their Activities and Be Supported, Final Report*, https://data.europa.eu/doi/10.2762/034412.

91 Italy's agri-food heritage is closely linked to the certified quality of products with Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI), which

kets, it is essential to adopt more structured internationalization strategies. A first step is the creation of alliances among cooperatives, through consortia or business networks, to overcome size limitations and access facilitated financial instruments. This model, already successfully adopted in the Netherlands and Denmark, allows cooperatives to share resources, infrastructure, and expertise, improving logistical and distribution efficiency.

At the same time, digitalization offers innovative tools to facilitate access to global markets. The use of e-commerce platforms and international marketplaces reduces geographical barriers and expands commercialization opportunities. Tools such as Access2Markets,[92] provided by the European Commission, offer detailed information on regulations, tariffs, and export conditions in major global markets, facilitating the strategic planning of cooperatives. Additionally, blockchain technology can be used to improve product traceability, ensuring transparency throughout the supply chain and meeting international consumers' sustainability demands.

Another key factor for successful internationalization is strengthening managerial competencies within cooperatives. Knowledge of international trade dynamics, the management of certification requirements in different markets, and adaptation to the cultural and regulatory specificities of each country are essential elements for successfully navigating global competition. In this context, training programs, institutional support, and technical-assistance networks can bridge existing gaps and provide concrete tools for managing export operations.

However, access to global markets is not without obstacles. In addition to regulatory barriers and the costs of complying with international standards, cooperatives must compete with multinational agri-food corporations, which possess significantly greater financial and logistical resources. To overcome these challenges, cooperatives must adopt positioning strategies that highlight the distinctive strengths of Made in Italy,

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form the cornerstone of the success of the national production system. Italy boasts the highest number of agri-food products recognized in Europe, with a sector that combines tradition, innovation, and sustainability. Italian food, wine, and spirits supply chains with Geographical Indications stand out for their high economic value and strategic role in promoting the Made in Italy brand on international markets.

92 Access2Markets is a platform that provides essential information for conducting trade with countries outside the European Union. It offers details on tariffs, taxes, procedures, formalities, rules of origin, export support measures, statistics, and trade barriers. Additionally, it provides crucial data for trade in services, investments, and procurement in third countries. This tool also helps businesses understand and take advantage of the EU's trade agreements, offering testimonials and success stories from other companies.

such as environmental sustainability, product authenticity, and quality certifications.

In this scenario, the role of institutions and public support mechanisms becomes essential. Programs such as the *Fondo per la Promozione Integrata*[93] and the measures provided under the (CAP) and the NRRP offer specific financial instruments to support the internationalization of agricultural cooperatives. Access to these incentives, combined with aggregation strategies, digitalization, and skills development, can transform internationalization from a challenge into a concrete opportunity for the growth and consolidation of the Italian cooperative system.

Conclusions

Agricultural cooperatives represent a fundamental economic and organizational model for the Italian agri-food sector, offering a synthesis of mutualism and entrepreneurship. Their ability to respond to the challenges of global competitiveness, digitalization, and the ecological transition depends on their capacity to adapt to a constantly evolving regulatory and economic framework.

A crucial element for the future of cooperatives is the strengthening of internal governance through digitalization, which can enhance managerial transparency and the democratic participation of members. However, the success of this process depends on the ability to integrate new technologies without distorting the mutualistic model and without creating barriers to information access for less digitally skilled members.

Internationalization is another critical challenge for the sector. Although agricultural cooperatives have traditionally faced difficulties in exporting due to organizational fragmentation and a lack of managerial skills, tools such as business networks and institutional support can help them overcome these limitations. The promotion of the Made in Italy agri-food sector, combined with the adoption of digital strategies and access to European funds, can strengthen the presence of cooperatives in global markets.

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93 The Integrated Promotion Fund (*Fondo Promozione Integrata*), managed by Simest, is a financial tool designed to support Italian businesses in their internationalization efforts. This fund provides non-repayable grants to compensate for the material damages incurred by exporting companies located in areas affected by natural disasters, such as floods.

The ecological and energy transition presents new opportunities, particularly concerning Renewable Energy Communities (RECs) and advanced agrivoltaic models. The integration of agricultural activities with energy production represents a strategic lever for reducing costs, increasing energy self-sufficiency, and contributing to national and European climate objectives.

From a legal perspective, the distinction between agricultural and commercial activities continues to impact the economic stability of cooperatives and the protections they can benefit from. The current regulatory framework generates uncertainty, with case law requiring a concrete assessment of the predominance of agricultural activities to exclude cooperatives from judicial liquidation. A legislative intervention to clarify these aspects could help reduce litigation and provide greater security to industry operators.

In summary, agricultural cooperatives have the tools and opportunities to successfully tackle future challenges. Technological innovation, international market growth, environmental sustainability, and a clearer regulatory framework are key factors in ensuring the sector's competitiveness and resilience. A coordinated effort among institutions, cooperatives, and trade associations will be essential to support a business model capable of adapting to global changes while preserving mutualistic principles and maintaining a strong connection to local communities.

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Tadgh Quill-Manley
King's Inns
https://orcid.org/0009-0006-9217-2708

Worker Cooperatives and Industrial Democracy in Ireland: Historical Perspectives, Legal Frameworks, and Pathways for Growth

Abstract

Worker cooperatives, firms owned and democratically administered by their workers, provide a robust type of industrial democracy with significant historical foundations in Ireland and the European Union (EU). This article analyses the progression of worker cooperatives within these circumstances, mapping their emergence as reactions to social inequity, economic disruption, and the pursuit of fair working standards. It rigorously examines the legal frameworks governing worker cooperatives in Ireland and the EU, emphasizing the obstacles presented by fragmented law, restricted access to financing, and insufficient support mechanisms.

Notwithstanding governmental support for cooperative principles at the EU level, worker cooperatives constitute a rather insignificant industry. This article examines obstacles to expansion, such as cultural prejudices against conventional corporate methods and insufficient understanding of cooperative governance. Utilizing successful models from nations such as Spain and Italy, it delineates plans for development, including adjustments to Irish and EU law, augmented financial assistance, and education about the advantages of cooperative enterprises.

This article presents a historical and legal study that highlights the capacity of worker cooperatives to mitigate economic inequality and promote industrial democracy in Ireland and the EU. It desires focused governmental measures to fully realize the sector's groundbreaking potential.

Keywords: employment, Ireland, worker cooperatives

Introduction

Despite Ireland's historically limited industrial sector, prevalence of numerous micro-enterprises, and elevated unemployment rate, which starkly contrasted with the United Kingdom, the mid-twentieth century witnessed the emergence of an "emulation effect," rendering industrial democracy a popular concept. It has been contended that the discourse on industrial democracy in Ireland mostly stemmed from the pressures of British industrial existence, and the expanding goals of the major trade unions. Consequently, it had by then enjoyed little influence on the broader populace. This did not imply that there existed no connections to other contemporary social and political events on those islands. Conversely, the mere utterance of the term "participation" elicited several connotations, both positive and negative, instantaneously. In all sectors of social life, calls emerged for more engagement in deliberating and resolving pertinent industrial issues. It was perceived that, these goals possessed little-to-no immediate impact on the "industrial democracy movement," although, collectively, they posed a significant threat to conventional corporate practices throughout other aspects of social life. However, elements of the principal trade unions, though not alone in Ireland, had developed a skepticism towards profit-sharing plans and some aspects of workers' control, due to past experiences that suggested that these initiatives may have undermined union influence.[1]

Lagging behind many other countries, the first workers' cooperative in Ireland was established in Dublin in 1956; nevertheless, the industry did not see significant growth until the 1970s, when many "phoenix" or "crisis" cooperatives were created in response to impending industrial cutbacks. Numerous workers' cooperatives that developed in the 1970s sought to sustain struggling enterprises, and ultimately collapsed. Nonetheless, at least one of these cooperatives, Crannac Furniture, persisted into the late 1990s.[2]

It follows that the worker cooperative sector in Ireland is distinctly limited and clearly undeveloped. A survey indicated that of the 82 worker

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1 Basil Chubb, James Dunne and Timothy Hamilton, 'Industrial Democracy: Its Background and Implications' (1969) 58 Studies: An Irish Quarterly Review 135 <https://www.jstor.org/stable/30088673> accessed 23 December 2024.

2 Bridget Carroll, 'Facing Crises: Challenges and Opportunities Confronting the Third Sector and Civil Society', Ninth International Conference of the International Society for Third Sector Research (ISTR) (2010) <https://cdn.ymaws.com/www.istr.org/resource/resmgr/working_papers_istanbul/carroll_wp10.pdf> accessed 29 December 2024.

cooperatives established by 1998, 46 were either dissolved, in the case of CRO registered enterprises, or ceased to be classified as cooperatives. Among the 36 surviving firms, eight were identified as worker cooperatives; however, five of these companies did not adhere to certain fundamental requirements typically associated with worker cooperatives, such as a prerequisite membership of three and nearly all of workers being members. This research encompassed all eight cooperatives in its conclusions. Of the rest, 23 had been privatized, four were incapable of being recognized by their business name or location, and the fate of the last firm, while still technically operational, was undetermined by researchers. Michael Gavin noted that, from 2000, several worker cooperatives had been established with assistance from a grant provided by the Workers' Co-operative Fund of the Irish League of Credit Unions. An examination of the data indicates that 26 firms received this funding. However, many of these were later privatized or dissolved. This particular investigation discovered a total of 19 worker cooperatives. Nonetheless, Gavin highlights that the aforementioned challenges in recognizing worker cooperatives may result in an incomplete representation. This analysis indicates that the worker cooperative sector in Ireland is feeble and seems to have significantly diminished since the last official data released by the Co-operative Development Unit in 1998.[3]

The present legal dichotomy of employee participation in Ireland

As outlined by the Workplace Relations Commission, the industrial relations framework in Ireland is fundamentally voluntary. There is consensus that the terms and conditions for workers are optimally established through a system of unforced collective bargaining among an employer or employers' association, and one or more trade unions, while not featuring state involvement. The State's involvement in industrial relations in Ireland has primarily been limited to facilitating collective bargaining, by legislating for institutions that aid in resolving conflicts among employers and employees.[4]

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3 Michael Gavin and others, 'The Worker Co-Operative Sector in Ireland: Current Status, Future Prospects' (2014) 47 Journal of Co-operative Studies <https://hubble-live-assets.s3.eu-west-1.amazonaws.com/uk-society-for-co-operative-studies/file_asset/file/270/2014_JCS_47_2__GavinEtAl-141.pdf> accessed 22 December 2024.

4 'Industrial Relations' (Workplace Relations Commission2012) <https://www.workplacerelations.ie/en/ what_you_should_know/industrial_relations/> accessed 23 December 2024.

The current status of collective bargaining in Ireland has reached an unprecedented low. Collective bargaining is viewed as a means of distributing abundance and preserving the equilibrium of power among market participants; however, Ireland is the sole Western European EU member lacking binding collective-bargaining laws, resulting in limited collective bargaining coverage. The economist Michael Taft elucidates that this has also contributed to Ireland's dearth of industrial democracy, placing it in the lowest ranks in worker representation and participation in economic decision-making.[5] As of 2024, Ireland is positioned in the lower half of Eurofound's industrial democracy ranking.[6] The government was compelled to promote collective bargaining only after the EU Directive on Adequate Minimum Wages necessitated its transposition into Irish law.[7]

One major obstacle to the proliferation of worker cooperatives in Ireland may be the existence of an array of legislation and schemes that encourage the adoption of alternative variants of employee ownership, participation and control, which are widely practiced.[8] According to the researchers Ceri Jones and Patricia Murphy, while there is not any legal obligation for board participation in the private sector, many segments of the public sector are governed by law that grants members of the staff the capacity to hold board seats. Some private organizations have established volunteer work council-type entities, but these are very uncommon. The procedures established in 2006, according to the EU directive on information and consultation, provide legislative protections for worker information and consultation liberties in Ireland. The Employees (Provision of Information and Consultation) Act 2006 implements the provisions of EU Directive 2002/14/EC into Irish law. However, the Act is applicable only to businesses

5 Akshay Sharma and Nivrati Gupta, 'The Crippling State of Collective Bargaining in Ireland' (Kcl.ac.uk21 June 2021) <https://blogs.kcl.ac.uk/kslreuropeanlawblog/?p=1609> accessed 23 December 2024.

6 Michael Taft, 'Stumbling at the Threshold: Democracy in the Irish Economy' (2024) 113 Studies: An Irish Quarterly Review 488 <https://muse.jhu.edu/pub/420/article/948129> accessed 23 December 2024.

7 Brian O'Donovan, 'Ireland Expects to Meet EU Deadline on Workers' Rights' RTÉ News (15 November 2024) <https:// www.rte.ie/news/ireland/2024/1115/1481006-workers-rights--directive/> accessed 23 December 2024.

8 'Employee Share Schemes' (Citizens' Information Board2018) <https://www.citizensinformation.ie/en/money-and-tax/ tax/tax-on-savings-and-investments/employee-share--option-schemes/> accessed 22 December 2024.

employing more than 50 individuals, and there does not exist any real presence of a culture of worker co-determination in the private sector.[9]

The Irish Worker Participation system, established by the Worker Participation (State Enterprises) Acts of 1977 and 1988, alongside additional pieces of legislation, is considered distinctive within the English-speaking realm. It bears some resemblance to the German system of employee representation on boards, but had been limited to state-owned industries as well as other governmental entities.[10] TASC, an Irish think-tank, note that the objective of the Worker Participation Acts was to incorporate elements of the stakeholder perspective into corporate governance, embodying the concept of the corporation as a "social institution." The backers of this system asserted that this initiative would enhance industrial relations, augment workplace democracy, and serve as a counterbalance to "economic liberalism." The formation of a Worker Directors Group in the Irish Congress of Trade Unions (ICTU) was also anticipated to enhance inter-union ties. The original seven enterprises were designed to serve as a "test bed," with plans for the concept to be extended into the public sector, and, maybe, the private sector in the years to come. The 1977 act was first implemented for Aer Lingus (and Airlinte), Bord na Mona, B&I, The Irish Sugar Company, CIE, ESB, and Nitrigin firearm. At that point, the act included a total of 50,000 workers. The act also mandated the election of worker directors. The elections for such were to be conducted by the use of secret ballot and proportional representation. Electors were required to be at least 17 years old, and have been employed by the firm for a minimum of one year. Candidates would have to be at least 17 years old, under 66, and hold a minimum of one year of employment with the firm. The function of the labor union was contingent upon its recognition for collective bargaining activities. In 1983, the Postal and Telecommunications Services Act expanded measures for worker directors to An Post and Telecom Eireann, which were also formed under the Act. Furthermore, the 1988 act included Aer Rianta and the National Rehabilitation Board onto the roster of semi-state entities with worker directors. This legislation also facilitated the establishment of sub-board participatory frameworks in 35 state businesses. These protocols must be implemented at the initiative of a trade union or via a large proportion of

9 Ceri Jones and Patricia Murphy, 'Worker Participation – Ireland' (Europa.eu18 July 2013) <https:// oshwiki.osha.europa.eu/en/themes/worker-participation-ireland> accessed 23 December 2024.

10 'Worker Participation on Boards' (Rosalux.de3 May 2013) <https://www.rosalux.de/en/news/id/6749/worker-participation-on-boards> accessed 22 December 2024.

the enterprise's workers. The act was intended to avoid excessive prescription of the structures to be implemented. It stipulated the participation of the following features: an usual exchange of perspectives and details between administration and staff members regarding issues outlined in their contract, and prompt communication of choices that may significantly impact employees' assets; distribution of information and perspectives to all workers resulting from the participatory arrangements. While some public entities and agencies have included worker directors onto their boards, this has been done on an "ad hoc" basis as opposed to systematically. The Labour Services Act 1987 mandated the nomination of worker directors to the board of FAS, whereas the Court Service Act 1998 specified the inclusion of worker directors in the Court Service. The implementation of worker directors in Ireland has been said to need many years to stabilize. The non-worker directors regarded the new system with skepticism and often omitted worker directors during their first appointments, even conducting private discussions in their absence.[11]

The Worker Participation (State Enterprises) Acts of 1977 and 1988 pertaining to Telecom Éireann were amended by Section 10 of the 1996 act stipulating that the number of employee directors appointed under these acts shall not surpass one third of the number the minister is otherwise authorized to appoint according to the company›s articles of association. This clause aimed to facilitate the nomination of directors to the Telecom Éireann board by the KPN/Telia partnership. The Worker Participation (State Enterprises) Order, 1996 (S.I. No. 405 of 1996), issued by the Minister for Enterprise and Employment under the Worker Participation (State Enterprises) Acts of 1977 and 1988, stipulated that Telecom Éireann shall have 12 directors, including two designated as employee directors. The lawyer Eamonn Hall points out that this order annulled the conditions of the Worker Participation (State Enterprises) Order, 1988 as they pertained to Telecom Éireann. The Telecommunications (Miscellaneous Provisions) Act 1996 (Expiration of Terms of Office) Order 1996 (S.I. No. 409 of 1996) stipulated the expiration of the terms of office for two staff directors. Section 10 of the Telecommunications (Miscellaneous Provisions) Act 1996 provides for alternative directors. According to section 10(9) of the 1996 act

[11] 'Good for Business? Worker Participation on Boards' (TASC 2012) <https://issuu.com/tascpublications/docs/ worker_directors_final130712? mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Flight%2Flayout.xml&showFlipBtn=true&proShowMe nu=true&proShowSidebar=true> accessed 22 December 2024.

an individual designated by the minister as an alternative director could come to and engage in discussions of the directors of Telecom Éireann, but would not be entitled to voting rights until the director for whom they are a substitute is absent.[12]

Additionally, the Finance Act of 1982 established a framework for private companies with an authorized profit-sharing program to allot shares to workers, that may be free from income tax under specific circumstances. An employee may receive shares through this authorized program, subject to a maximum yearly limit. Dividends collected by workers for granted shares are subject to income tax in the usual manner. Once shares are given to a person, they must be retained in a trust formed for that purpose, and the participant must consent to the trustees retaining their shares for a designated retention term.[13]

A long standing example of such is the Save as You Earn (SAYE) scheme. SAYE employee share plans consist of a Save As You Earn certified contractual savings scheme, as well as an authorized savings-related share option arrangement. Under this arrangement, a corporation allocates share options to its workers and directors. Those involved will enter into a formal savings agreement with a third-party banking organization, often for a duration of three, five, or seven years. Individuals can put away between €12 and €500 monthly. Upon conclusion of the savings term, workers and directors may use their choice to purchase stock in the firm, with payment derived from their SAYE savings profits. The resulting profit from exercising this option is exempt from income tax.[14] The legislation pertaining to SAYE and certified contractual savings schemes can be obtained in sections 519A to 519C Taxes Consolidation Act 1997, and Schedules 12A and 12B of the Taxes Consolidation Act 1997.[15]

Another illustration is Ireland's Key Employee Engagement Programme (KEEP). The specifics of the Key Employee Engagement Programme were delineated in the Finance Bill 2017, which was subsequently passed within the same year. The KEEP program is designed to facilitate and enhance

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12 Eamonn Hall, 'Communications' (1996) 10 Annual Review of Irish Law 77.

13 'Guide to Profit Sharing Schemes' (Revenue.ie) <https://www.taxfind.ie/binaryDocument//pdfs/ http___www_revenue_ie_en_tax_it_leaflets_it62_pdf_20160421233015.pdf> accessed 22 December 2024.

14 'Share Based Remuneration' (Commission on Taxation and Welfare 2022) <https://assets.gov.ie/234151/44fbc527-c416-45de-9fb9-63fee6ca07ef.pdf> accessed 22 December 2024.

15 'What Is a SAYE Scheme? Here Is All You Need to Know.' (Hyland Johnson Keane3 May 2023) <https://hjk.ie/saye-scheme/> accessed 22 December 2024.

tax efficiency for small and medium-sized enterprises in granting share options to employees. Gill Brennan, head of the Irish Pro Share Association, stated that the main obstacle preventing SMEs from providing share ownership or partial ownership to key workers was the tax liability incurred upon granting shares, which the staff member was unable to liquidate, effectively requiring them to pay tax on an intangible asset. The KEEP initiative was launched to enhance the competitiveness of SMEs, particularly in comparison to the UK.[16] According to the Tax & Duty Manual, KEEP related legislation from the 2017 Act is contained in section 128F of the Taxes Consolidation Act 1997.[17] A similar, and more extensive type of initiative also appears in the state sector. A 2014 legal article, written by Eva Barrett, explains that the ESB, a state-owned corporation, is mostly held by the Irish government, with the Minister for Finance possessing 85 percent and the Minister for Communications, Energy and Natural Resources having 10 percent of ESB shares. The balance of 5 percent is held by an Employee Share Ownership Trust.[18] One major example of these concepts in practice involves Aer Lingus, the partially state-owned airline. The Aer Lingus Act 2004 implemented the Employee Share Ownership Plan (ESOP) established by the government and associated trade unions at Aer Lingus, and provided a legislative structure to enable any private sector involvement, should the government pursue such an initiative. Section 6, to enable ESOT board participation, the conditions of which had been previously established by the parties, and when required, third-party board representation, allowed for the whole or in part dis-application of the Worker Participation Acts 1977 and 1993 from the company, the departure of directors upon such dis--application, and the minister's authority to select new directors to fill the resulting vacancies. Section 7 delineates employee ownership programs

16 'Key Employee Engagement Programme "Gets It 85% Correct"' RTÉ News (20 October 2017) <https://www.rte.ie/ news/business/2017/1020/913870-key-employee-engagement--programme-gets-it-85-correct/> accessed 22 December 2024.

17 'Key Employee Engagement Programme', Tax & Duty Manual (Revenue 2021) <https://www.revenue.ie/en/tax-professionals/tdm/share-schemes/Chapter-09-20211231151829.pdf> accessed 22 December 2024.

18 Eva Barrett, 'Getting the Price Right – Could a Reintroduction of Temporary Price Controls Solve the Problem of Increasing Renewable Energy in Ireland While Simultaneously Guaranteeing Affordable Electricity to Domestic Consumers?' (2014) 37 Dublin University Law Journal 21 <https://www.academia.edu/7021967/ _Getting_the_Price_Right_Could_a_reintroduction_of_temporary_price_controls_solve_the_problem_of_increasing_renewable_energy_in_Ireland_while_simultaneously_guaranteeing_affordable_electricity_to_domestic_consumers> accessed 22 December 2024.

and their procurement of shares in the organization. Section 8 elucidates that section 60 of the Companies Act 1963, which forbids a company from providing monetary support for the acquisition of its shares, is inapplicable to any assurances issued or financial commitments made by the company regarding the disposal of shares. Furthermore, it does not pertain to any financial arrangements related to the acquisition of shares by an Employee Share Ownership Trust (ESOT).[19]

The law firm Arthur Cox has advocated for the establishment of an employee-ownership trust system for non-state companies in Ireland, modelled after what they called the "successful" Employee Ownership Trust (EOT) program in the United Kingdom. The request was included in a proposal to Ireland's Department of Finance, as an element of a public consultation over share-based compensation. The company asserted that Ireland cannot anymore rely only on a low corporate tax rate to entice multinational corporations, and must enhance its provisions in domains such as personal taxation. They claimed that this enables business owners to transfer ownership to workers by creating a trust that assumes controlling interest of the firm. In this system, the trustees possess ownership of the firm and are obligated under the trust's provisions to use their position for the advantage of all workers. A corporation functioning under an EOT framework is not owned and governed by the shareholders themselves, but rather by the trustees of the EOT, as articulated by Arthur Cox.[20]

Also historically popular in Ireland was the notion of "enterprise partnership." The enterprise partnership in Ireland was an institutional manifestation of a wider, maybe worldwide, tendency for a demonstration of competitive togetherness. However, the movement prioritizes competitiveness and organizational effectiveness above equity, as well as improving social conditions for staff and broader society. Consequently, as Paul Teague accentuates, such a practice of enterprise partnership could not be practically considered as a manifestation of traditional industrial democracy.[21]

As noted by Darren Dahl in *Forbes*, although the prevalence of employee stock ownership plans has increased, they may not be suitable for all

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19 'Administrative Law' (2004) 18 Annual Review of Irish Law 1.

20 'Call for New Share Scheme for Employees' Law Society of Ireland Gazette (2021) <https://www.lawsociety.ie/ gazette/top-stories/2021/07-july/top-finance-executives-face--tougher-regime> accessed 22 December 2024.

21 Paul Teague, 'Social Partnership and The Enterprise: Some Lessons from the Irish Experience' (2004) 2 European Political Economy Review 6 <http://aei.pitt.edu/6047/1/ teague.pdf> accessed 23 December 2024.

organizations, particularly smaller enterprises with fewer than 50 employees that may find the paperwork and expenses of establishing an ESOP daunting. Consequently, numerous firms in the USA adopted the worker cooperative model as a feasible alternative.[22] However, numerous governments implement regulations that provide tax advantages to ESOPs, but not always for cooperatives. Moreover, almost all advantageous tax considerations are allocated to the financial dimensions of employee ownership. Although worker involvement receives little, if any, public policy backing or tax benefits, research indicates that it is more crucial to the productivity formula than ownership by workers. This result is particularly significant given the advantageous tax status of ESOPs which is occasionally utilized as an antitakeover tactic, and not as a means to disseminate share ownership, generate capital, or enhance productivity. Cooperatives seem to provide a distinct array of benefits to its members compared to Employee Stock Ownership Plans. Although cooperatives are often smaller than other ownership structures, they do not inherently function within a dysfunctional spectrum. Moreover, while using "crude" approximations for employment contentment, all metrics indicated that cooperatives exhibited higher levels of satisfaction with work compared to Employee Stock Ownership Plans. This correlation between job satisfaction rankings across ownership models likely reflects similar ratings for all metrics of worker engagement.[23]

Around a third of firms in Europe were predicted to undergo ownership transfer during the course of a decade, with a growing number of these transfers occurring outside the existing owner's familial circle. Employees possess a distinct stake in the long-term prosperity of their organizations and often hold a comprehensive grasp of their respective businesses. Yet, they frequently do not have the requisite financial resources and assistance to assume control and operate a corporation. Meticulous and incremental planning of employee transfers structured as worker cooperatives may enhance chances for longevity. A 1994 Commission Recommendation (N° 94/1060/EC of 7-12-1994 OJ L 385 of 31-12-1994 p. 14) urged Member States to facilitate the conveyance of enterprises to workers by diminishing taxation on capital gains from share transfers to employees, eliminating

22 Darren Dahl, 'For Some, Worker Co-operatives Emerge as an Alternative to ESOPs' Forbes (14 August 2016) <https:// www.forbes.com/sites/darrendahl/2016/08/14/for-some-worker-co-operatives-emerge-as-an-alternative-to-esops/> accessed 22 December 2024.

23 Patrick Michael Rooney, 'ESOPS, Producer Coops, and Traditional Firms: Are They Different?' (1992) 26 Journal of Economic Issues 593 <https://www.jstor.org/stable/4226572> accessed 22 December 2024.

registration fees, or providing tax incentives or deferrals. Subsequent evaluations of this recommendation in 1998 and 2002 highlighted the insufficient advancement by Member States in this domain. It is important to highlight the Commission's Communication from July 2002 on the topic of Framework for the Promotion of Financial Participation of Employees in the Capital or Profits of Their Company. One variant of these plans involves linking employees to business outcomes collectively and consolidating resources into a workers' cooperative, which may act as a potential origin of finance for an acquisition by the employees. The Commission urged Member States to investigate measures that promote systems facilitating employee takeovers.[24]

Cooperative law in Ireland

A cooperative society may be established as an industrial and provident organization or may instead register as a corporation under the Companies Acts in Ireland. Although not explicitly a cooperative statute, a feature in the *International Handbook of Co-operative Law* articulates that some entities seeking to form cooperatives in Ireland have seen the IPS Acts' framework as more advantageous than the conventional corporate structure.[25] Historically, entities in Ireland were deemed to be cooperatives if they were enlisted under the Industrial and Provident Societies' Acts. The original acts (the first of which was enacted in 1893), shaped by the pre-independence Westminster legislature's "laissez-faire" approach during that period, provided considerable latitude regarding the inclusion of components in a society's charter. According to Connell Fanning, no mandatory provisions were required to be included in the company statutes.[26]

The rules governing a cooperative under the IPS Acts function similarly to the memorandum and articles of association of a registered company, forming a contractual agreement among the society's members, as well as between the members and the society itself (as outlined in the 1893 act

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[24] 'EUR-Lex-52004DC0018-EN' (Europa.eu2024) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/? uri=CELEX:52004DC0018> accessed 22 December 2024.

[25] Bridget Carroll, 'Ireland' in Dante Cracogna, Antonio Fici and Hagen Henry (eds), International Handbook of Co-operative Law (Springer 2013) <https://link.springer.com/chapter/10.1007/978-3-642-30129-2_21> accessed 24 December 2024.

[26] Connell M Fanning, 'Ireland: Industrial Co-Operatives' [1982] The Performance of Labour-Managed Firms 141.

Section 22). These rules effectively constitute a form of private law, created by the members. It is noted by Eamonn Carey that the prevailing IPS Acts provided minimal guidance on the substance of this "law," beyond outlining a list of issues that the rules must address. Consequently, it could be argued that the most significant form of "cooperative legislation" in Ireland over the last 150 years had been the rules and practices that cooperatives had independently chosen to implement.[27] The Irish legislation that has existed contemporaneously stipulated that a society's regulations must include provisions for the nomination and dismissal of a management committee, managers, or other officials, together with their appropriate duties and compensation. As had been practiced amongst the few successful Irish worker cooperatives in the 1970s and 1980s, the "General Assembly" of members determines the management committee, which thereafter picks the managers. In the few examples of Irish workers' cooperatives, it is typical for the manager to be a member of the cooperative; regardless, external factors could occasionally compel the management committee to choose a professional manager, such as a need for obtaining grant assistance. While the legislation does not mandate the convening of annual general meetings or regulate the voting rights of members, the practices of different societies dictate otherwise. These entities facilitated yearly general meetings.[28]

According to a 1980 report by the Economics & Social Research Institute's Robert O'Connor and Phillip Kelly, that while cooperatives may be founded under several legal frameworks, they believed that new workers' cooperatives ought to be founded via the Industrial and Provident Societies Acts, unless there existed a compelling rationale for choosing an alternate framework. Numerous seasoned cooperators believed that adaptable law was vital, as members' objectives significantly differ based on conditions; the Industrial and Provident Societies Acts offer this versatility. The regulations established by a society must be explicit, especially concerning members' investments in the cooperative.[29]

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27 Eamonn Carey, 'Co-Operative Identity – Do You Need a Law about It?' (2009) 42 Journal of Co-operative Studies 49 <https://hubble-live-assets.s3.eu-west-1.amazonaws.com/uk-society-for-co-operative-studies/file_asset/file/545/s6-Carey-125.pdf> accessed 24 December 2024.

28 'Prospects for Workers' Co-Operatives in Europe' (Commission of the European Communities 1984) <http:// aei.pitt.edu/33684/1/A218.pdf> accessed 23 December 2024.

29 Robert O'Connor and Phillip Kelly, 'A Study of Industrial Workers' Co-Operatives' (ESRI 1980) <https://www.esri.ie/ system/files/media/file-uploads/2012-08/BS19.pdf> accessed 22 December 2024.

Contemporary workers' cooperation in Ireland

Cian McMahon of St. Mary's University notes that a small number of worker cooperatives still exist in Ireland, and he promotes worker cooperatives as a viable alternative to conventional corporate practices in contemporary Ireland. He also contends that worker participation in all cooperative societies is essential for them to be recognized as authentic cooperatives, in alignment with the movement's ideals and historical context as self-help groups for laborers. Moreover, he elucidates that the demands for worker inventiveness and adaptability at the technological forefront of economic production today indicates that the cooperative model possesses a comparative advantage, as decentralized and democratic management frequently facilitates their achievement. The current social and economic landscape of Ireland, he believes, provides an appetite for such advancement.[30]

One leading example of a worker cooperative in Ireland at present is the Great Care Co-op. It is Ireland's first initiative to form a cooperative for care workers in the home care industry. The Great Care Co-Op, established by an ensemble of committed migrant women, symbolizes optimism in a sector beset by numerous issues, including inadequate compensation, exploitative behavior, and racial prejudice. Following its establishment in 2017, the Great Care Co-op has diligently championed a more egalitarian and just form of care delivery. This cooperative is dedicated to transforming care delivery by adhering to ideals of respect, dignity, and self-determination, alongside an uncompromising dedication to improving their standard living for elderly individuals in various districts. Financial assistance not only promotes the growth of their services but also allows the cooperative to provide enhanced working conditions and increased financial remuneration for its primarily female staff.[31] The Great Care Co-op, as a worker-owned enterprise, is governed by its care-workers, who participate on the coop's board and several committees, and making high-level judgments on the organization's operations and strategy. The Great Care Co-op is structured as a decentralized network of local centers, where choices are taken by care-workers and their personnel on-site, eliminating the requirement for excessive oversight by

30 Cian McMahon, 'Co-Operatives and the Future of Work in Ireland' (2019) <https://www.tasc.ie/assets/files/pdf/ensuring_good_future_jobs.pdf#page=45> accessed 29 December 2024.

31 'Empowering Care: Ireland's First Care Workers' Co-Op' RTE.ie (14 March 2024) <https://www.rte.ie/lifestyle/living/ 2024/0314/1437893-empowering-care-irelands-first--care-workers-co-op/> accessed 22 December 2024.

higher authorities. This method has its foundation in a Netherlands-based social company named Buurtzorg, which translates to "neighborhood care" in Dutch. The Irish government had formed a standalone Commission on Care for Older People to provide suggestions on possible future policies. Analysis put forward by Alice Toomer-McAlpine indicates that this represents a significant chance to include worker cooperatives into debate and legislative discourse on social care in Ireland.[32]

An article published by RTÉ, Ireland's national broadcaster, suggested that such a model could serve as the ideal platform for care in Ireland. This is partially because of a staff recruitment crisis in the Irish care sector. Currently, the hiring and maintenance of the existing workforce pose significant obstacles to home care delivery, exacerbated by departures stemming from an ageing labor force, inadequate compensation and working conditions, unstable agreements, rivalry from competing industries, and insufficient career advancement prospects. Carers interviewed for a study said that their wisdom was disregarded by hierarchical organizational systems, and that intense time constraints resulted in "conveyor-belt care," where elderly individuals were merely viewed as a series of chores to be completed. Instead, the article, written by Caroline Crowley and Carol Power, suggested that a worker cooperative framework could prove to be a viable alternative to the existing form of private and State governed care services.[33]

Legal recognition of Irish workers' cooperatives

We should be reminded that the term "worker cooperative" is utilized arbitrarily to describe enterprises that are cooperatives of capital, labor, or a combination of each. As a perquisite, two things need to be distinctly differentiated: worker-capital control and worker-leadership. In certain situations, worker ownership might prove essential to achieve worker leadership; nonetheless, it's the latter that provides the behavioral benefits

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32 Alice Toomer-McAlpine, 'Irish Co-Op Brings Home a New Model of Social Care' (Co-operative News25 July 2024) <https://www.thenews.coop/irish-co-op-brings-home-a-new-model-of-social-care/> accessed 22 December 2024.

33 Caroline Crowley and Carol Power, 'Could Care Co-Operatives Be an Answer to Home Care Crisis?' RTÉ Brainstorm(25 March 2024) <https://www.rte.ie/brainstorm/2024/0325/1439809-ireland-home-care-older-people-care-co-operatives/> accessed 22 December 2024.

attributed to "worker cooperatives." Nonetheless, while the intention frequently involves worker-leadership, it is typically worker ownership that is executed, leading to several challenges for worker cooperatives. The clash that arises among shareholder interests and worker interests significantly contributes to the downfall of worker cooperatives. Consequently, Connell Fanning asserts that, in Ireland, it is essential to clarify the objectives and rationale from the beginning, and to structure the firm accordingly.[34]

The International Labour Organisation Recommendation 2002 (no. 193) urges countries to provide an appropriate setting for all forms of cooperatives. There exists an administrative deficiency in this context in Ireland. The Department of Business, Enterprise and Innovation has been conducting an evaluation of the Industrial and Provident Societies legislation and regulation, which governs the majority of cooperatives, for an extended period. Securing bipartisan endorsement for worker cooperatives would be advantageous. Excessive expectations may be imposed on worker cooperatives about their potential accomplishments. Bridget Carroll and Fiona Dunkin articulate that they need to be permitted to function as standalone, self-governing entities and embrace a variety of structures, irrespective of the advantages of asset locking. The comparatively low number of worker cooperatives may be attributed to various internal and external barriers rather than their inefficiency. The format is undoubtedly an alien notion for plenty of individuals in contemporary Ireland. A substantial knowledge deficit exists. It is essential to acknowledge the social and economic worth of cooperatives' contributions overall. The prevailing business model receives substantial backing, whereas there is limited explicit encouragement for the emergence of worker cooperatives.[35] In 2015, reacting to the rise of the gig economy in the EU and elsewhere, the ILO adopted a newer, Resolution 204 which referred to strategies for transitioning from the irregular to the regulated economy. This aims to establish a new international labor benchmark to provide safeguards for all workers in the shadow economy. As outlined in a research paper by Pat Conaty, Alex Bird and Cilla Ross,

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34 Connell Fanning, 'Some Issues Concerning the Founding of Labour Directed Firms' (ESRI 1983) <https://www.esri.ie/ system/files?file=media/file-uploads/2012-10/MEMO161.pdf> accessed 22 December 2024.

35 Bridget Carroll and Fiona Dunkin, 'Economic Democracy and Worker Co-Operatives: The Case for Ireland' (Research Gate9 April 2019) <https://www.researchgate.net/publication/342212628_The_Society_for_Co-operative_Studies_in_Ireland_in_conjunction_with_SIPTU_presents_SEMINAR_PROCEEDINGS_Economic_democracy_ and_worker_co-operatives_the_case_for_Ireland> accessed 22 December 2024.

such a suggestion identifies cooperatives, as well as additional "social solidarity" business entities, as integral to the move towards structured firms that provide stable and dignified employment.[36]

It is worthwhile to recall that, as far back as 1987, then Minister of State at the Department for Industry and Commerce, Seamus Brennan TD, told a Seanad Éireann (Irish Senate) debate, which had been discussing the Sixth Report of the Joint Committee on Small Business, that the committee recognized five categories of cooperatives, and focused the majority of their discussions on worker cooperatives and community cooperatives. The creation of FÁS, he stated, would decrease the amount of state entities engaged in assisting worker cooperatives, and therefore alleviate any misunderstanding stemming from the proliferation of state institutions in this domain. He reminded those presented that the Programme for National Recovery acknowledged the need to foster the creation of worker cooperatives under appropriate conditions. He emphasized that those who belonged to worker cooperatives may sometimes struggle to recognize their dual roles as both workers and shareholders, and that they were not in a "us versus them" scenario. This was especially true in what he termed "phoenix" scenarios, when a workers' cooperative assumed control of an otherwise defunct enterprise. This sort of challenge, he claimed, necessitated ongoing instructional programs for all participants. He observed that the limited sum of cooperatives established by that time, together with their scope and the areas in which they operated, suggested that it would need a lengthy period to effectively cultivate a sustainable and growing worker cooperative industry.[37]

The idea of tailoring Irish legislation to support the foundation of workers' cooperatives had been touted in recent years. In June 2019, when the Industrial and Provident Societies (Amendment) Bill 2018 was put

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36 Pat Conaty, Alex Bird and Cilla Ross, 'Working Together: Trade Union and Co-Operative Innovations for Precarious Workers' (Co-operatives UK 2018) <http://base.socioeco.org/docs/cuk_and_cc_-_working_together_final_print-quality.pdf>.

37 'Sixth Report of the Joint Committee on Small Business – the Development and Management of Small Business Co-Operatives: Motion' (1987) 117 Oireachtas Debates <https://www.oireachtas.ie/en/debates/debate/seanad/ 1987-11-18/6/?highlight%5B0%5D=co&highlight%5B1%5D=operatives&highlight%5B2%5D=worker&highlight%5B3%5D=co&highlig ht%5B4%5D=operatives&highlight%5B5%5D=worker&highlight%5B6%5D=co&highlight%5B7%5D=operatives&highlight%5B8%5D=workers&highlight%5B9%5D=co&highlight%5B10%5D=operative&highlight%5B11%5D=co&highlight %5B12%5D=operative> accessed 22 December 2024.

to scrutiny at a debate by the Oireachtas' Joint Committee on Business, Enterprise and Innovation, then Senator, Dr. James Reilly, declared that:

> "The point has been made that when they start, they start small. Perhaps then some of the concerns raised could be addressed by some of the terms and conditions for exemptions. In other words, the number of members in a co-operative would be influenced by its turnover. As the co-operative gets bigger, the minimum number has to increase. This Bill seeks to ensure that a workers' co-operative can start and benefit from co-operative status such that innovation and enterprise is not limited only to those who have money to invest. We need to encourage the worker-owned co-operative principle, which is a good principle."[38]

Since then, as underlined by Anca Voinea, a major attempt to reform cooperative law in Ireland has been undertaken. The General Scheme of Co-operative Societies Bill 2022 sought to update and streamline existing cooperative law. The bill would supersede the prevailing Industrial and Provident Societies Acts from 1893 to 2021.[39] According to Ireland's *Law Gazette*, the Co-operative Societies Bill would mandate registered societies to comply with an expressly defined cooperative spirit and specifically facilitate the establishment of cooperatives. This would constitute the inaugural item of law that addressed cooperatives unequivocally.[40]

According to Padraic Kinsella, Bryan Bourke and Elaine Morrissey, writing on the General Scheme of the Co-operative Societies Bill 2022, the existing corporate governance framework, perceived as lenient, was also deemed inadequate and failed to sufficiently safeguard the needs of cooperatives, their members, or external parties. Although cooperatives are inherently different from contemporary businesses, they eventually

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38 'Joint Committee on Business, Enterprise and Innovation Debate – Tuesday, 25 Jun 2019' (Oireachtas.ie2019) <https://www.oireachtas.ie/en/debates/debate/joint_committee_on_business_enterprise_and_innovation/ 2019-06-25/3/? highlight%5B0%5D=worker&highlight%5B1%5D=co&highlight%5B2%5D=operatives&highlight%5B3%5D=law&highlight%5B4%5D=worker&highlight%5B5%5D=co&highlight%5B6%5D=operatives> accessed 22 December 2024.

39 Anca Voinea, 'Irish Co-Ops Share Views on Co-Operative Societies Bill' (Co-operative News3 March 2023) <https:// www.thenews.coop/irish-co-op-apex-raises-concerns-with--ministers-over-co-operative-societies-bill/> accessed 22 December 2024.

40 'First Specific Legislation on Co-Ops Proposed' (Law Gazette2022) <https://www.lawsociety.ie/gazette/top-stories/ 2022/november/first-specific-legislation-on-co-ops--proposed>.

constitute a corporate entity. Numerous elements of sound practice delineated in corporate law apply to cooperatives, either immediately, or with modifications. The bill would update the Industrial and Provident Societies Act 1893 by introducing contemporary corporate governance, reporting on finances, and compliance standards. A number of sections addressed directors, members, registrations, meetings, and resolutions. To provide uniformity and clarity, these rules largely replicated those of the Companies Act 2014 (CA 2014) but were modified as necessary to accommodate the unique features of cooperatives. The bill aimed to establish a more stringent regulatory and governance framework, offering enhanced guarantees to members, workers, and creditors of any cooperatives. It was also hoped to enhance the appeal of cooperatives for investment.[41]

During the initial pre-legislative scrutiny meeting, which took place in the Joint Committee on Enterprise, Trade and Employment, the Department indicated that the General Scheme would not explicitly accommodate workers' cooperatives. The legislation aims to be adaptable, serving a diverse array of categories without detailing provisions for any particular sector, thereby permitting modifications through the cooperatives' own regulations. The ccommittee advocates for the reinstatement of the Co-operative Development Unit (CDU) to offer impartial counsel, instruction, and assistance to cooperatives. It was intended to assist family enterprises in transformation and succession. During the 1990s, the CDU actively sought to assist family-owned enterprises facing succession challenges in transitioning to worker cooperatives. It was notably effective in this regard. The committee advised that more attention should be directed towards enacting legislation permitting employee takeovers of enterprises in instances of succession planning or management. The committee advises that more attention be directed into the legal definition of a worker cooperative. It also questioned the absence of a mechanism to establish a succession model enabling employees to acquire their firms. The department evaluated the problems and their resolution in other parts of Europe. The suggested law aims to include a wide range of entities, without expressly targeting any specific industry or kind of cooperative activity, including worker cooperatives or social businesses. The proposed law is comprehensive

41 Padraic Kinsella, Bryan Bourke and Elaine Morrissey, 'General Scheme of the Co-Operative Societies Bill 2022' (Vlex.com2023) <https://justis.vlex.com/vid/921633354> accessed 22 December 2024.

and facilitative in character. It is also intended to provide benefits in the years to come.[42]

Separate to establishing a new cooperative, there are obstacles hindering enterprises from switching to workers' control in Ireland. The Worker Co-operatives and Right to Buy Bill, introduced into the Seanad (Irish Senate) in 2021, as suggested by Gerard Doyle, might possibly alleviate many of these problems; however, it is yet to be advanced to the Dáil (lower house).[43] As mentioned in a debate pertaining to the Finance Bill 2021, a recommended new section 597AB was considered for inclusion into the Taxes Consolidation Act 1997, to provide an exemption from capital gains tax on the transfer of an ordinary firm into a workers' cooperative.[44] The Worker Co-operatives and Right to Buy Bill 2021, which would have amended the Industrial and Provident Societies Act 1893, was moved to the Second Stage of the Seanad following its introduction, but, in fact, has not moved at all since that period.[45]

Financial barriers facing workers' cooperatives in Irish law

It is important to highlight that, in some instances, Irish law governing state support for community initiatives and social enterprises mandates that the funded groups must not allocate profits. The predominant structure used by firms in the social sector in Ireland is the "company limited by guarantee." Conversations with Pobal concerning their funding distribution revealed that Pobal has urged cooperatives to transition to companies

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42 'Joint Committee on Enterprise, Trade and Employment: Report on the Pre-Legislative Scrutiny of the General Scheme of the Co-Operative Societies Bill, 2022' (Houses of the Oireachtas 2023) <https://data.oireachtas.ie/ie/ oireachtas/committee/dail/33/joint_committee_on_enterprise_trade_and_employment/reports/2023/2023-05-03_report-on-the-pre--legislative-scrutiny-of-the-general-scheme-of-the-co-operative-societies-bill-2022_en.pdf> accessed 22 December 2024.

43 Gerard Doyle, 'Co-Op Care – the Case for Co-Operative Care in Ireland' (Jesuit Centre for Faith & Justice 2022) <https://www.jcfj.ie/wp-content/uploads/2022/11/Working--Notes-91.pdf> accessed 22 December 2024.

44 'Finance Bill 2021: Committee and Remaining Stages' (2021) 281 Oireachtas.ie <https://www.oireachtas.ie/en/ debates/debate/seanad/2021-12-14/20/? highlight%5B0%5D=worker&highlight%5B1%5D=co&highlight%5B2%5D=operatives&highlight%5B3%5D=workers&highlight%5B4%5D=co&highlight%5B5%5D=operative&highlight%5B6%5D=workers&highlight%5B7%5D=co&highlight %5B8%5D=operative> accessed 23 December 2024.

45 'Worker Co-Operatives and Right to Buy Bill 2021' (Oireachtas.ie19 May 2021) <https://www.oireachtas.ie/en/bills/ bill/2021/94/?tab=bill-text> accessed 22 December 2024.

limited by guarantee, lacking share capital, as they believe this aligns with the legislation governing the money that they allocate. The EU Commission (2004) acknowledges that cooperatives need equitable conditions relative to other types of companies. This does not imply that cooperatives require special treatment; rather, it suggests that while formulating laws, member states ought to strive for equitable conditions alongside other types of enterprises with whom cooperatives fight in a contemporary market economy. Cooperatives ought to operate without the constraints and responsibilities imposed on other types of enterprises. However, the EU Commission (2004) states that meticulously crafted regulation may mitigate some limitations associated with the cooperative model, including restricted access to investment capital.[46]

T.J Flanagan, CEO of the Irish Co-operative Organisation Society (ICOS), commented that workers' cooperatives frequently struggled due to the apparently harsh business realities, instead of their legal framework. He stated that ICOS had dedicated much effort to examining the gig economy to determine the feasibility of uniting those trapped inside that system under a workers' cooperative framework. Flanagan declared that, based on his observations, he did not believe there was any deficiency in the law that led to the lack of success of these initiatives He instead believed that it was merely a matter of commerce. Nevertheless, he maintained the potential for the inclusion of other instruments, such as tax breaks, to facilitate continued development of the industry.[47]

There has, nonetheless, been a push to allow for the Mondragon model to be facilitated in Ireland. In contrast to the mostly labor-intensive and capital-deficient worker cooperatives in Ireland and Britain, the Mondragon cooperatives are highly innovative and comparatively capital-intensive. They have identified methods to get sufficient equity and debt financing at an acceptable rate while adhering to Co-operative Principles. As outlined by Briscoe and Ward, of the Centre for Co-operative Studies at University College Cork, Ireland, the Mondragon model effectively addresses the issue of equity dilution. In Mondragon, the need for a significant primary investment, combined with the notion of individual capital accounts (ICAs) effectively addresses the issue of share dilution that has troubled most

46 'Ireland's Co-Operative Sector' (Forfás 2007) <https://www.serni.ie/wp-content/uploads/2021/03/Ireland-s-Co-operative-Sector.pdf> accessed 22 December 2024.

47 Ian Curran, 'Ireland's €9.7bn Co-Op Sector to Get Boost from "Long-Awaited" Legislation' (The Irish Times2023) <https://www.irishtimes.com/business/2023/02/15/long-awaited-historic-bill-could-boost-97bn-co-op-sector/> accessed 22 December 2024.

prospective worker cooperatives. In the Mondragon system, the admission of a fresh participant does not diminish the individual equity interests of existing members. Their shares are meticulously safeguarded inside their designated ICA. The new member contributes more money, without diminishing the equity of current members. Furthermore, new members assert no rights to funds amassed by persons before. Their only assertions are to the profits allocated throughout their tenure of employment.[48]

Similarly, Gerard Doyle has noted that a major enabler for cooperative development would be to legislate to acknowledge the capacity for worker cooperatives to establish indivisible reserve funds.[49] However, The Department of Enterprise, Trade and Employment in Ireland stated that the definitions of a legal reserve and indivisible reserve were ambiguous, and could sometimes be used interchangeably. The department reasserted its aim to implement a facilitative measure that promoted the cooperative spirit of businesses established under a new act without being too restrictive. Consequently, it was planned to advance as outlined in their consultation; nevertheless, they also clarified that cooperatives may choose to exceed the suggested legal reserve requirements if they desired, and may include suitable provisions in their own constitutions.[50] As emphasized by Deirdre Hosford, indivisible reserves guarantee that worker cooperatives would remain insulated from the private economy, ensuring that a portion of profits and any residual value be allocated to a core cooperative institution in Ireland to facilitate the growth of different cooperatives.[51]

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48 R Briscoe and M Ward, 'The Competitive Advantages of Co-Operatives' (UCC Centre for Co-operative Studies 2000) <https://www.ucc.ie/en/media/research/centreforco-operativestudies/publications/ BriscoeWard,2000TheCompAdvBookwithoutcovers.pdf> accessed 22 December 2024.

49 Gerard Doyle, 'A New Epoch for Worker Co-Operatives in Ireland – an Outline of the Factors Required for Their Implementation and the Opportunities to Address Precarious Employment' (Technological University Dublin 2022) <https://www.nerinstitute.net/sites/default/files/2022-06/ Gerard%20Doyle%20TU%20Dublin%20presentation%202B%2014%20June%2022.pdf> accessed 22 December 2024.

50 'Reform and Modernisation of Legislation Regarding Co-Operative Societies: Policy Response to Issues Raised in Public Consultation' (Department of Enterprise, Trade & Employment 2022) <https://enterprise.gov.ie/en/publications/ publication-files/reform-and-modernisation-of-legislation-regarding-co-operative-societies-policy-response-to-issues-raised-in-public-consultation.pdf> accessed 22 December 2024.

51 Deirdre Hosford, 'Reforming the Irish Economy – The Co-Operative Way' (Magill2012) <https://magill.ie/society/ reforming-irish-economy-%E2%80%93-co-operative-way> accessed 23 December 2024.

Furthermore, Irish competition law aims to guarantee that firms function in transparent and competitive marketplaces, fostering constructive rivalry and equitable trade practices. It seeks to avoid actions that negatively impact competition, which could result in other enterprises suffering financial losses and perhaps failing due to a competitive disadvantage. It was established to safeguard consumer interests, ensuring access to optimal goods and prices, while guaranteeing equitable compensation for the appropriate product. However, Rebeca Harvey, writing in an article titled "Co-Ops vs Competition Law," explains that cooperatives are also governed by the seven pillars of cooperation, which may run into conflict with key principles of competition law. The sixth concept, cooperation among cooperatives, emphasizes how cooperatives optimally benefit their members and reinforce the cooperative movement by collaborating via local, national, and worldwide frameworks. The sixth tenet illustrates the two-fold character of cooperatives. They serve as business organizations engaged in the exchange of products and services, as well as social entities comprised of members who maintain positive relationships with fellow cooperatives. They collaborate with other cooperatives to generate prosperity for the majority, rather than individual wealth for a select minority, by means of unrestricted commercial adversaries.[52] Imelda Maher, writing in the *Irish Jurist*, has highlighted that agricultural cooperatives in Ireland, by means of EU Regulation 26/62 (as it related to Articles 85 and 86 of the EEC Treaty), previously, and with success, sought to gain exemptions from contemporary competition law. In *Kerry Co-operative Creameries Ltd v. An Bord Bainne,*[53] despite the High Court of Ireland acknowledging that the regulation conferred exclusive authority upon the Commission to exempt agricultural arrangements from competition rules, it ultimately determined that a "prima facie" case existed for the exclusion of the cooperative rules from Article 85(1), thereby rendering the article inapplicable. On appeal, the Supreme Court adopted a different perspective, viewing the subject as one of jurisdiction. In light of the High Court's ruling that the regulation tacitly exempted cooperatives from the scope of Article 86, the Supreme Court submitted an Article 177 reference to explain the link between the regulation and Article 86. The regulation was a convoluted legislative document that was challenging to comprehend, suggesting that the High Court

52 Rebecca Harvey, 'Co-Ops vs Competition Law' (Co-operative News2 July 2021) <https://www.thenews.coop/co-ops-vs-competition-law/> accessed 22 December 2024.

53 [1991] ILRM 851

ought to have issued an initial reference. This ruling has additionally been subject to criticism for reversing the legislative hierarchy by permitting a kind of secondary law, the regulation, to supersede the directly applicable Articles 85 and 86. The High Court further aimed to omit the arrangement from Article 85 based on the utilization of the regulation, despite the fact that only the Commission had the ability to exempt contracts of this kind. Furthermore, despite the referral under Article 177, the European court did not deliver a decision on this matter.[54]

Workers' cooperatives, on the other hand, have little such protection in Irish or EU law. On the contrary, workers' cooperatives, specifically those created by worker buy-outs, have clashed with EU regulations in other Member States. In dispute, shortly after the involvement of Italy's industries' group, *Confindustria,* the *Legge Marcora framework for WBOs was halted in the late 1990s because of a verdict by the European Union, soon before Italy's entry into the Eurozone. The ruling determined that the Legge Marcora scheme violated EU competition regulations, as the EU concluded that the Italian state was providing an inequitable benefit to WBO cooperatives by allowing a 3:1 ratio of capitalization and start-up funds relative to workers' investments in the acquisition, pursuant to the original L. 49/1985 structure. Marcelo Vieta notes that, as a result of this verdict, a revision of the Legge* Marcora law, L. 57/2001, was enacted on 5 March 2001, including two significant new provisions. Article 7, section 1 now restricts the state's allocation of Legge Marcora monies from the "Special Fund" to a 1:1 financing ratio with workers' payments, which employees are required to repay over a period of 7 to 10 years. Article 17, Section 5 now allows WBO worker cooperatives to engage a *socio finanziatore* (financing member) who will join the cooperative for this funding period. The *socio finanziatore* may be any legal body, cooperative, or other organization with "financial interests" in the cooperative, as opposed to the "mutualistic interests" characteristic of conventional Italian cooperative members.[55] This template could be more widely applied in EU cooperative law, for application in Member States, such as Ireland. It has been argued in the *International Journal of Labour Research* that trade unions need to forge coalitions with the cooperative movement within EU member states

54 Imelda Maher, 'The Implementation of EC Competition Law in Ireland: The Transition to a New Statutory Regime' (1993) 28/30 Irish Jurist 21 <https://www.jstor.org/stable/44026382> accessed 29 December 2024.

55 Marcelo Vieta, 'The Italian Road to Creating Worker Co-operatives from Worker Buyouts: Italy's Worker-Recuperated Enterprises and the Legge Marcora Framework' (Euricsa 2015) <https://base.socioeco.org/docs/wp-78_15_vieta.pdf> accessed 29 December 2024.

at a national level to press for legislative reforms, and the establishment of financial mechanisms that promote the formation of worker cooperatives. Recognizing the significant obstacle employees have when contemplating the potential acquisition of their workplaces, they need to be offered a fair opportunity to submit an offer in the case of a facility shutdown or company relocation. This is not a romantic concept, but one that has now also been realized in France.[56]

An economic research feature, created by Alan Lockey and Ben Glover, suggests that making competition practices more flexible for workers' cooperatives in the context of service procurement could also be considered. Following the global financial crisis of 2008, the municipal leaders of Preston, England, UK, opted to implement the now-renowned "Community Wealth Building" model that, alongside other initiatives, advocates for the advancement of worker cooperatives, and a localized contracting strategy involving such firms. Importantly, prior to the occurrence of Brexit, the "Preston" procurement strategy successfully adhered to the strict competition laws of the EU. Supporters of Community Wealth Building assert that logistics activism, by explicitly aiming to enhance such variety of a local enterprise and financial ecosystem, may, in fact, foster greater competitiveness. Ultimately, completely impartial control is merely a myth, and several proponents of free enterprise have highlighted that excessively cumbersome procurement practices in the commercial world are typically mostly advantageous to the largest of corporations and established vendors, at the expense of expanded market competitiveness. This could, they believe, provide the impetus for worker cooperatives to possess greater capital access.[57]

Conclusion

The personnel of cooperatives and legislators seemingly align with the pertinent observations in the realm of politics regarding the Irish state's apparently longstanding lack of encouragement for the formation of

56 Pierre Laliberté, 'Trade Unions and Worker Co-operatives: Where Are We At?' (2013) 5 International Journal of Labour Research <https://base.socioeco.org/docs/wcms_240534.pdf#page=57> accessed 29 December 2024.

57 Alan Lockey and Ben Glover, 'The Wealth Within: The "Preston Model" and the New Municipalism' (Demos 2019) <https://www.sheffieldtribune.co.uk/content/files/wp-content/uploads/2019/06/june-final-web.pdf> accessed 29 December 2024.

worker cooperatives and related social enterprises. This is demonstrated by the dissolution of the worker cooperative unit (situated in FÁS), as well as the little consideration leaders have given, until recently, to revising Industrial and Provident Society law. It is believed that, during the period of economic growth in Ireland known as the "Celtic Tiger," the cooperative unit lacked substantial tactical significance from the viewpoint of FÁS.[58]

As affirmed in the *Irish Journal of Sociology*, worker cooperatives in Ireland cannot operate efficiently while lacking a robust legal framework that defines their legal standing, and additional support mechanisms such as the development of entrepreneurship, training for leaders, market analysis, availability of loan financing and grant assistance, inter-cooperative communication, and association formation. It is important to emphasize that the worker-owned concept exists inside a philosophical structure that emphasizes the intrinsic democratic values of their practice, which may, under certain conditions, provide tactical underpinnings for dramatic social transformation.[59]

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[58] Gerard Doyle, 'Socialising Economic Development in Ireland: Social Enterprise an Untapped Resource' (TUD 2018) <https://arrow.tudublin.ie/cgi/viewcontent.cgi?article=1021&context=beschspart> accessed 29 December 2024.

[59] Stephen Nolan, Eleonore Perrin Massebiaux and Tomas Gorman, 'Saving Jobs, Promoting Democracy: Worker Co-Operatives' (2013) 21 Irish Journal of Sociology 103.

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Rafał Adamus
University of Opole
ORCID https://orcid.org/0000-0003-4968-459X

Declaration of Bankruptcy of a Cooperative in Poland in Selected Court Judgments

1. Introductory issues

It should be noted at the outset that the Polish legal system is a system of statutory law. Court rulings do not constitute formal sources of law in Poland. Nevertheless, judicial decisions exert a significant influence on the interpretation and application of statutory law.

The research question in this study concerns the declaration of bankruptcy of a cooperative (including a "housing cooperative" – Pol. *spółdzielnia mieszkaniowa*) in Polish case law.[1] Bankruptcy proceedings fall within the scope of civil procedure. Therefore, rulings of the Civil Chamber of the Supreme Court, as well as the rulings issued by commercial courts (part of the common court system), will be relevant for the discussion. However, administrative courts exercise jurisdiction over matters concerning the tax liability of cooperative management-board members (liquidators). Therefore, administrative calse law also addresses the issue of cooperative bankruptcy.

In Poland, a cooperative is a legal entity.[2] It is therefore a separate legal entity distinct from its members (cooperative members). A cooperative,

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[1] R. Adamus, Ogłoszenie upadłości spółdzielni w świetle orzecznictwa sądowego. Prawo i Więź, 2022, No 43, pp. 88–99.

[2] Sz. Styś, Z problematyki upadłości spółdzielni, NP 1986, no 4–5, p. 91; S. Gurgul, Upadłość spółdzielni mieszkaniowej, dewelopera i towarzystwa budownictwa społecznego. Komentarz, Warszawa 2012, p. 15; J. Gójski, L. Marszałek, Spółdzielczość. Zarys rozwoju historycznego, Warszawa 1968, p. 38; S. Breyer, W sprawie reformy postępowania upadłościowego

including a housing cooperative,[3] has the capacity to become insolvent (be declared bankrupt). A cooperative can have different characteristics: it can be, for example, agricultural or energy-related.[4]

Members of a cooperative are not liable for the obligations of a cooperative that has become insolvent, although the cooperative is based on a special bond between the entity and its members.[5] *De lege lata,* the declaration of bankruptcy of a cooperative by a bankruptcy court does not impose an obligation for cooperative members to make additional payments to cover the cooperative's deficit. The bankruptcy of cooperatives and housing cooperatives is not a common occurrence in practice, and the legal framework governing this phenomenon is currently fragmented. The current legal framework is so unclear that it fosters divergent views and hinders the effective conduct of bankruptcy proceedings. This issue is both significant and concerning because the case law in this area is unfortunately unstable.

2. Social consequences of bankruptcy of a cooperative as the *ratio legis* of the special procedure for declaring bankruptcy

The bankruptcy of a cooperative, especially a housing cooperative, has far-reaching social consequences. This circumstance constitutes the ratio legis

spółdzielni, Państwo i Prawo 1964, no. 12, p. 887; M. Bieńko, Upadłość spółdzielni obejmująca likwidację jej majątku, Roczniki Nauk Prawnych 2008, vol. XVIII, no 1, p. 111; P. Bielski, Podstawy ogłoszenia upadłości spółdzielni w prawie polskim, Przegląd Prawa Handlowego, 2001, no 2, p. 33; P. Pogonowski, Upadłość spółdzielni – podstawowe problemy prawne [in:] Iustitia civitatis fundamentum. Księga pamiątkowa ku czci Profesora Wiesława Chrzanowskiego, H. Cioch, A. Dębiński, J. Chaciński [editors], Lublin 2003, pp. 99–101; D. Bierecki, Cooperative Principles in the Concepts of Social Economy and Social Enterprise in Polish Law, Prawo i Więź, 2024, no 4.

[3] K. Królikowska, Postępowanie upadłościowe spółdzielni mieszkaniowych, Instytut Wymiaru Sprawiedliwości, Warszawa 202, pp. 1–20; S. Gurgul, Upadłość spółdzielni mieszkaniowej, Monitor Prawniczy 2004, no 5, p. 20;

[4] D. Bierecki, Energy Cooperatives in the System of Polish Cooperative Law. Review of Institute of the Grand Duchy of Lithuania, 2021, No 1, pp. 7–16; D.Bierecki, Ustalenie liczby udziałów w spółdzielni rolników (spółdzielni energetycznej). Pieniądze i Więź, 2020, No 3, pp. 69–76.

[5] D. Bierecki, Zasada równości praw i obowiązków członków spółdzielni: Uwagi na tle orzecznictwa Sądu Najwyższego. Prawo i Więź, 2022, No 1; D. Bierecki, Cooperative Principles in the Concepts of Social Economy and Social Enterprise in Polish Law. Prawo i Więź, 2024 No 4; D. Bierecki, The Legal Nature of the Cooperative's Activity in the Interests of its Members–Remarks Under Polish Law. Boletín De La Asociación Internacional De Derecho Cooperativo, 2020, No 61, pp. 185–198.

for maintaining a special, exceptional procedure governing the decision to file a bankruptcy petition against a cooperative.

The bankruptcy of a housing cooperative directly affects the cooperative rights of its members. If, during bankruptcy proceedings, the buyer of a building and landed property is not a housing cooperative, the cooperative tenancy right to the apartment is converted into a lease right subject to the Act on the Protection of Tenants' Rights, Municipal Housing Resources, and Amendments to the Civil Code. If, during the proceedings, the property is acquired by an entity other than the cooperative, the cooperative ownership right to the apartment is transformed ex lege into full ownership of the apartment. Such a transformation, arising from Article 17(18) of the Act on Housing Cooperatives, cannot, however, be classified as a division of real estate within the meaning of Article 76 of the Act on Land and Mortgage Registers. This means that the holder of a cooperative ownership right to a unit acquires separate ownership of that unit, free from mortgage encumbrances previously attached to the cooperative's property.[6] If another housing cooperative acquires the right to land along with the ownership right to the building located on it or a share in the co-ownership of that building, the persons holding cooperative tenancy rights to residential units in that building, or claims to establish such a right, become members of that cooperative. The cooperative tenancy right to the residential unit, or claims to establish such a right, are transferred to the cooperative that acquired the land along with the ownership of the building, or a share in its co-ownership. At the same time, membership in the cooperative that previously held the right to the land and the building (or a share in its co-ownership), terminastes by operation of law. After bankruptcy is declared, members of any cooperative (regardless of its type), upon the bankruptcy trustee's request, must immediately pay any outstanding portion of their share (Article 135 of Cooperative Law, "CL").[7] This obligation is explicitly provided for by law. It does not raise the same doubts as the controversial demand made by the trustees of the bankruptcy estate of a sui generis cooperative, namely a cooperative savings and credit union (Pol. *spółdzielcza kasa oszczędnościowo-kredytowa*, "SKOK"), addressed to SKOK members and compelling them to pay a so-called double share to cover

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6 Resolution (*postanowienie)* of the Supreme Court of 16 February 2022, Case No. I NSNc 601/21

7 Resolution (*uchwała)* of the Supreme Court of 16 February 2022, Case No. I NSNc 601/21

balance-sheet losses.[8] If bankruptcy proceedings are initiated within one year of the date on which a member ceased to belong to the cooperative, that former member is obligated to contribute to covering the cooperative's losses as if their membership has not expitred (Article 28 CL). In the event of cooperative bankruptcy, however, complex legal issues, such as the admissibility of a claim by SKOK trustees seeking repayment of stabilization-fund contributions, do not arise.[9]

3. Autonomous regulation of the cooperative bankruptcy proceedings

In the Polish legal tradition, CL directly regulates certain aspects of cooperative bankruptcy. However, it does not constitute a comprehensive regulation. This can be attributed to two factors: (a) cooperatives have the capacity to become insolvent, and (b) cooperatives have been regulated by law since the early Second Polish Republic, while bankruptcy law ("BL") itself was not consolidated until 1934. In contrast, during the communist period in Poland, cooperatives expanded, and bankruptcy remained a marginal phenomenon due to the state's monopoly on economic activity and the principle of "uniform state ownership."

Therefore, currently applicable CL introduces autonomous rules governing both the procedure for declaring a cooperative bankrupt and, to some extent, the conduct of bankruptcy proceedings themselves.[10]

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[8] R. Adamus, Czy syndyk spółdzielczej kasy oszczędnościowo – kredytowej może dochodzić od członków kasy uzupełnienia straty bilansowej? Doradca Restrukturyzacyjny 2018, no 3, p. 26–35, R. Adamus, Zagadnienie odpowiedzialności za straty bilansowe członków spółdzielczej kasy oszczędnościowo – kredytowej w upadłości [in]: Prawo prywatne w służbie społeczeństwu. Księga pamiątkowa poświęcona pamięci Profesora Adama Jedlińskiego, P. Zakrzewski, D. Bierecki [editors], Sopot 2019, s. 23–44, R. Adamus, O zagadnieniu odpowiedzialności członków SKOK w upadłości za stratę bilansową raz jeszcze, Doradca Restrukturyzacyjny 2019, no 3, pp. 30–39.

[9] R. Adamus, Istota funduszu stabilizacyjnego w kontekście problemu dopuszczalności zwrotu wpłat na rzecz syndyka upadłej spółdzielczej kasy oszczędnościowo-kredytowej, Studia Prawnicze. Rozprawy i Materiały 2021, no 2, Studies in Law: Research Papers 2021, No. 2, R. Adamus, Niedopuszczalność zwrotu wpłat na fundusz stabilizacyjny na rzecz syndyka upadłej spółdzielczej kasy oszczędnościowo-kredytowej. Studia Prawnicze. Rozprawy i Materiały 2021, no 1, Studies in Law: Research Papers 2021, No. 2.

[10] J. Kruczalak-Jankowska, Autonomiczność i specyfika regulacji niewypłacalności spółdzielni – wybrane problemy, Prawo i Więź 2024, No 5, pp. 9–23.

The autonomy of the procedure for declaring a cooperative bankrupt is reflected primarily in specifically defined grounds for insolvency. Furthermore, it is determined in the specific internal decision-making procedure that the cooperative's governing bodies must follow when deciding whether to file a bankruptcy petition. Finally, the autonomy of the rules governing cooperative bankruptcy proceedings is expressed in the statutorily defined time limits imposed on the cooperative's management board for filing a bankruptcy petition.

4. Legal basis for declaring cooperative bankruptcy

A bankruptcy court declares a cooperative bankrupt when it becomes insolvent (Article 130(1) CL). This provision essentially mirrors the regulation of Article 10 BL. A linguistic, systematic, and teleological interpretation of these provisions suggests the existence of a statutory prohibition on declaring bankruptcy where only a single creditor is involved. This raises the question of what constitutes insolvency for a cooperative. Pursuant to the provisions of CL (Article 130(2) CL), a cooperative is insolvent when "the total value of its assets does not cover all liabilities."[11]

The cooperative's insolvency status should be evident from its financial statements. Article 130(2) CL provides for cooperative insolvency.[12] It differs

[11] M. Winter, Fałszowanie sprawozdań finansowych a odpowiedzialność zarządu za zobowiązania upadłej spółdzielni. Studia i Prace Kolegium Zarządzania i Finansów/Szkoła Główna Handlowa, 2017, No 154, pp. 113–136.

[12] The judgment of the Provincial Administrative Court in Gliwice of 11 March 2020, I SA/Gl 1046/19, indicates that "Article 130 § 2 of Cooperative Law, as well as the case law of administrative courts, clearly indicates that the state of insolvency should follow from the the financial statements, and not from other circumstances that may reveal that the total value of assets is insufficient to satisfy all liabilities." This interpretation is incorrect. Is objective knowledge of insolvency or the formal source of this knowledge more important? Furthermore, financial statements may be prepared unreliably or in violation of applicable accounting principles. The District Court in Łódź pointed this out in its judgment of October 18, 2018, case file VIII U 581/14: "It should be noted that due to the fact that the Cooperative's assets were not updated on an ongoing basis in accordance with the Accounting Act, it is impossible to verify whether the assets were valued at the correct amount. The Cooperative's financial statements for 2006 and 2007 contained entries that goods did not show any movement in the warehouse, i.e. that they were overdue. The balance sheet for 2007 and earlier years also showed the value of overdue materials at their purchase value. However, the financial statements do not provide information on whether the goods were discounted or whether they were revalued, especially when the information was included that the goods were difficult to sell. If the Cooperative made any revaluation write-offs regarding warehouse

significantly from Article 10 BL, which stipulates common grounds for bankruptcy applicable to most debtors.

5. Analysis of the insolvency prerequisite under Article 130(2) CL

The construction of this premise is notably imprecise. A question arises as to whether it applies only to monetary assets or also to the cooperative's non-monetary assets. It appears that all categories of assets are included. This conclusion follows from the principle of non-distinguishability. However, this cannot include inalienable rights, such as a right to usufruct established in favor of the cooperative. Such rights cannot be converted into cash to satisfy liabilities.

Furthermore, there is also uncertainty as to whether insolvency should be determined based on an inability to perform all obligations or only material ones. It appears that the interpretation of this provision should take into account the principle of proportionality. If the shortfall is small and temporary, it does not constitute grounds for filing a bankruptcy petition. In other words, the shortfall must be both permanent and financially significant. It should be noted that declaring a cooperative bankrupt has far-reaching social consequences. Furthermore, funds paid by cooperative members as operating fees are excluded from the bankruptcy estate. The law also places particular emphasis selling the assets of a bankrupt cooperative, where possible, to another cooperative. It would make no economic sense to declare a cooperative bankrupt in the event of a minor or temporary asset shortfall. This ground for insolvency does not appear to extend to disputed liabilities.

stocks, it should have been included in the financial statements or additional information, but it did not include such entries. If there are no such entries in the financial statements, it means that 'No write-downs were made. The Accounting Act requires, in such a case (if there is any overdue balance), the market value of warehouse inventory to be updated. This omission therefore means that the 2007 financial statements were prepared in violation of the Accounting Act. The cooperative also does not have accounting records."

6. The relationship between the grounds for insolvency under Article 130(2) CL and Article 11 BL

This raises the question of the relationship between the provisions of CL and BL regarding the grounds for insolvency. Differing views have been expressed on this matter. If BL were to regulate separate proceedings involving cooperatives and housing cooperatives, current interpretative uncertainties could be resolved legislatively.

According to one view, the ground for insolvency of a cooperative set out in CL constitutes a lex specialis with respect to the provisions of BL. Consequently, only the provisions of CL may serve as a valid legal basis for declaring a cooperative bankrupt.[13] The literature has expressed the view that excessive indebtedness, as referred to in Article 11(1)-(2) BL does not serve as a grounds for declaring bankruptcy for a cooperative or housing cooperative, as it is preceded by the broader concept of excessive indebtedness contained in Article 130(2) CL.[14]

According to another view, a cooperative may be declared bankrupt based on the insolvency grounds set out in both CL and BL.[15] What arguments are advanced to support this position? The special provisions apply only to declaration of bankruptcy based on excessive indebtedness (when liabilities exceed assets). Because these provisions do not regulate the creditors' position on cooperative bankruptcy, they do not preclude creditors from filing for bankruptcy on the ground of the cooperative's cessation of payments. Some authors have expressed the view that a dual, cumulative regime of insolvency grounds applis.

One could also argue that the applicable insolvency grounds depend on who files the petition – with CL governing petitions filed by the debtor cooperative and BL governing petitions filed by creditors. However, this approach leads to very inconsistent outcomes and should therefore be rejected. From the perspective of cooperative bankruptcy in general, the identity of the petitioner is of no legal significance.

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13 Judgment of the Supreme Administrative Court of 22 September 2017, II FSK 1423/15, judgment of the Provincial Administrative Court with its seat in Gdańsk of 30 October 2019, I SA/Gd 1292/19, judgment of the Provincial Administrative Court with its seat in Poznań of 11 December 2020, I SA/Po 479/20.

14 P. Zakrzewski, Upadłość spółdzielni [in:] System Prawa Prywatnego, t. 21, Prawo spółdzielcze, K. Pietrzykowski [editor], Warszawa 2020, p. 416.

15 Judgment of the Court of Appeal in Poznań of 5 October 1936, II CZ 922/36, Resolution (postanowienie) of the Supreme Court of 4 December 1998, III CKN 398/98.

It may also be argued that the grounds for insolvency under BL and CL substantially overlap, thereby forming a common basis for declaring bankruptcy. However, this approach fails to address cases that fall outside the area of overlap, leaving unresolved which legal standard should apply.

A bankruptcy petition filed by a cooperative is subject to the bankruptcy court's review of the cooperative's estate and its evaluation.[16] The following sequence of events, described in the judgment of the Provincial Administrative Court in Poznań of April 4, 2024, I SA/Po 81/24 is illustrative: "The Management Board decided to convene a General Meeting, which adopted a resolution not to take steps toward liquidation and instead authorized the sale of the Cooperative's property. At the Management Board meeting in March 2015, due to the disclosed financial loss and loss of liquidity, the body decided to cover the loss with share capital and reserve fund, althouth these proved insufficient to cover the entire loss. Therefore, a General Meeting was convened for March 30, 2015. The General Meeting adopted a resolution to place the Cooperative into bankruptcy, but the District Court dismissed the petition due to the lack of assets necessary to conduct bankruptcy proceedings."

Finally, it should be noted that a cooperative's insolvency status must be established on the basis of its financial statements. There are no grounds for conducting additional evidentiary proceedings, such as witness testimony or valuation reports) to determine the actual market value of the cooperative's assets (including real estate).[17]

7. Procedure for filing a bankruptcy petition by a cooperative

A bankruptcy petition for a cooperative may be filed by the cooperative's management board, or in principle, by any of its members. Article 132 CL clearly provides that a personal creditor may also file a bankruptcy petition against a cooperative.

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[16] Supreme Court Decision (*postanowienie*) of May 10, 1999, II CKN 167/99. In turn, pursuant to Article 133 CL, if the financial statements prepared by the management board or liquidator indicate that the assets of a cooperative that has ceased operations are insufficient to cover the costs of bankruptcy proceedings, and the creditors do not consent to their coverage, then bankruptcy proceedings shall not be conducted. In such a case, the court, at the request of the creditors or the National Cooperative Council, shall order the deletion of the cooperative from the National Court Register, notifying the creditors and the National Cooperative Council thereof. In such a case, bankruptcy proceedings shall not be conducted.

[17] Judgment of the Supreme Administrative Court of 10 January 2017, I FSK 827/15

If grounds for the cooperative's insolvency are disclosed, the management board must immediately convene a general meeting to consider whether the cooperative should continue to operate. Several procedural options are possible.[18]

First, the general meeting may adopt a resolution to continue the cooperative's operation, simultaneously indicating specific measures to cover the deficit. However, upon the request of a creditor who has filed a bankruptcy petition, the court may declare the cooperative bankrupt despite the resolution of the general meeting regarding its continued operation. Second, the general meeting may adopt a resolution on the declaration of bankruptcy of the cooperative. In such a case, the management board is required to file a bankruptcy petition with the court.

The primary decision-making authority for filing a bankruptcy petition is the general meeting, which serves as the direct representative body of the cooperative's members. The general meeting must be convened, and its resolution is binding on the cooperative's management board.[19] Pursuant to Article 130(4) CL, "if the general meeting adopts a resolution

[18] The Supreme Administrative Court's judgment of October 19, 2022, Case No. III FSK 1005/21, states that the adoption by the general meeting of a resolution to declare a cooperative bankrupt falls within the exclusive jurisdiction of the general meeting. The provisions of Article 130 of the Act of September 16, 1982, Cooperative Law, regulating the intra-cooperative procedure for declaring bankruptcy of a cooperative, also define the exclusive competences of its individual bodies in this regard. If grounds for declaring bankruptcy exist, the management board is obligated to convene a general meeting, which adopts a resolution regarding the cooperative's continued existence, including a resolution to declare the cooperative bankrupt. Therefore, the decision in this matter does not rest with the cooperative's management board, as it is reserved by law to another body (Article 48(2) CL). Since the legislature clearly defined the liquidator's authority to file a bankruptcy petition without attending the general meeting, the absence of such a provision with respect to the management board leads to the converse conclusion that this body lacks the authority to independently decide whether to file a bankruptcy petition with the court despite the existence of a cooperative's insolvency. Nor can it do so despite a resolution of the general meeting regarding the cooperative's continued existence. This understanding of this issue is indirectly indicated by Article 132 CL, which stipulates that the court may declare a cooperative bankrupt even despite a resolution of the general meeting regarding its continued existence, limiting this to situations where it occurs at the request of a creditor. The management board's obligations in this proceeding are to convene a general meeting at the appropriate time, after determining through financial statements prepared in accordance with the principles of proper accounting (Article 87 CL) that the total value of the cooperative's assets is insufficient to satisfy all its obligations, and to promptly file a bankruptcy petition with the court after the general meeting adopts a resolution declaring the cooperative bankrupt.

[19] Judgment of the District Court in Szczecin of 15 January 2013, IV Ka 1413/12, Judgment of the Provincial Administrative Court with its seat in Gdańsk of 30 October 2019, I SA/Gd 1292/19.

to declare the cooperative bankrupt, the management board is obligated to file a bankruptcy petition with the court without delay." However, the resolution of the general meeting does not bind the bankruptcy court. These intra-cooperative proceedings are mandatory.[20] Their absence is a procedural impediment to declaring bankruptcy. If the general meeting fails to adopt a resolution, or adopts a negative one, the management board cannot independently file a bankruptcy petition. This structure reflects the social consequences of cooperative's bankruptcy.[21] Cooperative members may prevent the cooperative from being placed into bankruptcy at the initiative of the management board, despite the cooperative's obvious insolvency.

The time required to conduct intra-cooperative proceedings means that general statutory time limits for filing a bankruptcy petition do not apply. If the cooperative's management board fails to convene a general meeting in the event of the cooperative's insolvency, its members incur statutory liability for failing to file a bankruptcy petition. Article 58 CL provides that members of the management board, the council, and liquidators are liable to the cooperative for damage caused by acts or omissions contrary to the law or the cooperative's articles of association, unless they are not at fault. The following view has been expressed in the literature: "Not only are the members of the management board liable for damages under Article 58 CL for the worsening of a cooperative's insolvency; members of the supervisory board are likewise liable. If, despite insolvency, the management board fails to convene a general meeting, the supervisory board members is obligated to fulfill this duty on behalf of the management board."[22]

The Supreme Administrative Court's judgment of October 19, 2022, Case No. III FSK 1005/21, states that the specific nature of bankruptcy proceedings under CL requires that the validity of filing a petition to declare a cooperative bankrupt may and should be reviewed after the end of each fiscal year, provided that no resolution declaring the cooperative bankrupt was adopted in previous years. In other words, if the general meeting, within the scope and limits of its statutory authority, adopted a resolution not to

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20 Judgment of the Supreme Court of 19 May 2010, I CSK 480/09.

21 Judgment of the Provincial Administrative Court in Bydgoszcz of January 30, 2019, I SA/Bd 857/18: "If a resolution is adopted on the continued existence of a cooperative, simultaneously indicating measures enabling it to emerge from insolvency, the cooperative's management board will be released from the obligation to file a bankruptcy petition with the court… a general meeting should be convened immediately if the cooperative's financial statements indicate that the total value of assets is insufficient to satisfy all liabilities."

22 K. Królikowska, Postępowanie upadłościowe…, p. 24.

declare the cooperative bankrupt, despite the existence of the necessary grounds for doing so, this does not mean that if the next fiscal year ends with a loss, the cooperative's management board's obligation to convene a general meeting, with the cooperative's continued operation included on the agenda, ceases to apply.

8. Conclusions

It should be emphasized that the legislator did not introduce separate proceedings in BL for cooperatives, including housing cooperatives. Separate bankruptcy proceedings apply, among others, to developers. The legal framework related to cooperative bankruptcy remains fragmented. BL regulates certain effects of cooperative bankruptcy in its provisions on the consequences of bankruptcy for liabilities. CL, by contrast, provides very limited guidance on the course of bankruptcy proceedings. It regulates the effects of declaring bankruptcy of housing cooperatives on cooperative rights. A better legislative solution would be to regulate all the distinctions concerning (a) cooperatives and (b) housing cooperatives in BL. The issue of bankruptcy should be regulated directly by legislation dedicated to insolvency, rather than by fragmentary statutes governing the creation of particular legal entities. The Commercial Companies Code, the Foundations Act, the Associations Act, the European Economic Interest Grouping Act, and the European Company Act appropriately do not contain any detailed regulations on bankruptcy. De lege ferenda, bankruptcy legislation could introduce a dedicated bankruptcy procedure for cooperatives. Such a measure could resolve many controversial issues surrounding the declaration of cooperative bankruptcy. Apparently, the objective should be to standardize the grounds for insolvency for all legal entities, while allowing for limited deviations tied to general principles. The internal cooperative procedure for filing a bankruptcy petition should, however, be preserved.

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Holger Blisse
Self-employed analyst and researcher, Vienna

The Case for the Legal Protection of Cooperative Reserves in "Old" Cooperatives in Germany and Austria (Part 2)

Abstract

This article builds on the text published in issue V of the journal (2023, 152–158) and examines in more detail the origins of today's financial constitution under § 73 of the German Cooperative Act. This norm can be seen as a protective norm for the permanent continuation of the unity of an increasing portion of the reserves remaining in the cooperative. The norm emphasizes the 'social dimension' of cooperative reserves. Developments in Austria are also considered. Over time, special protection is required for cooperatives that have existed for several generations: for so called "old" cooperatives. This protection can come from both exceptions in the transformation law and additional – foundation-like – supervision.

Keywords: Cooperative reserves, cooperative unit, exceptions from transformations, external supervision, § 73 German Cooperative Act

Introduction

"In this article, the term 'old' cooperatives is used to refer to e.g. agricultural, consumer, credit or housing cooperatives that have been in existence for more than a generation."[1] Even more, an "old" cooperative is a cooperative all of whose members did not belong anymore to the cooperative because

[1] Blisse, "The Case for the Legal Protection of Cooperative Reserves in 'Old' Cooperatives in Germany and Austria," p. 152.

they had left the cooperative and/or died since they had contributed to the creation of the cooperative.

"Generations of members in 'old' cooperatives have contributed to the reserves in good faith, trusting that their cooperative would continue in existence and be available for future generations, given the validity of the designated protective norm (§ 73 German Cooperative Act). This trust should be maintained or restored with suitable legislative protection."[2]

Cooperatives are able to continuously develop their social function inherent in their financial constitution. Then cooperatives contribute to balancing – socially – within an economy that is characterized by the division of labor – still without paying the price for it – and that is, not only in Europe, increasingly market-and competition-driven. The constitution of small and medium-sized cooperatives in general counteracts concentration, increasing risks, and imbalances.

However, additional measures are needed to safeguard this contribution and protect cooperatives to ensure that they do not become indistinguishable from other companies, such as corporations. Therefore, the article recommends changes within transformation law and considers additional governmental supervision.

An economy in which market competition concerns the common good becomes problematic. Although this topic does not belong to the article, the question still arises: Why is it so? A brief explanation can be attempted: The general transformation of the economy toward an economy based on common wealth created (only) by companies seems to be a reaction to states whose deficit spending leads to their being replaced, in practice, by companies in the regions concerned. This seems to become a problematic development, but it is a result of viewing states as "deficit spenders."

1. Legal protection of cooperative reserves

The form of § 73 of the German Cooperative Act (GenG) on settlement, developed and maintained by legislation and supplemented by Chapter 3 in 1974, continues to constitute a protective standard. The protection applies, on the one hand, to the reserves-related unit of the cooperative as a whole, which over time rises to its social dimension. On the other hand, a cooperative

2 Blisse, "The Case for the Legal Protection of Cooperative Reserves in 'Old' Cooperatives in Germany and Austria", p. 156.

is seen not to be primarily suitable "for asset investment according to the provisions of the Cooperative Act, since no participation of departing members in any increase in value is provided for, and the cooperative is designed for an open membership base."[3] This potentially distinguishes a cooperative from other "competitors" and contributes to maintaining alternatives and options, as well as to the social dimension within a market and competitive economy to the extent that each generation of members is willing to retain a portion of the profits within the cooperative, thereby strengthening the cooperative's reserves.

A similar situation would apply to the state if it did not place an excessive burden on the tax base of its population[4] or established a so-called economic stabilization reserve at the Deutsche Bundesbank (§ 7(1) of the Act to Promote Stability and Growth of the Economy, *Stabilitätsgesetz*, StabG) to be able to draw on in times of crisis (§ 5(3) and 6(2) StabG). On a smaller scale, a cooperative can provide this for its members and customers (not yet members) and thus within its sector, while ensuring that the members' expectations of the cooperative remain achievable, which also requires the members to stand up for the cooperative.

If the rules of inheritance law are applied to ownership in a company, then the inheritance-law rule for members of a cooperative is that the profit generated during their membership and not paid to the members as dividends or reimbursed to them remains permanently in the cooperative, beyond the individual membership.

2. Foundation-like development of cooperative reserves

If the cooperative builds and expands its reserves in this way, the question arises as to what will happen in the event of the cooperative's dissolution, i.e. its inheritance. Indeed, a considerable amount of reserves can grow over time if the members decide, or if the articles of association (statute) stipulate, that part of the annual surplus is retained (§§ 19 and 20 of the German Cooperative Act): As can be seen from the BVR Annual Report for Credit Cooperatives, the capital paid in on members' shares, calculated across all credit cooperatives, is approximately one quarter of total equity,

3 Deutscher Bundestag, *Drucksache 19/11467*, p. 7.

4 Krejci, "Über Bürgen mit leeren Taschen," p. 126.

compared to three quarters allocated to reserves.[5] This part of the reserves accumulated in today's "old" cooperatives has grown over many generations. One could even say that – due to the financial constitution in the event of a dispute with a member – something social has been created by the individual contribution as a (recognized or voluntary) waiver in favor of the whole, the cooperative.[6] Over time, it can assume such proportions, and conflict with individual advantage, that it arouses "desirabilities"[7] and could be abolished or relocated by legal means. Many cooperatives, some of which have been in existence and operating for more than 100 years, find themselves in this situation. Furthermore, they are denied the ability to continue to exercise their promotional function, particularly in local and regional areas.[8] With each merger and transformation, the number of institutions decreases, and they become increasingly larger, making it more difficult to recognize that they correspond to their cooperative principles.[9]

The legal requirements for a transformation were established in Germany as early as 1969, based on European developments. At that time, cooperatives were given the option of converting to the legal form of a stock corporation (§§ 385m – 385q Stock Corporation Act),[10] which was later expanded by comprehensive transformation law with the Transformation Act of 1995 (*Umwandlungsgesetz*, UmwG).

3. Austrian law

Responses from two professors in Austrian law point in different directions: Van Husen emphasizes that "savvy members of the association derive significant financial advantages from terminating the cooperative at a time favourable to them, as they could thus appropriate the assets of the cooperative."[11] In the event of the cooperative's liquidation, the "remaining surplus

5 Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), *Jahresbericht 2024*, p. 63.

6 Blisse, "Bürgerschaftliches Engagement und wirtschaftliche Förderung verbinden," 13, Blisse, *Genossenschaft und Gemeinwohl*, Blisse, "Warum Genossenschaften ihr Vermögen zusammenhalten sollten," p. 317.

7 Beuthien/Klappstein, *Sind genossenschaftliche Rücklagen ein unteilbarer Fonds?*, 123 ("Begehrlichkeiten").

8 Scheumann, *Die Abkehr von der Genossenschaftsidee*.

9 Beuthien, "Entfernen sich zu viele Genossenschaften von ihrer Leitidee?".

10 Deutscher Bundestag, *Drucksache V/4253*, p. 6.

11 Van Husen, *Wem gehört das Genossenschaftsvermögen?*, p. 181 f.

is distributed among the members in accordance with the provisions of the cooperative agreement regarding profit distribution" (§ 48 No. 3 of the Austrian Cooperative Act).

In practice, this arrangement is likely to be the exception, as a credit cooperative rarely enters liquidation and is more likely to merge with another – sometimes due to restructuring. The assets are then transferred to the acquiring cooperative (or bank). A merger is unproblematic from an asset-management perspective, but above all from a development perspective, as long as the cooperative remains manageable in size, maintains its cooperative orientation and legal form, and no generation of members is disadvantaged. If there is a change in legal form, or a merger with higher-level credit institutions within a multi-level cooperative network, for example, with institutions at the regional level up to the national level of this cooperative organization, then also the reserves that have been placed at the service of the cooperative for generations are also transferred. Furthermore, the influence of the individual member decreases not only over time but also with the increasing size of the group of all members. If the acquiring companies are corporations – possibly listed on the stock exchange – then the assets would be individualized and tradable, thus making them accessible for exploitation on the capital market.

In the liquidation of a cooperative that excludes any distribution of profits during its existence in favour of its owners, as reflected, for example, in the design principles of Raiffeisen cooperatives, the question arises of how any liquidation surplus should be treated. This is because the members of the cooperative at the time of liquidation receive nothing beyond the capital they paid in on their shares, just like previous or deceased members do. In his commentary on the Austrian Cooperative Act, Dellinger points out that, in such cases, efforts are made to "go beyond the continued interest of their own cooperative… to preserve the 'cooperative idea' and the cooperative assets as a supra-individual legacy for the region."[12] "Region" here likely refers to a limited and manageable catchment area.

In practice, for example, the statutes of Raiffeisen banks provide that the remaining assets must be invested with the solidarity association of the respective Raiffeisen banking group "until a new Raiffeisen bank is established in the area of activity… If no Raiffeisen bank is established within ten years of the deletion, the solidarity association may, in agreement with the auditing association, use the funds in accordance with the statutes."

12 Dellinger, *Genossenschaftsgesetz samt Nebengesetzen*, § 79 Rn. 23.

his diploma thesis from Linz (Catholic Theological Private University), Opitz cites the statutes of the Raiffeisen Solidarity Association for members of the Upper Austrian Raiffeisen Financial Organization (§ 2): "The purpose of the association is to support individual members of Upper Austrian Raiffeisen credit cooperatives, or their relatives, who have fallen into hardship through no fault of their own, provided that these are cases of hardship, in particular by providing support in cases of accidents and illness, assistance for relatives in the event of death, and support for widows and orphans of members."[13]

But the situation has also changed in Austria – albeit with some delay.[14] The Cooperative Merger Act (*Genossenschaftsverschmelzungsgesetz*, GenVG) has been in force since 1980. Although cooperatives – with the exception of credit cooperatives (§ 92 of the Banking Act (BWG), or previously § 8a of the former Banking Act (KWG))[15] – are still generally exempt from converting to a corporation, this suggests that the legislature is committed to the idea that "the establishment of a cooperative should have a lasting effect."[16] However, this legal situation, which corresponds to the structure of a cooperative that permanently preserves its reserves as a unit, was changed in 2019 by the Cooperative Split Act (*Genossenschaftsspaltungsgesetz*, GenSpaltG).[17] Later, even non-profit associations were allowed to convert into cooperatives (§ 91a of the Austrian Cooperative Act). The risk that the Austrian legislation will also more towards a general Transformation Act, and that cooperatives will lose their distinctive characteristics, has likewise increased in Austria.[18]

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13 Opitz, *Genossenschaften und Caritas*, p. 78.

14 Dellinger, *Genossenschaftsrecht Kommentar*.

15 E.g. van Husen in Laurer et al., *Bankwesengesetz*, § 92, Dellinger/Schellner in Dellinger, *Genossenschaftsrecht Kommentar*, § 92 BWG.

16 Blisse, "Genossenschaft als Marktwirtschaft-Moderator."

17 Mösenbacher, "Das bringt das neue Genossenschaftsspaltungsgesetz," Dellinger/Schellner, "Das neue Genossenschaftsspaltungsgesetz," Ritt-Huemer/Simonishvili, "Genossenschaft, spalte dich!," 328, as an answer Blisse, "Warum Genossenschaften ihr Vermögen zusammenhalten sollten." Furthermore Kalss, "Die nichtverhältniswahrende Spaltung von Genossenschaften," and referring to her Blisse, "Die Blickwinkel der Umgründungen."

18 The general development of cooperative law into the direction of corporate law has been descripted with the term "Verkapitalgesellschaftung": Henrÿ, "Genossenschaften und das Konzept der Nachhaltigkeit," p. 69.

4. Capital market-oriented development or protection of cooperative capital?

In the case of a cooperative sector with a listed central institution, today's decision-makers, by converting the cooperative or merging it with listed affiliated companies, are enabling capital market investors to inherit assets built up by generations of members who had renounced their claim to the reserves. The members would, to a large extent and in part without their knowledge and consent, have been deprived of the cooperative's social function, both now and in the future.

Even if the members today become shareholders or receive a partial equity stake through cooperative shares,[19] only those who are members of the cooperative at the time of the conversion, as well as future members (and future generations), would benefit.[20]

Asset disposals are highly regrettable:[21] on the one hand, they mean the loss of an institution in the market and for the future, namely cooperatives whose offerings help moderate prices. On the other hand, one generation appropriates reserves that have accumulated over many generations.

But reserves that have accumulated over generations require protection and responsible use: "This is one of the reasons why awareness of the social dimension and the preservation of the assets of the 'old' cooperatives are required."[22]

Because this "social dimension" can reduce some of the pressure for adjustment or change exerted by market and price mechanisms within a money-based, hierarchical, competitive economy. The continued existence of cooperatives can provide a complementary contribution to state services, for example with regard to the economic and social protection of people particularly affected during periods of significant social change. This is another reason why awareness of the social dimension and the protection

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19 E.g. Hofinger, "Beteiligungsinstrumente an der Genossenschaft," van Husen, *Der genossenschaftliche Geschäftsanteil mit Substanzbeteiligung*, Beuthien/Klappstein, *Sind genossenschaftliche Rücklagen ein unteilbarer Fonds?*, 54, 117, and Beuthien, "Erwerben Genossenschaftsmitglieder 'genossenschaftliches Eigentum'?," p. 1327.

20 Münkner, "Go public and remain cooperative?."

21 Blisse, "The Case for the Legal Protection of Cooperative Reserves in 'Old' Cooperatives in Germany and Austria," p. 155.

22 Blisse, "The Case for the Legal Protection of Cooperative Reserves in 'Old' Cooperatives in Germany and Austria," p. 156.

and preservation of reserves, and thereby the financial constitution of the "old" cooperatives, is necessary.[23]

If the federations themselves pursue their own merger and transformation strategy – supported by the European Commission[24] then only state oversight and legal adjustments would remain[25] to prevent significant financial harm to members and even the state itself, as has repeatedly affected larger "old" cooperative structures.[26]

Having established a cooperative, the first generation of members, like all subsequent generations, trusted in good faith in the continued existence of their cooperative and in the validity of the current protection standard (nowadays § 73 of the German Cooperative Act, similar to the third ICA/IGB principle). This trust must be maintained or restored by appropriate legal institutions. But the fewer "old" cooperatives remain, the less the question of their protection arises. However, the question arises before every decision that entails the disposal of assets – such as mergers, divisions, asset transfers, or changes of legal form – and for all newly created cooperatives, at the latest when the first generation of members is no longer alive, and is therefore of general relevance.

For "old" cooperatives, it is worth considering viewing them as a "life's work for generations" – also for the sake of their credibility.[27]

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23 For the limited-profit housing associations in Austria Feichtinger/Schinnagl, "Die Vermögensbindung als Eckpfeiler der Wohnungsgemeinnützigkeit," for the German limited liability company (GmbH) Preis, *Anforderungen an eine systemkonforme Ausgestaltung der Vermögensbindung im Recht der GmbH* and for cooperatives Blisse, "Wohnungsgemeinnützigkeit, ihre Träger und deren Angebot," p. 165.

24 Commission of the European Communities (Kommission der Europäischen Gemeinschaften), *Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee ant the Committee of Regions on the promotion of co-operative societies in Europe*, 13: "The Commission encourages [German: "fordert auf", p. 15] Member States to ensure that the assets of cooperatives upon dissolution or conversion should be distributed according to the cooperative principle of 'disinterested distribution'."

25 Beuthien/Klappstein, *Sind genossenschaftliche Rücklagen ein unteilbarer Fonds?*, 104 – 107, Beuthien, "Die Pflichtmitgliedschaft im genossenschaftlichen Prüfungsverband nur selbstgewollte Zuschreibung?," p. 1307 (II., 1., lit. f).

26 Brazda/Schediwy, *Consumer Co-operatives in a Changing World*, Todev/Brazda, *Aufstieg und Untergang der Österreichischen Volksbanken-AG*.

27 Raiffeisen, *Die Darlehenskassen-Vereine*, 18, Deutscher Genossenschaftsverband, *Schulze-Delitzsch – ein Lebenswerk für Generationen*.

5. Conclusion

In the "old" cooperatives – often in existence for many generations – and within their federal structures, reserves have grown over time, with each generation of members waiving their rights in favor of the cooperative. Due to the cooperative's unique financial constitution, these reserves can no longer be directly attributed to any single generation of members and increasingly resemble a foundation fund.

Cooperatives, as the bearers of these reserves, are able to contribute to social balance withina market-based and competitive economy. In order to preserve these reserves within a cooperative and protect them within a framework consistent with cooperative principles, an increasing number of institutions, both external to the cooperative and accepted by it, are needed over time. These institutions should be equipped by the legislation as needed – including, where appropriate, exempting older and larger cooperatives from the provisions of transformation law, such as the German Transformation Act, and, if necessary, subjecting them to additional state oversight, since the extent of the damage they can cause in the event of failure is particularly great. In this regard, experience from foundation law could make a valuable contribution to the further development of cooperative law, helping to protect and preserve the reserves of the "old" cooperatives.

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Tomasz Dąbrowski
Kazimierz Pułaski University in Radom
https://orcid.org/0000-0001-6184-140X

Liquidation of Cooperatives under Polish Law

Abstract

Cooperatives have a rich tradition in Poland and remain an important part of the economic landscape. Cooperatives bring members together to conduct joint economic activities in their collective interest. The liquidation of primary-level cooperatives is regulated by the current Act of 16 September 1982 – Cooperative Law. The aim of this article is to analyze this institution, with particular emphasis on the legal basis, the liquidation process, and the role of the bodies involved in this process. The author argues that the legal regulation governing the liquidation of cooperatives under said law, despite its formal detail, does not meet contemporary economic security standards due to fundamental shortcomings in determining the date of commencement of liquidation, qualification requirements for liquidators, and the status of cooperative bodies during liquidation proceedings. These legal gaps lead to interpretive uncertainty, risks to creditors' rights and the ineffectiveness of liquidation procedures, which requires a comprehensive amendment to align cooperative liquidation rules with those applicable to commercial companies.

Keywords: cooperative law, liquidation of cooperatives, National Cooperative Council

Introduction

Cooperatives in Poland have a rich tradition dating back to the nineteenth century and remain an important part of the economic landscape. Cooperatives bring together members to conduct joint economic activity in

their collective interest. They are one of the basic organizational and legal forms of conducting economic activity in the Polish legal system.

The institution of cooperative liquidation has been an integral part of Polish cooperative law since its codification in 1920. The first comprehensive regulation in this area was set out in the Act of 29 October 1920 on Cooperatives, in which the legislator devoted Section II, Chapter 11, comprising Articles 85–106, to this matter.[1] The next stage in the development of cooperative legislation was the Act of 17 February 1961 on Cooperatives and Their Unions, which regulated liquidation in Part I, Title I, Chapter IX, Articles 72–86.[2] The current legal framework is defined by the Act of 16 September 1982 – Cooperative Law, which regulates in detail the issues of liquidation of cooperatives in Part I, Title I, Section XII, entitled "Liquidation of Cooperatives," covering Articles 113–129.[3]

In legal terms, the liquidation of a cooperative should be understood as a specific procedure regulated in Section XII CL and in other specific provisions. The liquidation procedure is therefore a set of factual and legal actions provided for by law, aimed at removing the cooperative from the register of entrepreneurs.[4] It should be emphasized that the subject of this analysis is the liquidation of a primary-level cooperative, regulated in Section XII CL. Due to the limited scope of this study and the differences in legal regulations, liquidation procedures relating to other entities of the cooperative movement, particularly social cooperatives or audit unions, are outside its scope. Each of these organizational forms is characterized by specific legal solutions that would require a separate analysis.

The purpose of this article is to analyze the institution of liquidation of primary-level cooperatives in the Polish legal system, with particular emphasis on the legal basis, the course of liquidation proceedings, and the role of the authorities involved. The study also aims to identify interpretive problems and regulatory gaps in the binding law and to formulate de lege ferenda proposals intended to streamline the liquidation procedure and enhance the security of economic transactions.

The author argues that the legal framework governing the liquidation of cooperatives under the CL, despite its formal detail, does not meet contemporary standards of economic transaction security due to fundamental

1 Consolidated text: Journal of Laws of 1950, No. 25, item 232, as amended.

2 Journal of Laws of 1961, No. 12, item 61.

3 Consolidated text: Journal of Laws of 2024, item 593, as amended; hereinafter: "CL."

4 Marta Stepnowska-Michaluk, *Likwidacja spółdzielni* (Sopot: Spółdzielczy Instytut Naukowy, 2009), p. 29.

shortcomings in determining the date of commencement of liquidation, the qualification requirements for liquidators, and the status of cooperative bodies during liquidation proceedings. These legal gaps lead to interpretive uncertainty, risks to creditors' rights and the ineffectiveness of liquidation procedures, which requires a comprehensive amendment to align the liquidation framework with the rules applicable to commercial companies.

The study uses a dogmatic-legal method, consisting of an analysis of the applicable provisions of the CL and related legal acts, such as the Act of 23 April 1964 – Civil Code[5] and the Act of 15 September 2000 – Commercial Companies Code.[6] The historical-legal method was also used to show the evolution of regulations concerning the liquidation of cooperatives from 1920 to the present. In addition, a comparative method was employed, contrasting cooperative liquidation with analogous procedures applicable to commercial companies, as well as a case law and literature analysis, enabling the assessment of practical problems in the application of regulations and the identification of necessary legislative changes.

Reasons for the liquidation of cooperatives and types of liquidation

Statutory liquidation

Under Article 113 § 1(1) and (2) CL, a cooperative enters into liquidation by operation of law: (1) upon expiry of the period for which it was established under its articles of association, or (2) when the number of members falls below the minimum specified in the articles of association or in the CL, and the cooperative fails to increase the number of members to the required majority within one year.

A cooperative is to be placed in liquidation ex lege upon expiry of the period for which it was established, provided that its articles of association expressly indicate the temporary nature of its activities. Pursuant to Article 5 § 1(2) CL, the articles of association of a cooperative must specify its duration if it was established for a fixed term.

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5 Consolidated text: Journal of Laws of 2025, item 1071; hereinafter "CC."

6 Consolidated text: Journal of Laws of 2024, item 18, as amended; hereinafter "CCC."

A cooperative is to be placed in liquidation ex lege when the number of its members falls below the threshold specified in the articles of association or in the CL, and if it fails to increase the number of members to the required minimum within one year (Article 113 § 1(2) CL).[7] This period is calculated from the date on which the number of members first fell below the required minimum. The term "permanent loss of members" should be understood as the continuous maintenance of this state during the one-year period. It does not constitute a separate, additional condition beyond the requirement that the insufficient number of members persists for one year. The cooperative is wound up by operation of law, without the need for a resolution by the general meeting or another cooperative body.[8]

It should be noted that a cooperative whose membership falls below the minimum specified in its articles of association, yet remains above the statutory minimum, may avoid liquidation by amending its articles of association accordingly. A cooperative established for a fixed term may, however, amend its articles of association before the term expires, thereby extending its duration.

It should be emphasized that the management board or the liquidator must attach to the application for the opening of liquidation proceedings documents confirming the current number of members of the cooperative and the dates on which membership ceased, to the extent necessary for the registry court to determine that the statutory conditions for liquidation under Article 113 § 1(2) CL have been met.[9]

Voluntary liquidation

Pursuant to Article 113 § 1(3) CL, a cooperative is liquidated as a result of two unanimous resolutions of the general meetings, each adopted by a 3/4 majority, with at least a two-week interval between them.[10] This form of liquidation is known as voluntary liquidation. It is based on two principles:

7 According to the judgment of the Court of Appeal in Gdańsk of 27 March 2013, I ACa 815/12, LEX No. 1335628, in the light of Article 113 § 1(2) CL, the existence of a cooperative depends on it having the minimum number of members specified in the relevant provisions, and not on it having assets.

8 See the judgment of the Supreme Administrative Court of 15 December 2020, II FSK 1068/19, LEX No. 3150051.

9 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 87.

10 Adam Żabski, *Komentarz dla wszystkich do ustawy Prawo spółdzielcze* (Warszawa: Wydawnictwo Spółdzielcze, 1983), p. 69.

(1) the voluntary nature of establishing and dissolving a cooperative, and (2) self-governance, understood as the members' right to decide on the most important matters of the cooperative, including its liquidation.

Voluntary liquidation is a legally defined sequence of events, the order of which is specified by the CL.[11] This sequence includes:

- two resolutions of the general meeting (or the meeting of representatives),
- consistency between both resolutions concerning the liquidation of the cooperative,
- adoption of both resolutions by a 3/4 qualified majority,
- adoption of both resolutions at two consecutive general meetings held at least two weeks apart.[12]

Voluntary liquidation carried out in this manner constitutes a unilateral legal act. All of these conditions must be met for the cooperative to enter liquidation, and failure to satisfy any of them renders the resolutions legally ineffective. The general meeting may not adopt a resolution to liquidate the cooperative without following the prescribed procedure, as this would violate the mandatory provisions of the CL.[13] It should be emphasized that voluntary liquidation cannot be replaced by a resolution of the cooperative members to suspend the cooperative's business activity for an indefinite period.

Compulsory liquidation

Compulsory liquidation of a cooperative is a special form of terminating its legal existence, initiated not by the will of its members, but by a resolution adopted by an external supervisory body. In accordance with the applicable legal order, compulsory liquidation occurs when the cooperative is placed into liquidation by a resolution adopted by the competent audit union, duly authorized by statute. For cooperatives not affiliated with an audit union, the National Cooperative Council, which acts as their supervisory body, is empowered to adopt such a resolution.

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11 Such an accurate description of voluntary liquidation was presented by Adam Jedliński, *Członkostwo w Spółdzielczej Kasie Oszczędnościowo-Kredytowej* (Warszawa Wydawnictwo Prawnicze LexisNexis, 2002), p. 247.

12 Stepnowska-Michaluk, *Likwidacja spółdzielni*, p. 88.

13 See the judgment of the Court of Appeal in Gdańsk of 12 October 1994, I ACr 614/94, OSA 1995, vol. 2, item 7.

In Article 114 § 1(1–3) CL, the legislator specified three basic conditions which, if met, authorize the audit union to adopt a resolution to place the cooperative in liquidation. The first refers to a situation in which the cooperative's activities exhibit gross and persistent violations of the law or the provisions of its articles of association. In this provision, the legislator employed vague terms that require interpretation in light of specific factual circumstances. In cooperative law doctrine, a gross violation is understood as a serious and significant breach, typically relating to fundamental organizational matters and to the manner, subject matter, and scope of the cooperative's economic activity.[14] A persistent violation, by contrast, refers to conduct of a cooperative that is unlawful or contrary to its articles of association and that is repetitive and sustained, indicating the systemic nature of the irregularity.[15]

The second condition concerns a situation in which a cooperative was registered in violation of the law and relates closely to the fact that a cooperative, as an entrepreneur, is required to be entered in the court register under Article 7 CL. Defective registration may involve either formal deficiencies in the founding documentation and a failure to satisfy statutory requirements regarding the minimum number of founding members or the number of shares.

The third condition is met when the cooperative has not conducted business activity for at least one year, which is a statutory obligation of every cooperative under Article 1 § 1 CL, which defines a cooperative as an entity conducting joint business activity in the interest of its members.[16] Non-operation occurs when a cooperative fails to perform the activity specified in its articles of association or required under specific provisions. The list of circumstances under which an audit union may place a cooperative in liquidation is closed.[17]

A necessary condition for initiating liquidation proceedings is to demonstrate that the cooperative, despite a prior request from an authorized audit union performing supervisory functions, has not remedied the identified deficiencies within the time limit set for that purpose. Only the persistent

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14 Stepnowska-Michaluk, *Likwidacja spółdzielni*, p. 93.

15 Ibid., p. 94.

16 See Supreme Court resolution of 13 December 2000, III CZP 43/00, OSNC, No. 5, item 68; Supreme Court resolution of 21 January 2001, III CZP 44/00, OSNC 2001, No. 5, item 69.

17 Marta Stepnowska, Piotr Zakrzewski, "Ustanie spółdzielni", In *System Prawa Prywatnego, Prawo spółdzielcze* 21, edited by Krzysztof Pietrzykowski (Warszawa: C.H. Beck, 2020), p. 394.

nature of these violations and the lack of an appropriate response from the cooperative's authorities can justify the conclusion that the continuation of the entity's activities conflicts with the principles of sound cooperative management and the applicable legal order.

Removal of a cooperative from the National Court Register without liquidation proceedings

A special provision under Article 115 CL provides for the possibility of removing a cooperative from the National Court Register (Pol. *KRS*) without conducting liquidation proceedings. The application of this provision is permissible only if two substantive legal conditions are met cumulatively: (1) the cooperative has not commenced actual economic activity within one year of its entry in the register, and (2) it possesses no assets whatsoever. The legal standing to file a request for removal is held by the audit union to which the cooperative belongs. If the cooperative is not affiliated with any audit union, the National Cooperative Council acts in its place.

The removal of a cooperative from the court register pursuant to Article 115 CL takes place without the need to conduct liquidation proceedings within the meaning of Article 113 et seq. CL. Although this legal effect is not expressly stated in the analyzed provision, a logical and systematic interpretation of Article 115 CL,[18] read in conjunction with Articles 113 and 114 CL thereof, leads to the unequivocal conclusion that the legislator intended to establish a simplified procedure dispensing with liquidation for entities that possess no assets and conduct no economic activity whatsoever.

Specific legal grounds for the liquidation of a cooperative: absence of cooperative bodies (Article 42 CC)

The legal grounds for placing a cooperative in liquidation are also regulated outside the CL. An example is Article 42 CC. In a situation where a cooperative is unable to function due to the absence of a body authorized to represent it, the legislator has provided a remedial mechanism in the form of the appointment of a court-appointed administrator (curator) under Article 42 § 1 CC. This measure prevents the paralysis of the entity's

18 Stepnowska, Zakrzewski, "Ustanie spółdzielni", p. 395.

decision-making and operational functions. The court appoints a curator for such a legal person, who acts under the court's ongoing supervision.

The scope of application of Article 42 CC in relation to cooperatives is very narrow, as a curator may be appointed only when no cooperative body exists, resulting in an inability to manage the entity's affairs. The body authorized to manage the cooperative's affairs, in accordance with Article 48 CL, is the management board.[19]

Until the management board is appointed, the curator represents the cooperative and manages its affairs within the limits specified in the court certificate (Article 42 § 2 CC).[20] His primary and immediate duty is to take measures to appoint or supplement the composition of the representative body and, where necessary, to liquidate it (Article 42 § 3 CC).[21] If these measures prove ineffective, the administrator must instead prepare the cooperative for liquidation. However, the curator does not enjoy unrestricted authority in managing the entity's assets. Under pain of nullity, the curator must obtain authorization from the registry court for key transactions, such as the sale of a business or real estate (Article 42 § 4 CC). As a rule, a curator is appointed for a period not exceeding one year (Article 42^1 § 1 CC). In duly justified cases, when remedial measures require more time, this period may be extended (Article 42^1 § 1 CC). However, if the measures undertaken by the curator within the specified period do not result in the restoration of the cooperative's governing bodies or in its liquidation, the curator has another obligation: they must immediately apply to the registry court for the dissolution of the legal person (Article 42^1 § 2 CC). This is a final measure to ensure that a dysfunctional cooperative does not remain in a state of legal limbo. This power does not preclude dissolution under separate provisions (Article 42^1 § 2 CC).

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19 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 101.

20 According to the judgment of the Supreme Administrative Court of 10 March 2008, II OSK 59/07, LEX No. 456325, Article 42 § 1 CC imposes on the curator the obligation to immediately take measures to appoint the bodies of a legal person and, when necessary, to liquidate it. The curator should therefore take all permissible measures to enable the legal person to function through its bodies in the manner specified in the law and in relevant statutes, in accordance with Article 38 CC. However, they are not authorized to replace these bodies in the exercise of their powers. The scope of the curator's powers is defined in Article 42 § 2 CC, which specifies measure that they are authorized to undertake.

21 As the Supreme Court correctly concluded in its judgment of 6 October 2011, V CSK 457/10, LEX No. 1027202, the powers of a cooperative administrator appointed pursuant to Article 42 § 1 CC are limited only to efforts to immediately appoint the cooperative's bodies and, when necessary, to liquidate it.

In practice, the need to appoint a court-appointed administrator pursuant to Article 42 § 1 CC will arise primarily in relation to so-called "dead cooperatives," which no longer have members serving on their governing bodies, and, moreover, have often never been re-registered in the new National Court Register from the former register of cooperatives in force before 1 January 2000, i.e. the date of the Act of 20 August 1997 on the National Court Register becoming effective.[22]

Commencement of liquidation proceedings

An application for the commencement of liquidation, whether statutory or voluntary, is to be submitted to the registry court by the cooperative's management board or the appointed liquidator. The entity submitting the application must also provide notice to the competent audit union.[23] In relation to non-affiliated cooperatives, the functions of the audit union are performed by the National Cooperative Council (Article 259 § 3 CL[24]). In the event of non-compliance, the burden of making the notification within 14 days of becoming aware of the existence of grounds for liquidation is shifted to the indicated institutions.

The application for entry of the commencement of liquidation in the register must be accompanied by (1) the resolutions of the general meetings placing the cooperative in liquidation, (2) financial statements prepared as at the date of commencement of liquidation, and (3) a notarized specimen signature of the liquidator.

Unlike the CCC(Article 274 § 1 and Article 461 § 1), the CL does not specify the date of commencement of liquidation.[25] Considering the legal significance of this moment in the life of a cooperative, the current regulation should be considered inadequate. To eliminate uncertainty, it would be reasonable to propose that a provision be included in the CL explicitly stating that liquidation commences on the date on which this information in entered in the register.

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22 Consolidated text: Journal of Laws of 2025, item 869. Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 104.

23 Henryk Cioch, *Prawo spółdzielcze* (Warszawa: Wolters Kluwer Polska 2011), 100.

24 Adam Stefaniak, *Prawo spółdzielcze. Ustawa o spółdzielniach mieszkaniowych. Komentarz* (Warszawa: Wolters Kluwer, 2018), p. 228.

25 See the decision of the Provincial Administrative Court in Gdańsk of 25 October 2018, III SA/Gd 616/18, LEX No. 2572901.

In practice, the date on which liquidation commences is determined by the reason for its initiation. When liquidation results from the expiry of the period of activity or from a reduction in the number of members below the threshold specified in the articles of association or in the CL, liquidation commences on the first day following the relevant event. When liquidation is initiated on the basis of resolutions of the general meeting, adopted by a three-quarters majority at two consecutive meetings held at least two weeks apart, liquidation commences on the date of adoption of the second resolution. However, in the cases specified in Article 114 § 1(1–3) CL, liquidation commences on the date on which the resolution of the audit union or the National Cooperative Council to place the cooperative in liquidation becomes final.[26]

The entry recording the commencement of liquidation is only incidentally constitutive,[27] as the cooperative does not lose its legal personality. After entering or being placed in liquidation, it continues to have legal capacity, the capacity to perform legal acts, and the capacity to be a party to court and administrative proceedings. Yet, its activities are limited to those necessary to complete current affairs, satisfy creditors, and liquidate its assets.

Pursuant to Article 121 § 1 CL, a cooperative in liquidation retains its existing name, but the phrase "in liquidation" must be included therein to protect the interests of third parties. The entry recording the commencement of liquidation in the National Court Register causes the expiry of existing powers of attorney that are subject to registration. Powers of attorney and proxies granted before the commencement of liquidation expire by operation of law on the date of that entry and are deleted from the register upon the liquidator's request (Article 120 CL). The cooperative is represented by the liquidator, who may be a natural or legal person within the meaning of Article 118 CL.

The provisions of Section XII CL do not clearly define the legal position of individual cooperative bodies after the commencement of liquidation. An analysis of individual provisions imposing specific obligations on the supervisory board and the general meeting during liquidation indicates that these bodies continue to operate. The supervisory board is entitled

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26 Stepnowska-Michaluk, *Likwidacja spółdzielni,* pp. 114–115.

27 Małgorzata Wrzołek-Romańczuk, *Rejestr spółdzielni. Zagadnienia materialnoprawne i procesowe* (Warszawa: Wydawnictwo Spółdzielcze, 1986), 104; Paweł Suski, Rejestry sądowe spółek handlowych, spółdzielni, przedsiębiorstw państwowych (Warszawa: Wydawnictwo Prawnicze, 1994), p. 157.

to conclude an agreement with the liquidator for the performance of liquidation activities (Article 118 § 3 CL), and the general meeting retains competences such as the appointment and dismissal of liquidators and the approval of the financial statements as at the date of completion of liquidation (Article 126 § 1 CL). The absence of any statutory exclusion of their activities during liquidation further supports the view that these bodies continue to operate.

The status of the management board remains controversial. H. Cioch, referring to Article 116 § 2 CL, according to which "the management board or the liquidator should immediately report the resolution on the restoration of the cooperative's activities to the National Court Register," argues that the management board continues to operate after the commencement of liquidation.[28] M. Stępnowska-Michaluk, by contrast, points out that upon the commencement of liquidation, all powers are transferred to the liquidators, who thereby replace the management board.[29]

The commencement of liquidation entails specific legal consequences. Upon the commencement thereof, the provisions of the CL regulating the order of covering balance sheet losses from individual cooperative funds cease to apply, as specified in Article 123 CL. The cooperative's existing own funds are merged into a single basic fund, allocated entirely to the purposes of the liquidation proceedings.[30] The provisions governing the payment of membership shares and the distribution of the balance-sheet surplus also cease to apply.

Cooperative liquidators

The CL does not contain a legal definition of the term "liquidator of a cooperative." In doctrine, it is understood that a liquidator is a person appointed at the time of placing a cooperative in liquidation and tasked with conducting the liquidation proceedings aimed at terminating its activities,

28 Cioch, *Prawo spółdzielcze,* p. 69. He states, however, that during the liquidation proceedings, the liquidator and the management board of the cooperative cannot operate simultaneously.

29 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 131. This position is also confirmed by doctrine, see Remigiusz Bierzanek, *Prawo spółdzielcze w zarysie* (Warszawa: PWN, 1989), 80; Mirosław Gersdorf, Jerzy Ignatowicz, *Prawo spółdzielcze. Komentarz* (Warszawa: Wydawnictwo Prawnicze, 1985), p. 202.

30 Marta Stepnowska-Michaluk, "Majątek likwidowanej spółdzielni (cześć I)", *Prawo i Wieź,* no. 3 (2009): 117.

repaying creditors, and liquidating its assets.[31] Pursuant to Article 118 § 1 and 2 CL, a liquidator may be a natural or legal person who does not need to be a member of the cooperative, including a member of the last management board, a person elected by the general meeting, a person appointed by the audit union, or an external entity.[32] The admission of legal persons is an exceptional solution compared to commercial companies, where this function may be performed only by natural persons with full legal capacity (Article 18 § 1 CCC).

The legal status of a liquidator is, in principle, the same as that of members of the cooperative's management board. For this reason, the general provisions concerning members of the management board apply to liquidators, unless the provisions concerning the liquidation of cooperatives provide otherwise.[33] The CL provides for restrictions on the appointment of a liquidator. Pursuant to Article 56 § 1 in conjunction with Article 119 § 1 CL, a member of the supervisory board may not serve as a liquidator, unless they first resign from the position. Furthermore, pursuant to Article 56 § 3 in conjunction with Article 119 § 1 CL, a person conducting business competitive to the cooperative being liquidated may not be appointed as a liquidator.

However, the CL does not specify formal legal criteria for a candidate for the position of liquidator. It is therefore possible to appoint a person who does not have full legal capacity or who has been convicted of offences against property. This solution differs from the model of commercial companies, where, pursuant to Article 18 § 1–2 CCC, only a natural person with full legal capacity and not convicted of offences specified in Chapters XXXIII-XXXVII of the Act of 6 June 1997 – Criminal Code[34] may be appointed as a liquidator. The absence of such restrictions has a negative impact on the security of economic transactions and on the protection of creditors. De lege ferenda, it is proposed to introduce a requirement of full legal capacity, to exclude persons convicted of offences against property or economic transactions, and to consider limiting the function of liquidator to natural persons only. The relevant provisions could be included in Section IV, Chapter 3 CL, which, through Article 119 § 1, would apply mutatis mutandis to liquidators.

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31 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 145.

32 See the judgment of the Court of Appeal in Gdańsk of 16 July 2019, III AUa 1274/18, LEX no. 3388787.

33 Leopold Stecki, *Prawo spółdzielcze* (Warszawa PWN, 1987), p. 177.

34 Consolidated text: Journal of Laws of 2025, item 383, as amended.

The determination of the authority competent to appoint a liquidator depends on the type of liquidation. Article 118 § 1 CL stipulates that liquidators may be members of the last management board or persons elected by the general meeting. In the case of statutory or voluntary liquidation, the appointment is made by a resolution of the general meeting. If several liquidators have been appointed, Article 54 § 1 and 3 in conjunction with Article 119 § 1 CL applies to the submission of declarations of intent. In the event of compulsory liquidation, pursuant to Article 114 § 2 sentence 2 CL, the liquidator shall be appointed by the audit union or the National Cooperative Council. De lege ferenda, it is proposed that the obligation to appoint a liquidator should rest with the supervisory board rather than the general meeting, due to the difficulties in convening a general meeting at the liquidation stage, when the majority of members are not interested in active participation. It is easier and quicker to convene a meeting of the supervisory board, and the decision to appoint a liquidator is a simple act that, in the case of statutory liquidation, de facto confirms the existing legal situation.

After appointing a liquidator, the supervisory board concludes an agreement with them for the performance of liquidation activities (Article 118 § 3 CL).[35] In the event of difficulties in convening the board or if the liquidator has been appointed by the audit union, the agreement is concluded by the union itself. This relationship should be based on a contract of mandate.[36] However, according to A. Tomanek, the provision should be understood as allowing flexibility regarding the legal basis for the liquidator's engagement. Therefore, the establishment of an employment relationship is theoretically possible, but the current legal framework excludes basing this relationship on anything other than a contract.[37] De lege ferenda, it is proposed that the law should expressly provide that the legal relationship with the liquidator be based on a contract of mandate concluded in writing, which would increase legal certainty and facilitate evidentiary matters in disputes.

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35 Marta Stepnowska-Michaluk, "Likwidator spółdzielni – część I" *Przegląd Prawno-Ekonomiczny,* no. 1 (2007): 67.

36 Wojciech Jastrzębski, *Prawo spółdzielcze. Zarys wykładu* (Warszawa: Wydawnictwo Spółdzielcze, 1987), 117; Supreme Court judgment of 5 April 1966, I PR 71/66, LEX No. 4551.

37 Artur Tomanek, "Status prawny likwidatora w zakresie stosunku zatrudnienia" in: Księga dla naszych kolegów: prace prawnicze poświęcone pamięci doktora Andrzeja Ciska, doktora Zygmunta Masternaka i doktora Marka Zagrosika, ed. Jacek Mazurkiewicz (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2013), p. 462.

The entry of the liquidator in the National Court Register is merely declarative – the legally decisive factor is the appointment or designation. The legal event giving rise to the acquisition of rights is the resolution of the general meeting or the audit union. Pursuant to Article 119 § 1 CL, the provisions concerning the management board apply accordingly to the liquidator;[38] accordingly, they do not constitute a corporate body of the cooperative, and those may be applied to them only subsidiarily and by analogy. The liquidator is the statutory representative of a legal person, whose function is to wind up its affairs and terminate its legal existence.[39] Unlike a corporate body, a statutory representative is not part of the organizational structure of a legal person, does not embody the legal person, nor are they permanently linked to its existence. While a corporate body expresses the will of the legal person itself, a representative, acting on its behalf, expresses their own will.[40] The liquidator assumes the rights and obligations of the former members of the management board, manages the cooperative's affairs, and represents it externally. Pursuant to Article 119 § 2 CL, they may not conclude new contracts unless it is necessary for the purpose of the liquidation. Further restrictions may be imposed by the appointing body, but these must be reported to the National Court Register. If there are difficulties in convening a general meeting or supervisory board, the audit union may authorize the liquidator to perform actions that would otherwise require a resolution of those bodies (Article 119 § 3 CL). The liquidator acts by making declarations of intent and may not be deprived of this right.[41]

Pursuant to Article 119 § 4 CL, the liquidator may be dismissed at any time by the body that appointed them.[42] In statutory and voluntary liquidation, dismissal falls within the competence of the general meeting, whereas in compulsory liquidation, it lies with the audit union or the National Cooperative Council. The audit union may dismiss the liquidator for cause, regardless of the appointing authority (Article 119 § 4 sentence 2 CL). Valid grounds for dismissal include loss of trust, the commission of an offence to the detriment of the cooperative, gross violation of duties or lack of

38 See Grzegorz Tylec, *Statut spółdzielni i jego kontrola w postępowaniu o wpis do Krajowego Rejestru Sądowego* (Warszawa: Difin, 2012), p. 144.

39 See the Supreme Court ruling of 12 December 2017, II UK 43/17, LEX No. 3548237.

40 Resolution of the Supreme Court of 11 February 2014, I UZP 3/13, OSNP 2014/7/101.

41 Piotr Pałka in *Prawo spółdzielcze. Komentarz*, ed. Dominik Bierecki and Piotr Pałka (Warszawa: C.H. Beck, 2024). Legalis /el.

42 See Supreme Court judgment of 26 April 1999, I CKN 1126/97, LEX No. 1211836.

due diligence.[43] The dismissing body is required to appoint a replacement liquidator simultaneously (Article 119 § 5 CL).

The law does not specify the procedure for dismissing liquidators who are members of the last management board. De lege ferenda, this competence should be vested in the general meeting, and the notion of valid grounds for dismissal should be clarified to enhance transparency and predictability of the application of the law.

The liquidator's liability operates on three distinct levels. First, organizational liability – including the possibility of dismissal or suspension by the supervisory board (Article 50 § 1 in conjunction with Article 119 § 1 CL). Second, civil liability towards the cooperative for damage caused (Article 58 CL) and towards creditors in the event of the cooperative's removal from the register (Article 128 § 1 CL). Third, the liquidator bears criminal liability for acts specified in Articles 267b-267d CL, including actions to the detriment of the cooperative.

The course of liquidation proceedings

Liquidation proceedings are a key stage in the life cycle of a cooperative, the purpose of which is to terminate its activities, liquidate its assets and satisfy its creditors. The course of these proceedings is strictly regulated by the provisions of the CL, in particular through the obligations imposed on the liquidator. Pursuant to Article 122 CL, the liquidator is subject to a number of obligations which they must undertake immediately upon appointment. These obligations, enumerated exhaustively, constitute a closed set of activities necessary for the proper conduct of the liquidation.

The liquidator is required to submit an application for the entry of the commencement of liquidation in the National Court Register, unless this has already been done. The liquidator must notify the audit union to which the cooperative belongs, as well as the National Cooperative Council, of the commencement of liquidation. At the same time, they must notify the banks financing the cooperative and the tax authorities about the circumstances. A key obligation of the liquidator is to publish a notice of the commencement of liquidation of the cooperative in *Monitor Spółdzielczy*

43 Krystyna Kwapisz, *Prawo spółdzielcze. Komentarz Praktyczny* (Warszawa: LexisNexis, 2011), 204.

(Cooperative Gazette), which must include a call for creditors to submit their claims within three months from the date of publication.[44]

In terms of financial documentation, the liquidator is required to prepare financial statements as at the date of commencement of liquidation and, a list of the cooperative's liabilities, a liquidation financial plan, a plan for the satisfaction of creditors' claims. The purpose of liquidation, which is to terminate the cooperative's activities and satisfy its creditors, determines the scope of the liquidators' activities and, consequently, the content of their rights and obligations. The handling of creditors' claims is among the central aspects of the liquidation proceedings. Pursuant to Article 124 § 3 CL, the liquidator is authorized to acknowledge claims submitted within the statutory time limit. Written acknowledgment of claims interrupts the running of the limitation period and other relevant time limits. If the liquidator refuses to satisfy a claim, pursuant to Article 124 § 1 CL, they are required to notify the creditor in writing within four weeks from the date of filing the claim. During this period, pursuant to Article 124 § 2 CL, the limitation period or statutory time limit is suspended. A special obligation of the liquidator, resulting from Article 131 CL, is to apply immediately to the court for a declaration of bankruptcy if the cooperative's insolvency is established during the liquidation proceedings. The CL provides a comprehensive regulatory framework for liquidation, imposing a number of precise obligations on the liquidator. The proper conduct of the entire liquidation process, and in particular, the protection of creditors' rights, depends on their reliable and timely performance. An analysis of the relevant legal provisions indicates the central role of the liquidator as the body conducting the liquidation proceedings and ensuring their proper execution.

The order of satisfying creditors' claims in cooperative liquidation proceedings

The liquidation proceedings of a cooperative perform two fundamental functions: a dissolutive function, intended to terminate the legal existence of the entity, and a guarantee function, designed to protect the interests of creditors. The guarantee function is reflected in detailed regulations

44 Stepnowska, Zakrzewski, "Ustanie spółdzielni", p. 406.

governing the order of satisfaction of claims, which are mandatory and may not be altered by the liquidator or the cooperative's authorities.

In Article 125 § 1 CL, the legislator established a fixed hierarchy for the satisfaction of claims from the assets of a cooperative in liquidation.[45] Priority is given to liquidation costs, including all expenses necessary for the proper conduct of the proceedings. The next category covers claims arising from employment relationships and claims of a similar protective nature, including compensation for personal injury or death, in particular due to accidents at work and occupational diseases. At the same level of priority, satisfied are the claims of the Bank Guarantee Fund related to the financing of compulsory restructuring and support. Next in the hierarchy are tax liabilities and other public law levies, governed by the Act of 29 August 1997 – Tax Ordinance,[46] alongside receivables arising from bank loans. All other liabilities that do not fall within any of the above categories are satisfied last.

The liquidator is required to deposit with the court the amounts corresponding to disputed or not-yet-due claims at a given stage of the proceedings, as provided in Article 125 § 2 CL.[47] This measure serves as a security, ensuring the subsequent satisfaction of creditors whose claims cannot be enforced during the ongoing liquidation. The notification procedure begins with the publication of a notice of the commencement of the liquidation of the cooperative in *Monitor Spółdzielczy*, which contains a call for creditors to submit their claims within three months from the date of publication. As H. Cioch rightly points out, this period is not a strictly preclusive deadline because, as provided in Article 125 § 4 CL, creditors who submit their claims after the deadline may seek satisfaction solely from the cooperative's undistributed assets.[48] This rule is designed to maintain a balance between procedural efficiency and the protection of creditors' rights.

A separate legal regime applies to claims asserted by cooperative members arising from their contributions. Such claims may be satisfied only after two conditions set out in Article 125 § 3 CL have been met: (1) the full satisfaction or securing of all cooperative's creditors, and (2) the lapse of

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45 In this context, it is worth noting the judgment of the Court of Appeal in Kraków of 4 March 1992, I ACr 29/92, LEX No. 1680334.

46 Consolidated text: Journal of Laws of 2025, item 111.

47 See the judgment of the Provincial Administrative Court of 9 April 2019, III SA/Wa 1345/18, LEX No. 2770529.

48 Henryk Cioch, *Zarys prawa spółdzielczego* (Warszawa: Wolters Kluwer Polska 2007), p. 70.

six months from the date of publication of the notice in *Monitor Spółdzielczy*. The distribution of share payments is proportional to the amount of contributions made. This special rule excludes the application of the general provisions for the return of shares under Article 26 § 1 CL, as confirmed by the Supreme Court in its judgment of 23 June 1992, which held that once liquidation has commenced, a claim for the return of membership shares cannot be effectively pursued under that provision until cooperative liabilities have been repaid and the sums securing disputed or not-yet-due liabilities have been deposited with the court.[49]

The disposition of the remaining assets, once all liabilities have been satisfied or secured, is determined by a resolution of the last general meeting of members, as provided in Article 125 § 5 CL.[50] That resolution may authorize the distribution of the remaining assets among members and former members who have not received their due shares before the commencement of liquidation (Article 125 § 5a CL). The provision contained in Article 125 § 5a CL does not apply to housing cooperatives, due to the specific nature of membership rights related to residential premises in such entities. If the general meeting adopts no resolution, the liquidator is required to transfer the remaining assets without consideration for cooperative or social purposes. Such a transfer for cooperative purposes may be made to another cooperative, an audit union or the National Cooperative Council. A transfer for social purposes may be made to entities conducting statutory social activities, regardless of their organizational form or sector of operation.[51]

The closing of liquidation proceedings

The termination of a cooperative's legal existence through liquidation is a complex and multi-stage process, culminating in the removal of the entity from the National Court Register. The closing of the liquidation proceedings, following the satisfaction of creditors and the distribution of any remaining assets, imposes several reporting and formal legal obligations on the liquidator. The precise fulfilment of these obligations determines

49 Judgment of the Supreme Court of 23 June 1992, I PRN 27/92, OSNCP 1993, No. 4, item 66.

50 Zdzisław Niedbała, "Podstawowe zmiany w prawie spółdzielczym w świetle projektowanej ustawy" Ruch Prawniczy, Ekonomiczny i Socjologiczny vol. 3 (1994): 45.

51 Krzysztof Pietrzykowski, *Prawo spółdzielcze. Komentarz do zmienionych przepisów* (Warsaw: Wydawnictwo Prawnicze, 1995), p. 138.

the lawful and effective completion of the entire process, and any failure to comply may result in liability for damages.

The actual closure of the liquidation process, understood as the final distribution of the cooperative's remaining assets, initiates the final phase. The liquidator's essential obligation is to prepare a financial statement as at the date on which the liquidation is completed. This document, which must include a balance sheet and final accounts, is prepared as at the date of closing the books, a process that must take place within three months from the date of closing the liquidation. Although this report is not subject to a mandatory audit by a certified auditor, it must be submitted to the supervisory board, which verifies its reliability and accuracy, in accordance with Article 46 § 1 point 1 in conjunction with Article 88a § 1 CL.[52] The next step is to submit the financial statements to the general meeting of the cooperative for approval, which is a sine qua non condition for submitting an application for the removal of the cooperative from the register.[53] Anticipating potential difficulties in convening a general meeting, the legislator introduced, in Article 126 § 2 CL, a subsidiary mechanism that allows the report to be approved by the audit union to which the cooperative belongs. After obtaining approval, the liquidator is required to submit an application with the National Court Register within seven days for the removal of the entity and to transfer the cooperative's books and documentation for storage. The entry concerning the removal must be published in *Monitor Sądowy i Gospodarczy* (Judicial and Economic Gazette). The detailed rules governing the storage of documentation are set out in a regulation issued by the Minister of Justice, in consultation with the minister responsible for culture and national heritage and after consultation with the National Cooperative Council, as provided in Article 129 CL.[54] It should be emphasized that, in accordance with the judgment of the Provincial Administrative Court in Krak**ó**w of 17 April 2007, Article 129 CL provides the legal basis for determining the manner and duration of the storage of books and documents of liquidated cooperatives and cooperative

52 See Supreme Court judgment of 3 February 2000, I CKN 648/99, OSNC 2000, no. 7–8, item 145.

53 Gersdorf and Ignatowicz, *Prawo spółdzielcze,* 206.

54 See Regulation of the Minister of Justice of 4 April 1995 on the manner and time of storage of books and documents of liquidated cooperatives and cooperative organizations (Journal of Laws No. 47, item 248).

organizations.[55] This regulation has a general character and applies to the documentation of all cooperatives and cooperative organizations, not merely to an individual entity undergoing liquidation.

In practice, lengthy court proceedings involving a cooperative in liquidation may pose a significant barrier to the efficient completion of the liquidation process. To address these challenges, Article 127 CL introduces a mechanism enabling the formal completion of liquidation before the final resolution of all pending judicial disputes.[56] The use of this mechanism is conditional upon the prior satisfaction of all undisputed claims and the depositing with the court of amounts securing disputed or not-yet-due claims. In such a case, after the cooperative has been removed from the register, the audit union to which it belonged enters into its position as a party to the pending proceedings. If the cooperative was not affiliated with any audit union, it will be replaced by the National Cooperative Council.[57] This succession in litigation is universal in scope and encompasses all procedural rights and obligations. The financial resources obtained by the union or council as a result of the final resolution of such disputes must be allocated to the purposes specified in the resolution of the last general meeting, or, in the absence thereof, to cooperative or social purposes, in accordance with Article 125 § 5–6 CL.[58] The removal of a cooperative is constitutive in effect, namely it takes effect when the court's decision on removal becomes final. It marks the end of the entire process leading to the removal of that legal person from transactions under civil law.[59]

It should be emphasized that the removal of a cooperative from the National Court Register, which becomes effective upon the court's decision becoming final, does not release the liquidator from liability for damages incurred by creditors as a result of the liquidator's failure to fulfil their statutory duties. Pursuant to Article 128 § 1 CL, such liability is a tort.[60] This means that liability arises only where the liquidator fails to perform their duties, causes damage to the creditor and where a causal nexus exists between the liquidator's act or omission and the damage caused. Liability

55 Judgment of the Provincial Administrative Court in Kraków of 17 April 2007, III SA/Kr 1360/06, Legalis No. 1140542.

56 Zdzisław Niedbała, *Komentarz do znowelizowanego prawa spółdzielczego* (Poznań: Ławica, 1994), p. 61.

57 Supreme Court decision of 21 May 2009, V CZ 19/09, LEX No. 1381052.

58 Piotr Pałka in *Prawo spółdzielcze*, Legalis/el

59 Supreme Court ruling of 2 December 2010, I CSK 120/10, LEX No. 818556.

60 Supreme Court judgment of 24 January 2014, V CSK 123/13, LEX No. 1478716; Supreme Court judgment of 27 June 2002, IV CKN 1171/00, Legalis No. 58482.

is imposed on the liquidator on the basis of fault. Fault may take the form of intent, where the liquidator, through their unlawful conduct, intends – or at least accepts – damage to the creditor or negligence, understood as a failure to exercise the required standard of diligence. The liquidator is required to exercise a higher standard of due diligence, commensurate with the objective of liquidation, namely to terminate the cooperative's activities and distribute its assets. A breach of these duties may be manifested, in particular, by premature termination of the liquidation proceedings without first satisfying all creditors. Members of the cooperative's last management board bear similar liability, as confirmed in Article 128 § 2 CL, which applies where a cooperative is removed from the register pursuant to Article 115 CL, i.e. due to failure to commence business activity within one year of registration. The finalization of the liquidation process therefore requires the liquidator not only to act meticulously, but also to be aware of the long-term legal consequences of the decisions taken.

Conclusion

The liquidation of a cooperative is one of the most complex and significant processes governed by the CL. It combines elements of both civil and commercial law. Its role is not limited to the technical termination of the cooperative's legal existence but also serves an organizational and guarantee function, ensuring the protection of the interests of creditors, members, and other participants in economic transactions. By regulating the liquidation process in detail, the legislator seeks to maintain a balance between the self-governance of cooperatives and the need to safeguard transactional security and the stability of the legal system.

An analysis of the applicable provisions leads to the conclusion that, despite their overall consistency and comprehensiveness, the CL still requires clarification in several areas. This applies, in particular, to the status of cooperative bodies after the commencement of liquidation proceedings, the formal requirements for candidates for liquidators, and the unambiguous determination of the precise moment of commencing liquidation. De lege ferenda, it would be prudent to introduce a provision modelled on Article 274 § 1 CCC, expressly indicating the date of entry of the commencement of liquidation in the register as the operative date of commencement. It is likewise proposed to introduce a requirement that a liquidator possess full legal capacity and a clean criminal record with

respect to offences against property and economic turnover, following the solutions adopted in the CCC. Furthermore, it is equally important to clarify the competences of cooperative bodies during liquidation, in particular by specifying whether the management board continues to operate in a limited capacity or whether its powers are entirely transferred to the liquidator. Taken together, these proposals would serve to increase procedural transparency and strengthen the protection of participants in the liquidation proceedings.

It should be emphasized that the liquidation of a cooperative should not be understood solely as the final stage of its economic activity, but rather as a process of broader systemic importance that directly affects the economic and legal order. Ensuring an efficient, transparent and secure liquidation process remains a cornerstone of institutional stability within the Polish cooperative sector. Enhancing the regulatory framework in this area, coupled with consistent enforcement of liquidation obligations and the strengthening of supervisory mechanisms of audit unions and the National Cooperative Council, would constitute a significant step towards increasing confidence in the cooperative sector and its further development in a market economy.

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Ziwei xu
University of Luxembourg
https://orcid.org/0009-0006-1991-5093

Asset Lock and Voluntary Loss of Social Enterprise's Status: a Comparative Legal Analysis

Abstract

Legal architectures for asset dedication in social enterprises have proliferated across Europe, yet the durability of the asset lock at the point of voluntary exit remains insufficiently theorized. Existing scholarship focuses predominantly on formation and governance conditions, treating the asset lock as a static rule rather than a dynamic commitment susceptible to erosion when organizations seek to reorient or abandon their social purpose. This article develops a lifecycle-based analytical framework and examines the resilience of asset dedication following the voluntary loss of social enterprise status across four jurisdictions: the United Kingdom (UK), Ireland, Luxembourg, and Italy. The study demonstrates that the asset lock's resilience depends not merely on its nominal adoption, but on its legal inseparability from organizational identity and its enforceability at exit. The UK's Community Interest Company (CIC) and the Italian social cooperative represent form-constitutive regimes in which the asset lock is legally entrenched, and exit is structurally foreclosed. By contrast, Ireland's policy-defined Company Limited by Guarantee (CLG) model and Luxembourg's accreditation-dependent Société d'Impact Sociétal in cooperative form (SIS-SCOP) regime reveal vulnerabilities, notably when voluntary derecognition lacks statutory guardrails and when internal voting structures permit mission drift. Italy illustrates a dual-track system: immutable dedication in ex lege social cooperatives versus reversible, sector-bounded dedication in non-social cooperatives with social enterprise status (CONSIS). The comparative findings suggest that where asset dedication is tied to discretionary membership decisions rather than immutable legal form, social value becomes susceptible to private recapture or sectoral reallocation. The article argues that exit regulations (i.e., in cases of voluntary relinquishment of social enterprise status), rather than entry criteria, constitute

the fundamental normative element of social enterprise regulation. Legal frameworks for social enterprises must establish dedicated residual assets, prevent unilateral mission reversals, and incorporate regulatory oversight at the point of voluntary exit to safeguard social commitments.

Keywords: asset lock, social purpose, CIC, CLG, SIS-SCOP, social cooperatives, governance

Introduction

Across Europe, social enterprise law has evolved to channel entrepreneurial activity toward social purposes while leveraging private organizational forms. Central to this regulatory model is the asset lock, a mechanism designed to insulate social assets from private appropriation and ensure that organizational wealth continues to serve social purposes. Yet despite its normative importance, the resilience of asset locks remains neither uniform nor secured across jurisdictions.

Many legal scholars have concentrated on entry architecture – qualification criteria, social goal tests such as the community interest test, and regulatory oversight. Far less attention has been paid to the moment of voluntary exit from social enterprise status. This gap is consequential. Social enterprises operate at the intersection of market and welfare spheres and are therefore uniquely vulnerable to pressures arising from capital needs, member realignment, and mission drift. It is precisely when an entity seeks to abandon its social-enterprise identity that the legal system reveals whether the asset lock constitutes a binding social obligation or a revocable organizational choice.

This article, therefore, adopts a temporal and structural perspective, analyzing the resilience of asset dedication not at formation or during operation but at the point of voluntary withdrawal. The core question is straightforward: Does the legal system safeguard social assets when a social enterprise voluntarily relinquishes its social-enterprise status?

Employing comparative doctrinal methodology, the article analyzes four European models. The UK's CIC represents a form-constitutive regime in which social purpose and asset dedication are embedded in legal personality and protected by regulatory veto, rendering voluntary exit impossible. Ireland, lacking legal social-enterprise status, relies primarily on CLGs operating under policy-based criteria; here, constitutional amendment and internal governance determine the resilience of the asset lock, creating

differentiated resilience among licensed CLGs (Group 1 CLGs) and unlicensed CLGs (Groups 2 and 3). Though grounded in ministerial accreditation, Luxembourg's SIS regime is marked by statutory silence on voluntary deaccreditation and post-exit asset treatment, leaving accumulated social value vulnerable, particularly within SIS-SCOPs, where voting rules may dilute cooperative safeguards. Italy presents a dual structure: social cooperatives, as ex lege social enterprises, are permanently bound by asset-lock obligations, while CONSIS may exit and redirect assets to cooperative mutual funds, prioritizing sectoral solidarity over general-interest preservation.

Three findings are identified. First, voluntary loss of social-enterprise status constitutes the doctrinal site at which regulatory credibility is exposed: entry declares purpose; exit enforces commitment. Second, form-constitutive systems – such as UK CICs and Italian social cooperatives – ensure irreversible asset dedication, whereas voluntary or accreditation-based systems – most notably Ireland's non-licensed CLGs (Groups 2 and 3), Luxembourg's SIS-SCOP, and Italy's CONSIS – render asset dedication conditional and amendable. Ireland consequently operates a differentiated model, with Section 1180-licensed CLGs (Group 1 CLGs) enjoying statutory entrenchment, while non-licensed entities remain governance-dependent and comparatively vulnerable. Third, social enterprise law must be assessed through the fate of assets at exit rather than solely through organizational form.

Ultimately, this article argues that social enterprise frameworks must secure asset dedication as an irrevocable commitment once public trust and social assets have been mobilized. This does not necessarily require a single uniform model, but it does require credible exit governance, including mandatory redirection of residual assets to asset-locked bodies (e.g., in mixed regimes, to mission-protected entities), constitutional entrenchment of social purpose clauses, regulatory oversight of organizational transformation, and strict limits on voluntary exit where status arises ex lege. Absent such safeguards, hybrid corporate forms risk enabling the private capture of socially accumulated value and eroding the legitimacy of social-enterprise law. In this sense, exit rules are not peripheral but constitute the doctrinal core of a credible and resilient European social-enterprise regime.

This article proceeds as follows. Section 1 analyzes the UK CIC regime as a form-constitutive model characterized by statutory irreversibility and regulator-controlled exit. Section 2 examines Ireland's CLG framework, highlighting the layered asset-lock resilience between Section 1180-licensed entities and non-licensed CLGs under policy-based recognition. Section 3

evaluates Luxembourg's SIS regime, focusing on legislative silence regarding voluntary deaccreditation and post-exit asset direction, particularly for SIS-SCOPs. Section 4 considers Italy's dual system, contrasting the immutable asset-lock obligations of social cooperatives with the reversible, sector-oriented exit pathway available to CONSIS. Section 5 synthesizes the comparative findings and advances normative implications for designing credible exit governance in European social enterprise law.

1. British CIC model: balancing legal rigidity and organizational flexibility

The UK CIC represents a mandatory and non-reversible asset-lock model, in which a CIC cannot voluntarily revert to a traditional for-profit company. According to the Companies Act 2006, a CIC is established as a type of company[1] rather than a new legal form.[2] In the UK, where CICs are among the most notable forms of social enterprise,[3] their legal construction reflects a tension between the interests of their embedded communities and their private company structure.

This analysis is restricted to the two principal categories of CIC currently recognized in practice: companies limited by guarantee without share capital and companies limited by shares. Although the Companies Act 2006 abolished the possibility of establishing or converting into a company limited by guarantee with share capital, a minimal number of such legacy entities may still technically exist. Their existence is acknowledged herein for completeness; however, they remain peripheral to the primary focus, which pertains to the predominant forms that most exemplify the operation of the statutory asset lock.

Crucially, a CIC cannot voluntarily relinquish its CIC designation[4] and revert to a traditional company limited by shares (CLS) or by guarantee (CLG). Instead, exit options are limited to conversion into a charity,

1 Companies Act 2006 (UK), s. 6.

2 Stuart R. Cross, "The Community Interest Company: More Confusion in the Quest for Limited Liability?" *Northern Ireland Legal Quarterly* 55, no. 3 (2004): 302.

3 Fergus Lyon, Bianca Stumbitz, and Ian Vickers, *Social Enterprises and Their Ecosystems in Europe: United Kingdom* (Luxembourg: Publications Office of the European Union, 2019).

4 UK Government, Community Interest Companies, Community Interest Companies Guidance, Updated 9 February 2024, https://www.gov.uk/government/publications/community-interest-companies-how-to-form-a cic/co mmunity-interest-companies--guidance-chapters accessed 25 June 2024.

conversion into a registered society, or dissolution. This regulatory framework indicates that the CIC asset lock is inherently embedded at the level of corporate identity rather than being a matter of contractual choice.

A significant legal ambiguity exists regarding whether a CIC may continue to function as a CLS or CLG following the loss of its accreditation. However, legal provisions explicitly clarify that CIC status cannot be terminated except in cases of dissolution or conversion into a charity or registered society.[5] This limitation reflects a deliberate policy preference for continuity of community benefits over private corporate flexibility.

Consequently, if a CIC seeks to discontinue operating as such, it faces a binary pathway: conversion or dissolution. This rigid framework illustrates a structural prioritization of asset preservation for community benefit over member autonomy, enforced through the statutory asset lock that restricts residual asset appropriation.

This framework extends beyond voluntary removal from the register scenarios. Where a resolution to leave CIC status is passed but subsequently rejected by the Regulator,[6] the Regulator may mandate dissolution rather than permit reversion to a for-profit company. This oversight power subordinates shareholder autonomy to the regulatory protection of the community's interests, presenting a potential tension between internal corporate governance and external mission protection.

In such cases, the proportion of pro-social shareholders or members may be insufficient to sustain the CIC mission. Yet regulatory insistence on continued CIC status may risk institutionalizing a formally compliant but substantively hollow social enterprise, especially when directors and shareholders no longer prioritize community interests. When this governance

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5 Companies (Audit, Investigations and Community Enterprise) Act 2004 (UK), s. 53.

6 Community Interest Company Regulations 2005 (UK), reg. 13. British laws or regulations do not specify whether the requirement for CICs, in this case, shall apply to and require consent from the Regulator; in effect, a CIC voluntarily loses its status as a social enterprise may wish to revert to its prior form, i.e., to return to being a traditional for-profit company – either a CLS or a CLG – both of which are oriented toward maximizing the interests of shareholders or members, which conflicts with the CIC's original objective to serve the interests of the community. In this circumstance, the content of such a resolution would necessarily involve an alteration of the CIC's memorandum concerning the statement of the company's objects, which requires the agreement of the Regulator. This is the rationale behind the assertion in the main text that the request to revert to a CLS or CLG may be declined by the Regulator, who may subsequently order the entity's dissolution.

drift occurs, and the Regulator declines to permit exit from CIC status, the result may not be organizational correction but regulatory deadlock.[7]

If dissolution is ordered, winding up triggers the mandatory distribution of assets to an approved asset-locked body, reinforcing the protective operation of the asset lock. While this ensures preservation of community assets, it also demonstrates the system's inflexibility in accommodating organizational change without termination. In effect, the CIC regime enforces a structural dichotomy: mission continuity or corporate dissolution.

From a critical perspective, this rigid dichotomy may hinder innovation when evolving social needs or funding models necessitate greater organizational adaptability. Nonetheless, the model ensures the insulation of community assets from private capture, reflecting a strong normative commitment to the preservation of community benefits. The UK, therefore, may exemplify the most stringent form of legal asset lock among hybrid organizational regimes.

2. Irish CLG model: organizational flexibility and the erosion of asset permanence

While the UK has established a comprehensive legal framework for social enterprises through the CIC regime, the Irish approach demonstrates a significant distinction in its regulatory management of social enterprises. Unlike the statutorily mandated asset-lock mechanism in the UK CIC model, the Irish CLG structure functions within a more adaptable regulatory environment. This section examines how this flexibility, although advantageous for organizational autonomy, may impact the long-term stability of asset locks in Irish social enterprises.

The discussion of asset-lock protection in the context of losing social enterprise status poses a unique analytical challenge in Ireland. Unlike the UK's legal recognition of social enterprises through the CIC designation, Ireland has yet to establish a specific legal form or status for social

[7] S. Andreadakis, "Social Enterprises, Benefit Corporations and Community Interest Companies: The UK Landscape," in *The International Handbook of Social Enterprise Law*, ed. H. Peter et al. (Cham: Springer, 2023), 884; Sealy McLaughlin, *Unlocking Company Law*, 4th ed. (London: Routledge, 2019), 211–36; J.S. Liptrap, "Corporate Purpose, Social Enterprise Law, and the Future of the Corporation," *European Company and Financial Law Review* 21, no. 2 (2024): 762.

enterprises.[8] In this regard, the concept of "voluntary or involuntary loss of social enterprise status" (either as a particular type of legal entity or as a specific legal "status," "mark," "qualification," "certification," "label," etc.)[9] – which presupposes jurisdictional recognition of social enterprises either as a distinct legal entity or through formal certification – requires reframing within Ireland's regulatory landscape.

Nevertheless, the absence of formal legal status does not preclude the examination of scenarios in which Irish CLGs cease to function as social enterprises. The Irish government has established a policy-driven definition of social enterprise[10] that aligns with the fundamental criteria of the EU operational definition.[11] This administrative framework provides a basis for analyzing asset-lock protection when CLGs deviate from their social-enterprise characteristics, particularly when they no longer satisfy the government's definitional requirements.

A critical concern arises when examining the circumstances under which a CLG, which is also a social enterprise, may choose to cease operating as a social enterprise. In particular, when a CLG modifies its organizational purpose to eliminate or substantially diminish its social object, it effectively transitions away from its social-enterprise character.

This scenario raises fundamental questions about asset-lock protection: Can the safeguarding of assets be ensured when an organization's mission shifts away from its social-enterprise roots?

In such instances, the fundamental challenge becomes whether, and through what mechanisms, the asset lock can be effectively protected, given the absence of statutory safeguards comparable to those found in the UK CIC regime.

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8 Government of Ireland, *Trading for Impact: National Social Enterprise Policy 2024–2027* (Dublin, 2024), p. 37.

9 Antonio Fici, *Social Enterprise Laws in Europe after the 2011 "Social Business Initiative": A Comparative Analysis from the Perspective of Worker and Social Cooperatives*, Working Paper (2020), p. 19.

10 Government of Ireland, *Trading for Impact: National Social Enterprise Policy 2024–2027* (Dublin, 2024), 14; Government of Ireland, *National Social Enterprise Policy for Ireland 2019–2022* (Dublin: Department of Rural and Community Development, 2019), p. 8.

11 Mary O'Shaughnessy, *Social Enterprises and Their Ecosystems in Europe: Ireland* (Luxembourg: Publications Office of the European Union, 2020).

2.1 Doctrinal and organizational foundations of the asset lock in Irish CLGs

Before assessing asset-lock protections meaningfully, it is necessary to establish a consistently used classification of CLGs based on their alignment with the definitional criteria of social enterprises under Irish national policy. This step is essential for evaluating how these entities might retain or lose asset-lock protections when they transition away from a social-enterprise identity.

In line with the 2024 Trading for Impact policy – which reaffirms that social enterprises must trade on an ongoing basis, reinvest surpluses into achieving social objectives, operate transparently and independently, and transfer assets to similarly purposed organizations upon dissolution[12] – only those CLGs that clearly and verifiably pursue such goals may be classified as social enterprises.

This interpretive reference is essential because the policy definition is programmatic rather than statutory in nature. The legal analysis begins with the Companies Act 2014, which provides the fundamental framework for CLGs in Ireland. It outlines three key features of CLGs: they can pursue any lawful purpose,[13] operate without share capital, and are not permitted to issue shares.[14] However, this broad framework means that not all CLGs automatically qualify as social enterprises. Only those CLGs whose constitutional objects and operational practices align with public-policy commitments – such as surplus reinvestment and social goals – can be considered part of this category.

Accordingly, this section employs a tripartite classification of CLGs. This harmonization is vital for ensuring analytical consistency and enabling the comparative assessment of legal constraints and mission durability across various corporate structures.

Group 1 CLGs include those that have obtained a ministerial license under Section 1180 and are therefore bound by legal obligations regarding asset retention, surplus reinvestment, and mission permanence. Group 2 CLGs, by contrast, have voluntarily incorporated similar provisions into their constitutions – such as non-distribution clauses and asset-transfer mechanisms – but have not received formal exemption from the naming

12 Government of Ireland, *Trading for Impact*, p. 14.
13 Companies Act 2014 (Ireland), s. 1174(1).
14 Companies Act 2014 (Ireland), ss. 1172, 1181(4).

requirement. Group 3 CLGs lack both legal requirements and internal constitutional mechanisms for asset locks.

Accordingly, the classification may be summarized as follows:

Table 2.1-A: Harmonized Terminological Summary of CLG Group Classifications

Terms	Description (unified across the paper)
Group 1 CLG	Statutorily constrained CLGs under CA 2014 s.1180; includes mandatory asset-lock provisions and public benefit objectives; often registered as charities.
Group 2 CLG	Constitutionally constrained CLGs that voluntarily include non-distribution and asset transfer clauses; may or may not have applied for s.1180 exemption.
Group 3 CLG	CLGs without statutory or constitutional asset constraints; rely primarily on reputational norms and public accountability.

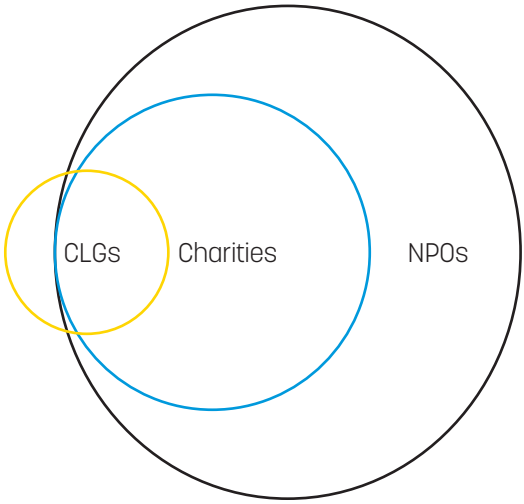
(Source: Author's compilation.)

In brief, Section 1180's naming exemption (license) distinguishes Group 1 (statutory asset-lock clauses) from Group 2 (voluntary clauses) and Group 3 (no binding safeguards), as outlined in Table 2.1-A; therefore, detailed explanation is omitted here to prevent repetition.

This tripartite grouping provides a practical framework for assessing asset-lock resilience in cases of mission drift or voluntary reorientation, allowing for a systematic comparison of enforceability, reputational pressures, and structural vulnerability across different organizational types.

The figure below illustrates the overlap among CLGs, charities, and non-profit organizations in Ireland. While it does not explicitly define the Group 1–3 classification, it highlights the structural hybridity of many entities that operate at the intersection of these categories. It illustrates the difficulty of drawing clear legal boundaries based solely on registration status.

Figure 2.1: Overlap Among CLGs, Charities, and NPOs in Ireland



(Source: Author's compilation.)

To illustrate how this taxonomy applies in practice, a representative subset of five CLGs is provided below. These organizations represent key combinations of charitable status, statutory licensing, and constitutional configuration, and have been selected to exemplify the Group 1 and Group 2 classifications outlined in this section. Their inclusion enables a grounded comparative analysis of how formal structures impact the enforceability and resilience of asset locks within the Irish legal framework.

It is important to note that no organization examined fits the definition of a Group 3 CLG. This absence does not imply that such entities do not exist but highlights the practical challenge of identifying CLGs that function entirely outside statutory and charitable constraints. Organizations lacking Section 1180 licensing or charitable registration – those without both constitutional and regulatory protections – may exist but are often under-documented or lack transparency. Therefore, Group 3 remains a valid theoretical category and is discussed further in Sections 2.2 and 2.3 below as part of the risk analysis related to legal reclassification and mission drift.

Table 2.1-B: Selected CLG Profiles Illustrating Group 1 and Group 2 Classifications[15]

No.	Company Name	Group	Charity	S.1180 Licence	Key Features
1	Prader Willi Syndrome Association Ireland	1	✓	✓	Fully regulated; classic Group 1 CLG
2	Socent CLG	2	✓	✗	Charitable CLG; voluntary asset-lock provisions
3	Mountaineering Ireland	1	✗	✓	Not a charity; covered by s.1180 licensing
4	Dublin Buddhist Centre (Triratna)	1	✓	✓	Religious CLG; dual compliance framework
5	Sensational Kids CLG	2	✓	✗	Charitable CLG with strong constraints

(Source: Author's compilation, based on the CORE company registry, the charitable register, and organizational documents.)

These examples collectively illustrate the institutional diversity within the CLG form and how legal, charitable, and policy mechanisms intersect to create different levels of asset-lock protection. Notably, Group 1 CLGs such as Prader Willi Syndrome Association and Dublin Buddhist Centre benefit from both ministerial license and charitable status, providing the strongest legal and normative safeguards against asset diversion. Mountaineering Ireland, although not a charity, remains a Group 1 entity because of its Section 1180 license, demonstrating that legal protection under company law can exist independently of charitable registration.

Group 2 CLGs, such as Socent and Sensational Kids, operate without statutory licensing but are registered as charities and subject to the regulatory oversight of the Charities Regulator. In these cases, while the asset lock is not immutable under the 2014 Companies Act, it is reinforced by charitable regulation and internal constitutional commitments. This indicates that Group 2 CLGs – when properly governed – may have de facto protections similar to those required for Group 1 entities.

These selected examples highlight the practical importance and internal diversity of CLG-based social enterprises in Ireland. They also show that neither statutory form nor charitable status alone guarantees the

[15] Note: This sample includes only Group 1 and Group 2 CLGs. Group 3 CLGs – defined by the absence of both statutory and charitable constraints – were not empirically represented among the selected cases. However, the risks and governance implications associated with such entities are discussed in detail in subsequent sections.

enforceability of the asset lock. Instead, the specific arrangement of licensing, constitutional design, and regulatory oversight determines each entity's vulnerability or resilience.

Having established a structured classification of CLGs and identified their respective legal foundations for asset-lock protection, the subsequent section examines the potential erosion of these protections when a CLG ceases to operate as a social enterprise. Special attention is given to the legal uncertainty that arises from voluntary or strategic changes to a company's mission and the conditions under which asset dedication may be maintained, bypassed, or invalidated.

2.2 Vulnerability of the asset lock: exit from social enterprise status and legal uncertainty[16]

The modification of a CLG's objectives presents a significant challenge to maintaining its social-enterprise status and asset-lock protection. This process requires a special resolution[17] approved by a minimum of 75% of member votes,[18] with mandatory notification requirements to both debenture holders[19] and the Registrar.[20] The notification process must mirror the one provided to the CLG's members, ensuring a minimum ten-day notice period.[21] Notably, if at least 15% of members or debenture holders petition the court seeking cancellation of the resolution concerning the alteration of the company's objects, the alteration remains ineffective unless judicially ratified.[22] Moreover, a CLG must formally notify the Registrar upon such an application to the court.[23]

Three potential outcomes may arise from this procedural framework. First, if the decision to amend the company's objectives is not approved, the CLG must continue to follow its original mission, thereby maintaining the rule of asset lock. Second, once the special resolution is passed and if no opposing parties petition the court to annul it, it becomes unlikely that

16 Rosemary Teele Langford, "Purpose-Based Governance: New Paradigm," *University of New South Wales Law Journal* 43, no. 3 (2020): 954.

17 Companies Act 2014 (Ireland), s. 1184(1).

18 Companies Act 2014 (Ireland), s. 191(3).

19 Companies Act 2014 (Ireland), s. 1185(3).

20 Companies Act 2014 (Ireland), s. 1185(6).

21 Companies Act 2014 (Ireland), s. 1185(3).

22 Companies Act 2014 (Ireland), s. 1184(2)(3).

23 Companies Act 2014 (Ireland), s. 1185(7).

the rule of asset lock will be protected for Groups 2 and 3 CLGs, unless the amended purpose fits within the "social objectives" outlined – though not exhaustively defined – in Ireland's national social-enterprise policies.

In contrast, the situation for Group 1 CLGs is structurally and legally distinct, as any amendment to their constitutional objects must comply with the statutory regime set out in Section 1180(1)(a) of the Companies Act 2014. Non-compliance constitutes a Category 3 offense.[24] While the national policy's definition of "social objectives" remains programmatic and non-exhaustive, the statutory formulation in Section 1180(1)(a) – listing purposes such as charity, education, art, and science – offers a meaningful point of reference, as these categories frequently mirror the objectives pursued by policy-recognized social enterprises.

Therefore, when the amended objectives of a Group 1 CLG still fall under Section 1180(1)(a) and can be reasonably regarded as aligned with national "social objectives," the asset lock remains legally enforceable and protected by law. This dual alignment – both statutory and policy-based – is unique to Group 1 and makes its asset lock significantly more resilient. In contrast, Group 2 and Group 3 CLGs are not bound by Section 1180(1)(a) and do not need to maintain legally enforceable social purposes, so any deviation from policy-defined social objectives would immediately weaken their asset lock.

Crucially, the asset lock across all CLG groups becomes vulnerable when the company's purpose no longer aligns with the national social-enterprise policy's concept or scope of "social objectives." However, what distinguishes Group 1 is that its amended purposes must satisfy not only the open-ended "social objectives" requirement under national policy but also the more formal, statutorily defined categories in Section 1180(1)(a) – a dual threshold that increases legal enforceability.

The fact that three quarters of the members consented to pass this resolution in the CLGs of the second and third groups implies a possible decline in the pro-social inclination of these members or a weakening of their commitment to the social purpose. The lack of dissenters seeking judicial intervention suggests that fewer than 15% of CLG members continue to uphold the social mission. Likewise, a comparable proportion applies to the debenture holders, who were once regarded as social investors but no longer fall within the category of patient-capital investors at this juncture. These indicators suggest that, notwithstanding the potential existence of pro-social members or external social investors in the third group of CLGs,

24 Companies Act 2014 (Ireland), s. 1180(7).

their numerical representation remains insufficient to meet the requisite threshold to influence corporate resolutions or to affect decisions potentially divergent from the social mission.

In another scenario, if the special resolution is passed and opponents apply to the court to have it canceled, the court may decide to cancel or confirm all or part of these alterations.[25] Should the court confirm such a resolution, the asset lock of the social enterprise will lose its protective effect. However, if it revokes this resolution, this rule will remain protected. In addition, the court may, at its discretion, adjourn the proceedings to facilitate arrangements whereby the company purchases the interests of dissenting members, and may issue such directions and orders as deemed expedient to facilitate those arrangements.[26]

However, dissenting members usually represent strong supporters of the social goals, and gaining their support – although it may be minor in a CLG whose members as guarantors typically contribute only €1 – has little practical importance.[27] Although purchasing such interests involves minimal financial outlay, this approach appears unfair given these members' alignment with the company's societal goals. More importantly, it does not maintain the asset lock. However, since such an arrangement likely requires court approval, acquiring the interest of dissenting members might be regarded as favorable if the court's approval process includes safeguarding the asset-lock mechanism, which could influence members seeking organizational change. On the other hand, it would not constitute an appropriate method, despite the legal provisions that permit it.

Section 1180 of the 2014 Companies Act is a critically important provision in safeguarding the asset-lock for social enterprises structured as CLGs, particularly regarding Group 1 CLGs. Regarding Groups 2 and 3, the protection of this mechanism during modifications to the company's original mission relies exclusively on two essential factors: first, whether the amended objectives align with the definition of "social objectives" outlined in national policy; and second, the proportion of pro-social members and debenture holders within the organization. Although the registrar participates in this process, it appears to act merely as a notified party to which information is communicated and from which the necessary documentation is obtained.

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25 Companies Act 2014 (Ireland), s. 1184(6)(a).

26 Companies Act 2014 (Ireland), s. 1184(6)(b).

27 O'Shaughnessy, *Social Enterprises in Europe: Ireland*.

It is also important to note that Groups 1 and 2 CLGs with charitable status exist in the dual identities of both a company and a charity,[28] while many of them simultaneously operate as social enterprises.[29, 30] For organizations occupying such triple roles, their objectives are of paramount importance. If they intend to change the company's charitable purposes, they must, beyond securing Charities Regulator's consent,[31] amend the company's purposes in accordance with relevant company law provisions. Where the Charities Regulator approves such a change, it may be inferred that the amended objectives remain within the statutory scope of "charitable purpose" – maintaining public-benefit orientation, albeit with altered content – thereby potentially preserving asset-lock protections. Without the Charities Regulator's agreement, the intention to modify objectives persists. However, this will no longer satisfy the requirements of the Charity Test,[32] and the CLG may be at risk of losing its charitable status when the Charities Regulator becomes aware of the change (as all charities must complete the Compliance Record Form every year, and the Regulator may request it at any time).[33]

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28 Charities Regulator, *Charities Governance Code*; *Charities Act* 2009 (Ireland), s. 3(1); Oonagh Breen and Philip A. Smith, *Law of Charities in Ireland* (Dublin: Bloomsbury Professional, 2019), pp. 249–340.

29 Department of Rural and Community Development, *Social Enterprises in Ireland – A Baseline Data Collection Exercise 2023*, 16. In Ireland, social enterprises in practice run under various legal types, the most common of which is the CLG (77%), with the vast majority (88%) of social enterprises registered as charities.

30 For CLGs with charitable status (Groups 1 and 2), these entities qualify as social enterprises if their charitable goals fall within the scope of the social objectives as outlined in Irish national social enterprise policy. Without such alignment, they are classified merely as CLGs with charitable status. That is why the word "many" is used in this sentence.

31 Citizens Information Board, *'Charities Regulation in Ireland'* (Relate: The Journal of Developments in Social Services, Policy and Legislation in Ireland, vol 45, issue 5, May 2018) https://www.citizensinformationboard.ie/downloads/relate/Relate_2018_05.pdf accessed 26 July 2024.

32 Charities Regulator, *What is a Charity?* rev 001 (2022), 5 https://www.charitiesregulator.ie/media/eqvh32ky/what-is-a-charity-rev-001.pdf accessed 8 July 2024.

33 This scenario of awaiting the Charities Regulator to discover that a CLG with charitable status is not operating in accordance with the regulations for charities is also, in effect, one of the situations in which involuntary loss of charitable status occurs. However, revoking charitable status does not necessarily mean the CLG is not a social enterprise. In other words, the fact that many CLGs operate as social enterprises that possess charitable status is distinct from those CLGs that lack such status or have forfeited their charitable status and consequently are no longer classified as social enterprises. Thus, the subsequent subsection addressing CLG's loss of charitable status will not be reiterated.

2.3 Constitutional amendments and structural fragility of the asset lock

Building on the previous analysis, which showed that changes to a CLG's stated objects could threaten its social-enterprise status and asset-lock protection, this section explores the constitutional aspects of such risks. While it remains uncertain whether constitutional changes to a CLG functioning as a social enterprise prevent it from continuing in that role, it is reasonable to infer that altering key statutory clauses significantly affects asset-lock protections. Additionally, because changes to company objects inevitably require corresponding updates to the memorandum and articles of association,[34] such constitutional amendments may prevent the CLG from maintaining its social-enterprise status.

For analytical purposes, this section proceeds on the assumption that charitable objects – where properly framed – fall within the scope of "social objectives" as defined by national policy. This position draws on comparative practice, notably UK CICs, which explicitly recognize charitable purposes as qualifying social objectives.

Against this background, the subsections below provide a structured typology of constitutional vulnerabilities across different CLG categories, focusing on the interplay among amendability, regulatory oversight, and the robustness of the asset-lock mechanism.

2.3.1 Group 1 CLGs: statutory restrictions on constitutional amendments

CLGs that operate as social enterprises and seek exemption from including the designation "Company Limited by Guarantee" or Cuideachta Faoi Theorainn Ráthaíochta in their registered name fall within Group 1 CLGs. Pursuant to Section 1180(1)(b) of the Companies Act 2014, their constitutions must incorporate mandatory provisions requiring that profits (if any) be applied solely to furthering the company's objects, that no distributions be made to members, and that remaining assets upon winding up be transferred to another company with similar objectives. These provisions are

[34] Department of Jobs, Enterprise and Innovation (now Department of Enterprise, Trade and Employment), *Explanatory Memorandum to the Companies Act 2014* (2014), p. 44, https://enterprise.gov.ie/en/publications/publication-files/explanatory-memorandum-to-companies-act-2014.pdf, accessed 6 June 2024.

not subject to amendment,[35] and any breach may constitute a Category 3 offense.[36, 37]

If a CLG maintains its objects but contravenes provisions outlined in its articles of association – for example, when it conducts business outside the scope of its stated objectives, misallocated profits or other forms of income for purposes not aligned with its goals, or distributes profits to its members inappropriately[38] – the registrar may direct in writing that the company be instructed to change its name accordingly. Failure to comply constitutes a Category 3 offense,[39] reinforcing the asset-lock safeguard through criminal sanctions and indirect reputational enforcement.

These statutory restrictions create a high level of constitutional rigidity, offering Group 1 CLGs the strongest legal protection for asset-lock continuity. However, the legal framework becomes more complex when these CLGs also possess charitable status. In such cases, proposed amendments to the company's primary object fall under an additional layer of scrutiny by the Charities Regulator.

This regulatory requirement is reflected in the General Scheme of the Charities (Amendment) Bill 2022 (Head 8), which proposes aligning Section 40 of the 2009 Charities Act with Section 39 by introducing mandatory prior approval for amendments to a charity's main object.[40] While the legislative rationale lies in protecting charitable purposes, concerns have been raised about potential administrative burdens and disproportionate delays if all constitutional changes – irrespective of materiality – were to require regulatory consent.[41]

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35 Companies Act 2014 (Ireland), s. 1180(4).

36 Companies Act 2014 (Ireland), s. 1180(7)(a).

37 Whilst the Companies Act 2014 provides for a change of purpose for such CLGs (section 1184), where an alteration of the company's purpose will give rise to a change in the content of its constitution, this may include the critical clauses that may qualify the CLG applying for without have the certain words in its name, what is interesting is that it also provides for the unchangeability of these clause in the constitution of such CLGs and specifies the risk of criminal liability that may follow from the change; this seems to be a bit contradictory. Looking at the legislative intent alone, though, it is likely that the latter provision is to protect the assets of the CLG from being used for purposes other than the objectives of promoting commerce, art, science, education, religion, charity, etc.

38 Companies Act 2014 (Ireland), s. 1180(5).

39 Companies Act 2014 (Ireland), s. 1180(7)(b).

40 Department of Rural and Community Development, *General Scheme – Charities (Amendment) Bill 2022: Explanatory Note* (2022), pp. 27–32.

41 Oonagh B. Breen and Philip Smith, *The Charities (Amendment) Bill 2022 – A Commentary on the General Scheme of Bill* (Dublin: Carmichael Ireland, 21 June 2022), pp. 3–4.

Although the proposed provisions have not yet come into effect – Sections 39 and 40 of the 2009 act remain uncommenced pursuant to S.I. No. 10 of 2025[42] – there is growing evidence that regulatory expectations are evolving in anticipation of formal statutory reform. The Charities Regulator's current guidance indicates that certain categories of amendments, particularly those affecting charitable objects, income and property clauses, or winding-up provisions, are already expected to be submitted for prior review.[43] This anticipatory regulatory practice reflects an implicit convergence between policy objectives and supervisory discretion, which, although not yet codified, functionally constrains exit-based dilution of the asset-lock mechanism.

Consequently, Group 1 CLGs with charitable status now operate within a dual-compliance framework: they are subject not only to the rigid statutory constraints of the Companies Act but also to increasingly anticipatory forms of regulatory supervision under charity law. This compound effect enhances the legal durability of the asset lock but also limits organizational flexibility, particularly where strategic reorientation or mission redefinition is contemplated.

2.3.2 Group 2 CLGs: constitutional amendments and the limits of voluntary protection

Unlike Group 1, Group 2 CLGs are not subject to legal prohibitions on changing asset-lock clauses but may voluntarily include similar restrictions in their constitutional documents. However, if a Group 2 CLG – which may or may not be charitable – adopts an object clause that goes beyond "social objectives," its three principal asset-lock clauses are likely to be amended as well. When such changes indicate a move away from the company's original

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42 Department of Rural and Community Development, *Charities (Amendment) Act 2024 – Commencement Order 2025* (SI 10/2025, 27 January 2025), p. 2, https://assets.gov.ie/static/documents/si-no-10-of-2025-charities-amendment-act-2024-commencement-order-2025.pdf, accessed 8 June 2025.

43 Charities Regulator, "Updating Your Constitution or Charitable Purposes," https://www.charitiesregulator.ie/en/information-for-charities/updating-the-register-of-charities/updating-your-constitution-or-charitable-purposes, accessed 26 April 2025; Arthur Cox, "Charities Law Update: Key Changes in the New Act," 2024, https://www.arthurcox.com/knowledge/charities-law-update-key-changes-in-the-new-act; The Wheel, *Charities Amendment Act 2024: A Summary for Trustees* (2024), https://www.wheel.ie/sites/default/files/media/file-uploads/2024-12/charities-amendment-act-2024.pdf.

social mission, the fundamental purpose of the asset-lock is compromised, and its enforceability is weakened.

When a Group 2 CLG qualifies as a charity, proposed amendments to its primary objects fall under the same evolving regulatory framework discussed in Subsection 2.3.1. Although the relevant statutory provisions remain unimplemented, regulatory guidance suggests that changes to core clauses – especially those affecting public benefit – are increasingly subject to prior review. This regulatory layer thus indirectly strengthens the asset lock by limiting the organization's flexibility in redefining its purpose.

In contrast, for non-charitable Group 2 CLGs, no legal mechanism prevents such amendments beyond the procedural requirements of the Companies Act. In these cases, the asset lock relies on internal governance practices and voluntary compliance with adopted restrictions. The balance of power between pro-social members and other stakeholders, including financial investors, will significantly shape whether the asset-lock mechanism continues to be upheld in practice. These mechanisms remain structurally vulnerable to change in the absence of external enforcement or statutory protection.

2.3.3 Group 3 CLGs: absence of binding mechanisms and maximum vulnerability

The situation is even more precarious for Group 3 CLGs. These entities typically lack both statutory obligations under Section 1180 and any constitutionally embedded asset-lock provisions. They are under no binding restrictions against amending their constitutions, including the removal of non-distribution clauses or asset-transfer obligations upon dissolution. Such amendments may be passed by special resolutions without legal restrictions, provided they comply with the procedural requirements under the Companies Act.

The absence of legally entrenched clauses places Group 3 CLGs in the weakest structural position regarding asset-lock continuity. No statutory constraint prevents the redirection of profits or assets, nor is there any requirement to preserve a specific social mission. Where internal consensus changes, the organization may legally reorient its objectives and redistribute assets without encountering regulatory obstacles.

If a Group 3 CLG has charitable status, its capacity to amend its objects remains subject, at least nominally, to the general oversight functions of the Charities Regulator. As discussed in Section 2.2.3.1, while the proposed

statutory amendments requiring prior approval have not yet been implemented, current regulatory guidance indicates an expectation of ex ante review for amendments affecting charitable purposes. In this respect, charity law may operate as a residual safeguard, albeit contingent on the charity's willingness to submit changes for review and the Charities Regulator's administrative discretion.

Conversely, for non-charitable Group 3 CLGs, the absence of both statutory restrictions and constitutional protections renders the asset-lock mechanism legally unenforceable and practically unstable. Any internal limitation on profit distribution or asset retention is a matter of voluntary practice rather than legal obligation. This creates a situation of maximum vulnerability: the asset lock can be diluted or eliminated at any time, subject only to internal voting thresholds. In effect, these entities exist in a state of minimum compliance and maximum flexibility, with no external mechanism to ensure alignment with social-enterprise principles.

2.3.4 Comparative outcomes of constitutional amendments across CLG types

Having analyzed the constitutional structure and amendment limits of each CLG category, this subsection compares how such amendments influence asset-lock protections in practice. The effect of constitutional change is neither consistent nor binary: it depends on the statutory framework, the type of amendment, and the presence or absence of additional regulatory safeguards. The following discussion highlights key resilience patterns and the erosion or removal of asset-lock mechanisms across the CLG typology.

Group 1 CLGs occupy the most legally insulated position. As noted earlier, the Companies Act 2014 requires that their constitutions include unchangeable clauses concerning the application of profits, the prohibition on distribution to members, and the transfer of remaining assets to similar organizations upon dissolution. These provisions are prohibited from being amended, and attempting to change them constitutes a criminal offense. Consequently, Group 1 CLGs are structurally incapable of weakening their asset-lock safeguards through constitutional change, regardless of internal consensus or strategic intent. Their legal architecture preserves asset locks by design rather than discretion.

Group 2 CLGs, by contrast, are legally permitted to amend their constitutions – including asset-lock provisions – subject only to the general procedural requirements under company law. A common situation in this

context involves minor updates to profit-distribution clauses – such as authorizing limited member participation in surpluses. Although these provisions may appear inconsistent with traditional interpretations of the non-distribution principle, they do not necessarily conflict with the Irish national-policy definition of a social enterprise, which requires that "fully or primarily" surpluses be reinvested to achieve social objectives. Furthermore, since the 2014 Companies Act does not prohibit CLGs from distributing surpluses to members – unless explicitly restricted by the constitution – such amendments remain legally valid. When these changes do not formally breach the organization's non-distribution clause, the entity may still qualify as a social enterprise under a policy-based interpretation. Nonetheless, such revisions may lead to functional drift toward the Group 3 model, as part of the surpluses is no longer fully directed towards promoting social objectives. In these cases, altering the constitution results in mission dilution, both in substance and in perception.

Within the Irish legal framework, Group 2 CLGs may also include internal mechanisms that allow limited or exceptional surplus distributions, provided these align with the organization's broader social goals and do not weaken the core asset-lock provisions. The impact of such arrangements depends primarily on the frequency and scale of distributions. The organization may still reasonably qualify as a social enterprise under current policies when surplus allocations are small and occasional. However, if such distributions are frequent or substantial, the asset-lock instrument is weakened – both symbolically and legally. This vulnerability characterizes Group 2 CLGs, whose asset protection relies on internal governance and remains susceptible to alteration under company law.

Group 3 CLGs occupy the most precarious position, often lacking statutory protection and constitutional entrenchment of asset-lock provisions. When CLGs expand their objects beyond recognized social objectives, they must cease to qualify as social enterprises. Their asset-lock protections disappear with the change in purpose. Alternatively, they may retain their original objects but modify other structural clauses – such as profit-application or asset-transfer provisions. In these cases, if surplus funds continue to support social goals and the asset-transfer clause is maintained, CLG may still operate as a social enterprise.

However, if either of the two foundational clauses – the non-distribution clause or the asset-dedication clause – is significantly altered, the organization may no longer credibly claim to be mission-locked. It then functions as

a CLG without the essential characteristics of a social enterprise, regardless of its legal structure.

As discussed earlier, if any of these entities also holds charitable status, additional regulatory oversight may apply under the Charities Act 2009 and related practices. These mechanisms, discussed in Subsections 2.3.1 to 2.3.3, provide either additional or fallback protection for asset locks and do not require repetition here.

2.3.5 Legal scenarios of voluntary exit from social enterprise status

To systematically illustrate how CLGs may cease to qualify as social enterprises through constitutional modification, this section identifies seven representative legal scenarios. These are grouped thematically into three domains of vulnerability: (i) deviation from recognized "social objectives" through object-clause amendments; (ii) dilution of financial dedication through surplus application or distribution; and (iii) erosion of structural safeguards, including winding-up and charitable clauses. This typology provides a practical framework for assessing the legal thresholds at which asset-lock mechanisms fail across CLG groups.

Table 2.3.5: Scenarios of CLGs voluntarily ceasing to be social enterprises

No.	Scenario: Relevant Constitutional Clause Change	Group 1 CLG	Group 2 CLG	Group 3 CLG
1	Amendment of the CLG's objects clause: new object within "social objectives"	✔	✔	✔
2	Amendment of the CLG's objects clause: new object beyond recognized "social objectives"	✘	✘	✘
3	Income or surplus not applied exclusively to further the company's stated objectives	✘	✘	✘
4	Distribution of profits to members	✘	⌀	⌀
5	Asset transfer clause upon winding up not directed to similar-purpose entity	✘	✘	✘
6	Amendment to charitable object clause with regulatory consent and remaining within social objectives	✔	✔	✔
7	Amendment to charitable object clause without consent or departing from "social objectives"	✘	⌀	⌀

✔ = Would continue to be a social enterprise
✘ = Would cease to be a social enterprise
⌀ = Qualification uncertain; contingent on interpretation and regulatory context
(Source: Author's compilation.)

Scenarios 1 and 2 address changes to the CLG's purpose. As long as the revised objectives remain within the accepted range of "social objectives," the legal basis for social-enterprise status – and the asset-lock mechanism – remains valid. However, when amendments introduce commercial or private goals outside this range, all CLG types consistently fail to meet the definitional criteria.

Scenarios 3 to 5 concern financial provisions essential for the asset-lock function. Misusing income (Scenario 3) or removing the non-distribution clause (Scenario 4) removes the requirement to reinvest surpluses, while altering the winding-up clause (Scenario 5) risks exposing remaining assets to private appropriation. Group 1 CLGs are legally prohibited from making these changes; Group 2 CLGs may implement them unless protected by charitable status or regulatory oversight; and Group 3 CLGs may lack formal restrictions under company law, although those with charitable status could still be subject to oversight by the Charities Regulator.

Scenarios 6 and 7 concern modifications to charitable clauses, especially for CLGs with charitable status. When amendments are made with regulatory approval and focus on public benefit, the nature of the social enterprise may be maintained. However, unauthorized or purpose-changing amendments risk the loss of charitable status and the removal of asset locks. Groups 2 and 3, without regulatory enforcement, enter a grey area of potential qualification.

Taken together, the scenarios above reveal the varying vulnerability of asset-lock mechanisms across different Irish CLG types. While Group 1 CLGs benefit from statutory protection, Groups 2 and 3 remain at risk of erosion through voluntary amendments or regulatory inaction. The enforceability of social objectives thus cannot rely solely on legal form. Instead, it depends on the complex interaction among statutory design, constitutional resilience, and the practical actions of organizational actors. This analysis highlights the need for a more integrated legal-policy approach to ensure the sustainability of mission commitments in social-enterprise governance.

In summary, Section 2 has shown that the Irish CLG structure accommodates considerable institutional diversity regarding asset-lock protection. By establishing a tripartite classification – statutory (Group 1), voluntary (Group 2), and residual (Group 3) – this section explains how organizational form, constitutional rigidity, and regulatory involvement interact to shape the durability of social-purpose commitments. While Group 1 CLGs benefit from formal legal protections and statutory safeguards, Groups 2 and 3 depend more on internal governance mechanisms and, in some cases,

charitable status as additional protections. Notably, although the statutory provisions requiring prior regulatory approval for amending charitable purposes have not yet been implemented, evolving regulatory practices already provide anticipatory oversight in many cases. Therefore, charitable registration offers a soft-law constraint that may partially reinforce the asset-lock instrument in Group 2 CLGs. However, in the absence of statutory or charitable safeguards – as may be the case for Group 3 CLGs – asset locks remain structurally vulnerable and legally unenforceable.

These findings reveal that asset dedication in Irish social enterprises is influenced more by governance design and regulatory interpretation than by statutory certainty. In the absence of a unified legal form or harmonized enforcement, constitutional amendments – especially those altering objects, distribution rules, or dissolution clauses – serve as key points of vulnerability. This legal uncertainty is particularly impactful during organizational lifecycle transitions. The following sections build on this doctrinal foundation to examine how such risks emerge at the critical stage: the transfer or dissipation of assets upon conversion and merger.

3. Luxembourgish SIS-SCOP model: doctrinal ambiguity and the fragility of asset lock mechanisms

Luxembourg's 2016 SIS law governing entities accredited as SISs contains no explicit provision regarding the voluntary relinquishment of ministerial accreditation by entities previously approved as SISs.[44] While such a withdrawal may be inferred from the general principle of entrepreneurial autonomy, the process remains legally ambiguous and unregulated. Theoretically, entities may renounce their SIS status by passing a special resolution and submitting a corresponding request to the MTEESS. Upon ministerial approval, SIS status is forfeited.[45] However, this procedure is not officially codified, and there is no authoritative clarification. Therefore, the legal framework for voluntary de-accreditation remains underdeveloped and unclear in its normative implications.

The only interpretive guidance currently available derives from a non-binding informational guide co-issued by Union luxembourgeoise de l'économie sociale et solidaire (ULESS) and the MTEESS (SIS Guide 2016). This

44 *Doc. Parl.* No. 6831/04, *Avis du Conseil d'État*, 11–12 (Luxembourg).

45 ULESS and MTEESS, *Guide SIS* (2016).

document identifies three statutory modifications requiring ministerial approval – changes to purpose, performance indicators, and the distribution between impact and performance shares – but it lacks legal force. Although it implies that significant amendments might trigger a de facto withdrawal of SIS status, the absence of a formalized legal mechanism undermines regulatory coherence and legal certainty.

More critically, the theoretical possibility of voluntary withdrawal highlights a more profound structural vulnerability within the governance of SIS entities, particularly those established as SCOPs. The legal capacity to adopt a special resolution to abandon SIS status – requiring a two-thirds majority in SCOPs/SAs and a three-quarters majority in SARLs[46] – implies that a shift in control from pro-social to profit-oriented members is not merely possible but legally permissible.[47] The approval of such a resolution would materialize only in situations in which impact shareholders or socially driven members have lost their supermajority status, thereby signaling a realignment of priorities away from the social mission.[48]

This dynamic is especially troubling in the context of SIS-SCOPs, which are typically presumed to embody the principles of participatory and solidaristic governance. Yet Luxembourg law grants SCOPs significant latitude in structuring internal voting rights. The SCOP statutes may, for example, assign multiple votes to certain members, adopt proportional voting based on shareholding, or create hybrid or exclusionary voting schemes. In the absence of specific provisions, all members are presumed to hold equal voting rights.[49] Nonetheless, this statutory flexibility allows for a configuration that departs materially from the cooperative ideal of democratic governance, weakening the internal safeguards traditionally functioning

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46 *Loi modifiée du 10 août 1915 concernant les sociétés commerciales* (Luxembourg), Articles 450-3(2) and 710-26(1).

47 *Doc. Parl.* No. 6831/09, *Projet de loi relative à la société d'impact sociétal (SIS)*, 11: "le texte reste entièrement muet quant à la possibilité d'une SIS de renoncer de plein gré à l'agrément ministériel, par exemple dans le cas ou une 'SIS à 100 pourcent' désire s'ouvrir à du capital de rendement et ne voit par conséquent plus aucun avantage à maintenir l'agrément en tant que SIS."

48 This could also be the hidden reason that it is unlikely the MTEESS would reject the application in such circumstances. Indeed, the decision to do so would be unhelpful to the pursuit and realization of the purposes contained in the SIS statute; rather, it may be better to stop the loss promptly.

49 Alain Steichen, *Précis de droit des sociétés*, 6th ed. (Luxembourg: Éditions Saint-Paul, 2018), pp. 551–62.

as the first line of defense for asset locks. In essence, the doctrinal commitment to cooperative democracy has been diluted through legal design.

Once SIS accreditation is relinquished, the entity reverts to its original commercial form – SCOP – and, crucially, the statutory protections governing the asset-lock cease to apply. This creates a legal void in which assets formerly dedicated to social purposes may be redirected toward private interests. While social norms and reputational considerations may theoretically constrain this outcome, the legal regime offers no substantive impediment to such a reallocation.

An informal response to this regulatory gap is suggested in the minutes of the Commission du Travail, de l'Emploi et de la Sécurité sociale (Committee on Labour, Employment and Social Security), which proposes that SIS entities composed entirely of impact shares, upon voluntarily relinquishing their accreditation, should be dissolved and liquidated, with residual assets distributed through a controlled process to prevent embezzlement or private appropriation.[50] However, while normatively commendable, this mechanism lacks any binding legal force. The 2016 law does not explicitly provide for such dissolution nor articulate the conditions under which voluntary de-accreditation would necessarily result in liquidation.[51] This legislative silence undermines the predictability and enforceability of the asset-lock mechanism.

The opacity of SIS regulation further compounds the risks associated with this gap. According to the Ministry, information on voluntary and involuntary SIS withdrawals is confidential, making it impossible to assess how the system functions in practice. While available data suggest that most SIS entities (70 out of 86)[52] are composed entirely of impact shares –

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50 Chambre des Députés, Session ordinaire 2015–2016, TS/JW P.V. TESS 19, *Commission du Travail, de l'Emploi et de la Sécurité sociale*, Procès-verbal de la réunion du 15 juin 2016, https://wdocs-pub.chd.lu/docs/exped/122/640/162319.pdf, accessed 29 August 2024.

51 *Doc. Parl.* No. 6831/09, *Rapport de la Commission du Travail, de l'Emploi et de la Sécurité Sociale*; *Doc. Parl.* No. 6831/04, *Avis du Conseil d'État*, https://www.chd.lu/fr/dossier/6831, accessed 29 August 2024.

52 Administration des contributions directes, *Relevé des sociétés d'impact sociétal (SIS) agréées par par le Ministère du Travail (MTE)* https://impotsdirects.public.lu/fr/az/l/libera_dons/sis.html accessed 29 August 2024. As of 16 July 2024, the list notes 66 accredited SIS and 4 withdrawn. According to this document, the four enterprises whose SIS status has been withdrawn are: 106 Conseil S.à r.l.-S, Altis Progress S.à r.l., Curiel S.à r.l., and Net to Bureau S.à r.l. However, based on records from *Mémorial B*, only Curiel S.à r.l. appears explicitly as having its SIS status removed by ministerial decision. Further verification through the *Registre de Commerce et des Sociétés* (RCS) shows that: Netto Bureau S.à r.l. S.I.S. is closed in bankruptcy (*en faillite clôturée*); Altis Progress S.à r.l. is in bankruptcy (*en faillite*); and both

thereby making voluntary withdrawal less likely – this empirical fact does not negate structural risk. Instead, it masks the latent vulnerabilities embedded in the legal design.

Unless and until Luxembourg law is amended to extend asset-lock protections beyond the period of SIS accreditation, or to condition de-accreditation upon mandatory asset redirection to public-benefit purposes, the risk of private capture remains a significant concern. This is particularly problematic given that the SIS framework was conceived to embed social purpose into the governance structures of commercial entities. The existing legislative framework, by failing to bind SCOPs – arguably the most socially oriented among commercial entities – to a durable asset-lock safeguard, undermines both the coherence and credibility of the SIS regime as a whole.

4. Italian SE model: divergent pathways of asset locks in social cooperatives and non-social cooperatives with SE status[53]

The Italian regulatory framework governing social enterprises, particularly social cooperatives, presents a significant divergence in applying the asset-lock mechanism. While social cooperatives, by virtue of their statutory classification, are ex lege social enterprises, it remains contentious whether they may voluntarily relinquish their social-enterprise status. As of 20 July 2017, it is clear that social cooperatives cannot voluntarily exist outside the social-enterprise framework, a position widely accepted in the scholarship.[54] However, no consensus exists on whether these entities may voluntarily lose their status as social enterprises. Scholars present two conflicting views: one holds that social cooperatives, as social enterprises

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Curiel S.à r.l. S.I.S.S. and 106 Conseil S.à r.l. have been struck off (*radiée*). See https://www.lbr.lu/mjrcs/jsp/DisplayConsultDocumentsActionNotSecured.action?time=1721819292936&FROM_BREADCRUMB=true&CURRENT_TIMESTAMP_ID=1721819283782 accessed 29 August 2024. On this basis, while the exact number of SIS withdrawals formally made by the Ministry remains unclear, publicly available evidence suggests the figure does not exceed four.

53 Non-social cooperatives with social enterprise status (*cooperative non sociali con qualifica di impresa sociale*, or CONSIS) are cooperatives that do not qualify as social cooperatives under Law No. 381/1991 but have voluntarily acquired social enterprise status under Legislative Decree No. 112/2017: see Emanuele Cusa, "Frammenti di disciplina delle cooperative con la qualifica di impresa sociale," *Le Nuove Leggi Civili Commentate* 44, no. 2 (2021): 267, 268.

54 Consiglio Nazionale del Notariato (CNN), *Studio n. 205-2018/I, Le cooperative sociali come imprese sociali di diritto*, 2; Antonio Fici, "Le cooperative sociali tra RUNTS e legislazione cooperativa," *Terzo settore, non profit e cooperative* 1 (2021): 40–61.

by law, cannot shed this status voluntarily;[55] while the other asserts that social cooperatives can forfeit both their social-cooperative and social-enterprise status.[56]

The central issue in the debate surrounding social cooperatives is their legal autonomy to relinquish their social-enterprises status voluntarily. It is widely acknowledged that social cooperatives are granted de jure social-enterprise status by the legislator, with accompanying obligations. However, these obligations may not align with the general interests that initially justified their introduction. Some argue that these obligations, particularly those outlined in Article 9(2), should not apply to social cooperatives.[57] Yet the MLPS has taken a contrary stance, affirming that social cooperatives are legally bound to adhere to these obligations.[58] This divergence reflects differing interpretations of what constitutes a "reward" versus a "burden" within the context of social-enterprise status.

In light of this, it becomes evident that the status of social cooperatives as social enterprises is not a matter of voluntary choice but one imposed by legislative mandate. Social cooperatives have no legal right to opt into or out of this status. The absence of an option to apply for social-enterprise status means that the question of "voluntarily choosing" to lose this status does not arise. Instead, the imposition of social-enterprise status by the legislator creates a fixed legal identity for social cooperatives, reinforcing the notion that these entities cannot freely relinquish their social-enterprise status without substantial legal implications.[59]

This complexity is further reflected in the asset-lock mechanism, which plays a pivotal role in the regulatory framework for social enterprises. For social cooperatives, classified ex lege as social enterprises, the asset lock

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55 Fici, "Le cooperative sociali tra RUNTS e legislazione cooperativa," 40–61; Giuseppe AM Trimarchi, *Terzo Settore e "Imprese Sociali": La Disciplina delle Operazioni Straordinarie* (2019) 455; Annapaola Coletta, *Le operazioni straordinarie di trasformazione, fusione e scissione coinvolgenti enti aventi qualifica di impresa sociale* (2021), p. 106.

56 Cusa, "Frammenti di disciplina," pp. 290–292. It is argued that social cooperatives can at any time renounce their status as social cooperatives by revising their statutes and, thus, as social enterprises… at the same time, however, the rules on the transfer of assets in Article 12(5), of the social enterprise law in such cases do not apply to social cooperatives and non-social cooperatives with social enterprise status (or CONSIS).

57 Fici, "Le cooperative sociali tra RUNTS e legislazione cooperativa," pp. 40–61.

58 Ministero del Lavoro e delle Politiche Sociali (MLPS), *Nota* n. 2491/2018.

59 This highlights a critical tension: while social cooperatives are bound by a rigid legal framework that dictates their social enterprise status, they are also confronted with obligations that may not always align with their operational realities, raising questions about the balance between the intended benefits and the burdens imposed by such a classification.

is inherently embedded within their legal identity without requiring the formal qualification process mandated for other entities. This ex lege classification assumes that social cooperatives governed by Law No. 381/1991 inherently fulfill the general interests underpinning the social-enterprise regime.[60] Consequently, the asset lock operates as an immutable legal obligation, ensuring the perpetual protection of assets designated for social purposes, regardless of internal statutory changes. This provision emphasizes the rigid nature of the asset-lock mechanism as a governance structure for social cooperatives, designed to safeguard assets dedicated to fulfilling their social mission.

In contrast, CONSIS is subject to a more flexible regulatory regime. These cooperatives can both enter and exit the social-enterprise framework at will, and the asset-lock mechanism in such cases is conditional and reversible. Upon voluntary renunciation of social-enterprise status, Article 12(5) of Legislative Decree No. 112/2017 provides that any residual assets must be allocated either to TSEs established and operating for at least three years, or to the fondo per la promozione e lo sviluppo delle imprese sociali (Fund for the Promotion and Development of Social Enterprises, or FPDSE). However, a key exception allows CONSIS to channel assets into fondi mutualistici per la promozione e lo sviluppo della cooperazione (mutual funds for the promotion and development of cooperation).[61] This provision effectively transforms the asset-lock regime from a structure designed to protect social goals into one that facilitates sector-specific reinvestment. In this regard, the original intent of the asset lock – to preserve assets for the

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[60] CNN, *Studio n. 91-2018/I – L'impresa sociale nel sistema della riforma del Terzo settore* (18 May 2018), 22; Antonio Fici, "La función social de las cooperativas: notas de derecho comparado," *REVESCO. Revista de estudios cooperativos* 117 (2015): 77, 84. It is argued that "a social enterprise is an economic activity of social utility or community benefit carried out on a not-for-profit basis for purposes of common or general interest … If this concept is adopted, there is no doubt that social cooperatives fall into this category."

[61] *Codice Civile*, art. 2545-undecies (1). However, the legal framework becomes significantly more ambiguous in the case of non-social cooperatives that voluntarily acquire social enterprise status. While art. 12(5) of Legislative Decree No. 112/2017 sets out asset-redirection obligations upon voluntary exit, its applicability to cooperatives is doctrinally contested. The controversy arises from the clause "salvo quanto specificamente previsto in tema di società cooperative," which creates a carve-out based on cooperative law, permitting residual assets to be allocated to mutual funds rather than to public-interest destinations. This structural tension between cooperative legislation and social enterprise regulation weakens the uniformity of the asset-lock regime and introduces interpretive uncertainty at the point of status loss.

general interest – is diluted by the flexibility afforded to these cooperatives in reallocating assets according to their own strategic priorities.

This divergence exposes a structural limitation in the regulatory efficacy of the asset-lock. Rather than acting as a durable constraint on asset appropriation, the asset lock in voluntary affiliations becomes a contingent mechanism, subject to the legal form and internal statutes of the entity. While the asset-lock symbolically affirms the primacy of social objectives, its practical application functions more as an ex post corrective instrument than as a robust, enduring constraint. Its conditional nature weakens its protective function, particularly when cooperatives exercise their autonomy to exit the social-enterprise regime and reallocate assets in line with their own sector-specific logic.[62]

A deeper examination of the normative hierarchies within the Italian legal framework reveals additional tensions. The descending legal order in this domain comprises: (1) the special law on social enterprises (Legislative Decree No. 112/2017), (2) the Third Sector Code (Legislative Decree No. 117/2017), and (3) the general law on cooperatives, including Article 111 of the Royal Decree No. 318 of 30 March 1942.[63] This composite framework creates interpretive tensions, particularly when the objectives of social-enterprise legislation – specifically ensuring general interests through a rigid asset-lock safeguard – conflict with the principles of

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62 This conditional nature of the asset lock in voluntary affiliations remains evident for several reasons. First, while assets must be devolved to mutual funds upon the renunciation of social enterprise status, this obligation arises only when a cooperative voluntarily exits the social-enterprise framework. The obligation to redirect assets is thus contingent on the cooperative's decision to cease operating as a social enterprise, rather than being an inherent and immutable legal requirement. This mechanism applies particularly to non-social cooperatives with social-enterprise status, which may voluntarily acquire and renounce social-enterprise status under Legislative Decree No. 112/2017. In contrast, social cooperatives are bound by the *ex lege* social-enterprise framework and are generally considered unable to voluntarily relinquish their status, though statutory amendments in practice may result in loss of social-cooperative identity and consequent cessation of *ex lege* social-enterprise status. Second, voluntary exit permits reallocating resources according to sector-specific logic; mutual funds serve the cooperative sector and may not align with the original public-interest intent of the social-enterprise framework. Third, cooperatives' internal statutes continue to influence asset management, indicating residual discretion over asset use within legal limits. Finally, unlike social cooperatives, which are presumed permanently bound by the asset lock, non-social cooperatives with social-enterprise status retain autonomy over asset allocation post-exit, underscoring the conditional and contingent nature of the asset-lock regime in voluntary affiliations. See Legislative Decree No. 112/2017, art. 12(5); *Codice Civile*, art. 2545-undecies (1).

63 CNN, *Studio n. 205-2018/I*, 6.

cooperative law, which prioritizes member autonomy and sectoral development. When CONSIS exercises its right to exit, the regulatory focus shifts toward a broader, less targeted logic of mutuality, thereby subordinating the asset lock's intended protective function.

The practical consequences of this regulatory flexibility are far-reaching. CONSIS may justify its exit from the social-enterprise framework on the grounds of financial distress or changes in leadership, and upon exit, the reallocation of residual assets to cooperative development funds can often support ventures that diverge from the original social purpose.[64] As a result, assets initially earmarked for general interests may be redirected into a cooperative ecosystem that lacks explicit social commitments, thereby undermining the missions of social enterprises.

In essence, the Italian regulatory framework delineates two distinct trajectories for the asset-lock instrument: one that is intrinsic and immutable for social cooperatives and one that is conditional and reversible for CONSIS. This bifurcation raises an important doctrinal question: should the asset lock be viewed as an inherent attribute of an entity's legal identity or as a contingent consequence of an elective status? The Italian model, particularly with regard to social cooperatives, supports the former approach, ensuring robust protection of social assets. This contrasts starkly with models such as Luxembourg's SIS-SCOP, where de-accreditation introduces uncertainty regarding asset protection.

Ultimately, the Italian framework exposes an intrinsic tension between legal form and normative substance. While the asset-lock functions effectively within the rigid framework of ex lege social enterprise status, it proves vulnerable under the elective dynamics governing CONSIS. This divergence undermines the internal coherence of the social-enterprise regime and raises profound questions about the efficacy of legal mechanisms designed to secure and perpetuate the social purpose within hybrid organizational forms. The Italian case thus provides a critical lens through

64 An illustrative case is a non-social cooperative with social-enterprise status in Italy – initially focused on delivering social services to marginalized communities – that exited the social-enterprise regime after experiencing financial distress and leadership changes aimed at reducing regulatory burdens. Upon exit, the cooperative redirected its residual assets to a mutual fund for cooperative development, pursuant to *Codice Civile*, art. 2545-undecies. (1). While this allocation preserved the assets within the cooperative sector, the funds were no longer specifically tied to the enterprise's original social objectives. As a result, resources were diverted from the cooperative's initial mission, demonstrating mission drift through dilution of its commitment to serve marginalized groups. See *Codice Civile*, art. 2545-undecies (1).

which to examine the broader challenges of maintaining social objectives in the face of organizational flexibility.

5. Comparative assessment: asset-lock resilience after voluntary exit from social enterprise status

This article has examined the resilience of the asset-lock mechanism through the lens of voluntary exit from social-enterprise status, arguing that asset dedication must be understood not as a static feature of organizational law but as a temporal and structural commitment tested at the moment of departure. Across the UK, Ireland, Luxembourg, and Italy, the analysis demonstrates that the credibility of social-enterprise regulation turns less on the nominal existence of an asset lock safeguard than on the legal architecture governing its irreversibility.

Three overarching findings emerge.

First, form-constitutive regimes, most clearly illustrated by the UK CIC and the Italian social cooperative, embed asset dedication within the legal identity of the entity, restricting exit and rendering mission drift structurally implausible. In these systems, social commitment is upheld by statutory entrenchment, regulator veto power, and the mandatory transfer of residual assets to mission-aligned bodies. Asset dedication thus functions as a hard governance constraint rather than a discretionary rule.

Second, where social-enterprise identity is not grounded in legal form but in organizational choice, asset dedication is structurally more vulnerable. Ireland exemplifies a policy-recognized, governance-dependent model: there is no statutory social-enterprise status, and the CLG merely operates as a vehicle through which social-enterprise commitments are voluntarily embedded. Luxembourg offers a different but equally fragile configuration. Although SIS status is formally granted by ministerial accreditation, the legislative silence on voluntary de-accreditation, the absence of statutory post-exit asset-redirection rules, and the discretionary nature of supervisory practice create a regime in which accumulated social assets may, in practice, be exposed to private appropriation once SIS identity is relinquished. The statutory flexibility afforded to SCOP voting structures further weakens internal mission-preservation safeguards. In both jurisdictions, where legal irreversibility is not guaranteed and supervision operates primarily through soft administrative guidance, the asset-lock

becomes contingent, uncertain, and vulnerable to mission dilution once member incentives shift.

Third, Italy illustrates the consequences of dual normative hierarchies within the same legal order. Social cooperatives, as ex lege social enterprises, cannot voluntarily exit the regime; the asset lock is permanent and integral to legal identity. By contrast, CONSIS may renounce that status. While residual assets are ordinarily redirected to mission-bound entities, a statutory exception permits the transfer to cooperative mutual funds, reallocating dedicated assets into the cooperative ecosystem rather than the general interest. This mechanism preserves mutualistic capital continuity but partially weakens the universality of general-interest protection, revealing a model in which cooperative normative logic can supersede social-enterprise dedication at the point of exit.

Taken together, these findings show that hybrid enterprise law constitutes a distinct regulatory field, defined by whether mission commitments survive organizational reorientation. Entry rules may signal purpose, but exit rules determine credibility. A social enterprise proves its social character not when it enters the regime but when it seeks to leave it.

Effective legal design, therefore, requires mandatory residual-asset dedication, constitutional entrenchment of core purposes, and regulatory gatekeeping at exit, particularly in voluntary-status systems. Absent such protections, hybrid forms risk enabling private or sectoral reappropriation of collectively generated value, thereby weakening the legitimacy of social-enterprise frameworks.

As hybrid forms proliferate, lawmakers must look beyond formation architecture and focus on preserving the irreversibility and enforceability of social commitments across the organizational lifecycle. Exit remains the doctrinal locus at which the social mission becomes either a binding social obligation or a disposable aspiration. Ensuring the persistence of asset dedication, once pledged, is therefore central to the structural integrity and future evolution of social-enterprise law.

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Federico Botelho da Costa Santas
Cooperativa António Sérgio para a Economia Social

The Binding Force of Cooperative Principles in Portuguese Law: Definition, Implementation, and Jurisprudential Enforcement

Abstract

This article examines the legal and conceptual foundations of cooperative principles, demonstrating that cooperatives are far more than "mere enterprises." While cooperatives engage in economic activity, their identity is defined by a distinctive normative and ethical framework embodied in the Statement on the Cooperative Identity, adopted by the International Cooperative Alliance (ICA) in 1995. The seven cooperative principles – voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education and training, cooperation among cooperatives, and concern for community – constitute the core of the cooperative model and have been legally incorporated into Portuguese law through Article 3 CC.

Tracing the historical evolution of Portuguese cooperative legislation, from the Law on Cooperative Societies of 1867 to Decree-Law No. 454/80 and its subsequent amendments, the article highlights how the legislator progressively recognized the binding force of cooperative principles, transforming them from moral guidelines into enforceable legal norms.

The theoretical analysis is complemented by the discussion of a landmark judicial decision – Judgment of the Guimarães Court of Appeal, 25 May 2016 (*Case No. 860/13.5TJVNF.G1*) – in which the court declared void a statutory provision imposing an excessive admission fee (€150,000), holding it contrary to the principle of voluntary and open membership. This case illustrates the jurisprudential affirmation of the binding nature of cooperative principles, demonstrating that statutory autonomy within cooperatives is limited by their legal and ethical foundations.

Ultimately, the article concludes that compliance with cooperative principles constitutes a *conditio sine qua non* for the lawful operation and legitimacy of cooperatives. These

principles, possessing both ethical and normative force, define the cooperative's social function, ensure its democratic governance, and safeguard its identity within the Portuguese legal system.

Keywords: cooperative principles; cooperative identity; International Cooperative Alliance (ICA); Portuguese Cooperative Code; cooperative law; voluntary and open membership; democratic governance; social function of cooperatives; normative force; legal nature of cooperatives; Guimarães Court of Appeal judgment; Statement on the Cooperative Identity

Article

Cooperatives are more than "mere enterprises."

This statement may give rise to ambiguity and therefore warrants careful analysis. From a grammatical perspective, the term "enterprise" is a common noun defined as a business or organization engaged in commercial, industrial, or professional activities. While this definition captures an essential dimension of the cooperative model, it does not fully encompass its distinctive nature.

In pursuing their objectives, cooperatives are guided by seven fundamental principles that constitute the foundation and essence of the cooperative model. These principles articulate the genuine meaning and purpose of cooperatives, comprehensively embodying their cooperative identity (Meira, 2018, p. 2).

Formulated by the International Cooperative Alliance (ICA) in Manchester in 1995 and incorporated into Portuguese law through Article 3 of the Cooperative Code,[1] these principles enshrine not only the ethical and democratic commitments of cooperatives but also their social and economic mission within the communities in which they operate.

The current formulation of the cooperative principles stems from the Statement on the Cooperative Identity, in which seven fundamental principles were defined: 1 – Voluntary and Open Membership; 2 – Democratic Member Control; 3 – Member Economic Participation; 4 – Autonomy and

[1] Although the first version of the Portuguese Cooperative Code ("CC"), enacted in 1980, already included a provision referring to the cooperative principles, it was only in 1996, through the first amendment to the CC, that the legislator revised this provision in accordance with the International Cooperative Alliance's Statement on the Cooperative Identity, thereby establishing the formulation of the principles as they are known today.

Independence; 5 – Education, Training, and Information; 6 – Cooperation among Cooperatives; and 7 – Concern for Community.

In brief, the principle of Voluntary and Open Membership ensures that any individual may become a member of a cooperative without discrimination and that each member retains the freedom to withdraw at any time. The principle of Democratic Member Control guarantees equality in participation, encouraging active involvement in shaping cooperative policies and enshrining, in primary cooperatives, the rule of "one member, one vote" as the ultimate expression of democracy. The principle of Member Economic Participation entails a fair contribution to the cooperative's capital, its democratic control, and the equitable distribution of results in proportion to each member's participation in the cooperative's activities. The principle of Autonomy and Independence underscores the importance of maintaining the cooperative's self-determination, even when it enters into partnerships with public or private entities. The principle of Education, Training, and Information seeks to equip members, employees, and the broader community with the knowledge and skills necessary to foster the development and sustainability of the cooperative project. Cooperation among Cooperatives encourages collaboration between cooperatives, promoting synergies and strengthening the cooperative movement. Finally, the principle of Concern for Community reflects cooperatives' commitment to sustainable development and the well-being of the communities in which they operate, reaffirming their social and solidarity-oriented mission (Meira & Ramos, 2018; Namorado, 2018).

In addition to the principles, a universal definition of a cooperative was also established by the Statement on the Cooperative Identity: "A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise." This definition reinforces the initial argument that cooperatives are indeed enterprises, yet endowed with a set of distinctive characteristics that make them unique. Voluntary membership, joint ownership, democratic management, and the pursuit of members' common aspirations immediately establish a specific model that differentiates cooperatives from other legal forms of organization. However, this definition alone is insufficient to define cooperatives comprehensively.

Referring once again to the Statement on the Cooperative Identity, it is clear that, in addition to defining what a cooperative is, the document also sets out the aforementioned principles, describing them as the guiding

principles through which cooperatives put their values into practice. As Deolinda Meira (2020) observes, "...a cooperative possesses a DNA founded on its own rationality, on structural principles and characteristics, and on normative and ethical references that are entirely consistent with the value of solidarity. Thus, the cooperative fulfills a social function, evidenced by the primacy of the individual and social objectives over capital; by democratic governance by its members; by the alignment of members' interests with the general interest; by the defense and application of the values of solidarity and responsibility; and by the reinvestment of surplus funds in long-term development goals or in the provision of services of interest to members or of general interest."[2]

The origins of these principles date back to 1844, when a group of weavers founded the cooperative that would come to shape modern cooperativism – the Rochdale Society of Equitable Pioneers. It would be a mistake, however, to assume that the principles recognized by the International Cooperative Alliance (ICA) in 1995 are a faithful reproduction of the rules established in nineteenth-century Rochdale. The current formulation of the cooperative principles is the outcome of a long and thoughtful process of evolution, refined through the accumulated knowledge and experience of numerous cooperatives and their members (Namorado, 2018).

These principles are, therefore, inseparable from the definition of a cooperative.

With regard to the Portuguese legal system, the understanding of cooperativism and the legal organization of cooperatives has undergone several transformations throughout history. A brief retrospective reveals that the earliest legislative instruments regulating cooperatives – then referred to as *sociedades cooperativas* (cooperative societies) – namely *Lei das Sociedades Cooperativas, de 2 de julho de 1867* (Law on Cooperative Societies of 2 July of 1867) and *Código Comercial de 1888* (Commercial Code of 1888), overlooked the principles as an essential element of their legal nature.[3] These legal texts, particularly the Commercial Code of 1888, assigned to cooperatives a predominantly entrepreneurial character, aligning them with other commercial companies existing at that time.

For more than a century, the prevailing view regarded the cooperative form as an atypical type of commercial company, a perspective that persisted until the enactment of Decree-Law No. 454/80 of 9 October, which

2 Translation by the author of this article.

3

established the first version of the CC and, consequently, introduced a holistic vision of the cooperative sector.

To address cooperative principles, therefore, is to address cooperative law itself.

As a distinct branch of law, cooperative law represents the particularization of an organizational structure founded upon a unique axiological framework that is intrinsic to its legal qualification. The emergence of cooperative law thus marked a definitive departure – both conceptually and literally – from the profit-oriented commercial companies enshrined in the Commercial Code.

Within this context, the enactment of Decree-Law No. 454/80 of 9 October 1980, for the first time (in the wording of Article 3), codified the cooperative principles in Portuguese law, thereby granting them the legal authority that continues to be recognized today. At that time, the principles were divided into ten paragraphs and were as follows: "a) The number of members and the share capital are variable; b) Admission to or withdrawal from the cooperative constitutes a free and voluntary act; c) The admission or exclusion of members may not be subject to restrictions or discrimination based on ancestry, sex, race, language, nationality, religion, political or ideological beliefs, education, economic situation, or social condition; d) The governing bodies shall be elected by democratic methods, in accordance with the procedure prescribed in the statutes, and subject to the principle of full equality in the rights and duties of all members; e) The voting right in first-degree cooperatives shall be based on the principle of one member, one vote, regardless of the amount of share capital held. However, supplementary legislation applicable to the various cooperative branches may, with respect to multipurpose cooperatives, provide for other forms of assigning voting rights; f) The attribution of voting rights in higher-degree cooperatives shall be determined on a democratic basis, in the form which, having obtained the majority approval of the members, is deemed most appropriate; g) The payment of interest to members of cooperatives shall be limited to their participation in the share capital or in the mandatory deposits established under the statutes, and the payment of interest on investment securities issued by cooperatives shall be determined by the general assembly; h) Surpluses may, if so decided by the general assembly, be distributed proportionally according to the economic transactions carried out by members with the cooperative, or according to the work and services provided by them; i) Cooperatives shall promote cooperative education among their members, workers, and the general public, as well as

the dissemination of cooperative principles and methods, namely through the creation and use of special funds for that purpose; j) In order to better pursue their objectives, cooperatives shall give preference to establishing relations with other cooperatives."[4]

Beyond their formal recognition, the Portuguese legislator consolidated the relationship between these principles and the definition of a cooperative through the wording of Article 2 of the aforementioned Decree-Law,[5] which defines cooperatives as "...legal persons, freely established, with variable capital and composition, which, through the cooperation and mutual assistance of their members and in observance of the cooperative principles, aim, on a non-profit basis, to satisfy the economic, social, or cultural needs of those members, and may also, on a complementary basis, carry out transactions with third parties."[6] This wording has undergone minor amendments over time. The current version derives from Article 2 of Law No. 119/2015 of 31 August, as amended by Law No. 66/2017 of 9 August, which provides the following definition: "Cooperatives are autonomous legal persons, freely established, with variable capital and composition, which, through the cooperation and mutual assistance of their members, and in observance of the cooperative principles, aim, without profit, to satisfy their members' economic, social, or cultural needs and aspirations."[7] As this definition makes clear, adherence to cooperative principles is mandatory in the pursuit of the cooperative's social purpose. Such a requirement grants the principles binding force, making them fully enforceable against the cooperative itself, its members, and even third parties.

In light of this framework, it is important to emphasize that cooperative principles should not be understood as mere recommendations or arbitrary "ideological guidelines." Rather, they define what cooperatives are and distinguish them from other forms of corporate entities.

Under Portuguese law, the binding nature of the cooperative principles in the conduct of a cooperative's activities is undeniable. Any disregard for these principles constitutes a violation of the cooperative model and may lead to the entity's involuntary dissolution. This is explicitly provided for in Article 112(1)(h) CC,[8] which lists as a cause for dissolution: "A final judicial decision determining that the cooperative does not comply with the

4 Translation by the author of this article.

5

6 Translation by the author of this article.

7 Translation by the author of this article.

8 Law No. 119/2015 of 31 August, as amended by Law No. 66/2017 of 9 August

cooperative principles in its operations."[9] Accordingly, the law reinforces the imperative of compliance with these principles, under penalty of judicial dissolution of the entity pursuant to Article 113(6) CC, even without the members' express will. Therefore, it is accurate to affirm that compliance with these principles constitutes a *conditio sine qua non* for the lawful and proper functioning of a cooperative.

The arguments outlined above are both irrefutable and legally well-founded. It is unequivocal, in light of Portuguese legislation, that the cooperative principles possess binding legal force, operating as concrete normative standards governing the legal organization and functioning of cooperatives. In this regard, it is pertinent to present a judicial decision in the form of an appellate judgment, which adds a jurisprudential dimension to the discussion developed herein.

The decision in question is the Judgment of 25 May 2016, *Case No. 860/13.5TJVNF.G1*, delivered by the Guimarães Court of Appeal.[10] The case originated from a complaint lodged by a group of employees of an educational cooperative who were prevented from applying for membership due to a statutory requirement that they considered contrary to the provisions of the CC – specifically, the principle of voluntary and open membership enshrined in Article 3 of that legal instrument.[11]

A central issue in the case concerned the admission fee (*joia de admissão*) required of new members. The admission fee is an ancillary, non-refundable monetary contribution that may be optionally imposed, consisting of a single payment – made either in full or in installments – at the time of a member's entry. According to Article 90(2) CC, the amount collected from such fees must be allocated to the cooperative's mandatory reserves, in accordance with the applicable legal conditions.[12]

Furthermore, the CC establishes that the possibility of an admission fee must be expressly stipulated in the cooperative's statutes, meaning that its imposition falls within the exclusive competence of the general assembly.[13] However, the determination of this amount cannot be arbitrary or create discriminatory conditions for prospective members. Admission fees must therefore be justified according to two fundamental criteria: (i) proportionality, in relation to the cooperative's patrimonial dimension – particularly

9 Translation by the author of this article.

10 Ac. TRG, 25.05.2016, Proc. n.º 860/13.5TJVNF.G1, Rel.ª Maria Amália Santos

11 1.st Principle of Article 3 CC.

12 Articles 96 and 97 CC.

13 Article 38(g) CC.

its share capital – and (ii) necessity, as a means to offset the administrative and operational costs associated with the admission and integration of new members. Thus, the admission fee serves as a non-refundable contribution by members, intended to cover the costs of their admission and, in part, to compensate for the contributions previously made by existing members to the cooperative's common assets (Meira & Ramos, 2018).

The requirements of proportionality and necessity in setting the amount of the admission fee serve precisely to safeguard the cooperative principle of voluntary and open membership, preventing cooperatives from arbitrarily fixing a fee that functions as a deterrent – or, in some cases, as an insurmountable barrier – to entry (Meira & Ramos, 2018).

In the case under consideration, the cooperative (defendant in the proceedings) had exponentially increased the amount of the admission fee in its statutes, without any plausible justification, setting it at the amount of €150.000,00 (one hundred and fifty thousand euros). The establishment of such a disproportionate amount is, undeniably, contrary to the cooperative principle of voluntary and open membership, regardless of whether it was intended to discourage prospective members from applying for admission. The judges' reasoning followed precisely this line of interpretation. The Guimarães Court of Appeal stated in its ruling that:

"I – The statutory provision of the defendant requiring the payment of an admission fee of €150.000,00 for new members of the cooperative, without any objective justification, namely financial necessity, violates Article 3 CC, which enshrines the principle of voluntary and open membership of new cooperators.

II – Moreover, the amount of the fee is disproportionate in relation to the minimum value of the subscribed capital shares of €500,00, which also infringes the principle of equity between existing and new members.

III – This is therefore a statutory provision that violates imperative legal norms, which determines its nullity."[14]

This decision thus reinforces the binding and enforceable nature of the cooperative principles within the Portuguese legal system, illustrating how their violation – particularly of the principle of voluntary and open membership – constitutes not only a breach of cooperative ethics but also an infringement of positive law.

In addition to declaring the statutory provision setting the admission fee void, the court ordered the reinstatement of the previous provision, or

14 Translation by the author of this article.

alternatively, that the fee be capped at €1,000.00 (one thousand euros). This significantly reduced the amount and restored the ability of prospective members to apply for admission to the cooperative.

Thus, the Judgment of the Guimarães Court of Appeal provides, from a practical standpoint, a clear demonstration of the centrality of cooperative principles in the activities of these entities under Portuguese cooperative law. A violation of these principles constitutes not only a deviation from the cooperative identity but also a legal infraction capable of rendering acts void or even justifying the dissolution of the entity.

The Judgment of the Guimarães Court of Appeal, 25 May 2016 (*Case No. 860/13.5TJVNF.G1*), is paradigmatic in illustrating the normative force of cooperative principles. By declaring void the statutory provision setting the admission fee at €150,000.00, the court recognized that such an amount constituted an unjustified and disproportionate economic barrier, contrary to the principle of voluntary and open membership. In ordering the reinstatement of a reasonable fee, the decision reinforces the understanding that the statutory autonomy of cooperatives is not unlimited and must always conform to the principles and values that define their legal nature.

In summary, cooperatives, as economic organizations with a social orientation, must maintain a balance between economic efficiency and cooperative justice. Adherence to the principles of the International Cooperative Alliance, as incorporated into the CC, is essential to the legitimacy and continued existence of these entities. Accordingly, the jurisprudence examined here represents a significant contribution to the consolidation of Portuguese cooperative law, unequivocally affirming that compliance with cooperative principles is an inalienable requirement of the cooperative's identity and legal validity.

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David Hiez
University of Luxembourg
https://orcid.org/0009-0002-9845-3616

Ian Adderley, Co-Operatives: Linking Practice and Theory, Co-Op Press Publishing, 2025, 584 P.

Abstract

In May 2025, with the support of the UK Society for Co-operative Studies, Ian Adderley published a remarkable book on cooperatives. It is valuable for a wide range of readers not only because of its breadth but also because of its ambition to broaden the scope of cooperative thinking. Instead of organizing his work around the features of the cooperative (democracy, inter-cooperation, cooperative transactions, etc.), Adderley frames it explicitly in terms of academic disciplines: history, law, economics, finance, management, and so on. The book offers an "overview of co-operatives." Formally, each chapter is subdivided into subheadings, which enables (and perhaps encourages) selective reading. Although I read the book cover to cover, I am certain I will be returning to individual sections many times in search of information or references.

Keywords: co-operatives, practice, theory

In May 2025, with the support of the UK Society for Co-operative Studies, Ian Adderley published a remarkable book on cooperatives. It is valuable for a wide range of readers not only because of its breadth but also because of its ambition to broaden the scope of cooperative thinking.

The volume runs to around 450 pages, excluding forewords and appendices. In other words, it is substantial – far more than a popular outreach book for beginners. It is organized into three parts: an introductory overview,

technical content, and cooperative thinking. From an academic perspective, this division raises several questions:

- Can a section that takes up nearly one-third of the book still be called an "introduction"?
- Is it appropriate to set "technical features" against "co-operative thinking" as if they were opposed?
- Can co-operative law or co-operative economics really be excluded from "co-operative thinking"?

These and other questions might be raised, and indeed the tripartite division is not fully convincing. It feels more like a formal framework than a coherent guiding logic. Yet this does not detract from the book's value, since the three parts are not intended as a linear pathway through which the author guides the reader. This is not the demonstration of a personal theory or a polemical analysis, although Adderley occasionally voices his opinions.

Each part is further divided into chapters, and this is in fact the more meaningful structure, since it reflects the specific issues the author seeks to present. There are 12 substantive chapters (apart from the introduction and conclusion), generally running 10–20 pages each, which cover the central themes of co-operative studies: identity, history, contemporary practice, governance, law, finance, economics, ideology, politics and religion, education, and social responsibility. Some chapters are much longer than others: for instance, the section on cooperative law extends to 50 pages.

Instead of organizing his work around the features of the cooperative (democracy, inter-cooperation, co-operative transactions, etc.), Adderley frames it explicitly in terms of academic disciplines: history, law, economics, finance, management, and so on. This orientation is not always consistent – for instance, the chapter on "co-operative identity" does not correspond neatly to a discipline – but overall the aim is clear: to provide as objective a picture of cooperatives as possible. The book does not seek to advance a personal conception of cooperation but rather, as the preface states (p. 5), to offer an "overview of co-operatives." Crucially, however, this overview is not a short pamphlet with a few figures: it is a comprehensive *summa* of knowledge, ambitious in scope and – importantly – successful.

That said, some apparent limits must be acknowledged. First, the book is primarily UK-focused. But this focus is not a restriction, and any reader will find many jewels. The book frequently ventures beyond Britain – for statistics and history in particular – even if its discussions are most substantial with regard to England and its surroundings. This is not a criticism: no

single author could realistically provide a universal survey of cooperatives. Moreover, in many respects the national focus recedes behind a broader perspective: for instance, the chapter on co-operative identity draws on authors from many countries and continents. As a result, while a British reader may find certain sharp details that will not be caught by foreigners, international readers will also find the content rich and relevant. More broadly, one must always recognize that any author is culturally situated: a treatment of co-operative identity written by an Indigenous scholar, or a Chinese woman, for example, would inevitably differ. This observation does not undermine Adderley's work, but it highlights the cultural framing of knowledge and the debates yet to come as Europe's intellectual dominance wanes.

Second, the book is not exhaustive. Again, this is not a weakness, but a strength. Exhaustiveness is both impossible and undesirable: multi-volume compendia may include everything, but they overwhelm the reader, and make it difficult to extract key references, or timelines. By contrast, Adderley's selection forces concision, and when the choices are well made – as they are here – this serves the reader far better.

Formally, each chapter is subdivided into subheadings, which enables (and perhaps encourages) selective reading. Although I read the book cover to cover, I am certain I will be returning to individual sections many times in search of information or references. My only regret is that all subheadings appear in the same format, without a visible hierarchy, which makes navigation less convenient.

To conclude on this point: anyone interested in cooperatives, and wishing to gain an overview of the related debates, should read this book. It is bound to appear in all the major bibliographies. To borrow the author's own words, the aim is not to advance radically new ideas, but rather to synthesize the theoretical and practical discussions surrounding cooperatives. It serves as a gateway for readers whose knowledge is limited to what they might have seen on television, or read in newspapers. Yet, at the same time, it is also (I take myself as an example) immensely valuable for specialists in the field: since each expert approaches cooperatives through a particular discipline, this book presents the major questions, together with references that allow one to explore them across other disciplines.

Despite its limits – or perhaps thanks to them – the book is rich in substance. It would be neither possible nor useful to summarize all the chapters, so I will mention only a few of my personal favorites.

Co-operative Law (p. 183). As a lawyer, I was eager to discover the author's treatment of this topic. Unsurprisingly, the chapter focuses primarily on UK legislation, but not exclusively. The UK's legal evolution is clearly presented and provides the key elements necessary to understand current reform debates: https://lawcom.gov.uk/news/reform-of-co-operative-and-community--benefit-societies-proposed/

Yet cooperative law is addressed more broadly, as a central tool for grasping both the different forms of cooperative mechanisms and the balance of power achieved in a specific time and place. Hence the chapter extends well beyond the UK. It should be emphasized at once that this section is not intended only for lawyers. The author explains legal concepts with great clarity – for instance, the notion of *legal person* (p. 193) – making the material accessible to any reader.

Beyond its structure, the chapter provides two sets of complementary insights: first, the major debates regarding the relationship between cooperatives and cooperative law, and second, a thorough overview of the history of UK cooperative law. As a non-UK lawyer, I found the historical account particularly useful, as it not only provided context, but also lent depth to the many debates in which cooperative law is entangled. These debates are numerous, including: whether cooperatives should be registered, whether they should enjoy limited liability, whether they require general or special legislation, what degree of oversight is appropriate, and how a cooperative ought to be defined. This illustrates one of the limitations of the author's decision not to structure the book thematically: although these questions are all present, they are not clearly distinguished.

Depending on the reader's profile, different aspects will attract greater attention. But lawyers, and non-lawyers alike, will find the chapter highly rewarding. As is sometimes said of other matters, cooperative law is too important to be left to lawyers alone.

My favorite chapter, however, is the one on co-operative ideology (p. 337). I will mention only a few subsections.

Co-operative wealth (p. 359): economic versus social and cultural needs. The starting point is the ICA's Cooperative Identity Statement, which defines cooperatives in relation to the economic, social, and cultural needs of their members. The crucial question is whether economic aspirations outweigh social and cultural ones. This is both a subtle and fundamental issue, touching on whether the cooperative is intrinsically an economic entity. Behind it lies the legacy of the nineteenth century, when cooperative activity encompassed a broader range of goals.

If I may enter the discussion, I would argue that the question is somewhat misleading, as it presupposes an exaggerated opposition. Whatever the needs of members, what ultimately matters is the underlying conception of the human being. In contrast to capitalism, cooperative members are not *homo economicus*; this is precisely why their aspirations cannot be so neatly divided into economic and non-economic.

Enterprise versus association (p. 386). Closely related is the question of whether a cooperative is primarily an enterprise or an association. Again, the ICA definition is the starting point: a cooperative is an association of persons who unite to meet their aspirations through an enterprise. Is the enterprise merely a means? Is the association primary? A parallel may be drawn with the French debate on the definition of the social and solidarity economy: is it simply a *mode d'entreprendre* (a way of doing business), or something more?

General-interest co-operatives (p. 392). These are discussed in this chapter and throughout the book. The central question is whether such cooperatives are truly cooperatives, like the others. They have proliferated over the past 40 years, reviving an old tension between the "ancient" and the "modern." The issue is complex, since the principle of self-help lies at the heart of co-operative identity, and general-interest cooperatives may appear to rest on other foundations. This, however, must be distinguished from multi-stakeholder membership.

Here, I would propose an alternative perspective: self-help remains the foundation, but the community in question is broader, allowing for different ways of participating, including through legal persons acting as proxies. This suggests useful bridges with the theory and practice of the commons.

The discussions could, of course, be multiplied, and the technical aspects should not be overlooked, as they may be of greater interest to other readers.

The UK Society for Co-operative Studies deserves thanks for its support. The book demonstrates that the UK cooperative movement remains strong and inspiring for all those interested in cooperatives. Grounded in UK experience, yet enriched by global practice and reflection, this book is indispensable for anyone who studies or works with cooperatives. It also provides an excellent introduction for those curious about contemporary debates on alternatives to capitalism.

The book is available in hard copy (paperback or hardback): https://shop.ingramspark.com/b/084?params=HJ9nfzqTzTLfD8Yqm5rq6y1VeCotHLGe1AQbO7nzULK.

It may also be downloaded for free: https://www.ukscs.coop/pages/co-operatives-linking-practice-and-theory.