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*Zoltan Vig*

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**Magyar Tudományos Akadémia / Hungarian Academy of Sciences**

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# Comparative analysis of the current cooperative regulation in Hungary<sup>1</sup>

by

Zoltan Vig

Abstract: The aim of the autor with this paper is to present and analyse the new Hungarian cooperative legislation in the light of international guidelines and recommendations. The work also takes into consideration two time-tested regulations, the Austrian and Italian laws.

Keywords: cooperatives, Hungary, Austria, Italy, UN Guidelines, ILO Recommendation no. 193, ICA Statement

## Introduction

Sources of law on cooperatives differ from country to country. In international law there are conventions touching upon issues related to cooperatives, and also so called guidelines and recommendations from international organisations. On national level, provisions relevant to these organisations are dealt with in national constitutions, in national laws and subsidiary legislation and in by-laws of cooperatives.

The most important sources of the international cooperative law are the International Co-operative Alliance (ICA) Statement, the Guidelines aimed at creating a supportive environment for the development of cooperatives (UN Guidelines) and International Labour Organization (ILO) Recommendation no. 193.<sup>2</sup> Even if these documents have no binding force, they should be taken into consideration when drafting laws as they are the result of majority decision, or even consensus in some cases, among member states of these organizations.

The new Hungarian constitution, the so-called Fundamental Law of Hungary<sup>3</sup>, unlike some earlier versions of the old constitution, does not contain any express provision on cooperatives. This is regrettable, as the Constitution is also the most important guarantee of basic human rights, which form part of cooperative values. According to the report of the UN, climate for cooperative development is favourable where basic human rights are guaranteed by legal instruments.<sup>4</sup> According to the opinion of legal experts, these rights

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<sup>2</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 5.

<sup>3</sup> See: Fundamental Law of Hungary  
[https://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary\\_20180629\\_FIN.pdf](https://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf)

<sup>4</sup> Sec. 5, Status and role of cooperatives in the light of new economic and social trends (SRCLNEST).

are best guaranteed through acts of a democratically elected legislative body, *i.e.* constitution or laws.<sup>5</sup> However, it should be pointed out that there are certain provisions in the Hungarian Fundamental Law, which can be related to cooperatives: its preamble, the „National Avowal“, states that „individual freedom can only be complete in cooperation with others“ and the „freedom of association“ is also expressly mentioned by the new Hungarian constitution. This latter is particularly important, as this is the most important legal basis for the regulation of cooperatives with laws and lower legal acts.<sup>6</sup> At the same time, cooperative principles are also guaranteed by other relevant provisions, like that on the protection of private property. Besides this, the Fundamental Law provides for free entrepreneurship.<sup>7</sup> These principles of free market economy are essential conditions of sound development of cooperatives in a democratic country. The Fundamental Law also guarantees free access to courts and judicial protection.<sup>8</sup> Besides, the Fundamental Law states that “Hungary shall accept the generally recognized rules of international law”.<sup>9</sup>

In this study, we also compare the Hungarian legislation with two time-tested legislations on cooperatives in Europe, the Austrian and the Italian. Examining the constitutions of these two countries, it can be said that generally there are no stronger constitutional guarantees for cooperatives. However, it should be mentioned that the Italian Constitution contains express provisions regarding cooperatives (art. 45), and it expressly states that Italy recognizes the social function of cooperatives for mutual benefit, and that the law should promote and encourage them to achieve their goals with proper control. Besides, it provides that the law protects and promotes the development of handicrafts.

The above mentioned constitutional provisions of the Hungarian Fundamental Law can be considered adequate guarantee for the protection of human rights and a good legal base for internationally recognized cooperative principles, and in our opinion there is no need for additional complementation of this document (issues like “social function” of cooperatives can be stipulated on the level of law). However, there is a delicate issue related to these guarantees that should be dealt with. It is the practical implementation of these principles. As in any other country under transition, there are constant criticisms on the functioning of the state administration and courts – which basically implement these principles in our society. Unfortunately, sometimes these criticisms are supported by statistics of international organizations.<sup>10</sup> In practice, these issues might influence negatively the operation of cooperatives and of the whole economy.

Ensuring cooperative values and principles on the level of the Constitution is of prime importance. However, in practice, it is expedient to regulate the field of cooperatives in detail with laws. On national level this material is primarily regulated by private law.<sup>11</sup> In

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<sup>5</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 3.

<sup>6</sup> It states that „Everyone shall have the right to establish and join organisations.“ (Freedom and responsibility VIII (2)).

<sup>7</sup> See Freedom and responsibility XII (1).

<sup>8</sup> See *e.g.* Freedom and responsibility XXVIII (1).

<sup>9</sup> See Foundation Q (3).

<sup>10</sup> See: *e.g.* Transparency International <[www.transparency.org](http://www.transparency.org)>

<sup>11</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 12.

some countries (*e.g.* Belgium, Sweden) there are no specific laws on cooperatives, these organizations are regulated by provisions of several other laws, *e.g.* company law, tax laws, audit law, etc.<sup>12</sup> In others, they are specifically regulated, meaning that a separate law that deals only with cooperatives (this is the case in Austria) regulates issues related to cooperatives or there is a separate chapter or part of some other general code, like civil code (*e.g.* Italy, the Netherlands and Hungary), commercial code that deals only with these issues.<sup>13</sup> It can be also the case that there are several separate laws, each dealing with different types of cooperatives (*e.g.* Syria).<sup>14</sup> However, in Europe this is not the tendency.

Not having a separate law on cooperatives is generally not recommended by experts. Such solution might result in serious regulative gaps and the coordination of the regulation of all the issues is usually problematic. Hagen Henry, a recognized authority in the field, argues that the trend is to have one single (general) law, because this solution guarantees the best the principle of autonomy of cooperatives (there is less detailed regulation in one single law than in several laws), it diminishes bureaucracy, avoids the fragmentation of the cooperative movement (*e.g.* a single law gives a single system of standards for all cooperative movements), and it creates better legal security.<sup>15</sup> On the other hand, having different laws for each type of cooperative would support the development of cooperative distinctiveness (*e.g.* special provisions could be tailored for each type of cooperative, etc.).

A more difficult question is whether to have a detailed or less detailed law. Generally, detailed laws give less space for different interpretations and governmental regulation through lower legal acts (governmental interpretation), thus providing higher degree of legal security. At the same time, such laws might narrow the autonomy of cooperatives, meaning that fewer issues can be regulated in the by-laws. We would suggest finding a kind of middle-way, where the most important issues are regulated by the law and all other issues are let to the cooperatives to regulate in the by-laws. However, in a country under transition with relatively high rate of corruption it is a very difficult issue. We would not support the idea of having too detailed law (respecting cooperative autonomy), however, the most important legal issues should be regulated in the law.

In Hungary the main sources of cooperative legislation can be found in the Hungarian Civil Code, Book Three, Part Four (Cooperative Societies 3:325-366.§). It should be also mentioned that certain parts of the Law X of 2006 on cooperatives (the “old law”) are still in force, regulating specific cooperatives. However, this solution is not the most fortunate.

In Austria cooperatives are regulated by the Law on Business and Economic Cooperatives no. 70/1873 (“*Gesetz vom 9. April 1873 über Erwerbs- und Wirtschaftsgenossenschaften*“) (hereinafter: Austrian Law on Cooperatives), which

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<sup>12</sup> Sec. 17, SRCLNEST.

<sup>13</sup> Sec. 37, SRCLNEST.

<sup>14</sup> Sec. 38, SRCLNEST.

<sup>15</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 3, 15.

regulates cooperatives in general.<sup>16</sup> In Italy, the general regulation on cooperatives is given by the Fifth Part, Title VI of the Civil Code (Codice Civile, published by the Royal Decree of 16 of March, 1942, no. 262) (hereinafter: Italian Civil Code).

Besides these legal acts it is also important to mention the SCE Regulation<sup>17</sup>, as it is directly applicable in all EU member states, thus in Austria, Italy and Hungary. However, we have to emphasize that this Regulation is applicable only to “supranational” forms of cooperatives (founded on the basis of this Regulation), thus, it does not affect cooperatives founded on the basis of national laws. At the same time, the SCE Regulation has an important role in so-called up to down legal harmonization and unification, and it can be expected that sooner or later solutions applied by this Regulation will become part of national laws on cooperatives in Europe, that will result in EU-wide unification in this field of law. In any case, this Regulation strengthens the cooperation of cooperatives on the European market and improves their competitiveness on global level.

### **Structure of the law**

The structure of the law should be simple and logical, taking into consideration that cooperative members are usually not lawyers. The Guidelines for Cooperative Legislation suggests a structure that follows “the phases of a cooperative from its formation to its dissolution”.<sup>18</sup>

The relevant part on cooperatives of the Hungarian Civil Code has the following structure, each under separate title: general provisions (definitions, members, registration, dispute settlement, instruments of constitution, capital contribution, fellowship fund, etc.), organizational structure (general meeting, management, supervisory board, auditor), membership (commencement, register, rights, termination, etc.), protection of minority stakeholders, transformation, merger and division, and the last title is on the termination of cooperatives.

The Austrian Law has a bit different structure. The reason for this might be that it is a relatively old law (135 years) and it has been several times amended. Due to these amendments and its “out-datedness” its structure is not the most logical (by this we mean the inner structure of the law). In its first part it deals with the foundation of the cooperative and the legal relationship of the members, with the organs of the cooperative and with issues related to the termination of the cooperative. The second part of the Law contains special provisions regarding cooperatives with unlimited liability, and the third part provisions regarding cooperatives with limited liability. The last two parts are the penalty provisions and the closing provisions. Throughout the Law the accent is on the liability rules.

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<sup>16</sup> Some authors translate it as “Law on Trade and Industrial Cooperatives” (see D. Campbell ed., *International Taxation of Low-Tax Transactions - High-Tax Jurisdictions*, Yorkhill Law Publishing, Salzburg, 2005, at 153)

<sup>17</sup> Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.

<sup>18</sup> Henry, H. (2005) *Guidelines for Cooperative Legislation*. Geneva: International Labour Office, p. 17.

The Italian Law is neither a modern one, however, it is well structured and detailed. It contains chapters on: general provisions, foundation, shares, organs of the cooperative, amending the foundation document and supervision.

Having a preamble to the Law on Cooperatives is recommended by the above-mentioned Guidelines (GCL). The primary importance of such preamble is to state the general principles of cooperative legislation. The Austrian Law has a one line preamble, that is in fact a promulgation clause. The “old” Hungarian Law on Cooperatives has one, which states that “The Parliament recognizing that the cooperative form is able to mobilize social resources widely, to strengthen the position of insulated economic actors, to satisfy community needs, wishes to encourage cooperation and want to support the further development of cooperative movement with state means, ....”.

### **Definition of the cooperative**

The qualification of an organization as a cooperative, and so, the recognition of cooperatives is the issue of complying with strict requirements of national laws and not of the will of the founders.<sup>19</sup> Thus, the definition given by the law is of great significance, as this provides for the requirements which have to be fulfilled by an organization to be recognized as a cooperative.

Compared to the definition offered by the GCL substantial difference is that the cooperative is not defined there as a “form of organization” but as an “enterprise”. Such definition (GCL) might help us to make distinction between cooperatives as subjects of business law and not-for-profit organizations. However, it is also very important not to forget that cooperatives exist to fulfill the needs of its members and the society and not those of the investors.<sup>20</sup>

According to the definition given by the Hungarian Civil Code, cooperative is a legal person established with a capital made up of the members’ contributions; it operates under the principle of open membership and variable capital with the objective of lending assistance to its members so as to satisfy their economic and societal needs, where the obligation of its members toward the cooperative society covers the provision of capital contribution and their personal involvement as provided for in its statutes. It also says that members shall not bear liability for the cooperative society’s obligations.

An important principle left out from the new regulation is the principle of “concern for the community” that should be one of the basic principles of a modern cooperative according to the GCL.<sup>21</sup> For example, in Italy, long since has been recognized that besides mutual benefit of the members there is an important social function of the cooperative. Vlatkovic suggests also the introduction of the principle of “neutrality”

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<sup>19</sup> Zsohár, A. (ed.) (2007) Szövetkezeti jog. Budapest: HVG-ORAC, p.34.

<sup>20</sup> M. Bateman, J. Pennarz, *Socijalna preduzeća u Srbiji: Zadruga – Institucionalni okvir i iskustva iz prakse*, UNDP Srbija, ITAD, 2008, p. 10.

<sup>21</sup> Henry, H. (2005) *Guidelines for Cooperative Legislation*. Geneva: International Labour Office, p. 5.

(political, religious and national).<sup>22</sup> This might be useful in a country that is under transition, and where the state administration is constituted mainly of the followers or even members of political parties.

At the same time, it should be mentioned that this definition complies with the requirement of the GCL that suggests that cooperatives should be clearly distinguished from other forms of business organizations.<sup>23</sup>

### **Types of cooperatives**

The Hungarian Civil Code mentions cooperatives for sale, purchase, production and services in general. However, the old law on cooperatives (certain parts still in force), regulates specifically school, social, agrarian, and pensioner cooperatives of general interest.

The Austrian Law on Cooperatives enumerates specific types of cooperatives, like credit-, purchase-, sale-, consumption-, marketing-, utilization-, building- and housing cooperatives. However, this is not a closed list, as it is complemented with all other types of cooperatives that have an objective prescribed by the SCE Regulation.

The Italian Civil Code talks about cooperatives that are „predominantly“ for mutual benefit. Such cooperatives have to fulfill the following conditions: (a) carry on their activity in the interest of their members, consumers or users of goods and services, (b) use in the course of carrying on their activity primarily the work of their members, (c) use in the course of carrying on their activity primarily contributions in goods and services of the members.<sup>24</sup> The Law also determines detailed conditions for the above stated premises.

The old Hungarian and the Italian law have introduced the legal category of *social cooperative*, which is neither a legal form nor a type of cooperative. Any cooperative that fulfills the requirements prescribed by the Law fall into this category. In Italy these cooperatives have a great social importance,<sup>25</sup> and they are gaining on their importance also in Hungary.

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<sup>22</sup> Vlatković, M. (1999) Omladinske i studentske zadruge. Beograd: NIP, p. 39.

<sup>23</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 19.

<sup>24</sup> Art. 2512, Italian Civil Code.

<sup>25</sup> In Italy the Constitution expressly recognizes the social function of cooperatives (see supra 2.1.2.) This was the legal base for introducing the category of social cooperatives with the Law on Social Cooperatives (no. 1991/381) in early nineties. There are two types of social cooperatives, one that provide planning, organization, information and education services for social and health care sector within the field of social entrepreneurship, and the other type that supports the employment of those individuals and groups of people, who may find it hard to (re-)enter work life, such as the mentally, socially or physically disadvantaged or otherwise marginalized people or those in danger of it. Good example of this type of social cooperative is the “Consortium Kairos/Cooperative Pausa Café”. In Vallette prison in Turin, the social cooperative Kairos runs a coffee roasting business Pausa Café. Prisoners have the possibility to work in this cooperative. They can become members of the cooperative by paying a small fee. Membership guarantees their employment also after their release, so they can plan their future. As members of the cooperative they are entitled to their share of the profits, and they also take part in the decision making. (Source: Sarekoski,

## Foundation of cooperatives

In Hungary cooperatives are founded with the instrument of incorporation (articles of association) at the moment of registration of this instrument with the court registry.<sup>26</sup> According to the Hungarian Civil Code, the articles of association is the basic document that regulates the governance and operation of the cooperative, thus it provides that it can be adopted only by the consent of all the members (at least seven). On the one hand, this solution respects maximally the principle of democracy and takes into consideration the character of the cooperative in the sense that as a general principle each member takes directly part in its operation, therefore, it is expected that there is full consent regarding the basic rules of operation. On the other hand, such provision might hinder the adoption of the by-laws. Besides, the Hungarian regulation provides that the articles of association should be drawn up in a notarial document (authentic instrument) or in a document signed by an attorney or legal counsel. This is a reasonable provision that provides for better legal security. It should be also mentioned, that in section 3:328 the relevant part of the Hungarian Civil Code contains provisions that require that statements made by the cooperative (*i.e.* its representatives) be in writing, made without delay and communicated to the person whom it concerns. This part contains also rules related to deadlines concerning the mailing of documents, and gives the possibilities for the by-laws to prescribe exercise of membership rights and administration by electronic means, according to modern standards.

In Austria, the regulation is similar, there is need for a single document, “*der Genossenschaftsvertrag*” for the registration of a cooperative.<sup>27</sup>

The Italian Civil Code makes distinction between the agreement of foundation (“*atto costitutivo*”) and the by-laws (“*statuto*”), however, it states that the by-laws constitute integral part of the agreement of foundation.<sup>28</sup> Whereas, this provision does not give a clear cut solution for the problem of the above-mentioned potential contradiction between the provisions of the agreement of foundation and the by-laws. We can only presume that the agreement of foundation prevails. Besides these documents, the Italian Civil Code mentions so-called rules (“*regolamenti*”) made by the board of directors (and affirmed by the general assembly), which are not part of the agreement of foundation.<sup>29</sup>

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Haapa). The Italian lawmaker has also introduced another category (“social enterprise”) with the new Law on Social Enterprise (no. 2006/155). This Law provides that organizations that fulfill the following three requirements at the same time, qualify as social enterprises: (a) being a private organization, (b) performing an entrepreneurial activity of production of social utility goods and services, and (c) acting for the common interest and not-for-profit. Thus, organizations not organized in the form of a cooperative (that provide planning, organization, information and education services for social and health care sector within the field of social entrepreneurship, etc.) can also partake in state subsidy, however, the legal ground is here different (being a social enterprise that fulfills the above stated requirements).

<sup>26</sup> Sec. 3:331 Hungarian Civil Code.

<sup>27</sup> Art. 3, Austrian Law on Cooperatives.

<sup>28</sup> Art. 2521, Italian Civil Code.

<sup>29</sup> Art. 2521 (5), Italian Civil Code.



The activity of the cooperative can be an important factor when making distinction between cooperatives and other forms of business organizations, as well as, between cooperatives and not-for-profit organizations. As already mentioned, according to the Hungarian Civil Code the activities of cooperative societies may include sales, purchases, production and services. So, generally, cooperatives may engage to any activity that is not expressly prohibited by the Law. At the same time, section 3:327 of the Hungarian Civil Code provides that where authorization by the competent authority is prescribed mandatory by law to engage in a certain activity, the cooperative society may only start up and pursue the activity in question when in possession of such authorization. And also, that activities subject to qualification may be pursued by a cooperative only if there is at least one person among its participating members, employees, or among the persons working to the benefit of the cooperative under a long-term civil relationship concluded with the cooperative, who satisfies the qualification requirements set out in the relevant legislation.

## **Membership**

Section 3:354 of the Hungarian Civil Code provides that the membership of a cooperative commences upon the foundation of the cooperative or upon admission following application. In the application the member should acknowledge the provisions of the articles of association and the amount of monetary or in-kind contribution undertaken. If the member undertakes to provide personal assistance, he or she should specify in detail the content of such assistance. It is interesting, that in the Hungarian Civil Code there is no provision on who decides on the application of a new member (the “old” law on cooperatives provided that the organ determined in the articles of association decides on membership applications). For example, the Italian Civil Code provides that the board of directors decides on membership applications within 60 days, and has to justify its decision.<sup>30</sup> The SCE Regulation in article 14 states that the acquisition of membership of an SCE shall be subject to the approval of the management or administrative organ (and candidates refused membership may appeal to the general meeting). For legal certainty it would be important to explicitly regulate this issue in the Hungarian legislation.

The law, as other laws examined, provide for the keeping of a register of cooperative members that contains basic data on the members. The data from the register is considered authentic (until contrary is proven). Thus, the register is available to any person for inspection subject to proof of legal interest (*e.g.* being creditor of the cooperative).

Regarding the minimal number of members, the Hungarian Civil Code requires at least seven members to establish a cooperative. The Hungarian regulation also provides that members may not be recruited through public announcements, what is justified with the character of the cooperative (close relationship between the members, etc.). However, we do not think that this is a practical solution. The Italian Civil Code requires at least ten

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<sup>30</sup> Art. 2528, Italian Civil Code.

founding members, however, if the cooperative is founded by natural persons with the rules of limited liability company, it is enough to have at least three founding members.<sup>31</sup>

There are certain restrictions in the Hungarian law regarding membership. Thus, section 3:326 provides that the number of members other than natural persons in a cooperative shall not exceed twenty per cent of the total membership.<sup>32</sup> It also states that the number of members of the cooperative refusing to undertake personal assistance shall not exceed one-quarter of the membership. Furthermore, that the individual monetary or in-kind contributions provided by members in a cooperative shall not exceed fifteen per cent of the capital each; and the monetary or in-kind contributions of the members other than natural persons shall not exceed one-third of the capital. It should be noted, that with allowing legal persons to become member, the cooperative might turn into a kind of company and can easily lose its cooperative character, thus, the before-mentioned restrictions are reasonable in our opinion. However, it can be still argued, that having “investor members” the cooperative is losing its special character that distinguishes it from companies (*e.g.* personal involvement of all the members, *etc.*). With few exceptions, “investor members” have the same rights and obligations as common members. One of the biggest problems of cooperatives is the lack of capital, therefore it is important to have legal solutions that attract capital. Flexible provisions and solutions might help to achieve this.

Having investor members is also advocated by the SCE Regulation.<sup>33</sup> As long as the principle of “one vote one member” is respected, legal persons should be allowed as members. Section 3:337 of the Hungarian Civil Code states that irrespective of his or her contribution, each member has one vote at the general meeting.

The GCL, based on the UNGuidelines, ILO Recommendation and the ICA Statement gives a good overview of the rights and obligations of the members of the cooperative. The GCL categorizes rights into personal and financial rights. Accordingly, personal rights of members are the right to ask for those services which form the objective of the cooperative, to ask for education and training from the cooperative based on the by-laws or decisions of the general assembly, to use the installations and services of the cooperative, to participate in the general assembly, propose a motion therein, and vote, to elect or be elected for an office in the cooperative or in that of a higher level structure of which the member’s cooperative is a member, to obtain information and to have the books and registers inspected by the supervisory board.<sup>34</sup> Jointly (a certain number of members determined by the agreement of foundation or the by-laws) the members can also: convene a general assembly and/or have a question inscribed on the agenda of the general assembly or ask for an additional audit. The GCL also enumerates financial rights: to receive a share of the surplus at economically reasonable intervals in the form of a patronage refund, to be paid pro rata of the member’s transactions with the

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<sup>31</sup> Art. 2522, Italian Civil Code.

<sup>32</sup> The number of legal person members operating as cooperatives shall not be counted in the number of members other than natural persons.

<sup>33</sup> Art. 14 (1), SCE Regulation.

<sup>34</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 31.

cooperative (or a limited interest on the paid up shares), to be reimbursed at nominal value for the paid up shares when terminating the member's membership.

The Guidelines also enumerate the obligations of the members. Thus, personal obligations are to respect the by-laws as well as the decisions taken by the general assembly, to abstain from any activity detrimental to the objective of the cooperative, and to participate actively in the life of the cooperative. Financial obligations are: subscription to and payment of the minimum number of shares fixed in the by-laws, liability for the debts of the cooperative (at a minimum with the amount of money to be paid for the shares subscribed by the member), purchasing additional shares or making supplementary financial contributions to the cooperative (if the general assembly decides so).<sup>35</sup>

The "old" Hungarian Law also enumerated itemized the rights and obligations of the members. However, the new regulation is more general, and states only that members have the fundamental right regarding the operation and supervision of the cooperative, regardless of the amount of their monetary or in-kind contributions. Furthermore, it provides that the profits of a cooperative may be distributed among its members. Half of the profits of the cooperative shall be distributed among members in proportion to their personal assistance; any provision of the articles of association providing for a lower part of the profit to be distributed in proportion to personal assistance shall be null and void. In the cooperative two different interests are combined, the interest of private property and the interest of the group. When defining the rights and obligations of the members, the balance between these two interests should be found.

The Hungarian Civil Code enlists the reasons for the termination of the membership. These are the following: upon the member leaving the cooperative; if the member failed to fulfill his obligation to make a monetary or in-kind contribution or additional monetary contribution within the time limit set in the articles of association or resolution of the general meeting; upon the member's death or termination; upon the member being excluded by court; upon the cooperative being terminated through transformation, merger, division or without succession.

The Italian Civil Code also states that if the member does not provide his or her capital contribution or supplementary payment within the time limit stipulated in the by-laws or by the resolution of the general assembly, the membership is terminated.<sup>36</sup> Otherwise, in this case the membership could be terminated only with the decision of the cooperative's organ in charge and not by the force of law.

Section 3:360 of the Hungarian Civil Code states that a member of a cooperative may be excluded from the cooperative by a court decision based on an action brought by the cooperative against the member concerned if his remaining in the cooperative jeopardized the objectives of the cooperative. Membership shall terminate upon the member's exclusion. For a procedure for the exclusion of a member to be initiated, a

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<sup>35</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 29-30.

<sup>36</sup> Art. 2531, Italian Civil Code.

resolution indicating the reasons for exclusion must be adopted by the general meeting by a majority of at least three-quarters of all members.<sup>37</sup> The action, indicating the reasons of exclusion, shall be brought within a term of preclusion of fifteen days from the date of the general meeting's resolution. Upon the termination of his membership, the member or his legal successor shall be entitled to the amount of his monetary or in-kind contribution, as well as to an amount equal to that accrued in the equity during his membership, decreased by the proportionate amount of fixed reserves, unless such amount has been used to cover losses. If the asset provided for common use is no longer in the possession of the cooperative due to normal wear and tear, the cooperative shall not be liable to pay consideration for it. If the asset is being used on after the termination of membership, a fee shall be paid to the former member or his legal successor not joining the cooperative as a member until the asset is returned.

Actually, similar solutions are suggested also by the GCL<sup>38</sup> and by the SCE Regulation<sup>39</sup>. The Italian Civil Code also provides for the possibility of judicial review of the decision on expulsion.<sup>40</sup> Thus, it would be good to introduce these solutions also into the Serbian legislation as well.

The issue of the protection of minority stakeholders is also related to membership. Section 3:362 of the Hungarian Civil Code deals with it, and states that the member or members of a cooperative holding jointly at least five per cent of the voting rights may, at any time, request that a general meeting be convened, indicating the reason for it and its purpose, or that the general meeting take a decision without holding a meeting. If the management fails to convene the general meeting at the earliest possible date within eight days of receiving the request, or fails to initiate decision-making without holding a meeting, the court operating the register shall, at the request of the members filing the motion, convene the general meeting or empower the members requesting the meeting to convene it, or to make decisions without holding a meeting. It also provides, that if the general meeting rejects or does not put to vote the proposal to enforce a claim of the cooperative against a member, executive officer, supervisory board member or the auditor, the claim may be enforced on behalf and to the benefit of the cooperative by the members holding at least five per cent of the votes of the cooperative, within a term of preclusion of thirty days following the general meeting.

## **Assets**

The Hungarian Civil Code does not provide for a minimum capital, it only states that the articles of association of the cooperative shall specify the amount of monetary or in-kind contribution to be provided by each member.

The Italian Civil Code provides that the face value of a share can not be less than 25 Euros and more than 500 Euros, and that no member can have more shares in value than

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<sup>37</sup> Without the vote of the member concerned.

<sup>38</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 29.

<sup>39</sup> Art. 15, SCE Regulation.

<sup>40</sup> Art. 2533 (3), Italian Civil Code.

100.000 Euros.<sup>41</sup> The Italian Law does not state this expressly, however it follows from the provision of the Italian Civil Code, which states that the provisions on stock corporations apply accordingly on all issues not regulated in the part of the Law on cooperatives.<sup>42</sup>

We would like to mention here that the SCE Regulation provides for a minimum capital of 30.000 Euros that has to be provided by the members.<sup>43</sup> It might be reasonable for a supranational cooperative to have a minimum capital, however, we do not support the application of such solutions in national laws. Actually, none of the national laws examined provide for a minimum capital. The SCE Regulation also prohibits issuing shares for an undertaking to perform work or supply services.<sup>44</sup>

### **Organisation of cooperatives**

This issue is the subject of a separate research, therefore we are going to deal only with basics here. The organs of a Hungarian cooperative are the general (members') meeting, the management, the supervisory board and the auditor. This structure is in accordance with international standards and with the majority of national legislations on cooperatives.

### **Termination of cooperatives**

The general principle should be to permit free termination of cooperatives that can be restricted only by legal interests of third parties and members. This is supported also by renowned authors.<sup>45</sup> Let us see what are the major differences regarding termination of cooperatives in other laws under scrutiny. The Austrian Law on Cooperatives does not contain termination reasons related to not fulfilling prescribed legal conditions (*e.g.* for performing the activity or having null and void registration, *etc.*), these issues must be regulated in and sanctioned by some other legal act from the field of public law. However, what is relevant in our opinion is the fact that the Austrian Law has very detailed liability rules. Such rules provide better legal protection and security to creditors of the cooperative in case of its termination. The Austrian Law on Cooperatives requires also 2/3 majority, however, it is not obvious if it is 2/3 of all the members or only those present at the meeting.<sup>46</sup>

This issue is regulated in section 3:367 of the Hungarian Civil Code: in addition to the general cases of the termination without succession of legal persons, a cooperative shall terminate without succession if the number of its members falls under seven and the cooperative does not file for the registration of an adequate number of new members at

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<sup>41</sup> Art. 2525, Italian Civil Code.

<sup>42</sup> Art. 2519, Italian Civil Code.

<sup>43</sup> Art. 3 (2), SCE Regulation.

<sup>44</sup> Art. 4 (2), SCE Regulation.

<sup>45</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 51.

<sup>46</sup> Art. 33 (2), Austrian Law on Cooperatives.

the court operating the register within a term of preclusion of six months following that date.

A serious issue related to the termination of cooperatives is the left-over assets of the cooperative after termination. The „old” Hungarian Law explicitly provided that assets remaining after the termination of the cooperative shall be distributed among the members and investors consistent with their respective capital contributions. However, in the part of the Hungarian Civil Code dealing with cooperatives, there is no such provision, which means that section 3:48 applies (general rules on the termination of legal persons), which states that the assets of the legal person terminated without succession that remain after satisfying the creditors shall benefit the members or, in the case of a legal person having no members, the persons exercising founders’ rights, to the extent they or their legal predecessors provided their monetary or in-kind contributions to the legal person.

### **Conclusions**

The current regulation on cooperatives in Hungary is in many ways in line with international and European tendencies. The new regulation is contained in the Civil Code what is not exceptional in European national systems. The structure of the regulation is logical, however, there are some important issues not regulated by the law (*e.g.* who decides on the application of a new member). Parts of the old law on cooperatives are still in force, what might lead to misunderstandings, therefore this issue should be solved. There is one serious issue we would like to highlight, that is the assets of the cooperative, the „one member one share” principle should be reconsidered. This could be combined with the investor’s veto right regarding certain decisions. Personal commitment, services or work should not be allowed as in-kind contribution, as it give possibility for misuse.

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**Honlap: <http://jog.tk.mta.hu/mtalwp>**

**E-mail: [mta.law-wp@tk.mta.hu](mailto:mta.law-wp@tk.mta.hu)**

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