

Aneta Suchoń

# Legal aspects of the organisation and operation of agricultural co-operatives in Poland





LEGAL ASPECTS  
OF THE ORGANISATION AND OPERATION  
OF AGRICULTURAL CO-OPERATIVES  
IN POLAND



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IN POLAND**



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# INTRODUCTORY REMARKS

## 1.1. Explanation of the title and assessment of the current state of research

The subject of the book is the legal aspects of the organisation and operation of agricultural co-operatives in Poland. The term ‘agricultural co-operative’ itself is not a legal term under Polish law. It can be found in literature,<sup>1</sup> draft bills,<sup>2</sup> and foreign legal systems.<sup>3</sup> The new Act of 4 October 2018 on Farmers’ Co-operatives,<sup>4</sup> on the other hand, as the name already suggests, introduces the normative basis for the operation of such entities. The remit of farmers’ co-operatives is to run a business for the benefit of their members relating to, for example, planning the production of products or groups of products and adjusting it to market conditions, especially in terms of quantity and quality, and to processing products or groups of products produced by the farmers and the marketing of such processed products.

Besides the farmers’ co-operatives which will be established under the Act of 4 October 2018 on Farmers’ Co-operatives, co-operatives of agricultural pro-

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<sup>1</sup> S. Wojciechowski, *Spółdzielnie rolnicze: jakie być mogą i powinny w Polsce według wzorów zagranicznych*, Poznań 1936; H. Cioch, *Spółdzielnie rolnicze*, in: *Zarys prawa spółdzielczego*, Warszawa 2007; A. Suchoń, *Prawna koncepcja spółdzielni rolniczych*, Poznań 2016; COGECA, *Development of Agricultural Co-operatives in the EU*, Brussels 2014, p. 6 et seq.; J. Bijman, R. Muradia, A. Cechin, *Agricultural co-operatives and value chain coordination*, in: *Value chains, inclusion and endogenous development: Contrasting theories and realities*, B. Helmsing, S. Vellem, eds., Milton Park 2011, p. 82. In the literature the term “agricultural co-operative movement” is also popular, e.g.; H. Cioch, *Spółdzielczość rolnicza w świetle projektu nowej ustawy – Prawo spółdzielcze*, „Rejent” 2005, No 1, p. 34 et seq.; *Spółdzielczość rolnicza w gospodarce rynkowej*, E. Pudełkiewicz, Z. Wierzbicki, eds., Warszawa 1993; D. Mierzwa, *Spółdzielczość rolnicza w procesie zmian*, in: *Wieś i rolnictwo w procesie zmian. Szanse rozwojowe rolnictwa w przestrzeni europejskiej*, S. Sokołowska, A. Bisaka, eds., Opole 2008, p. 188.

<sup>2</sup> *MPs draft of the law on agricultural co-operatives* 2003, Print No 2759 of 2004. [online]. The Sejm of the Republic of Poland [accessed on: 2015-05-10]. Available at: <[http://orka.sejm.gov.pl/proc4.nsf/drafts/2759\\_p.htm](http://orka.sejm.gov.pl/proc4.nsf/drafts/2759_p.htm)>.

<sup>3</sup> Chapter III of the French Rural Code (*Code rural et de la pêche maritime*) applicable to Les sociétés co-operatives Agricoles. See e.g. *Code rural et de la pêche maritime, code forestier, commenté*, La Rochelle 2014. The Italian legislature also uses the concept of agricultural co-operatives in the Civil Code, e.g. Article 2513 of the Italian civil code.

<sup>4</sup> Dz. U. of 2018, item 2073.

ducers have existed for many years, such as dairy co-operatives, co-operative agricultural producers' groups, 'Samopomoc Chłopska' (farmers' self-help) co-operatives and others.

Therefore the author of this paper assumes that by agricultural co-operatives is meant co-operative entities engaged in agricultural production (agricultural holdings) and other entities operating in the agricultural sector, which take on at least one stage of such activities, or, operating more broadly in this sector. The members of such a co-operative are mainly agricultural producers.

For each business entity the legal aspects of its organisation and operation are of material importance.<sup>5</sup> Organising a business entity is the process of creating a mix of people and other resources to work together to achieve a common goal.<sup>6</sup> In the case of an agricultural co-operative, the organisation stage concerns mainly the formation of the entity, the shaping of its internal organisational structure, the contributions and shares of its members, and work (the 'set-up' phase). An organised entity may undertake economic activity as specified in its statutes, but at the same time it may, during its operation, supplement and modify the organisational structure. Therefore, operations of a business entity consist of factual and legal activities, and the related legal provisions vary and concern, for example, mergers, vetting, economic principles, the conclusion of agreements, raising funds, taking advantage of tax exemptions, deductions, and the like.

The scope of legal regulations affecting the organisation and functioning of agricultural co-operatives is very wide. It is not limited to the Act of 16 September 1982 on co-operative law itself,<sup>7</sup> and Act of 4 October 2018 on farmers'

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<sup>5</sup> There is no normative definition of the organisation and functioning of an enterprise, however, these terms are used in literature, e.g. A. Zakrzewska-Bielawska, *Organizowanie działalności przedsiębiorstwa*, in: *Podstawy zarządzania. Teoria i ćwiczenia*, ed. A. Zakrzewska-Bielawska, Warszawa 2012; *Organizacja i funkcjonowanie przedsiębiorstwa transportu drogowego rzeczy*, ed. I. Mitraszewska, Warszawa 2014; A. Tobolska, *Nowy model organizacji i funkcjonowania starych przedsiębiorstw przemysłowych* [online]. UP [accessed on: 2014-11-05]. Available at: C:\Users\Dell\Downloads\581-1744-1-PB.pdf.

<sup>6</sup> See e.g. A. Zakrzewska-Bielawska, *Organizowanie działalności...*, pp. 253-287; *Encyklopedia organizacji i zarządzania*, Warszawa 1981, pp. 320-321; M. Kukurba, *Teoria organizacji i przedsiębiorstwa* „Biuletyn Polish Open University” 2010, No 5 (39). The word “organisation” derives from Latin *organisation* – system, Greek *organikos* – produced with the use of tools and *organon* – tool, instrument. See W. Kopaliński, *Słownik wyrazów obcych*, Warszawa 1983, p. 306. Different descriptions of the organisation or organising are to be noted in the literature. For example: organising as a process, means a sequence of intentionally dependent phases (stages): *Organizowanie* [online].[accessed on: 2018-10-05]. Available at: <<https://pl.wikipedia.org/wiki/>>. *Organizowanie* has been assumed in this work that the organisation refers to the stage of creation, and further harmonisation of the means of production during the operation of the co-operative is part of the functional stage. So for the agricultural holding see R. Budzinowski, *Koncepcja gospodarstwa rolnego w prawie rolnym*, Poznań 1992, p. 112 et seq. Also see Z. Wojtaszek, *Podstawowe pojęcie z zakresu organizacji gospodarstw rolniczych*, „Zeszyty Problemowe Postępów Nauk Rolniczych” 1967, issue 68, p. 63 et seq.

<sup>7</sup> Uniform text: Journal of Laws of the Republic of Poland, abbreviated Dz. U. of 2018, item 1285 as amended.

co-operatives but it also encompasses (apart from the regulations applying directly to different types of agricultural co-operatives) the regulations indirectly governing the structure and operation of co-operatives. They often regulate their economic environment and agriculture as a part of the economy covered by the Common Agricultural Policy.

As an example, one may point to the Act of 15 September 2000 on agricultural producer groups and their associations, which is particularly important for the research subject discussed here,<sup>8</sup> the Act of 27 April 2006 on social co-operatives,<sup>9</sup> the Act of 20 April 2004 on the organisation of the milk and dairy products market,<sup>10</sup> the Act of 23 April 1964 entitled the "Civil Code",<sup>11</sup> the Act of 19 October 1991 on the management of agricultural real property of the State Treasury,<sup>12</sup> the Act of 11 April 2003 on the shaping of the agricultural system,<sup>13</sup> legislative acts related to taxes,<sup>14</sup> agricultural markets,<sup>15</sup> or acts issued by the European Union.<sup>16</sup>

So far, there has been no attempt in the legal literature to produce a publication on the organisation and operation of agricultural co-operatives. Although monographs devoted to agricultural co-operatives have been published, they referred to a different normative, political and economic system, and are now primarily of historical importance. From the interwar period, the work of S. Wojciechowski entitled: *Spółdzielnie rolnicze: jakie być mogą i powinny w Polsce według wzorów zagranicznych*<sup>17</sup> deserves special attention. The author here presents agricultural co-operatives (mainly their structure, area of activity, benefits for farmers and agricultural development) at the turn of the 20<sup>th</sup> century not only in selected countries

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<sup>8</sup> Uniform text: Dz. U. of 2018, item 1026 as amended.

<sup>9</sup> Uniform text: Dz. U. of 2018, item 1205 as amended.

<sup>10</sup> Uniform text: Dz. U. of 2018, item 724, 1578 as amended.

<sup>11</sup> Uniform text: Dz. U. of 2018, item 1025, 1104, 1629 as amended.

<sup>12</sup> Uniform text: Dz. U. of 2018, item 91, 1162 as amended.

<sup>13</sup> Uniform text: Dz. U. of 2018, item 1405, 1496, 1637 as amended.

<sup>14</sup> For example the Act of 12 January 1991 on local taxes and fees, uniform text: Dz. U. of 2018, item 1445 as amended; Act of 15 February 1992 on company income tax (uniform text: Dz. U. of 2018 item 1509 as amended); Act of 15 September 1984 on agricultural tax (uniform text: Dz. U. of 2017 item 1892 as amended).

<sup>15</sup> Act of 19 December 2003 on the organisation of fruit, vegetable and hops market (uniform text: Dz. U. 2018 item 1131 of as amended).

<sup>16</sup> For example Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation 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 (Official Journal of the European Union abbreviated O.J.EU (L 347, p. 671), hereinafter referred to as Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products or EU Regulation No 1308/2013.

<sup>17</sup> S. Wojciechowski, *Spółdzielnie rolnicze...*, p. 5 et seq., idem, *Kooperacja w rozwoju historycznym*, Warszawa 1923; idem, *Ruch spółdzielczy w Anglii*, Warszawa 1918.

of Western Europe (mainly in Denmark, Germany, France and Belgium), but also in the USA and Canada. This book has undoubtedly been an innovative work and the only monograph in the Polish literature which deals so extensively with the issue of agricultural co-operatives outside Poland. In the interwar period, a study of a practical nature authored by W. Bzowski: *Co to jest spółdzielczość rolnicza?* was also published.<sup>18</sup>

After the Second World War, owing to the change in the economic and political system, the legal literature on agricultural co-operatives referred primarily to agricultural production co-operatives and, more broadly, co-operatives of agricultural production. In particular, the following books should be mentioned: *Formy organizacyjne rolniczych spółdzielni produkcyjnych* by S. Rittermann and V. Siedlecki<sup>19</sup>; *Problemy prawne rolniczych spółdzielni produkcyjnych* edited by H. Świętowski,<sup>20</sup> *Wkłady gruntowe w rolniczych spółdzielniach produkcyjnych*<sup>21</sup> by Skiba and a book by J. Paliwoda entitled *Zagadnienia prawne spółdzielni produkcji rolnej*.<sup>22</sup>

Since the political transformation and the introduction of a market economy, the subject of agricultural co-operatives in the legal literature has rarely been given attention. Only one monograph by J. Paliwoda on agricultural production co-operatives, published in 1996, is worthy of note here.<sup>23</sup> In subsequent years these issues constituted a part of other deliberations or discussions,<sup>24</sup> referred to when other issues were being considered in monographs, handbooks of agricultural law,<sup>25</sup> co-operative law,<sup>26</sup> or a modest handful of articles<sup>27</sup>. These considerations focused mainly on the legal aspects of agricultural production co-operatives. There has been no interest in legal doctrine in the evolution of agricultural co-operatives. This may be attributed to the fact that many co-operative entities operating in rural areas have been liquidated.

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<sup>18</sup> W. Bzowski, *Co to jest spółdzielczość rolnicza?*, Warszawa 1930.

<sup>19</sup> S. Rittermann, V. Siedlecki, *Formy organizacyjne rolniczych spółdzielni produkcyjnych*, Warszawa 1962.

<sup>20</sup> *Problemy prawne rolniczych spółdzielni produkcyjnych*, ed. H. Świętowski, Wrocław 1965.

<sup>21</sup> H. Skiba, *Wkłady gruntowe w rolniczych spółdzielniach produkcyjnych*, Warszawa 1969.

<sup>22</sup> J. Paliwoda, *Zagadnienia prawne spółdzielni produkcji rolnej*, Wrocław 1987; idem, *Problemy prawne kooperacji produkcyjnej w rolnictwie*, Warszawa 1979.

<sup>23</sup> See J. Paliwoda, *Zagadnienia prawne przekształceń własnościowych w mieniu spółdzielni produkcji rolnej w Polsce, Niemczech i Ukrainie*, Warszawa 1995.

<sup>24</sup> B. Jeżyńska, *Spółdzielnie produkcji rolnej*, in: eadem, *Producent rolny jako przedsiębiorca*, Lublin 2008, pp. 187-199.

<sup>25</sup> S. Prutis, *Model normatywny rolniczej spółdzielni produkcyjnej*, in: *Prawo rolne*, ed. A. Stelmachowski, Warszawa 2009, pp. 282-286.

<sup>26</sup> H. Cioch, *Spółdzielnie rolnicze...*, op. cit.

<sup>27</sup> idem, *Spółdzielczość rolnicza w świetle...*, p. 34 et seq.; A. Kokot, *Normatywne pojęcie działalności pozarolniczej w rolniczych spółdzielniach produkcyjnych*, „Prawo rolne” 1991, issue 1, pp. 37-49; J. Paliwoda, *Uwagi o aspektach prawnych rolniczych spółdzielni produkcyjnych w przededniu integracji europejskiej*, „Prawo Rolne” 1998, issue. 2.

It is only in recent years that the interest in co-operatives in agriculture and rural areas has been revived in the legal doctrine. The publications concern not only agricultural production co-operatives, but also dairy co-operatives, agricultural co-operative producer groups and social co-operatives as well.<sup>28</sup> Articles have also been published on issues related to agricultural co-operatives in other countries in EU.<sup>29</sup> Another book that deserves attention is a work by A. Suchoń *The Legal Concept of Agricultural Co-operatives*.<sup>30</sup> The aim of the book is to attempt to create a legal concept of agricultural co-operatives in Poland, which required a thorough analysis of their structure and the way they operate, taking into account their complexity and diversified nature. The book also includes an analysis of legislation concerning agricultural co-operatives in selected member states of the European Union (mainly France, Italy and Germany). Further, it contains an extensive summary presenting a new model of agricultural co-operatives, which contributes to their increased sustainability and the provision of better development opportunities.

Of special interest are works on agricultural co-operatives published by the National Co-operative Council<sup>31</sup>. These are publications of a primarily practical nature, dealing with economic but also legal issues, relating to, among other issues, the formation and operation of co-operative agricultural producer groups. Their main task is to help create and run the business of co-operative groups of agricultural producers or social co-operatives and to promote the idea of co-operatives in rural areas.

Compared to the Polish legal literature on agricultural co-operatives, foreign doctrine is extremely rich. It is primarily literature concerning the internal legislation of each of the European Union's Member States. First of all, I would like to mention the Italian studies and the book by G. Giuffrida<sup>32</sup> *Le co-operative agricole (natura giuridica)*. This is a work devoted to the legal aspects of agricultural co-operatives in Italy, and in particular to the definition of the legal nature of agricultural co-operatives. The book by S. Carmignani<sup>33</sup> *La societa in agricoltura*, should also be mentioned. It focuses on the Italian agricultural company mainly, although the author also discusses agricultural co-operatives as agricultural

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<sup>28</sup> See e.g. A. Suchoń, *Prawne formy władania gruntami przez spółdzielnie funkcjonujące w rolnictwie i na terenach wiejskich*, „Przegląd Prawa Rolnego” 2011, No 2, pp. 71-89.

<sup>29</sup> E.g. eadem, *Spółdzielczość rolnicza w Niemczech*, „Przegląd Prawa Rolnego” 2012, No 1, pp. 239-266.

<sup>30</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 6 et seq.

<sup>31</sup> E.g. Krajowa Rada Spółdzielcza (The National Co-operative Council), *Instrukcja postępowania przy zakładaniu spółdzielni jako grupy producentów rolnych*, Warszawa 2010; *Organizacja mazowieckiego rynku rolnego poprzez tworzenie grup producentów rolnych na bazie prawa spółdzielczego*, ed. W. Boguta, Z. Gumowski, K. Lachowski, Warszawa 2007.

<sup>32</sup> G. Giuffrida, *Le co-operative Agricole (natura giuridica)*, Milano 1981.

<sup>33</sup> S. Carmignani, *La societa in Agricoltura*, Milano 1999.

entrepreneurs. The issue of agricultural co-operatives is also addressed in the text books on Italian agricultural law.<sup>34</sup>

The achievements of German studies are also rich. A short presentation is worth starting with the work by U. Ott *Die landwirtschaftlichen Kooperativen in die Europäischen Gemeinschaft*<sup>35</sup> which deals with the legal issues concerning agricultural co-operatives in the “old EU Members” including Germany. Of particular interest is the 1990s work written after the unification of Germany on *landwirtschaftlichen Produktionsgenossenschaften*, which are German agricultural co-operatives. Works of R. Steding<sup>36</sup> and J. Wenzel<sup>37</sup> are also noteworthy, as well as those by H. Münkner, which deal with a number of different issues concerning agricultural co-operatives, especially the international aspect.<sup>38</sup> Moreover, there are handbooks of agricultural law.<sup>39</sup> Also worthy of note are works on the law and economy of the Raiffeisen (Deutscher Raiffeisenverband e.V.) organisation, which brings together predominantly agricultural co-operatives.<sup>40</sup> Much attention to agricultural co-operatives has been given in German economic literature, too.<sup>41</sup>

Agricultural co-operatives have also been discussed in French literature. Here, a book entitled *Les co-operatives agricoles. Identité, gouvernance et stratégies* should be mentioned.<sup>42</sup> It is a work written by academics and experts with wide practical experience in the field of co-operative law and the operation of agricultural co-operatives. The work focuses on the legal aspects, but also takes into account financial, economic and social issues. Noteworthy are the

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<sup>34</sup> A chapter from the handbook by L. Costato, *Corso di diritto agrario Italiano e comunitario*, Milano 2008; A. Germanò, *Manuale di diritto agrario*, Torino 2003, p. 139 et seq.

<sup>35</sup> U. Ott, *Die landwirtschaftlichen Kooperativen in die Europäischen Gemeinschaft*, Berlin 1996.

<sup>36</sup> R. Steding, *Die Produktivgenossenschaft im deutschen Genossenschaftsrecht*, Göttingen 1995; idem, *Produktivgenossenschaften in der ostdeutschen Landwirtschaft – Ursprung und Anspruch*, Berlin 1994.

<sup>37</sup> J. Wenzel, *Der Bestandsschutz fehlerhaft umgewandelter LPG-Unternehmen*, „Agrarrecht“ 1998, H. 5, p. 139; idem, *Die Umwandlung der landwirtschaftlichen Produktionsgenossenschaften in der Rechtsprechung des Bundesgerichtshofes*, „Agrarrecht“ 2000, H. 11, p. 349 et seq. Also see: D. Schweizer, *Das Recht der landwirtschaftlichen Betriebe nach dem Landwirtschaftsanpassungsgesetz*, Köln 1999.

<sup>38</sup> H. Münkner, *Co-operation as a Remedy in Times of Crisis. Agricultural Co-operatives in the World. Their Roles for Rural Development and Poverty Reduction*, Marburg 2012.

<sup>39</sup> C. Grimm, *Agrarrecht*, München 2004.

<sup>40</sup> Deutscher Raiffeisenverband e.V., *Ausblick 2011, Geschäftsbericht 2010; Raiffeisen-Genossenschaften, Wir leben Nachhaltigkeit! 20 Jahre Agrar-genossenschaften eine Erfolgsgeschichte; Genossenschaften – gestern, heute, morgen* [online]. Raiffeisen [accessed on: 2018-09-05]. Available at: <<https://www.raiffeisen.de/downloads/publikationen>>.

<sup>41</sup> M. Hanisch, M. Ihm, *Genossenschaftliche Antworten auf Globale Herausforderungen*, „Agrarsoziale Gesellschaft – Ländlicher Raum“ 2012, No 1.

<sup>42</sup> C. Chômel, F. Declerck, M. Filippi, R. Mauget, O. Frey, *Les coopératives agricoles. Identité, gouvernance et stratégies*, Paris 2013.

comments on the provisions of the French agricultural code concerning agricultural co-operatives.<sup>43</sup> An example of this is the work by M. Gilardeau and J.P. Moreau: *Code rural: commenté et annoté*.<sup>44</sup>

Extensive literature on agricultural co-operatives also exists in other Western European countries. Of interest are publications by J. Bijman, which deal mainly with economic, but to a lesser extent also legal, aspects of the operation of co-operatives, especially in the Dutch fruit and vegetable market, and outside Europe.<sup>45</sup>

The development of research on agricultural co-operatives has been largely influenced by the implementation of the Common Agricultural Policy. An example is the book by O.F. van Bekkum and G. van Dijk *Agricultural Co-operatives in the European Union. Trends and Issues on the Eve of the 21<sup>st</sup> Century*. Notable are studies and documents related to co-operatives prepared by or on behalf of the European Commission.<sup>46</sup> Studies prepared by the European Commission within the framework of the "Support for Agricultural Co-operatives" financial project make a significant contribution to the development of studies on co-operatives in agriculture. The vast majority of them are of an economic nature, but there are also very important studies on the development of the legal aspects of agricultural co-operatives. This is true in particular of the report by G. van der Sangen *EU synthesis and comparative analysis report – Legal Aspects*.<sup>47</sup> Other works on European agricultural co-operative organisations, including in particular the COGECA (General Committee for Agricultural Cooperation in the European Union) should also be mentioned.<sup>48</sup>

According to this review, the achievements of Polish legal studies concerning agricultural co-operatives, especially the issue of their organisation and operation when compared to other EU Member States, are poor. This very observation, however, does not prejudice the choice of the research topic.<sup>49</sup>

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<sup>43</sup> See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 8 et seq.

<sup>44</sup> M. Gilardeau, J.P. Moreau, *Code rural: commenté et annoté*, Paris 1995, p. 10 et seq.

<sup>45</sup> See J. Bijman, *Essays on Agricultural Co-operatives; Governance Structure in Fruit and Vegetable Chains (Cooperatiesenbeheersstructuur in groente- en fruitketens)*, doctoral thesis of 2002 available of the European Commission Library in Brussels, J. Bijman, G. Hendrikse, *Co-operatives in chains: institutional restructuring in the Dutch fruit and vegetables industry*, „Journal on Chain and Network Science” 2003, No 3 (2), pp. 95-107.

<sup>46</sup> The European Commission, *Biała Księga o przedsiębiorstwach spółdzielczych, Dokument konsultacyjny Unii Europejskiej*, Brussels 2001. A series of analyses and papers prepared within the framework of the project „Support for agricultural co-operatives” financed by the European Commission. E.g. M. Hanisch, M. Müller, J. Rommel, *Support for Farmers’ Co-operatives*; Sector Report Dairy, Wageningen 2012.

<sup>47</sup> G. van der Sangen, *Support for Farmers’ Co-operatives; EU synthesis and comparative analysis report – Legal Aspects*, Wageningen 2012.

<sup>48</sup> COGECA, *Agricultural Co-operatives in Europe, Main Issues and Trends*, Brussels 2010.

<sup>49</sup> See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 6 et seq.

## 1.2. Justification of the choice of research subject

There were various arguments in favour of conducting an analysis of the legal concept of agricultural co-operatives, and they included cognitive, social and economic, practical, legal and theoretical aspects. A co-operative constitutes an entity of significance that functions in agriculture. Since it is an enterprise within the agricultural sector, it needs to be analysed in the context of the basic concepts of agricultural law, namely the agricultural farm, the agricultural activity, the agricultural product and the agricultural producer. Therefore, the reason for creating the concept of agricultural co-operatives was to distinguish between a specific legal and agricultural category of co-operative entities. These categories require further research as they as yet insufficiently covered in reference books. There has been a long-lasting need to carry out theoretical research into co-operative law.<sup>50</sup> It is worth referring here to the general definition of a co-operative, co-operative principles and concepts, co-operative law relations, distinctive features of co-operatives and co-operative law, their relationships with other fields and their development tendencies.

Agricultural co-operatives have a rich history on Polish soil, and the legal, economic and social formula of their organisation and operation has changed over the years. The beginnings of agricultural co-operatives date back to 1816, when S. Staszic founded the Hrubieszów Agricultural Society for the purpose of “improving agriculture and industry and mutual help in misfortune.” However, the formula for the organisation and operation of agricultural co-operatives is poorly recognised in Polish doctrine, despite the fact that co-operatives are an important element of a market economy and that their interests must therefore be protected and promoted. This is confirmed by a number of international instruments issued by global organisations such as the United Nations (UN), the International Labour Organisation (ILO) and the Food and Agriculture Organisation (FAO).<sup>51</sup> These considerations alone prompt research into the legal concept of agricultural co-operatives.

As early as 1895, the International Co-operative Alliance (ICA) was established, the largest and one of the oldest non-governmental international organizations in the world. Currently, its headquarters are in Brussels and it associates more than 284 co-operative organizations active in all sectors of the economy from 95 countries, representing over 1 billion co-operative members.<sup>52</sup>

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<sup>50</sup> B. Słotwiński, *Z teoretycznych zagadnień prawa spółdzielczego*, Warszawa 1973, p. 10 et seq.

<sup>51</sup> For more see W. Czternasty, *Determinanty rozwoju spółdzielczości w różnych warunkach ekonomiczno-społecznych*, Toruń 2013, p. 8 et seq.

<sup>52</sup> National Co-operative Council [access: 2018-10-11]. Available at <<https://www.krs.org.pl/index.php/dzialalno-midzynarodowa-2/wiatowy-ruch-spodzielczy>>. For more see A. Suchoń, *Co-operatives in the face of challenges of contemporary agriculture in the example of Poland*, in: *Contemporary challenges of Agriculture Law: among Globalization, Regionalisation and Locality*, ed. R. Budzinowski, Poznań 2018, pp. 303–310.

The need for research is also justified by differing socio-economic considerations. Taking into account the high financial uncertainty experienced by agricultural producers such as relatively high costs related to agricultural activities (changes in prices of agricultural products and the impact of weather conditions), the collective action of farmers is necessary to reduce the costs of agricultural production, achieve higher prices for agricultural products and increase their competitiveness in the market.

A form of comprehensive joint action termed co-operation<sup>53</sup> among individual entities in agriculture is therefore extremely essential. It can take various forms: as an agreement between agricultural producers, or as a more permanent structure (setting up a separate organisation). The latter possibility is of great importance within the framework of Poland's membership of the EU and in times of globalisation. In my opinion, a co-operative is the most appropriate form of cooperation for agricultural producers. The attribute that distinguishes a co-operative entity from other business entities is that it combines not only financial means (capital), but above all people.<sup>54</sup> The essence of the co-operative movement is founded on mutual support and joint action by its members<sup>55</sup> including their work for the entity on a co-operative basis. Besides, co-operatives have a long-term business perspective and a life span of generations, which is extremely important in agriculture.<sup>56</sup>

Cooperation is needed at various stages of farming – from purchasing the means of production through the use of agricultural machinery, sale of crops and consultancy, to processing. Agricultural associations are crucial in representing farmers' interests at regional, national and EU levels. Cooperation between agricultural producers in the form of co-operatives is an expression of horizontal and vertical integration in agriculture.<sup>57</sup> Horizontal integration involves the merging

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<sup>53</sup> For more on cooperation see: A. Perzyna, *Kooperacja w rolnictwie na tle ogólnego pojęcia kooperacji*, „Studia Iuridica Agraria” 2008, Vol. VI, 2007, p. 215 et seq.

<sup>54</sup> M. Zuba, *Spółdzielnie mleczarskie trwałą formą agrobiznesu*, „Zeszyty Naukowe WSEI w Lublinie, Seria Ekonomia” 2009, No 1, pp. 167-175.

<sup>55</sup> See J. Pastuszka, E. Turkowski, *Spółdzielczość jako ruch obywatelski na przełomie XIX/XX wieku w Europie i w Polsce – inspiracja dla przyszłości*, in: *Spółdzielczość w budowie społeczeństwa obywatelskiego – historia i współczesność*, ed. T. Skoczek, Warszawa 2013, p. 29 et seq.

<sup>56</sup> Some dairy co-operatives are over 100 years old or were established in the inter-war period. For more see A. Piechowski, *Spółdzielcze stulatki, Rzecz o wiekowych polskich spółdzielniach*, Warszawa 2008, pp. 3-4; A. Domagalski, *Wyzwania stojące przed spółdzielczością w III RP*, in: *Spółdzielczość w budowie społeczeństwa obywatelskiego – historia i współczesność*, Warszawa 2013, p. 23 et seq.

<sup>57</sup> Also see E. Dulfer, *The co-operative between member participation, the formation of vertical organizations and bureaucratic tendencies*, in: *Co-operatives in the Clash between Member Participation, Organizational Development and Bureaucratic Tendencies*, ed. E. Dulfer, W. Hamm, London 1985; P.V. Scheel, *The legal problem of vertical organisation building in co-operation*, in: *ibidem*. See more. A. Bialek, *Perspektiven der Genossenschaft als Organisationsform*, Berlin 1995, p. 48 et seq.

of operators at the same stage of production or distribution.<sup>58</sup> An example is a co-operative group of agricultural producers. Vertical integration, on the other hand, is a form of economic and production link between the units producing a given product from the raw material to its final form.<sup>59</sup> Such cooperation exists, for example, in a dairy co-operative. Farmers' associations, especially in the form of co-operatives, are increasingly used by the Polish legislator as an instrument for organising production in agriculture and agricultural markets. Agricultural co-operatives, as undertakings owned and controlled by farmers, account for a significant share of the milk market (around 70%). Their increasing role can be observed in the pig, cereals and fruit and vegetable markets.

It is worth noting that agricultural co-operatives provide jobs for the inhabitants of rural areas and small towns, among them the disabled and the unemployed, whose number in such areas is constantly growing. They therefore contribute to the development of civil society by providing opportunities for active participation in the labour market for many people.<sup>60</sup> Combining a wide range of values, a co-operative pursues the key objectives of the European Union, in such areas as social policy and employment, regional development and agriculture. There are opinions in the doctrine that the co-operative movement is a positive response to the threats posed by the modern system of the global economy.<sup>61</sup>

The choice of co-operatives as a form of cooperation in agriculture is also supported by the experience of the European Union Member States. According to statistical data, there are about twenty two thousand agricultural co-operatives in European Union countries, and their total turnover exceeds EUR 347 milliard. They have more than a 50% share in deliveries of the means of agricultural production, and more than 60% in the purchasing, processing and marketing of agricultural products.<sup>62</sup> The type of co-operative and the organisational structure of the co-operative movement are also important. In some European countries,

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<sup>58</sup> J. Małyśz, *Integracja pozioma*, in: *Encyklopedia Agrobiznesu*, ed. A. Woś, Warszawa 1998, p. 389.

<sup>59</sup> W. Szymański, *Integracja pionowa w rolnictwie*, in: *Encyklopedia Agrobiznesu*, ed. A. Woś, Warszawa 1998, p. 383.

<sup>60</sup> See [online]. KRS [accessed on: 2013-05-11]. Available at: <<http://krs.org.pl>>. J. Bijman, R. Muradian, A. Cechin, *Agricultural co-operatives...*, op. cit.

<sup>61</sup> See A. Czyżewski, *Procesy globalizacji a spółdzielczość*, 1 Spółdzielcze Forum Ekonomiczno-Gospodarcze, paper presented at a conference in Kielce on 16 September 2005.

<sup>62</sup> The earlier report prepared by COGECA indicated 38 000 co-operatives. This difference is a result of the exclusion from the total number of co-operatives the French CUMA (*Les Coopératives d'Utilisation de Matériel Agricole*. They are small co-operatives using agricultural machinery) and the reduction of the number of co-operatives in Greece due to the change in registration regulations and the consolidation of co-operatives: COGECA, *Development of Agricultural...*, p. 6 et seq. Also seen COGECA, *Agricultural Co-operatives in Europe...*, p. 5 et seq.; W. Boguta, Z. Gumowski, K. Lachowski, *Organizacja mazowieckiego rynku rolnego poprzez tworzenie grup producentów rolnych na bazie prawa spółdzielczego*, Warszawa 2007, p. 27.

thanks to the expansion of the scope of co-operative activity and its adaptation to the needs of agriculture and the requirements of the Common Agricultural Policy, as well as the extensive structure ensuring the development of co-operatives, co-operative entities are in good financial condition and largely support co-operative agricultural holdings. Noteworthy are the co-operatives active in the production of agricultural products. Good examples here are the East German territories, Bulgaria and Slovakia.<sup>63</sup>

Agricultural co-operatives operate in the field of agriculture, which has various functions. Social and economic changes, environmental degradation, civilizational development present new challenges for agriculture. What is needed is the sustainable development of agriculture, combining economic, social and environmental goals (agrotourism, renewable energy, commerce, high quality food production). It is also significant to enhance the competitiveness of agricultural producers and increase their income as well as to create workplaces in rural areas. The United Nations in its document<sup>64</sup> "Transforming our world: the 2030 Agenda for Sustainable Development" says that what it advises should be achieved by 2030 is to double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishermen, to implement robust agricultural practices designed to increase productivity and production, to help maintain ecosystems and to strengthen capacity for adaptation to climate change.<sup>65</sup>

In Poland, there are currently about 700 agricultural production co-operatives operating on about 230 000 ha of agricultural land. A number of farmers' associations (currently around 500) also operate an agricultural holding with the main purpose of providing services in a rural environment.<sup>66</sup> Recently, social co-operatives have started to be created in rural areas as well. Currently there are over 1600 such co-operatives registered in Poland.<sup>67</sup> Some are also involved in agricultural activity.<sup>68</sup>

When it comes to co-operative groups of producers, as of December 2014, there were 418 such entities registered in regional registers (over 1300 groups

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<sup>63</sup> For more see A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 10 et seq.

<sup>64</sup> ONZ, *Transforming our world: the 2030 Agenda for Sustainable Development* [online]. ONZ [access on: 2018-01-10]. Available at: <[http://www.unic.un.org/pl/files/164/Agenda%202030\\_pl\\_2016\\_ostateczna.pdf](http://www.unic.un.org/pl/files/164/Agenda%202030_pl_2016_ostateczna.pdf)>.

<sup>65</sup> Ibidem.

<sup>66</sup> See [online]. KRS [accessed on: 2015-03-14]. Available at: <<http://krs.org.pl>>.

<sup>67</sup> See [online]. Urząd Statystyczny [accessed on: 2018-10-14]. Available at: <[https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5490/15/1/1/spoldzielnie\\_socjalne\\_2016.pdf](https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5490/15/1/1/spoldzielnie_socjalne_2016.pdf)>.

<sup>68</sup> For example, the „Świt” co-operative in the village of Chudobczyce runs plant and animal breeding, while the social co-operative in Marszewo and the „Eco-Farm” co-operative in Władysławowo operate in the field of organic farming.

in total).<sup>69</sup> Currently there are about 1000 groups operating in the market.<sup>70</sup> Pre-recognised groups and recognised fruit and vegetable producer organisations that are run as co-operatives are also worth mentioning. The number of dairy co-operatives in 2007 reached 188.<sup>71</sup> There are also co-operatives involved in processing produce other than milk. They include, among others, the “Samopomoc Chłopska” co-operative.

Practical considerations related to the formulation and application of the law also support (the undertaking of) the research presented here. In Poland, for several years now, attempts have been made to adopt new regulations on co-operatives, including a separate law on agricultural co-operatives. These attempts have now been reflected in a handful of drafts of legislative acts<sup>72</sup> of which, however, none has yet become (adopted binding) law. The Act on Farmers’ Co-operatives, adopted on 4 October 2018 needs to be given more attention. In order to be recognised as a co-operative of farmers, an entity needs to meet a number of requirements. Since it is a new legal act, it is particularly important to analyse the way such entities are established and how they operate.

Theoretical considerations, important for the development of agricultural and co-operative law, also support the initiation of a research project. A co-operative is an important entity operating in the area of agriculture and, as an enterprise in the agricultural sector, it should be viewed from the perspective of the basic conceptual categories of agricultural law, i.e. an agricultural holding, an agricultural activity, an agricultural product and an agricultural producer.<sup>73</sup> Therefore, an assessment of the organisation and operation of agricultural co-operatives serves to identify a specific legal and agricultural category of co-operative entities. It is this issue that is relatively poorly recognised in the literature and requires further research.<sup>74</sup>

The doctrine has long stressed the need for theoretical research into co-operative law.<sup>75</sup> What is worth mentioning in this context is the general concept of co-operatives, the co-operative principles and concepts, the relationship under

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<sup>69</sup> See [online]. KSOW [accessed on: 2015-05-11]. Available at: <<http://ksow.pl/grupy-producentow-rolnych/warto-wiedziec.html>>.

<sup>70</sup> See [online]. ARiMR [accessed on: 2018-09-14]. Available at: <<http://www.arimr.gov.pl/grupy-i-organizacje-producentow/rejstry-prowadzone-przez-arimr/rejestr-grup-producentow-rolnych.html>>.

<sup>71</sup> See [online]. KRS [accessed on: 2015-05-11]. Available at: <<http://krs.org.pl>>.

<sup>72</sup> E.g. draft bill: *Co-operative law prepared by an Expert Team appointed by President of the Republic of Poland A. Kwaśniewski* (September 2004); Draft bill prepared by the Extraordinary 4<sup>th</sup> term Sejm Commission (2005). Three parliamentary draft Acts of the Co-operative Law 2012: print No. 515, print No. 980, print No. 1005.

<sup>73</sup> R. Budzinowski, *Problemy ogólne prawa rolnego, Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Poznań 2008.

<sup>74</sup> See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 22 et seq.

<sup>75</sup> B. Słotwiński, *Z teoretycznych zagadnień prawa spółdzielczego*, Warszawa 1973, p. 10 et seq.

co-operative law, the characteristics of co-operatives and co-operative law and the links with other areas, as well as trends in their development.

Polish co-operatives, especially agricultural ones, have a rich history, and the importance of agricultural co-operatives is still quite high in agriculture. At the same time, Polish academics have no special achievements in promoting knowledge about co-operatives at an international level. Additionally, there are not enough papers in English, hence publications in other foreign languages are of importance.

### 1.3. Aims of the book and underlying assumptions

As has already been emphasised, the organisational stage refers primarily to the creation of an agricultural co-operative and the shaping of its internal organisational structure, while matters related to its operation are more diversified and relate, among other things, to mergers, vetting, economic principles, concluding contracts, raising funds, taking advantage of tax exemptions and allowances, etc.

In addition, when considering all these issues, it should be borne in mind that agricultural co-operatives operate in an agricultural space which fulfils a number of different functions. First of all, they are related to the production of food and food safety assurance, as well as environmental protection, job guarantees and the preservation of cultural diversity. Seeing an agricultural co-operative as a socio-economic phenomenon that engages real individuals will help to embed the analyses in specific socio-economic conditions and demonstrate the relationships between legal norms and their economic and social background.<sup>76</sup>

The research aimed to present and assess the legal principles (conditions) underlying the organisation and operation of agricultural co-operatives in the context of: socio-economic needs, agricultural development and the agro-food economy, having regard to the fact that they are entities of a complex structure and non-uniform character. It is also important to:

- pinpoint the ways and directions of development of agricultural co-operatives and to enumerate the legal acts regulating the structure and the operation of individual types of co-operatives as reflected in their particular structure and relationships with other entities,<sup>77</sup>
- indicate the distinctive features of agricultural co-operatives in the context of other co-operative entities.

The implementation of the above aim requires several assumptions of an initial character.

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<sup>76</sup> Compare Roman Budzinowski's deliberations on the concept of an agricultural holding *Problemy ogólne prawa rolnego...*, p. 73 et seq.

<sup>77</sup> R. Budzinowski uses the term "leading ideas" *ibidem*, p. 7 et seq.

**First of all**, formation requires certain co-operative principles to be taken into account. These include the basic concepts of the construction of co-operatives, such as the rule of voluntary and open membership, democratic membership control, economic participation (co-responsibility) of members, autonomy and independence, training, education and information, and community care.<sup>78</sup> They are part of the Declaration of Co-operative Identity and determine the nature of a co-operative as an economic entity that differs from that of a company incorporated under commercial law.<sup>79</sup>

They also point to the fact that the focus of interest of each co-operative is its members.<sup>80</sup>

**Secondly**, the assessment of the formula underlying the organisation and operation of agricultural co-operatives requires account to be taken of the general part of the Act of 16 September 1982 on co-operative law<sup>81</sup> as well as the differences resulting from the provisions of the detailed part and the provisions of other legislative acts. This concerns mainly such issues as the requirements to be met by the statutes and by the members of co-operatives, the entry fee, contributions, co-operative authorities and bodies, exclusion or expulsion of a member, merger of co-operatives and the like.<sup>82</sup>

**Thirdly**, in the assessment of the organisation and operation of an agricultural co-operative, reference must be made both to the production and financial resources as well as the business activity which although frequently diversified, is related to agricultural activity (carried out in the agricultural space).<sup>83</sup> An agricultural co-operative is, in fact, an organised group of intangible and tangible assets intended for business purposes and designed to ensure the co-operative's operability and the achievement of its objectives.<sup>84</sup>

**Fourthly**, it should be noted that the activities of agricultural co-operatives are affected by a number of legislative acts on agricultural law that are of administrative and civil nature. It is therefore necessary to take into account many legal regulations of public and private law. The juxtaposition of "agricultural" (due to

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<sup>78</sup> H. Cioch, *Zasady rocdzelskie i ich realizacja w praktyce*, Teka Kom. Praw. – OL PAN 2009, pp. 26-35.

<sup>79</sup> See for example the Peasants Party (PSL) draft proposal, print No 980.

<sup>80</sup> See M. G. Brodziński, *Spółdzielnie, ich członkowie i samorzady jako kapitał warunkujący przezwyciężenie kryzysu i odbudowę spółdzielczości wiejskiej w Polsce*, Warszawa 2010, p. 10 et seq.

<sup>81</sup> The literature concerning the Act on co-operative law from 1982 must be taken into account as well, among others R. Bierzanek, *Prawo spółdzielcze w zarysie*, Warszawa 1984; K. Pietrzykowski, *Zmiany w prawie spółdzielczym*, „Monitor Prawniczy” 2005, Vol. 21, pp. 1047-1053; H. Cioch, *Prawo spółdzielcze*, Warszawa 2011; P. Zakrzewski, *Majątek spółdzielni*, Warszawa 2003; K. Kwapisz, *Prawo spółdzielcze. Komentarz praktyczny*, Warszawa 2011.

<sup>82</sup> See A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 24 et seq.

<sup>83</sup> R. Budzinowski, *Koncepcja gospodarstwa...*, p. 27 et seq.

<sup>84</sup> This concerns mainly delivery vans, agricultural equipment, means of agricultural production, warehouses and the like used by or in favour of members of co-operatives.

the subject matter) legal institutions with certain “general” institutions existing in co-operative law, or more broadly in civil and administrative law, will be of great significance here.<sup>85</sup>

**Fifthly**, the formulation of relevant principles for the organisation and operation of agricultural co-operatives requires internal and external elements to be taken into account. Of particular importance in the internal structure are those related to the activity and involvement of the members of co-operatives in the affairs of their co-operatives. Each co-operative has its own operating mechanism and its strengths often lie in the co-operative itself, i.e. in its members.<sup>86</sup> Of considerable significance here are the legal regulations and provisions of the statutes which allow members to exercise their property and corporate rights and which, consequently, either encourage or discourage by imposing barriers to co-operative members’ participation in the development of the entity.

There is no doubt, however, that in times of globalisation, an increasingly important role is played by external elements as they are dynamic and relate to the entire business environment.<sup>87</sup> The business environment includes “all elements outside the organisation related to its operation, including the elements with a direct or indirect impact on it.”<sup>88</sup> It is obvious that such an important external element influencing the activity of agricultural co-operatives was Poland’s accession to the European Union. The agricultural environment changed, and the principles of conducting business, including its financing underwent modifications. Hence the need to take into account the organisation and operation of agricultural co-operatives in the European space.

#### 1.4. Structure of the book and research methods

The assessment of the principles of organisation and operation of a co-operative requires a comprehensive approach to many legal issues, including those related to the economics of agriculture or its finances. The structure of the considerations presented here corresponds to the direction of the argumentation set by the objective and the assumptions of its realisation. Its characteristics will make it easier to understand the structure of the book. The topic of the organisation and operation of a co-operative of agricultural co-operatives required a comprehensive analysis of numerous legal issues as well as of the issues relating to the economics of agriculture or its finances. The framework of the book resulted from the aims and methods used to achieve them.

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<sup>85</sup> R. Budzinowski, *Koncepcja gospodarstwa...*, p. 23 et seq.

<sup>86</sup> *Ibidem*.

<sup>87</sup> *Ibidem*, p. 27 et seq.

<sup>88</sup> J.A.F. Stoner, R.E. Freeman, D. R. Jr. Gilbert, *Kierowanie*, Warszawa 2001, p. 79.

The starting point in Chapter Two aims to highlight the evolution of co-operative principles and the ideological trends of the co-operative movement. Particular attention is paid to the ideas of economic liberalism and Christian solidarity. These ideas continue to be popular in the 21st century, too. Taking into account the purpose of the work, it was necessary to refer to the policies and law of the European Union. The analysis focuses in particular on The Common Agricultural Policy, social policy, regional policy and energy policy (especially renewable energy) as for their implementation co-operatives have been instrumental for many years. Chapter Two gives an insight into agricultural co-operatives in Poland. Firstly, it presents the process of adopting regulations on co-operatives on the Polish lands in the period of Partitions and the interwar period. Then, it focuses on co-operative legislation after World War II. The issues raised in this chapter are necessary to determine the tendencies in the development of agricultural co-operatives.

Chapter Three starts with the definition of a co-operative, its objectives and characteristic features. Further, it defines both an agricultural activity and an agricultural product as starting points for presenting the concept of agricultural co-operatives. These definitions help to outline the distinctive features of agricultural co-operatives. The chapter covers the concept and the objectives of co-operatives of agricultural production, social co-operatives running an agricultural activity, associations of agricultural co-operatives, co-operative groups of agricultural producers, preliminarily recognised agricultural groups of fruit and vegetable producers, recognised co-operative organisations of fruit and vegetable producers, co-operative organisations of agricultural producers (mainly milk producers), and co-operatives acting for the benefit of protected products and dairy co-operatives. It outlines, in particular, their establishment, registration, bodies and structure. It discusses the basic legal solutions under the Act on co-operative law and other regulations on agriculture which refer to agricultural co-operatives.

Chapter Four offers a legal analysis of the structure and operation of co-operatives in Poland. Issues related to the operation of agricultural co-operatives, such as, among others, acceptance of new members to agricultural co-operatives, rights and obligations of members of agricultural co-operatives, assets of an agricultural co-operative, financial management of agricultural co-operatives, analyses of ordinary contracts concluded by agricultural co-operatives, such as contracts for the supply and delivery of pre-contracted agricultural produce and lease agreements, are presented. Attention is also drawn to the legal support sourced from the public funds. There is also a discussion concerning the supervision and control of the activities of agricultural co-operatives.

The last chapter includes a summary containing: an attempt to outline the evolution of agricultural co-operatives and their characteristics as compared to other co-operatives. The author postulates the creation of a new model of agricultural co-operatives.

The basic research method was the dogmatic analysis of normative texts, which is a characteristic feature of a lawyer's work. In the first place, the legislative acts concerning co-operative and agricultural law were examined. The analysis of legislative acts in the field of civil, administrative or financial law included taking into account the agricultural aspect.

It is undisputed that research into agricultural co-operatives also requires reference to the historical method. This part is not very extensive, but it remains necessary. Despite the fact that more than 90 years have passed since the end of the Partitions, there are still regional differences in the development of the co-operative movement in Poland. As the literature rightly points out, the co-operative movement as a historical category is constantly changing. The tasks and operating conditions of co-operatives often depend on the economic structure of society, its development and socio-economic situation.<sup>89</sup> Historical considerations are important for the determination of the trends in the development of agricultural co-operatives and for the identification of the legal factors that determine this process.

The subject matter of the book also requires an analysis of EU legislation, especially that relating to financial matters.

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<sup>89</sup> See K. Boczar, *Spółdzielczość*, Warszawa 1979, p. 13 et seq.



# THE EVOLUTION OF PRINCIPLES, IDEOLOGICAL TRENDS OF CO-OPERATIVES AND THE DEVELOPMENT OF LEGAL REGULATIONS GOVERNING CO-OPERATIVES IN POLAND

## 2.1. The evolution of principles and ideological trends of co-operatives

Co-operatives are an international movement, popular in developed as well as developing countries practically all over the world. The principles upon which the Rochdale weavers founded their co-operative in 1844 have become a model for other co-operatives and are considered the backbone of the co-operative movement.<sup>90</sup> In the following years, however, the methods and forms in which co-operatives operated differed, depending on circumstances, their external conditions and their internal activities. This has sometimes led to the emergence of “pseudo-co-operative” entities.<sup>91</sup> This is why the International Co-operative Alliance<sup>92</sup> recommended that these principles be formally codified.<sup>93</sup> The 15<sup>th</sup> International Co-operative Congress held in Paris in 1937 recognised the Rochdale principles as a criterion for assessing whether an entity is a co-operative. These principles include, *inter alia*: membership open to all, a democratic system (one member – one vote), the distribution of the surplus in proportion to the volume of turnover of the co-operative, cash-only sales, and the pursuit of educational activities in addition to economic activities.<sup>94</sup> On the other hand, the optional principles include, among others, political, national and religious neutrality, or conducting social and educational activities.<sup>95</sup>

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<sup>90</sup> R. Bierzanek, *Prawo spółdzielcze...*, p. 8; S. Wojciechowski, *Ruch spółdzielczy w Anglii...*, p. 2 et seq.

<sup>91</sup> Ibidem; K. Boczar, *Spółdzielczość...*, p. 21 et seq.

<sup>92</sup> The International Co-operative Alliance – ICA was created in 1895. See [online]. KRS [accessed on: 2017-05-11]. Available at: <<http://krs.org.pl>>.

<sup>93</sup> K. Boczar, *Spółdzielczość...*, p. 22 et seq.

<sup>94</sup> H. Cioch, *Zasady rocdzelskie...*, pp. 26-35.

<sup>95</sup> W. Czernasty, *Determinanty rozwoju spółdzielczości...*, p. 18 et seq.

As the doctrine rightly points out, these principles and values have evolved in line with the changing ideological, economic, social and cultural grounds for group action in the economy.<sup>96</sup> Following the Second World War, the need to reconstruct and adapt the rules to (the) new social and economic conditions became apparent. Therefore, the 22nd Congress of the International Co-operative Alliance adopted a resolution to propose the appointment of a committee for drafting the basic principles for co-operatives that would be adequate for the new situation.<sup>97</sup> The Rochdale principles adopted at the 23rd Congress in Vienna in 1966 had the following wording:

(a) membership should be voluntary, accessible without artificial restrictions or social, political or religious discrimination to all those who are eligible for the benefits of the co-operative and who wish to assume the responsibilities arising from their membership;<sup>98</sup>

(b) co-operatives shall be democratic organisations. Their operations should be conducted by persons elected or appointed in a manner adopted by a majority of members and who are accountable to the members;

(c) if the share capital is interest-bearing, dividends must be strictly limited;

(d) surpluses and savings, if they result from the operations of the co-operative, shall belong to the members of the co-operative and should be distributed in such a way as to avoid one member benefiting at the expense of another. Members may decide to use their surplus or savings to finance the development of the co-operative's operations;

(e) all co-operatives should raise funds for educational activities in the areas of labour, technology, social and economic democracy;

(f) members of the co-operative must cooperate with one another.<sup>99</sup>

The results of the work of the International Co-operative Alliance General Assembly held on 20-23 September 1995 at the Manchester Congress on the Centenary of its existence deserve special attention. The Statement on the Co-operative Identity of the International Co-operative Alliance adopted by the 31<sup>st</sup> Jubilee Congress at Manchester established a definition of a co-operative as: 'an autonomous association of individuals who have united voluntarily in order to meet their common economic, social and cultural aspirations and needs through their jointly owned and democratically controlled enterprise.'<sup>100</sup> Co-operatives ought to operate according to the following principles of co-operativeness:<sup>101</sup>

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<sup>96</sup> Ibidem, See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 31 et seq.

<sup>97</sup> K. Boczar, *Spółdzielczość...*, p. 22 et seq.

<sup>98</sup> H. Cioch, *Zasady roczdelskie*, pp. 26-35.

<sup>99</sup> R. Bierzanek, *Prawo spółdzielcze...*, p. 8 et seq.; P. Zakrzewski, *Zasady Międzynarodowego Związku Spółdzielczego*, „Kwartalnik Prawa Prywatnego” 2005, issue XIV, p. 278 et seq.

<sup>100</sup> *Deklaracja spółdzielczości* [online]. OZRSS [accessed on: 2018-10-05]. Available at: <[http://ozrss.promotion.org.pl/pliki/deklaracja\\_spoldzielczosci.pdf](http://ozrss.promotion.org.pl/pliki/deklaracja_spoldzielczosci.pdf)>.

<sup>101</sup> Principles in the Statement of the Co-operative Identity: ibidem.

1. *Voluntary and accessible membership*– membership of a co-operative is based on the principle of voluntariness and openness to all those who may benefit from it and who are prepared to assume the associated responsibilities, regardless of gender, race, social status, religion or political opinions.

2. *Democratic membership control* – members of the co-operative actively participate in decision-making and they monitor the activity of the co-operative through their representatives elected democratically, according to the principle of one member – one vote. The elected representatives are accountable to the members.

3. *Economic membership of members* – the members determine themselves the level of their membership shares and decide on the distribution of the surplus. If interest accrues on the capital contributed by the members, such interest is generally limited. Members allocate surplus funds to one or all of the following purposes: the development of their co-operative, if possible by creating a reserve fund of which at least part should be indivisible; and the promotion of other activities approved by the members.

4. *Self-government and independence* – a co-operative is an autonomous organisation controlled by its members. Any agreement with other organisations is possible on condition that the principle of democratic control is preserved and that full co-operative independence is maintained.

5. *Education, training and information* – co-operatives provide training opportunities for their members, representatives and employees and ensure that the general public is informed about the co-operative principles and values.

6. *Cooperation between co-operatives* – all co-operative organisations should work together at local, national and international level to best serve their members.

7. *Concern for the local community* – co-operatives are obliged to take care of the development of the local community in which they operate.<sup>102</sup>

Co-operatives base their activities on the values of self-help, self-responsibility, democracy, equality, justice and solidarity. Members share the following ethical values: honesty, openness, social responsibility and concern for others.<sup>103</sup> As a rule, successful co-operatives seek to attract large numbers of new members. This is not to maximise the return on capital, but to ensure that the needs of the members are best met.<sup>104</sup>

As the literature rightly points out, although co-operative principles are generally “guidelines with which co-operatives put their values into practice”, they are generally regarded as a kind of “co-operative decalogue.”<sup>105</sup> They are not only the

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<sup>102</sup> Principles in the Statement of the Co-operative Identity: *Ibidem*.

<sup>103</sup> *Kodeks dobrych praktyk* [online]. Polish milk industry [accessed on: 2018-09-10]. Available at: <[http://mleczarstwopolskie.pl/uploads/2010/kodeks\\_dobrych\\_praktyk.pdf](http://mleczarstwopolskie.pl/uploads/2010/kodeks_dobrych_praktyk.pdf)>.

<sup>104</sup> K. Boczar, *Spółdzielczość...*, p. 19 et seq.

<sup>105</sup> *Deklaracja Spółdzielczej Tożsamości*, „Monitor Spółdzielczy” 1999, No 1; A. Piechowski, *Edukacja i szkolenie w dziejach polskiej spółdzielczości*, „Problemy Polityki Społecznej. Studia

basis for activities which co-operatives around the world carry out, but also for the legislation on co-operatives adopted in many countries and for international regulations relating to their operations.<sup>106</sup>

Given the diversity of co-operatives, a distinction can be made between the guiding principles of the different co-operative sectors. In agricultural trade co-operatives, for example, the needs of agricultural producers should be met at every stage of production. In industrial manufacturing and service co-operatives, these principles should be tied to a proportionate share of profits in relation to the contribution of labour.<sup>107</sup>

In the co-operative movement at least three trends can be distinguished, which formulate differently the objectives of the existence of co-operatives: 1) ideas of economic liberalism, 2) Christian solidarity and 3) socialist utopia.<sup>108</sup>

For the supporters of neoliberal theories of co-operatives, society is a mosaic of various individuals, social groups and institutions interconnected by many different ties. Regarding human behaviours and activities, those directed at the economic sphere are of particular importance. Economic activities are aimed at satisfying basic human needs which are articulated in the form of economic interest. In neoliberal theories, cooperation means that individuals work together to pursue their economic interests.<sup>109</sup> The axioms of the theories referring to liberal ideas are the freedom of the individual and the right to dispose of one's private property, which is one of the manifestations of human freedom. Hence the opinion expressed by some that co-operatives may exist primarily in a market economy.<sup>110</sup> Herman Schultz-Delitzsch is considered to be the pioneer of liberal co-operative theories. He created the concept of co-operative banks founded by people who needed loans for economic purposes. In 1852, he reorganised the bank into the first co-operative bank, which became the model of a later system of German

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i Dyskusje" 2013, No 20(1), pp. 89-106 [online] [accessed on: 2018-08-05] Available at: <<http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-bdb4a175-8cba-4a22-ba36-f80357511571/c/Piechowski20PPS2020-2013.pdf>>.

<sup>106</sup> A. Piechowski, *Międzynarodowe Zasady i Wartości Spółdzielcze a praktyka działania spółdzielni*, in: *Odmienność podmiotów spółdzielczych od spółek prawa handlowego*, ed. K. Lachowski, Warszawa 2006, p. 17 et seq.; I. MacPherson, *Co-operative Principles for the 21st Century*, Geneva 1996, p. 10 et seq. According to K. Pietrzykowski, the co-operative principles established by an international non-governmental organisation obviously do not have the value of norms of international law. They are therefore not formally binding on Polish co-operatives, including housing co-operatives. De lege lata are they of purely moral significance. On the other hand, the de lege ferenda to these principles should be included in the future Polish Co-operative Act. idem, *Pojęcie spółdzielni*, in: *Prawo rzeczowe. System Prawa Prywatnego*, Vol. 4, ed. E. Gniewek, p. 293 et seq., SIP Legalis 2012.

<sup>107</sup> See W. Czternasty, *Determinanty...*, p. 23 et seq.

<sup>108</sup> A. Maliszewski, *Dylematy polskiej spółdzielczości*, „Spółdzielczy Kwartalnik Naukowy” 1989, No 4, pp. 21-49; See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 35 et seq.

<sup>109</sup> A. Maliszewski, *Wartości wyznaczające sens istnienia ruchu spółdzielczego w Polsce*, in: *Spółdzielczość w lokalnym systemie samorządowym*, ed. K.Z. Sowa, Warszawa 1988, p. 103 et seq.

<sup>110</sup> Ibidem, p. 106 et seq.

People's Banks. Herman Schultze-Delitzsch argued that the task of a co-operative activity is not to transform social relations but to protect the individual interests of economically weak individuals. The co-operative form of management cannot be based on some abstract universal idea, but must realistically refer to the fact that the economic interest of individuals is the main motive of all people's actions.<sup>111</sup>

In Poland, the liberal trend developed within the Prussian partition, especially in Wielkopolska. The reason for this was, on the one hand, the relatively high level of economic development of the region and a more modern social structure than in the other partitioned parts, showing the beginnings of the formation of a middle class, and, on the other hand, the restrictive policy of the partitioning power towards Poles and Polishness. In this context, the ideals of "organic work" were particularly vivid, with a large number of economic and social activists emerging.<sup>112</sup> This liberal trend of the Polish co-operative movement was still strong after Poland regained its independence, and Wielkopolska, thanks to its developed and integrated system, remained a sanctuary of social entrepreneurship of the Second Republic of Poland. It was not until World War II that it ended, when the German occupier liquidated the Polish co-operative movement and confiscated assets on lands annexed to the Reich. On the other hand, in the areas of the General Government, co-operatives were obliged to collect quotas of agricultural produce and related bonus goods.<sup>113</sup>

Views that were the most representative of the ideals of a socialist utopia were those of three thinkers: Claude Henri Saint-Simon, Charles Fourier and Robert Owen.<sup>114</sup> They created a doctrine of class antagonism and believed in the possibility of radically changing the social order as well as the political and economic system. As is emphasised in the literature, they considered that the overriding goal was to rebuild society and rather than pursue individual interests and needs, promote group interests and even class interests. Private ownership and individual profit were negated, in contrast with collective ownership and non-financial benefits. Some supporters of this trend later joined the socialist parties, particularly the Marxist parties, and their model was referred to as "class co-operative" (or "workers' co-operative").<sup>115</sup> On Polish territory, the socialist trend in social entrepreneurship developed mainly in the Russian-controlled Kingdom of

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<sup>111</sup> A. Maliszewski, *Wartości wyznaczające sens istnienia...*, p. 107 et seq.

<sup>112</sup> A. Piechowski, *Gospodarka społeczna i przedsiębiorstwo społeczne w Polsce. Tradycje i przykłady*, in: *Gospodarka społeczna i przedsiębiorstwo społeczne. Wprowadzenie do problematyki*, ed. E. Leś, Warszawa 2008, pp. 13-33.

<sup>113</sup> K. Boczar, *Spółdzielczość...*, p. 140 et seq. For more see G. Szczepańczyk, *Polityka okupanta wobec spółdzielczości wiejskiej w Generalnej Guberni*, Warszawa 1978.

<sup>114</sup> See A. Piechowski, *Gospodarka społeczna...*, p. 13 et seq.

<sup>115</sup> J. Pastuszka, E. Turkowski, *Spółdzielczość jako ruch obywatelski...*, p. 34 et seq.; K. Krzeczowski, *Dzieje życia i twórczość Edwarda Abramowskiego*, Warszawa 1933, p. 10 et seq.; K.M. Cwynar, *Kooperatyzm Edwarda Abramowskiego i jego realizacja przez Ignacego Solarza*, in: *Dzisiejsze znaczenie ideałów spółdzielczości*, ed. M. Szyszkowska, Warszawa 2013, p. 45 et seq.

Poland where, among others, Edward Abramowski, the founder of the Society of Co-operative Activists (1906), was active.<sup>116</sup>

The sources of Christian solidarity, on the other hand, lie in the principle of love of one another and mutual help. Its creators believed that society is a real community connected by natural ties. In their view, families and the division of labour, for which “social peace” is essential, were of fundamental importance for such a community.<sup>117</sup> The consequence of the adoption by co-operatives of the social doctrine of the Church is, on the one hand, to treat it as a social movement and, on the other hand, to emphasise the moral aspect of work and cooperation. In co-operative theories of this trend, both work and cooperation were aimed primarily at building a new kind of social bond by jointly satisfying the individual needs (financial and spiritual) of people associated in co-operatives.<sup>118</sup> Solidarity firmly rejects the idea of treating man as a means of achieving a certain goal, regardless of whether that goal is for the benefit of the individual, a capitalist or the general public, which is invoked by communism.<sup>119</sup>

In practice, the assumptions of Christian solidarity in the field of the social economy were implemented by, among others, Friedrich Wilhelm Raiffeisen (1818-1888), a deeply religious man.<sup>120</sup> He based his first rural credit units in Anhausen (1862) and Heddesdorf (1864) on mutual assistance between the poorest people. The other idea that was important for him was the unlimited and joint liability of the members with all their property. As he wrote, “all should be responsible among themselves for one, and one for all”. From 1869, some co-operatives also began to supply their members with the basic means of agricultural production, becoming the prototype of multi-directional agricultural co-operatives.<sup>121</sup> Their aim was not so much to maximise profits and to develop individual ownership as to create new social relations based on mutual assistance and the responsibility of members. However, neither the role of profit nor the private ownership of members under perpetual and natural law were questioned.<sup>122</sup>

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<sup>116</sup> J. Pastuszka, E. Turkowski, *Spółdzielczość jako ruch obywatelski...*, p. 34 et seq.; K. Krzeczowski, *Dzieje życia i twórczość Edwarda Abramowskiego*, Warszawa 1933, p. 10 et seq.; K.M. Cwynar, *Kooperatyzm Edwarda Abramowskiego i jego realizacja przez Ignacego Solarza*, in: *Dzisiejsze znaczenie ideałów spółdzielczości*, ed. M. Szyszkowska, Warszawa 2013, p. 45 et seq.; A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 35 et seq.

<sup>117</sup> A. Piechowski, *Gospodarka społeczna...*, pp. 13-33.

<sup>118</sup> A. Maliszewski, *Wartości wyznaczające sens istnienia...*, p. 108 et seq.

<sup>119</sup> R. Łętocha, *W imię dobra wspólnego. Leopold Caro – teoretyk solidaryzmu chrześcijańskiego* [online]. Nowy obywatel [accessed on: 2017-04-05]. Available at: <<http://nowyobywatel.pl/2012/04/13/w-imie-dobra-wspolnego-leopold-caro-teoretyk-solidaryzmu-chrzciscija-nskiego/>>, L. Caro, *Solidaryzm. Jego zasady, dzieje i zastosowania*, Lwów 1931, pp. 5-6.

<sup>120</sup> J. Pastuszka, E. Turkowski, *Spółdzielczość jako ruch obywatelski...*, p. 31 et seq.; T. Janczyk, *Spółdzielczość polska. Geneza, rozwój, perspektywy*, Warszawa 1976, p. 22 et seq.

<sup>121</sup> A. Piechowski, *Gospodarka społeczna...*, pp. 13-33.

<sup>122</sup> T. Janczyk, *Spółdzielczość ...*, p. 22 et seq.; A. Piechowski, *Gospodarka społeczna...*, p. 13 et seq.

The Christian co-operative movement also developed in Poland, especially in Galicia and Wielkopolska.<sup>123</sup> Although as early as the 1860s there were a number of different social enterprises operating in Galicia, it was the model of Raiffeisen co-operatives, called “Kasy Stefczyka” (Stefczyk’s Banks) that was developing particularly well. It was named after its creator, Franciszek Stefczyk. This was the beginning of a later development of many similar rural savings and loans co-operatives as well a number of agricultural and commercial co-operatives and dairy co-operatives. In 1909, the “Central Agricultural Company Fund” was established in Lviv.<sup>124</sup> Before World War I 1397 Stefczyk’s banks operating in Galicia brought together more than 320 thousand members. There were also 73 milk co-operatives with approximately 15 thousand members. It is noteworthy that as in Wielkopolska, and also in Galicia, the role of priests in the process of their development was considerable.<sup>125</sup>

L. Carlo, one of the Polish theorists of the co-operative movement, pointed to Christian solidarity as a model worth promoting, as it fosters the creation of interpersonal bonds, solidarity, and teaches cooperation and self-help. In his opinion, co-operative activity brings important and positive economic changes, as well as very significant “mental” benefits: – it thoroughly changes people’s thinking. All of this serves the cause of solidarity and makes its establishment easier. L. Carlo emphasised that no law alone, however good, and no coercion of statism or socialism would work if “the human material were meagre and dull. “Transforming people into better and more mature ones” is a noble task for co-operatives.<sup>126</sup>

Representatives of the Church also referred to co-operative activity and its importance in society. For example, in his 1931 encyclical *Quadragesimo anno*, Pope Pius XI mentioned co-operatives as important institutions for workers, craftsmen, farmers and “all kinds of mercenaries.”<sup>127</sup> John XXIII in his 1961 encyclical *Mater et Magistra*, on the other hand, said: “We therefore call on our beloved sons, craftsmen, and co-operatives all over the world to be particularly aware of their important role in society, as they are the ones who help to awaken the sense of responsibility and the spirit of cooperation among their fellow citizens, as well as maintaining in them a taste for the original products of human hands and for

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<sup>123</sup> Also see A. Wóycicki, *Moralne znaczenie spółdzielczości*, Paper presented at a meeting of representatives of Christian co-operatives in Warszawa on 24 June 1923, Warszawa 1923.

<sup>124</sup> F. Stefczyk, *Początki i ogólne warunki rozwoju spółdzielczości w Polsce*, Kraków 1925, pp. 27-34. See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 6 et seq.

<sup>125</sup> A. Piechowski, *Gospodarka społeczna...*, p. 13 et seq.

<sup>126</sup> L. Caro, *Solidaryzm. Jego zasady, dzieje...*, p. 5 et seq. Primate Cardinal Stefan Wyszyński wrote that the main idea of many of Professor Caro’s works, dissertations and articles is the struggle for the morality of economic life; the struggle for the primacy of ethics in economic life is probably the greatest merit of Professor Caro, for science and for Polish social and economic life. Prof. Caro saw well the close relationship between socio-economic issues and moral sciences (moral philosophy) – compare S. Wyszyński, *Śp. Prof. Leopold Caro*, „Ateneum Kapłańskie” 1939, Vol. 43.

<sup>127</sup> A. Piechowski, *Gospodarka społeczna...*, pp. 13-33.

their high quality". He stressed the particular role of co-operatives for farmers, for whom they not only perform an economic function but also ensure a fair and dignified standard of living.<sup>128</sup>

Also John Paul II in his encyclical *Centesimus Annus* referred to co-operatives, emphasising "various activities, also undertaken by many Christians, related to the establishment of manufacturing co-operatives, food processing and credit co-operatives, the development of so called 'folk education' and vocational training, and the creation of experimental forms of participation in the life of enterprises and the whole of society."<sup>129</sup> Benedict XVI also pointed out on the occasion of World Food Day 2012 that co-operatives are a concrete expression of the principle of subsidiarity, proclaimed in the social teaching of the Church, which is the basis of relations between the individual, society and institutions. This principle ensures that everyone contributes to the development and protection of their rights. "In a world that seeks to overcome the economic crisis and make globalisation truly human, co-operatives are a new type of economy that serves the individual," writes the Holy Father.<sup>130</sup> The present Pope Francis too is an enthusiast for the co-operative movement. During the Second Social Science Festival of the Church of Verona he said that he supported co-operatives as a form of business management and warned that leaving young people without work or a chance for the future is dangerous. In co-operatives, work and individual dignity go hand in hand. Solidarity must also be respected in the organisation of work in order to ensure pluralism among those who manage the markets. Co-operativeness, according to Pope Francis, is "a path to equality in conditions of diversity."<sup>131</sup>

## 2.2. The impact of EU policies and legislation on the development of agricultural co-operatives

The creation of the European Economic Community (now the European Union)<sup>132</sup> in 1957 contributed to the definition of specific EU policies<sup>133</sup> including *inter alia* agricultural, social, regional, environmental protection and energy. There is no

<sup>128</sup> Ibidem.

<sup>129</sup> *Encyklika Centesimus Annus* [online]. OPOKA [accessed on: 2018-01-04]. Available at: <[http://opoka.org.pl/biblioteka/W/WP/jan\\_pawel\\_ii/encykliki/centesimus\\_2.html#m4](http://opoka.org.pl/biblioteka/W/WP/jan_pawel_ii/encykliki/centesimus_2.html#m4)>.

<sup>130</sup> *Papież: spółdzielczość służy osobie ludzkiej* [online]. Wiara.pl [accessed on: 2015-08-04]. Available at: <<http://papiez.wiara.pl/doc/1329770.Papiez-spoldzielczosc-sluzy-osobie-ludzkiej>>.

<sup>131</sup> *W ruchu spółdzielczym: praca i godność osoby* [online]. KRS [accessed on: 2015-04-07]. Available at: <[http://krs.org.pl/index.php?option=com\\_content&view=article&id=280:w-ruchu-spodzielczym-praca-i-godno-osoby-id-rami-w-zami&catid=11:aktualnoci&Itemid=489](http://krs.org.pl/index.php?option=com_content&view=article&id=280:w-ruchu-spodzielczym-praca-i-godno-osoby-id-rami-w-zami&catid=11:aktualnoci&Itemid=489)>.

<sup>132</sup> The Treaty of Rome concluded on 25 March 1957 (in force as of 1 January 1958), Dz. U. of 2004 No 90, item 864/2.

<sup>133</sup> *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom 1 (art. 1-89)*, ed. A. Wróbel et al., SIP LEX 2012.

doubt that their implementation is highly dependent on the involvement of agricultural producers and such actions as the joint sale of agricultural products, purchase of the means of production, involvement in processing, projects in the field of renewable energy sources, support for organic farming or providing employment for the unemployed or people with disabilities.<sup>134</sup>

The operation of agricultural co-operatives is most affected by the Common Agricultural Policy (CAP).<sup>135</sup> Agricultural co-operatives are important players in the agricultural sector, helping to increase the incomes of agricultural producers and to strengthen their position in the food supply chain.<sup>136</sup> According to the Treaty of Rome of 1957 (now The Treaty on the functioning of the European Union<sup>137</sup>) the main goals of the CAP are: to increase agricultural productivity by promoting technical progress and ensuring the optimum use of the factors of production, in particular labour; to ensure a fair standard of living for farmers; to stabilise markets; to ensure the availability of supplies; and to ensure reasonable prices for consumers (Article 39).<sup>138</sup>

It should be noted that the objective of increasing profitability in agriculture is extremely difficult to achieve. Undoubtedly, income and price volatility and natural risks are more significant in agriculture and farmers' incomes are on average lower than those of other sectors of the economy.<sup>139</sup> It is worth noting that the agricultural sector is highly fragmented compared to other stages of the food supply chain which are better organised and therefore more powerful. Moreover, European farmers must cope with competition from global markets. At the same time, they are obliged to respect high environmental standards, the need to ensure food safety and quality and the welfare of animals as demanded by the people of Europe.<sup>140</sup>

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<sup>134</sup> COPA, COGECA, *Promowanie pozycji rolników i spółdzielni w łańcuchu dostaw żywności* [online]. COPA-COGECA [accessed on: 2017-02-05]. Available at: <[http://www.copa-cogeca.be/img/user/file/902\\_v\\_P.pdf](http://www.copa-cogeca.be/img/user/file/902_v_P.pdf)>.

<sup>135</sup> A. Jurcewicz, P. Popardowski, J. Zięba, *Prawne podstawy wspólnej polityki rolnej*, in: *Prawo i polityka rolna Unii Europejskiej*, ed. A. Jurcewicz, Warszawa 2010, pp. 14-15; A. Jurcewicz, *Traktatowe podstawy unijnego prawa rolnego w świetle orzecznictwa. Zagadnienia wybrane*, Warszawa 2012.

<sup>136</sup> COPA, COGECA, *Promowanie pozycji...*, op. cit.

<sup>137</sup> Consolidated version of 26 October 2012 (Official Journal of the European Union, C 326, 26 October 2012, p. 47-390). Pursuant to the Lisbon Treaty (Article 2) the Treaty establishing the European Community was updated to the Treaty on the functioning of the European Union.

<sup>138</sup> A. Jurcewicz, P. Popardowski, J. Zięba, *Prawne podstawy wspólnej...*, pp. 14-15. For more on CAP see E. Tomkiewicz, *Limitowanie produkcji w ustawodawstwie rolnym Wspólnoty Europejskiej*, Warszawa 2000, p. 28 et seq. M. Szewczyk, *Administracyjno-prawne aspekty realizacji Wspólnej Polityki Rolnej w Polsce*, Lublin 2009, p. 19 et seq.

<sup>139</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions CAP until 2020 – Meeting the food, natural resources and territorial challenges of the future [online]. EU [accessed on: 2018-02-15]. Available at: <<http://webapi.cor.europa.eu/>>.

<sup>140</sup> Communication from the Commission to the European Parliament...

The huge difference in economic power between farmers and food processors and sellers is an indication of a lack of balance in the food supply chain.<sup>141</sup> The main effect of this trend is a fall in the prices paid to farmers. Therefore, promoting the development of co-operatives is the right solution, which is frequently emphasised by the European Commission. For these reasons, the actions taken, including legislative measures at both EU and national level, should aim to increase the impact and negotiating power of agricultural co-operatives in the market. The main problem is that farmers receive less and less of the added value generated in the food supply chain, while the share of the food industry increases.<sup>142</sup> A remedy for this problem, even if only partial, is to be an association of agricultural producers.

Although the regulations do not impose any form of cooperation on co-operatives, it seems justified to argue that this is the most advantageous structure in line with the development of agribusiness. Co-operatives, as a rule, are intended for small and medium-sized agricultural holdings, i.e. usually family farms. They are a flexible form of conducting business activity created by heterogeneous entities, which provides an opportunity for the development of agricultural holdings, which are very diverse both in terms of their area and the degree of modernisation. One of the objectives of the CAP is that the basic unit of production in the agriculture of the European Union is the family farm.<sup>143</sup> Such an entity, regardless of its size, is a small one.<sup>144</sup> Membership of a co-operative enables it to develop and increases its competitiveness in the European market.

In the European Parliament resolution of 7 September 2010 on fair incomes for farmers<sup>145</sup> it was stressed that all the agricultural objectives set out in the Treaties of Rome (increased productivity, adequate food supply, reasonable consumer prices, market stability) had been attained, with the exception of ensuring an adequate income for the agricultural sector. It follows from the resolution that it is appropriate for the Commission to take this fact into account. It is also necessary to address the problems of the unfair distribution of profits within the food

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<sup>141</sup> The food supply chain includes farmers, agricultural co-operatives, producer organisations, food processors, wholesalers and retailers, supermarket chains, catering, restaurants and direct subsistence production, private production and consumers, as well as operators outside the food supply chain, such as communication and promotion enterprises, transport and logistics service providers, energy and other services, packaging, technical means, additives, technology and consulting services (such as the European Parliament resolution of 7 September 2010 on fair revenues for farmers: A better functioning food supply chain in Europe) [online]. EU [accessed on: 2018-09-15] Available at: <<http://europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0302+0+DOC+XML+V0//PL>>.

<sup>142</sup> *Promowanie pozycji rolników i spółdzielni w łańcuchu dostaw żywności* [online]. FBZPR [accessed on: 2017-02-15]. Available at: <[http://www.fbzpr.org.pl/docs/zalacznik\\_copa.pdf](http://www.fbzpr.org.pl/docs/zalacznik_copa.pdf)>.

<sup>143</sup> See A. Jurcewicz, P. Popardowski, J. Zięba, *Prawne podstawy wspólnej...*, p. 10 et seq.

<sup>144</sup> See [online]. KRS [accessed on: 2014-08-05]. Available at: <<http://krs.org.pl>>; See A. Suchoń, *Wpływ Wspólnej Polityki Rolnej na rozwój spółdzielczości rolniczej*, *Zeszyty Naukowe Polityki Europejskiej, Finanse i Marketing* 2012, No 8, pp. 438-452.

<sup>145</sup> Resolution of the European Parliament of 7 September 2010.

supply chain as a matter of urgency, in particular with regard to the adequate remuneration of farmers. Similar conclusions were also drawn in the European Parliament Resolution on rising food prices of 9 February 2011<sup>146</sup> and the Decision of the Commission of 30 July 2010 establishing the High Level Forum for a Better Functioning Food Supply Chain.<sup>147</sup>

Many institutions and organisations involved in the functioning of the European Union, including COPA/COGECA, stress that it is necessary to create facilities for farmers' co-operatives so that they can improve their position in the European single market and ensure that production is planned and demand-driven in terms of quantity and quality, that supply is concentrated and that the products of their members are marketed.<sup>148</sup>

EU legislation encourages agricultural producers to cooperate and build a stable organisational structure. First of all, there are regulations concerning agricultural markets, particularly milk and fruit and vegetables. In the milk market, co-operatives act as purchasers, agricultural producers and organisations of agricultural producers; while in the fruit and vegetables market they act as organisations of producers and in the new EU Member States as producer organisations for fruit and vegetables they are granted preliminary recognition. Farmers are encouraged to associate by EU regulations which concern not only agricultural markets but also the financing and development of rural areas.<sup>149</sup>

The statistical data confirm that agricultural co-operatives play a significant role in stabilising European agricultural markets and therefore form part of the Treaty objectives of the Common Agricultural Policy. In many regions of the European Union, a relatively high share of co-operatives in the milk market can be observed, amounting to more than 90%. This applies in particular to Austria, Denmark, Sweden and Finland.<sup>150</sup> Consolidation of dairy co-operatives has been underway for several years now. It is aimed at increasing the competitiveness of co-operative entities. As a result of this process, they are usually transformed into large companies, sometimes of an international character. One example is Arla Foods, a Swedish/Danish co-operative based in Aarhus, Denmark. It is one of the largest dairy producers in the world. It was formed in 2000 as a result of a merger of the Swedish Dairy Co-operative ArlaEkonomiskFörening and Danish Dairy Co-operatives Danish MD Foods.<sup>151</sup>

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<sup>146</sup> Resolution of the European Parliament of 9 February 2011 on the increase of food prices [online]. PE [accessed on: 2018-09-12]. Available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B7-2011-0116+0+DOC+XML+V0//PL>>.

<sup>147</sup> O.J.E.U, C 2010, L 210, p. 4 of 3 August 2010.

<sup>148</sup> *Promowanie pozycji rolników...*, op. cit.

<sup>149</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 43 et seq.

<sup>150</sup> M. Hanisch, M. Müller, J. Rommel, *Support...*, p. 15 et seq.

<sup>151</sup> Federation of Danish Co-operatives, *The Agricultural Co-operatives in Denmark* [online]. WISC [accessed on: 2018-08-04]. Available at: <<http://uwcc.wisc.edu/icic/orgs/ica/mem/country/denmark>>.

For EU agriculture, the livestock market is of the essence. Also in this sector, co-operatives tend to prevail in some countries. This is the case in particular for Denmark (86%), Finland (71%), Sweden (51%), Malta (100%) and France (94%), but also to a lesser extent for Belgium, the Czech Republic, Germany, Spain, Austria, Hungary and Italy.<sup>152</sup> Co-operatives play an important role in the European fruit and vegetable market as well. For example, they are dominant in the Netherlands, Belgium and Sweden with a market share of over 70%. They are also relatively strong in Austria, Denmark, Germany, Greece, Finland, France, Italy, Portugal, the Czech Republic and the United Kingdom, contributing more than 30% to the market.<sup>153</sup> In these countries, most of the co-operatives are also fruit and vegetable producer organisations meeting the requirements of European Union regulations. They are of particular importance in the Netherlands, where as early as in the year 2000, more than 70 % of all fruit and vegetables was supplied by members of 14 officially registered producer organisations. In the following years, this share increased to about 95%. Horticultural exchanges in the Netherlands also take the form of co-operatives.<sup>154</sup>

Unlike in Poland, in some European countries co-operatives also operate in the sugar market. However, the total share of co-operatives in this area is lower than in other sectors and accounts for about 40%. Their main task is to buy sugar beet from farmers and produce sugar. They are popular in France, the Netherlands, Spain and Italy.<sup>155</sup> Co-operatives are also present on the wine market. In Spain they account for nearly 70%, in Italy 52%, in France 36% and in Portugal 42% of the total. The Italian Riunite & CIV S.C.A., with an annual turnover in excess of EUR 415 million, is considered to be the largest co-operative in the sector.<sup>156</sup>

Agricultural co-operatives operating in many Member States of the “old” European Union, due to their extensive structure and range of activity, are in line with the EU principle of multifunctionality of agriculture<sup>157</sup> and sustainable development of rural areas. The latter provides for support for diversified economic activity in

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<sup>152</sup> P. Pyykkönen, S. Bäckman, P. Ollila, *Support for Farmers'...*, p. 18 et seq.

<sup>153</sup> J. Bijman, *Support for Farmers'...*, p. 17 et seq.

<sup>154</sup> Ibidem.

<sup>155</sup> B. Smit, K. de Bont, *Support for Farmers' Co-operatives; Sector Report Sugar*, Wageningen 2012, p. 15 et seq.

<sup>156</sup> I. Theodorakopoulou, C. Iliopoulos, *Support for Farmers' Co-operatives; Sector Report Wine*, Wageningen 2012, p. 18 et seq.

<sup>157</sup> As E. Tomkiewicz rightly pointed out, “the current concept of the European agricultural model, based on its multifunctional nature, assumes that it is not only the traditional function of food production “that this sector performs”. She emphasises that environmental and social functions related to rural development policy are also important, eadem, *Polityka rozwoju obszarów wiejskich w kontekście europejskiego modelu rolnictwa*, in: *Prawo w XXI wieku*, ed. W. Czapliński, Warszawa 2006, p. 964 et seq.; eadem, *Legitymizacja organizacji rolników w UE i ich wpływ na regulacje unijnego prawa rolnoego*, „*Studia Iuridica Agraria*” 2011, Vol. IX, pp. 272-273.

these areas, creation of new jobs, improvement of living conditions and providing citizens with access to a wide range of services and modern infrastructure, which will result in a comprehensive increase in the attractiveness of rural areas as places of work and residence.<sup>158</sup> In general, it can be said that economic, social and environmental (and ecological) problems are perceived as equivalent in the economic policy.<sup>159</sup>

The Common Agricultural Policy for the period 2014-2020, in the context of the co-operative movement, focuses on three objectives: firstly, on food efficiency, i.e. ensuring food security, improving the productive capacity and competitiveness of EU agriculture and increasing farmers' incomes; secondly, on sustainable management of natural resources, i.e. supporting environmentally friendly farming activities, securing the provision of environmental public goods, promoting green growth through innovation, continuing efforts to mitigate the effects of climate change; thirdly, on sustainable territorial development, i.e. supporting rural employment, preserving the social fabric of rural areas and promoting diversification to enable local actors to exploit their potential.<sup>160</sup>

On the one hand, co-operatives can help achieve these three objectives and, on the other hand, these new tasks will contribute to the development and expansion of the objectives of some co-operatives or the creation of new entities. There is no doubt that professional co-operatives may help to improve the production capacity and competitiveness of the agricultural sector and its contribution to the food chain of agricultural producers. The involvement of farmers' associations in negotiating the prices of agricultural products, purchasing cheaper means of production and processing may contribute to increasing farmers' incomes. Farmers operating in co-operatives also find it easier to meet the second objective, i.e. to run their agricultural business using methods geared to environmental protection, development of sustainable agriculture and environmentally-friendly economic growth through innovations, implementation of new technologies or products, and change of production processes.<sup>161</sup>

In many documents, the European Union has emphasised the importance of co-operatives for the economic, social and cultural life. An example of this is the White Paper on co-operative enterprises, a consultation document of the European Union<sup>162</sup>. It points out that in most Member States new small co-operatives

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<sup>158</sup> M. Adamowicz, M. Zwolińska-Ligaj, *Koncepcja wielofunkcyjności jako element zrównoważonego rozwoju obszarów wiejskich*, „Zeszyty Naukowe SGGW z Warszawy, Polityki Europejskie, Finanse i Marketing” 2009, No 2 (51), pp. 11-38.

<sup>159</sup> R. Baum, *Kryteria oceny zrównoważonego rozwoju w gospodarstwach rolniczych*, „Roczniki AR Poznań CCCLVIII, Ekon.” 2003, No 2, pp. 3-10.

<sup>160</sup> More in eg. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions CAP until 2020.

<sup>161</sup> A. Suchoń, *Wpływ Wspólnej Polityki Rolnej...*, pp. 438-452.

<sup>162</sup> Komisja Europejska, *Biała Księga...*, p. 5 et seq.

are being set up, particularly in the social, healthcare, and services sectors, as well as in local and regional development. They are a valuable source of employment in declining industrial and urban areas, in sparsely populated regions and for people at risk of exclusion.<sup>163</sup> The European Commission stresses, inter alia, that "the social economy and co-operatives contribute to the implementation of key policy objectives of the European Union, such as social and employment policy, enlargement of the Union, regional development of rural areas and agriculture." The Commission believes that this trend should be maintained and that the presence of co-operatives in the various programmes and Community policies should be increasingly exploited and promoted.<sup>164</sup>

In addition, the document "On the promotion of co-operatives in Europe" contains suggestions for Member State governments to support co-operatives, improve co-operative legislation and take it better into account in the formulation of Community policy objectives. One of the most important recommendations of this Communication is: "National legislators should therefore base their preparation of new laws on co-operatives on this definition, and these values and principles of co-operatives, and it is desirable that Member States should also be sufficiently flexible to allow co-operatives to compete effectively in their markets on an equal footing with other forms of enterprise." Co-operatives do not need preferential treatment, but legislation that gives them equal opportunities."<sup>165</sup>

As has already been pointed out, social policy is of great importance to the European Union, including the social economy, which is linked to co-operatives, especially social co-operatives. For example, the European Lisbon Strategy places great emphasis on job creation and economic development. These objectives are to be achieved through the promotion of employment, modernisation of the social protection policy based on money transfers, support for the adaptability of employees, ensuring flexibility of the labour markets. The development of civil society is crucial to achieving these goals.<sup>166</sup>

At this point it is worth noting that the concept of the social economy is very broad and refers to many spheres of social life. Nevertheless, the basic principle is the priority of acting for the benefit of people (members, guests) over achieving high profits. In other words, for entities of the social economy, apart from the economic objective, the social mission and, above all, counteracting social exclusion is of crucial importance.<sup>167</sup> Entities of social economy include, among others,

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<sup>163</sup> Ibidem.

<sup>164</sup> Ibidem.

<sup>165</sup> Ibidem, Komisja Wspólnot Europejskich, *O promowaniu spółdzielni w Europie*, Warszawa 2004.

<sup>166</sup> A. Sienicka, A. Van den Bogaert, *Modele przedsiębiorstwa społecznego: Polska i Belgia*, 2009 [online]. Romowie.com [accessed on: 2017-04-10]. Available at: <<http://romowie.com/equal/mps.pdf>>.

<sup>167</sup> *Ekonomia społeczna – podstawowe informacje* [online]. NGO [accessed on: 2017-03-10]. Available at: <<http://ngo.pl/x/83813>>.

labour co-operatives, social co-operatives, co-operatives for disabled workers and for the blind<sup>168</sup> as well as foundations, associations, mutual assistance societies, and non-governmental organisations. The literature emphasises that the most important features of these entities are: activity in the private and public sector, location between the state and the market, economic and social mission, priority of work over capital, limited and equal distribution of profits, democratic decision-making, working for local communities, addressing the needs of participants in so far as the state and the market cannot (do so), high quality and durability of internal relations, obtaining resources from various sources, and not only from the market.<sup>169</sup> The social economy sector operates on the principle of a community-based approach, consisting of working together and the redistribution of profit. It tries to secure jobs instead of unemployment benefits.<sup>170</sup>

The Communication from the Commission Europe 2020: “A strategy for smart, sustainable and inclusive growth”<sup>171</sup> stressed that three priorities should underpin Europe 2020: smart growth (developing an economy based on knowledge and innovation), sustainable growth (promoting a more resource efficient, greener and more competitive economy) and inclusive growth (promoting an economy delivering high levels of employment and economic, social and economic cohesion).<sup>172</sup> The document also stressed that inclusive growth is about empowering people by ensuring a high level of employment, investing in skills, fighting poverty and modernising labour markets, education and welfare systems to help people to predict and manage change so that they can build a cohesive society.<sup>173</sup>

It is also important that the benefits of economic growth are spread evenly throughout the Union, including in the outermost regions, thereby enhancing territorial cohesion.<sup>174</sup> The idea behind the European social model is that the individual should not be left alone, dependent only on market forces when it comes to meeting his or her needs. This applies in particular to situations in which people are unable to work owing to illness, disability, accident, unemployment

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<sup>168</sup> Also see eg. R. Szarfenberg, *Spółdzielczość, gospodarka społeczna a polityka społeczna* [online]. Social Policy Issues [accessed on: 2018-09-10]. Available at: <<http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-2db3b89d-2b97-4649-9d8b-c94ff3c75591/c/Szarfenberg20PPS2020-2013.pdf>>.

<sup>169</sup> *Podmioty ekonomii społecznej* [online]. Wielkopolski Ośrodek Ekonomii Społecznej [accessed on: 2014-03-10]. Available at: <<http://woes.pl/pes,14>>.

<sup>170</sup> J. Bugajski, *Ekonomia społeczna – nowość nie tylko polska* [online]. Sprawy nauki [accessed on: 2018-10-10]. Available at: <<http://www.sprawynauki.edu.pl/archiwum/dzialy-wyd-elektron/312-ekonomia-el3/1443-1300>>.

<sup>171</sup> The European Commission, *EUROPA 2020. Strategia na rzecz inteligentnego i zrównoważonego rozwoju sprzyjającego włączeniu społecznemu* [online]. EC [accessed on: 2018-08-10]. Available at: <[http://ec.europa.eu/eu2020/pdf/1\\_PL\\_ACT\\_part1\\_v1.pdf](http://ec.europa.eu/eu2020/pdf/1_PL_ACT_part1_v1.pdf)>.

<sup>172</sup> *Ibidem*.

<sup>173</sup> *Ibidem*.

<sup>174</sup> *Ibidem*.

or old age.<sup>175</sup> It can therefore be concluded that the social economy supported by the European Union has contributed to the development of social co-operatives in the Member States or to legislative changes concerning co-operatives.<sup>176</sup> EU funds are a particularly effective instrument for the development of social co-operatives.<sup>177</sup>

The activity of co-operatives is also part of the implementation of the EU's regional<sup>178</sup> and energy policy. The former focuses on strengthening the economic, social and territorial cohesion of the EU. In particular, the Union is aiming at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions. Regulations relating to this policy are set out in Articles 174 to 178 of the Treaty on the Functioning of the EU.<sup>179</sup> As is highlighted in the literature, European regional policy aims at the harmonious development of the Union, reducing differences, and thus achieving cohesion between different areas in terms of their socio-economic development.<sup>180</sup> Regional policy assumes: support for economic development of economically underdeveloped regions, restructuring of border regions and areas, combating unemployment and stimulating rural development, as well as assistance for regions in using their potential and improving their competitiveness.<sup>181</sup>

As the Treaty points out, particular attention is paid to rural areas among the regions. Co-operatives, as a rule, are connected with a given region – they know its specificity, they often have a long tradition. Agricultural co-operatives contribute to rural development. It is worth noting that principle VII, adopted at the 31st Congress of the International Co-operative Alliance in Manchester in 1995, is precisely a concern for the local community.<sup>182</sup> The activities of many co-operatives contribute to the protection of consumers' interests, which is in line with the message contained in Article 169 of the EC Treaty. Its provisions indicate that by pursuing the objectives of promoting consumers' interests and ensuring a high level of consumer protection, the Union will contribute to the protection of consumers' health, safety and economic interests, as well as to the promotion of their

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<sup>175</sup> D. Jarre, *Europejski model społeczny i usługi socjalne użyteczności publicznej. Możliwości dla sektora gospodarki społecznej*, in: *Przedsiębiorstwo społeczne w rozwoju lokalnym*, eds. E. Leś, M. Ołdak, Warszawa 2007, pp. 61-71.

<sup>176</sup> An example may be the French Act of 31 July 2014. More on this later in this work.

<sup>177</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 46 et seq.

<sup>178</sup> See e.g. K. Kokocińska, *Polityka regionalna w Polsce i w Unii Europejskiej*, Poznań 2010, p. 14 et seq.; S. Pastuszka, *Polityka regionalna Unii Europejskiej. Cele, narzędzia, efekty*, Warszawa 2012.

<sup>179</sup> For more see P. Kucharski, *Komentarz do art.174 Traktatu o funkcjonowaniu Unii Europejskiej*, in: *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, Vol. I, SIP LEX 2012.

<sup>180</sup> T.G. Grosse, *Polityka regionalna Unii Europejskiej i jej wpływ na rozwój gospodarczy. Przykład Grecji, Włoch, Irlandii i wnioski dla Polski*, Warszawa 2000, p. 7 et seq.

<sup>181</sup> *Polityka regionalna UE* [online]. UE [accessed on: 2018-09-05]. Available at: <<http://www.uniaeuropejska.info.pl/polityka-regionalna-ue>>.

<sup>182</sup> *Deklaracja spółdzielczości...*, op. cit.

right to information, education and the right to organise themselves in order to safeguard their interests.

In recent years, energy policy which aims to preserve energy<sup>183</sup> security and increase the use of renewable energy has been of particular importance to the EU. By 2020 its share in the total gross consumption of Energy within the EU is set to account for 20%, as provided for by Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.<sup>184</sup> As it turns out, co-operatives become involved in the pursuance of these plans, participating in the construction of biogas plants, wind power plants or photovoltaic installations.<sup>185</sup>

The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Meeting the food, natural resources and territorial challenges of the future – highlights the need to emphasise the specific role of agriculture in tackling climate change.<sup>186</sup> It may contribute to a sustainable energy supply and the development of an environmentally friendly chemical industry based on natural resources. Local and regional authorities also have a special role to play in promoting innovative, including biomass-based, concepts of energy production.<sup>187</sup>

Co-operatives are also active players in the implementation of EU environmental policy. The objectives of this policy, as set out in Article 191 TFEU, include preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, promoting measures at the international level to deal with regional or worldwide environmental problems, and in particular combating climate change.<sup>188</sup> It is not only the production of renewable energy that co-operatives support,<sup>189</sup> as they also

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<sup>183</sup> M. Tatarzyński, *Polityka energetyczna Unii Europejskiej*, „Bezpieczeństwo Narodowe” 2007, No 3-4.

<sup>184</sup> O.J.E.U. L.140 of 5 June 2009, p.16 et seq.

<sup>185</sup> *Europejska polityka energetyczna* [online]. EU [accessed on: 2015-01-05]. Available at: <[http://europa.eu/legislation\\_summaries/energy/european\\_energy\\_policy/127067\\_pl.htm](http://europa.eu/legislation_summaries/energy/european_energy_policy/127067_pl.htm)>. See K. Tomaszewski, *Polityka energetyczna Unii Europejskiej w kontekście problematyki bezpieczeństwa gospodarczego*, „Przegląd Politologiczny” 2018, No 1.

<sup>186</sup> S. Naumann, A. Frelih-Larsen, *Klimaschutz in der Landwirtschaft. Ziele und Anforderungen zur Senkung von Treibhausgasemissionen*, Berlin 2010; *Genossenschaften und Klimaschutz*, ed. C. Schröder, H. Walk, Wiesbaden 2014.

<sup>187</sup> For more see [online]. EU [accessed on: 2015-01-05]. Available at: <<http://eur-lex.europa.eu>>.

<sup>188</sup> See Z. Bukowski, *Prawo ochrony środowiska Unii Europejskiej*, Warszawa 2007; *Genossenschaften und Klimaschutz...*, op. cit.

<sup>189</sup> E. Viardot, *The role of co-operatives in overcoming the barriers to adoption of renewable energy*, „Energy Policy” 2013, No 63, pp. 756-764. Ö. Yildiz et al., *Renewable energy co-operatives as gatekeepers or facilitators? Recent developments in Germany and a multidisciplinary research agenda*, „Energy Research & Social Science” 2015, No 6, pp. 59-73.

get involved in green agriculture<sup>190</sup> or the processing of green produce, providing support to farmers in environmentally friendly farming, and offering consultation, advice or equipment.<sup>191</sup>

Despite the fact that the European Commission has stressed in many documents that the social economy and co-operatives contribute to key objectives of the European Union, such as social policy and employment, regional development and agriculture, there is no general EU law on the establishment and organisation of co-operatives.<sup>192</sup> These issues are dealt with in the national regulations of each Member State. An exception is the European Co-operative Society (ESC or SCE), the general operating rules of which are laid down in Council Regulation No 1435/2003/EC of 22 July 2003 on the Statute for a European Co-operative Society<sup>193</sup> and supplemented by Council Directive No 2003/72/EC of 22 July 2003<sup>194</sup> laying down the rules on the involvement of the employees in an European co-operative.

According to the 2003 EU regulation, the main objective of the activities of the SCE is to meet the needs of its members and/or to support their economic and/or social activities, in particular by concluding agreements with them on the supply of goods or services or on the performance of work in connection with the activities which it carries out or has carried out. Other tasks pursued by the SCE may include the meeting of its members needs by promoting, in the manner laid down above, their participation in economic activities in one or more of the ECS's co-operatives and/or national co-operatives. The European co-operative may carry out its business through subsidiaries.<sup>195</sup>

The preamble (recital 10) emphasises that the objectives of the European Co-operative Society shall be pursued in accordance with the following principles: first, the object of the activity should be for the members to obtain mutual advantage in such a way that each member derives a corresponding benefit from the activities of the ECS; second, the members of the SCE should at the same time be customers, employees or suppliers or they should be otherwise involved in

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<sup>190</sup> Organisation for economic co-operation and development, *Co-operative Approaches to sustainable Agriculture*, Paris 1998, p. 61 et seq.

<sup>191</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 46 et seq.

<sup>192</sup> The European Commission, *Biała Księga...*, p. 5 et seq.

<sup>193</sup> O.J.E.U. L. 207 of 18.08.2003, p. 1.

<sup>194</sup> U.J.E.U. L. 207 of 18.08.2003, p. 25.

<sup>195</sup> In its judgment of 2 May 2006 the ECJ (C-436/03; Legalis No 75316) stated that "Regulation 1435/2003 on the Statute for a European Co-operative Society (SCE) aims to create a new legal form existing alongside the national forms of co-operatives, while the SCE should be considered as a European legal form for co-operatives with a specific Community character. In the ECJ's view, the legal form of an SCE is governed primarily by this Regulation, the conditions for its creation are specific to that legal form and the possibility of transferring the registered office from one Member State to another is also specific to the SCE. Importantly, the transfer does not involve the winding up of the co-operative or the creation of a new legal person. The form of the European Co-operative Society coexists with that of national co-operatives."

the activities of the SCE; third, the right of scrutiny should be exercised equally by members, although a weighted voting system is allowed in order to reflect each member's share in the SCE; fourth, the remuneration of foreign and share capital should be limited; fifth, profits should be paid in accordance with the activities carried out with the ECS or retained to meet the needs of members; sixth, there should be no artificial restrictions on membership. The preamble also stresses that the primary objective of the Regulation is to make it possible for natural persons resident in different Member States and legal persons formed under the laws of different Member States to form an SCE. It also allows for the creation of an SCE by merging two existing co-operatives or by transforming a national co-operative into a new legal form, without the need for prior winding up (provided that the co-operative has its registered office and head office in one Member State and has a subsidiary or a permanent establishment in another Member State).

The adoption of the regulation on the statute of co-operatives was preceded by a number of documents supporting the co-operative movement. As early as 1978, the European Economic and Social Committee stressed in its study the role of co-operatives and other similar forms in the regional policy and promotion of democracy. This resulted, *inter alia*, in the adoption in 1980 of a resolution of the European Parliament, in which the European Commission was urged to give greater recognition to the role of co-operatives and to proceed with a Statute for a European Co-operative Society. The co-operative issue was also signalled in successive resolutions adopted in 1983 and 1987.<sup>196</sup>

And so, on 13 April 1983 the European Parliament adopted a resolution on co-operatives in the European Community,<sup>197</sup> on 9 July 1987 a resolution on the role of co-operatives in regional development,<sup>198</sup> and on 18 September 1998 a resolution on the role of co-operatives in supporting women's employment.<sup>199</sup> As early as on 6 March 1992 the Council had received the Committee's first draft on a European co-operative<sup>200</sup> and on 6 July the Committee adopted its amended motion which was subsequently submitted to the Council.<sup>201</sup> Following the adoption of the

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<sup>196</sup> A. Piechowski, *Spółdzielczość w Unii Europejskiej*, in: *Rola i przyszłość spółdzielczości: gospodarka konkurencyjnej Polski*, Kancelaria Prezydenta Rzeczypospolitej Polskiej, „Biuletyn Forum Debaty Publicznej” 2012, No 19, pp. 54-66; C. Chômél, *The long march of the European Co-operative Society*, „RECMA – Revue Internationale de l'Économie Sociale, Hors-Série” 2006, p. 28.

<sup>197</sup> Official Journal of the EC C 128 of 16.5.1983, p. 51.

<sup>198</sup> Official Journal of the EC C 246 of 14.9.1987, p. 94.

<sup>199</sup> Official Journal of the EC C 313 of 12.10.1998, p. 234.

<sup>200</sup> COM (91) 273 final version (Official Journal of the EC 1992, C 99, p. 14). Also see the case: European Parliament and the EC Council.

<sup>201</sup> COM(93) 252 final version (Official Journal of the EC of 1993, EC C 236, p. 17). See A. Piechowski, *Spółdzielczość w Europie i dotychczasowe doświadczenia w tworzeniu spółdzielni ponadgranicznych*, in: *Spółdzielnia Europejska – szansa integracji i rozwoju spółdzielczości w Europie, materiały z ogólnopolskiej konferencji Krajowej Rady Spółdzielczej i Wydziału Prawa i Administracji Uniwersytetu Kardynała Wyszyńskiego*, Warszawa 2008, p. 97 et seq.

Regulation in 2003, each Member State introduced the necessary internal legal provisions on the European co-operative. Some of them have also amended the regulations on the establishment and operation of other co-operatives. It is also worth mentioning Article 54 (formerly Article 48) Treaty on the Functioning of the European Union. In the light of its provisions, the term “companies or firms” means companies or firms constituted under civil or commercial law, including co-operative societies, and other legal persons governed by public or private law, save for those which are non-profit-making. As J. Napierała points out, “Companies within the meaning of this provision are all entities conducting business activities which are not natural persons, including entities without legal personality.”<sup>202</sup> It should be noted that co-operatives act primarily on behalf of their members and generally do not seek to maximise profits. This issue will be addressed in the following chapters.

There is no doubt that the development of co-operatives is also influenced by the aforementioned organisations linked to the European Union, in particular COGECA. As far back as September 1959, national agricultural co-operative organisations set up the General Committee for Agricultural Co-operatives of the European Union, based in Brussels. The Committee represents the interests of agricultural, forestry and fisheries co-operatives in the public institutions of the European Union as well as in European and international organisations.<sup>203</sup> The organisation brings together around 40 000 agricultural co-operatives which employ around 660 000 people and generate an annual turnover of more than 300 billion euros. At the time of its creation, the COGECA Committee was composed of only six members, while at present it has 35 full members and four associates from across the European Union. There are also 36 partner organisations in the COGECA Committee.<sup>204</sup> The CCACE is the Coordinating Committee of European Co-operative Societies, associating various European sectoral co-operative organisations (COGECA – agricultural co-operatives, CECOP – labour co-operatives, CECODHAS – housing co-operatives, etc.). It was established in 1983 (initially as the CCACC) and has an official consultative status *vis-à-vis* the EU authorities.

In order to deepen integration further, in February 2006, 11 member organisations of the International Co-operative Alliance (ICA-Europe) and the Coordinating Committee of European Co-operative Societies represented in the European Council of the ICA (including the Polish National Co-operative Council) decided

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<sup>202</sup> For more see Article 54 of the Treaty on the functioning of the European Union, see J. Napierała, *Korzystanie przez spółki ze swobody przedsiębiorczości*, „Studia Prawa Prywatnego” 2015, No 1, p. 61 et seq.

<sup>203</sup> E. Tomkiewicz, *Legitymizacja organizacji rolników w UE i ich wpływ na regulacje unijnego prawa rolnego*, „Studia Iuridica Agraria” 2011, Vol. IX, p. 272 et seq.

<sup>204</sup> *History* [online]. COPA-COGECA [accessed on: 2017-09-05]. Available at: <<http://copa-cogeca.be/CogecaHistory.aspx>>.

to establish a new organisation common to the whole co-operative movement, under the name Co-operatives Europe.<sup>205</sup>

The International Labour Organisation attaches great importance to co-operatives, particularly in terms of job creation, the mobilisation of resources, the stimulation of investment and their contribution to the economy.<sup>206</sup> An example of this is Recommendation 193 of 2002 on promoting co-operatives, which stresses, *inter alia*, that governments should implement a policy and legal framework that is favourable to co-operatives, in line with the nature and function of co-operatives and takes into account co-operative values and principles. This should include: creating an institutional framework in order to enable co-operatives to be registered quickly, easily, inexpensively and efficiently; promoting policies to enable co-operatives to build up adequate reserves; facilitating the entry of co-operatives into co-operative structures that meet the needs of their members; and supporting the development of co-operatives as autonomous and self-governing enterprises.<sup>207</sup> Governments should facilitate access by co-operatives to services that support them in strengthening their economic efficiency and their ability to create employment and income.<sup>208</sup> Recommendation 193 also stresses that governments should introduce (where appropriate) measures to support the activities of co-operatives which pursue specific social and public policy objectives. Their main aim is to promote employment and to pursue activities that benefit disadvantaged groups or regions. Such measures should include, *inter alia*, tax privileges, and a system of loans and grants, as well as easier access to public works programmes and special provisions for public markets.<sup>209</sup>

### **2.3. The development of legal regulations governing co-operatives on Polish territory during the period of partitions and between 1918 and 1939**

Most studies consider the first co-operative in the world to be the Rochdale Society of Equitable Pioneers founded in England in 1844.<sup>210</sup> Around the same time,

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<sup>205</sup> Co-operatives Europe [online]. KRS [accessed on: 2018-09-07]. Available at: <[http://krs.org.pl/index.php?option=com\\_content&view=article&id=94&Itemid=149](http://krs.org.pl/index.php?option=com_content&view=article&id=94&Itemid=149)>.

<sup>206</sup> Recommendation No 193 on promoting co-operatives. See Krajowa Rada Spółdzielcza, *Oficjalny tekst Zalecenia nr 193 Międzynarodowej Organizacji Pracy dotyczące promowania spółdzielni. Materiały z 90. Sesji Międzynarodowej Konferencji Pracy w Genewie*, Warszawa 2002, p. 45 et seq.

<sup>207</sup> Ibidem, p. 45 et seq.

<sup>208</sup> Ibidem, p. 45 et seq.

<sup>209</sup> Point 7.2 (II Outline of the policies and the role of governments), Recommendation 193 of 20 June 2002 of the International Labour Organisation concerning promoting co-operatives.

<sup>210</sup> The literature emphasises that the earliest forms of cooperation with the type of mutual assistance existed already in antiquity. Examples include Egyptian associations of leaseholders and

in many countries in the world there emerged numerous similar pre-co-operative initiatives as well.<sup>211</sup> This was the time when Poland was partitioned and deprived of sovereignty.<sup>212</sup> And yet, the co-operative movement started to develop as well and its precursor on Polish territory was Stanisław Staszic, the founder of the Hrubieszów Farmers' Rescue Society (Towarzystwo Rolniczego Ratowania się Wspólnie w Nieszczęściach) in 1816.<sup>213</sup> Members of the Society, peasants who cultivated their land individually, paid rent and as well as a fixed fee for the Society's common purposes, which dealt mainly with mutual assistance to those in need, in events like the reconstruction of a building or household after a fire, aid and assistance or care of the victims of natural disasters, the elderly, the disabled or orphans. The Society operated a loan and aid fund, granting low-interest loans for the development of agricultural holdings, setting up workshops and trade operations, or the building of a house.<sup>214</sup> It also provided rural residents with health care (running its own hospital and employing a doctor), social care (care home for the elderly and the handicapped, an orphanage) and education (five folk elementary schools, scholarships funded for the most talented children in order to continue their education in higher schools). All these activities, financed from the Society's funds, were based on self-help and mutual assistance and solidarity, which were principles binding upon all members. The Rescue Society operated for many years and was finally dissolved by the communist authorities in 1952, its assets being then nationalised.<sup>215</sup>

The co-operative movement, popular in Poland during the time of partitions, performed various functions. Among other things, it was a form of association and a provider of education for peasant farmers, which also served the landowners. It allowed the horizontal consolidation of agricultural production, which was the beginning of producer associations, and improved local supply by creating simple agricultural processing as well as craftsmanship.<sup>216</sup> The legal principles of the establishment and operation of co-operatives in the 19th century on Polish lands were determined by the legislation of the partitioning states, and the directions of

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craftsmen, Jewish shepherd's associations and Dead Sea communities, Greek associations of craftsmen, miners and fishermen, Roman carpentry colleges, blacksmiths, shoemakers, potters, doctors and musicians. See K. Boczar, *Spółdzielczość. Problematyka społeczna i ekonomiczna*, Warszawa 1986, pp. 27-28; E. Pudełkiewicz, *Spółdzielcze formy...*, pp. 259-295.

<sup>211</sup> See ex. K. Boczar, *Spółdzielczość...*, p. 28 et seq.

<sup>212</sup> F. Stefczyk, *Początki i ogólne warunki rozwoju spółdzielczości w Polsce*, Kraków 1925 p. 9 et seq.

<sup>213</sup> See [online]. KRS [accessed on: 2018-05-11]. Available at: <[http://krs.org.pl/index.php?option=com\\_content&view=article&id=27&Itemid=283](http://krs.org.pl/index.php?option=com_content&view=article&id=27&Itemid=283)>; S. Staszic, *Przestrogi dla Polski*, Warszawa 1960, p. 25 et seq.

<sup>214</sup> See A. Piechowski, *Historyczny kontekst uchwalenia ustawy z 29 października 1920 r.*, in: *90 lat prawa spółdzielczego, materiały pokonferencyjne Krajowej Rady Spółdzielczej*, Warszawa 2010, p. 7 et seq.

<sup>215</sup> Ibidem. S. Staszic, *Przestrogi...*, p. 25 et seq.

<sup>216</sup> See [online]. KRS [accessed on: 2013-05-11]. Available at: <<http://krs.org.pl>>.

development of co-operatives depended on the socio-economic situation in those states. Undoubtedly, its fastest development took place in Wielkopolska where the level of economic development was relatively high, and the social structure more modern than in the other two partitioned parts, with a middle class starting to emerge and form, initiating the ideas of “organic work.” As is rightly emphasised in the literature, the specificity of the Wielkopolska system was its far-reaching social solidarity, connected with the effort to maintain Polish identity.<sup>217</sup>

In Poznań Province and in Pomerania, the first co-operatives appeared in the years 1861-65, and they were organised within agricultural circles, which then played an important role in spreading agricultural education in rural areas, teaching peasants rational land cultivation and farming. At the same time, they initiated the creation of agricultural and commercial co-operatives.<sup>218</sup> The first one was founded in 1865 in Gniew in Pomerania. Later, upon the entry into force of the German law on co-operatives of 1867, similar co-operatives were created in other regions<sup>219</sup> of the Prussian partition. Their basic function was to supply farmers with essential household products as well as the means of agricultural production, although their main objective was the collection of agricultural products (cereals in particular).<sup>220</sup> Also worthy of note is credit and dairy co-operatives which started to operate within agricultural circles. But the real development of the co-operative movement, especially credit co-operatives, occurred some time later.<sup>221</sup>

Apart from people’s banks and agricultural and commercial co-operatives “Rolnik”, parcel co-operatives operating in some rural areas of Poznań Province and Pomerania played an important role. Their main function was to enable Poles to buy land, to prevent a loss of possession by Poles at the time when the activity of the colonisation commission established by the Prussian government was very intense. Co-operatives were being established in Silesia too, where industry was developing and a new working class was emerging. Among others, there were co-operatives bringing together food producers, and savings and loan co-operatives. The latter were established on the initiative of Karol Miarka, a well-known Silesian activist.<sup>222</sup>

A characteristic feature of the Wielkopolska model of “liberal” co-operative movement was the participation in it of many representatives of the clergy. This is well evidenced by statistical data. Before World War I, in 212 Wielkopolska co-operatives there were 296 priests working (in them), often holding the highest

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<sup>217</sup> A. Piechowski, *Historyczny kontekst uchwalenia...*, p. 7 et seq.

<sup>218</sup> See: J. Mroczek, *Początki rozwoju spółdzielczości w Polsce*, „Przegląd Prawniczy, Ekonomiczny i Społeczny” 2012, No 1, pp. 29-40.

<sup>219</sup> Ibidem.

<sup>220</sup> K. Boczar, *Spółdzielczość...*, p. 78.

<sup>221</sup> J. Gójski, L. Marszałek, *Spółdzielczość. Zarys rozwoju historycznego*, Warszawa 1968, p. 38. See J. Szczepański, *Spółdzielczość*, Poznań 1987, pp. 40-41.

<sup>222</sup> J. Mroczek, *Początki rozwoju spółdzielczości...*, pp. 29-40.

positions. The most famous was undoubtedly Augustyn Szamarzewski<sup>223</sup> from Środa Wielkopolska, who founded a savings bank. He also contributed to the founding of other co-operatives, and in 1872 became the patron of the Union of Profitable and Economic Companies. Priest Piotr Wawrzyniak, who worked for the cooperation of agricultural co-operatives with the already strong system of banking co-operatives, should also be mentioned. His aim was to organise the supply of fertilizers, fodder, seeds, coal, tools to farms and the sale of their produce, mainly cereals and potatoes. At the beginning of the twentieth century, the Agricultural and Trade Co-operatives "Rolnik" (Farmer) were increasingly popular in Wielkopolska. Before the outbreak of World War I there were already 60 of them bringing together almost 10 000 people.<sup>224</sup>

The dynamically developing co-operative movement in Germany and Austria, as well as the first successes of credit unions in those countries, aroused great interest in them among many Poles living in the Austrian partition.<sup>225</sup> As early as the 1860s, various types of social enterprises operated there, such as advance (loan) funds, labour co-operatives and agricultural circles. Stefczyk's banks became best known in Galicia.<sup>226</sup> Co-operatives in the Austrian partition developed further in the 1880s and 1890s. Three types of co-operatives emerged and became more widespread: credit co-operatives, agricultural and commercial co-operatives and dairy co-operatives.<sup>227</sup> Later, co-operatives bringing together food producers also developed in cities, while commercial and agricultural co-operatives in Galicia started to develop only after 1905 and to expand further after 1909. They were responsible for food procurement and supply. The issues concerning the supply of food in rural areas were also dealt with by the agricultural circles, which organised grocery stores with agricultural products in stock.<sup>228</sup> In 1912, there were 73 dairy co-operatives with about 14 000 members.<sup>229</sup>

The legal conditions in Galicia, just as in the German partition, were favourable for the development of co-operatives and their operations. Initially, co-operatives were created under the Austrian Associations Act of 1852 with a complex registration procedure. Then, in 1873, the law on economic and commercial associations was passed in Austria, in which many solutions were analogous to German

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<sup>223</sup> M. Jakóbczyk, *Szamarzewski Augustyn (1832-1891)*, in: *Wielkopolski Słownik Biograficzny*, Warszawa-Poznań 1983, pp. 725-726.

<sup>224</sup> See: A. Piechowski, *Historyczny kontekst...*, p. 11 et seq.; S. Wojciechowski, *Historia Spółdzielczości Polskiej do 1914 r.*, Warszawa 1939, p. 44; J. Pastuszka, E. Turkowski, *Spółdzielczość jako ruch obywatelski na przełomie...*, p. 40 et seq.; W. Jakóbczyk, *Ks. Piotr Wawrzyniak (1849-1910)*, in: *Wielkopolski Słownik Biograficzny*, Warszawa-Poznań 1981, pp. 801-802.

<sup>225</sup> *Ibidem*. Also see e.g. K. Boczar, *Spółdzielczość...*, p. 79 et seq.

<sup>226</sup> F. Stefczyk, *Początki...*, pp. 27-29.

<sup>227</sup> *Ibidem*.

<sup>228</sup> K. Boczar, *Spółdzielczość. Problematyka...*, p. 104 et seq.

<sup>229</sup> *Ibidem*.

cooperatives law. This Act remained in force until 1918 and significantly simplified the procedures.<sup>230</sup>

All in all, just before the outbreak of the First World War, on Polish territory under all three partitions, there operated about 3400 co-operatives of different kinds, with almost 1.2 million members, of which in Galicia there were 1670 co-operatives of various types bringing together almost 700 000 members (of which, however, 1400 were small Stefczyk's banks with a total of 320 000 members). In the Kingdom of Poland (Russian Partition) there functioned more than 1400 co-operatives with their almost 400 000 members, and in the Prussian partition there were more than 300 co-operatives with almost 200 000 members.<sup>231</sup>

Immediately after the establishment of the Polish state after the end of the First World War, work began on the preparation of the Act on co-operatives. The co-operatives throughout the whole of Polish territory were functioning well but, being formerly organised in areas under three different partitions they operated within three different legal frameworks.<sup>232</sup> On 29 October 1920 the Act on co-operatives<sup>233</sup> was passed, at the time a very modern and progressive law. It constituted a kind of co-operative constitution in Poland, as is rightly emphasised in the literature, based on a wealth of historical experience drawn from various legal systems (especially the Austrian and German, where the conditions for the development of this form of activity were favourable).<sup>234</sup> It is no coincidence that between 1919 and 1920 the Minister of Internal Affairs of the reborn Poland was Stanisław Wojciechowski (one of the founders of "Społem," and later president of the Republic of Poland).<sup>235</sup> The first draft of the Act was prepared by the Ministry of Labour and Social Welfare in early 1919. However, it was quickly abandoned as it was considered too radical and the work on co-operative law was undertaken by the Ministry the Treasury, which was responsible for co-operative matters having a specially dedicated co-operative department, which prepared another draft. This draft was subsequently discussed in June 1919 during a joint conference of representatives of state authorities and co-operatives.<sup>236</sup>

The Act adopted contained only the general provisions and did not regulate individual types of co-operatives, thus leaving greater freedom when it came to creating different types of co-operatives.<sup>237</sup> According to the Act of 1920,

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<sup>230</sup> A. Piechowski, *Historyczny kontekst...*, p. 11 et seq. A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 144 et seq and related literature.

<sup>231</sup> A. Piechowski, *Historyczny kontekst...*, p. 17 et seq.

<sup>232</sup> A. Jedliński, *Ustawa z 1920 r. na tle ówczesnych regulacji europejskich*, in: *90 lat prawa spółdzielczego, materiały pokonferencyjne Krajowej Rady Spółdzielczej*, Warszawa 2010, p. 21 et seq.

<sup>233</sup> Dz. U. of 1920 No 111, item. 733 as amended.

<sup>234</sup> See A. Piechowski, *Historyczny kontekst...*, p. 17 et seq.

<sup>235</sup> *Ibidem*.

<sup>236</sup> *Ibidem*.

<sup>237</sup> *Ibidem*.

a co-operative was an association with an unlimited number of people with variable capital and personal composition, aimed at increasing the earnings per household of its members by running a joint enterprise. In carrying out these economic tasks, a co-operative was also to seek to improve the cultural level of its members.

The definition of the objectives as increasing the earnings per household of the members by running a joint enterprise referred to German and Austrian co-operative laws binding on Polish lands during the partitions. Agricultural co-operatives, which were popular at that time, provided seeds and fertilizers, organised sales of produce from farmers who were members of the group, while food co-operatives provided their members with everyday products. There had to be a link between the activity of the co-operative enterprise and the economic activity of the member of the co-operative or of his holding.<sup>238</sup> It was emphasised in the doctrine that the objective of a co-operative is not maximising profits but realising a specific goal<sup>239</sup> since the co-operative is to provide direct support to its members.<sup>240</sup>

Article 1 provided for the principle of the open door. Membership was available to all, and the co-operative, apart from its economic activity, was to conduct educational activities, i.e. activities aimed at raising the cultural level of its members. At the same time, the founders of a co-operative had to be at least ten natural persons or three legal entities. The principle of a democratic system (1 member – 1 vote) was enshrined in Article 45(3), which stipulated that each member was to have one vote, irrespective of the number of shares held. The principles of the distribution of the balance sheet surplus proportionately to the turnover and the co-operative and limited interest rates on shares were reflected in Articles 57 and 27 of the Act.<sup>241</sup> Article 81(2), on the other hand, provided for the indivisibility of assets in the event of a dissolution of a co-operative. In addition, Article 65 provided for the possibility of a dissolution of a co-operative by a court at the request of the competent authority in the event of the activities of the co-operative contravening the law or the statutes.<sup>242</sup>

Co-operatives played an important role in the economic development of the country. As is rightly pointed out in the literature, an important concern after Poland became independent was not so much to rebuild the economy as to build it from scratch. Capitalism requires capital to be created. A co-operative is a form that does not need capital at the beginning of its operations. It creates capital in

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<sup>238</sup> For more see P. Zakrzewski, *Cel...*, p. 69 et seq. and related literature.

<sup>239</sup> Z. Łaczyński, *Ustawa o spółdzielniach. Przepisy wykonawcze. Ustawodawstwo zwiqzkowe. Orzecznictwo. Wzory statutów, regulaminów i podań*, Kraków-Warszawa 1939, p. 2; Z. Chmielewski, *Podręcznik spółdzielczości*, Warszawa 1937, pp. 28, 54; W. Gartner, *Prawo handlowe i spółdzielcze w zarysie*, Warszawa 1949, p. 125.

<sup>240</sup> P. Zakrzewski, *Cel...*, p. 72.

<sup>241</sup> See R. Cioch, *Zasady rozdelskie...*, p. 33 et seq.

<sup>242</sup> See A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 144 et seq. and related literature.

the course of its operations.<sup>243</sup> At the end of 1927 there were 11 900 co-operatives in Poland, in 1929 their number already reached some 15 500, while in 1930 it exceeded 22 600.<sup>244</sup>

Pursuant to the Act of 1920, practically every type of business activity could be conducted, since the law in force only provided for a general model of co-operatives as a voluntary corporation. The co-operative was a registered merchant, but not a commercial company. Commercial law applied to co-operatives only under certain conditions and to the extent not provided for in the Act.<sup>245</sup> The Polish co-operative always had to have legal personality, which was not the case in other legal systems. In addition, judicial registration was necessary. The 1920 law granted the members of the co-operative a great deal of freedom in shaping the content of the statutes. This freedom was significantly higher than in other European countries. This concerned, for example, the creation of funds other than those provided for in the Act, creation of additional own funds or the creation of additional reserves, or the choice of the method of covering co-operative losses.<sup>246</sup> Regarding the co-operative bodies, its Management could be a single-member body termed Directorship. The Board had to be composed of at least 3 persons who were paid for their work.<sup>247</sup>

As has already been pointed out, the 1920 Act on co-operatives binding in the interwar period, did not contain any separate legal regulation concerning agricultural co-operatives. However, agricultural co-operatives continued to develop (e.g. dairy co-operatives, agricultural services co-operatives, purchasing and marketing, purchasing and marketing of cattle and pigs, egg co-operatives, poultry co-operatives, sales of agricultural tools, grazing co-operatives, grain purification co-operatives, processing co-operatives such as distilleries, bakeries, sugar factories, etc.).<sup>248</sup> Their operations were subject in some measure to the influence of the legal regulations governing agriculture although there were not many of them.

## 2.4. Legislation on co-operatives in Poland after the Second World War

After 1945, there were many co-operatives operating in rural areas in Poland, but they were used to implement the policy of command and control. Co-operatives lost their self-governing and social character at that time. What is more, their

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<sup>243</sup> A. Jedliński, *Ustawa z 1920 r...*, p. 21 et seq.

<sup>244</sup> M. Kwiecień, *Rozwój spółdzielczości w II Rzeczpospolitej*, in: *90 lat prawa spółdzielczego, materiały pokonferencyjne Krajowej Rady Spółdzielczej*, Warszawa 2010, p. 32 et seq.

<sup>245</sup> A. Jedliński, *Ustawa z 1920 r...*, p. 21 et seq.

<sup>246</sup> *Ibidem*.

<sup>247</sup> *Ibidem*.

<sup>248</sup> *Spółdzielnia wiejska jako jedna z głównych form wspólnego gospodarczego działania ludzi*, ed. W. Boguta, Warszawa 2011, p. 28; M. Brodziński, *Oblicza...*, p. 53 et seq.

members had been losing influence on the operation of the co-operative, they stopped identifying with it, treating it as an element of the party and state apparatus.<sup>249</sup> After regaining independence in 1945, the people's authorities began to implement a new political and social programme and introduced numerous reforms – nationalisation of industry and banks, agricultural reform, planning of the entire national economy.<sup>250</sup>

The political changes introduced after the Second World War resulted in major changes in the co-operative sector. Clashing political views, as well as the inclusion of co-operatives in the system of the planned economy, contributed to the weakening of their self-government activity to the benefit of central and administrative management. The independence of these entities was reduced and they were made dependent on the State.<sup>251</sup> After the Second World War the co-operative movement in Poland did nevertheless develop but only in quantitative terms.

During the socialist period, co-operatives developed mainly in rural areas, but group interests were subordinated to the general social interest.<sup>252</sup> After the Second World War, the country's agricultural policy changed and the collectivisation of agriculture began to play an increasingly important role. It was intended to create large agricultural enterprises, i.e. agricultural production co-operatives and public agricultural holdings.<sup>253</sup> On 21 May 1948, three laws were passed to supplement the Act on co-operatives: the Law on the Central Co-operative Union and on the Centres of Co-operatives;<sup>254</sup> the Law on the State-co-operative Centres;<sup>255</sup> and the Law on state-co-operative enterprises.<sup>256</sup> On 20 December 1949, the Act of 29 October 1920 on co-operatives was amended.<sup>257</sup> The provision of Article 1 of the Act read as follows: a co-operative shall be regarded as an association with an unlimited number of members and variable personal composition conducting jointly economic activity within the framework of the national economic plan for the improvement of the level of the economic and cultural life of its members and for the benefit of the People's State. The literature stresses that this amendment violated all the basic principles under which co-operatives operate and clearly distorted the essence of co-operatives and the co-operative movement, forcing them

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<sup>249</sup> J. Mroczek, *Początki rozwoju spółdzielczości...*, p. 37 et seq.

<sup>250</sup> Ibidem.

<sup>251</sup> Ibidem. See [online]. KRS [accessed on: 2013-05-11]. Available at: <<http://krs.org.pl>>.

<sup>252</sup> Ibidem.

<sup>253</sup> J. Bański, *Historia rozwoju gospodarki rolnej na ziemiach polskich*, in: *Człowiek i Rolnictwo*, ed. Z. Górka, A. Zborowski, Kraków, 2009, pp. 33-34.

<sup>254</sup> Dz. U. of 1948 No 30, item 199.

<sup>255</sup> Dz. U. of 1948 No 30, item 200.

<sup>256</sup> Dz. U. of 1948 No 30, item 201. For more see R. Bierzanek, *Prawo spółdzielcze...*, p. 33.

<sup>257</sup> Uniform text announced by the President of the State Economic Planning Committee on 20 May 1950 (Dz. U. R.P. No 25 of 20 June 1950, item 232).

into the system of the socialist planned economy.<sup>258</sup> The fundamental change was, as P. Zakrzewski rightly points out, that “a co-operative functioning within the central economy was to conduct its activity not only in the interest of its members, but also in the interest of the People’s State.”<sup>259</sup>

That co-operatives and co-operative movement was to be used for the purpose(s) of building a new economic and political system, is confirmed by the reference made to them in the Constitution of 1952.<sup>260</sup> Article 11 of the Basic Law stresses that the People’s Republic of Poland also supports the development of various forms of co-operative movement in the city and in the countryside and provides it with support in fulfilling its tasks, and that co-operative ownership, as a social property, is under particular care and protection (after amendment – Article 16). This regulation was referred to in Article 126 of the Civil Code of 1964, stating that social property is either socialist national property (state property), or co-operative property, or property of other social organisations of the working people. Therefore, co-operative ownership in the period of the People’s Republic of Poland was a segment of social ownership.<sup>261</sup>

During the implementation of the six-year plan to build the foundations of socialism in Poland (1950-1955), the agricultural policy of the state recognised agricultural production co-operatives as an effective instrument of the reconstruction of the small-scale individual agricultural economy. In the course of a few months in 1950, the number of agricultural production co-operatives increased almost eightfold to 1900.<sup>262</sup> Further co-operatives continued to be established. According to Mr Brodziński, the changes in state policy that took place after 1956 allowed for the gradual restoration of the self-governing character of co-operatives, although of course the State continued to interfere in their activities.<sup>263</sup>

On 17 February 1961 the Act on co-operatives and their associations was adopted.<sup>264</sup> In Article 1 it was stated that a co-operative is a voluntary and self-governing association with an unlimited number of members and a variable share fund; its aim is to conduct economic activity within the framework of the national economic plan, as well as social and educational activity for the permanent improvement of the financial and cultural wellbeing and social awareness of its members and for the benefit of the Polish People’s Republic.<sup>265</sup>

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<sup>258</sup> H. Cioch, *Prawo spółdzielcze...*, p. 19 et seq.

<sup>259</sup> P. Zakrzewski, *Cel...*, p. 74 et seq.

<sup>260</sup> Dz. U. of 1952 No 33, item 232 as amended.

<sup>261</sup> M. Stańko, *Regulacje prawne i rozwój spółdzielczości w I PRL*, in: *90 lat prawa spółdzielczego, materiały pokonferencyjne Krajowej Rady Spółdzielczej*, Warszawa 2010, p. 35 et seq.

<sup>262</sup> See J. Paliwoda, *Zagadnienia prawne...*, pp. 26-27.

<sup>263</sup> See: M. Brodziński, *Oblicza polskiej spółdzielczości...*, p. 41.

<sup>264</sup> Dz. U. No 12, item 61.

<sup>265</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 148 et seq.

Under the Act, co-operatives of a specific type or types associate to form their own central and other co-operative associations. The main representation of the co-operative movement in Poland was the Supreme Co-operative Council. Co-operatives for which, by reason of their type, there was no appropriate central connection were to form part of an association designated by the General Council, provided that the latter did not assume the function of the central association with respect to them. The economic activity of co-operatives was to be carried out in a planned manner, based on economic and financial plans. The economic and financial plans were to be drawn up on the basis of guidelines drawn up by the competent central association and the national councils, and were to be consistent with the planned indicators of tasks for co-operatives. The scope, principles, methods, manner and dates of preparation of economic and financial plans as well as amendments to such plans were set out in separate provisions.<sup>266</sup>

The 1961 law referred to the special provisions for agricultural production co-operatives. Article 95 specified that the object of their economic activity was to run a joint agricultural holding based on the personal work of its members. Alongside its core business, an agricultural production co-operative was also allowed to operate processing and service plants. It follows from this definition that, apart from agricultural activity, the co-operative could also engage in non-agricultural economic activity (processing and services). It seems that owing to the basic activity connected with running a farm, it concerned mainly agro-food processing based on its own agricultural products and providing e.g. agro-technical services. However, the regulations did not exclude the purchase of products from third parties. In general, the law did not define either a processing plant or a service.

Another legislative act on co-operatives was the Act of 16 September 1982 (Co-operative law).<sup>267</sup> Despite many amendments, it is still in force. In its original version, a co-operative was defined as a voluntary and self-governing association with an unlimited number of members and a variable share fund, which conducts economic activity, guided by the needs of its members and the assumptions set out in the central and territorial socio-economic plans, as well as social and educational activity for the permanent improvement of the financial and cultural standard of living and social awareness of its members, and for the benefit of the People's Republic of Poland. Another provision specified that although a co-operative operates independently, the authorities of both the local and state administration may issue legal regulations and decisions binding on the co-operative on the basis of and within the scope of authorisations provided for in statutory regulations.<sup>268</sup>

The regulation stipulating that co-operatives must follow the assumptions set out in the central and territorial socio-economic plans was unfavourable for the

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<sup>266</sup> See M. Brodziński, *Oblicza polskiej spółdzielczości...*, p. 41.

<sup>267</sup> Dz. U. of 1982 No 30, item 210 (hereinafter referred to as Co-operative law or Act of 1982).

<sup>268</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 149 et seq.

independence of the co-operative movement. In addition, the competent public authority had the power to require the co-operative to include tasks in its plan or to assign tasks outside the plan if it was considered necessary in the interests of national defence or in the event of a natural disaster (Article 71). Another provision provided that if a co-operative undertook, on the basis of an agreement with a public administration body, an unprofitable activity necessary to satisfy certain essential social needs, that body was obliged to provide the co-operative with the financial and other means specified in the agreement to enable it to perform such activity on a profitable basis. The co-operative could also receive subsidies from the budget to finance its production of products and provision of services, in the amount stipulated in the legal Acts.

After 1989, i.e. after the political transformation, many co-operatives were abolished and their role in servicing rural areas and agriculture was weakened. Farmers saw the co-operative movement as a relic of the previous era. Moreover, the adoption of the Act of 20 January 1990 on changes in the organisation and operation of co-operatives had a very negative impact on the development of co-operatives.<sup>269</sup> Its entry into force resulted in the collapse of many of them, as it put all the co-operative associations, as well as certain co-operatives established by legal and natural persons, into liquidation. It also prohibited co-operatives from associating for several years, which violated the Constitution. This violation was confirmed by the Constitutional Tribunal in 1991, which held that the provision of Article 19(1) of the Act of 20 January 1990 on changes in the organisation and activity of co-operatives in the scope of preventing the voluntary association of co-operatives until the adoption of a new statutory regulation (Co-operative Law) was inconsistent with Article 84(1) and (2) of the Constitution of the Republic of Poland.<sup>270</sup> However, this Act was amended only in 1994 and during the time it was in force and binding, the profound changes in the co-operative sector that took place led to a regression of the co-operative movement as a result of which, according to the findings of the Co-operatives Research Institute, more than 3000 co-operatives had been liquidated, of which 20% were co-operatives operating in the agricultural sector.<sup>271</sup>

In 1994 the Act: Co-operative law was amended one more time,<sup>272</sup> this amendment corrected certain defects of the previously binding regulation. A new definition of a co-operative was introduced and the co-operative's assets ceased to be treated as indivisible group ownership but became the private property of its

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<sup>269</sup> Dz. U. of 1990 No 6, item 36 as later amended.

<sup>270</sup> Judgment of the Constitutional Tribunal 6/90, OTK 1991, No 1, item 1; H. Cioch, *Prawo...*, p. 21 et seq.

<sup>271</sup> J. Mroczek, *Transformacja polskiego sektora spółdzielczego na tle wybranych krajów postsocjalistycznych*, „Przełęcz Prawniczy, Ekonomiczny i Społeczny” 2012, No 3, pp. 77-86.

<sup>272</sup> Act amending the Act on co-operative law and amending some other acts, entered into force on 26 September 1994 (Dz. U. of 1994 No 90, item 419).

members. The rules of conduct within the co-operative, the organisation of the co-operative, its bodies, vetting, winding-up proceedings also changed.<sup>273</sup> Many amendments also referred directly to agricultural production co-operatives.

The amendment was welcomed by the co-operative movement.<sup>274</sup> On the basis of the 1994 Act, the Act of 19 October 1991 on the management of state treasury agricultural property was amended in respect of granting the pre-emptive right to purchase (real-estate) property without a tender. In addition, the Act allowed co-operatives of agricultural producers which used agricultural land before 31 December 1993 to conclude a lease contract without a call for tenders if they applied for it.

In the following years further amendments to the Act were made. However, they did not have any longer such a significant impact on the co-operative system in Poland. An amendment introducing simplifications in establishing co-operatives in order to create a co-operative group of agricultural producers was important for the development of agricultural co-operatives. On 25 July 2008, the Sejm passed an amendment to the Act on Co-operative Law,<sup>275</sup> under which natural persons and legal persons running an agricultural holding within the meaning of the provisions on agricultural tax or carrying on an agricultural activity as regards the special divisions of agricultural production may establish a co-operative whose number of founders may not be less than five, but only if that entity is formed with the sole aim of creating groups of agricultural producers or a pre-approved group of producers of fruit and vegetables.

The amendments also introduced operational simplifications related to the operation of the supervisory board. There is no need for a supervisory board to be appointed in agricultural co-operative producer groups or agricultural production co-operatives where the number of members does not exceed ten, unless the statutes provide otherwise. In this case, the competence of the Board will be exercised by the General Assembly of Members. These amendments to co-operative law were related to the operations of producer groups and the introduction of simplifications in establishment of agricultural co-operative producer groups.<sup>276</sup>

At this point, it is also worth mentioning the amendments to the Act of 15 September 2000 on agricultural producer groups, which influenced the establishment and operation of co-operative agricultural producer groups. Modifications have taken place, *inter alia*, with regard to entities which may form a group. The original version of the 2000 Law in question provided for groups to be formed

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<sup>273</sup> For more see H. Cioch, *Prawo...*, p. 22 et seq.

<sup>274</sup> *Ibidem*, p. 23 et seq. More in K. Pietrzykowski, *Prawo spółdzielcze. Komentarz do zmienionych przepisów*, Warszawa 1995, p. 5 et seq.

<sup>275</sup> Dz. U. of 2008 No 163, item 1014.

<sup>276</sup> See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 150 et seq.

only by natural persons. The Amendment to the Act of 18 June 2004<sup>277</sup> widened the scope of entities and groups of entities which may form groups, by adding to it legal persons (including co-operatives) running an agricultural holding within the meaning of the agricultural tax regulations or carrying out an agricultural activity within the scope of special divisions. This has enabled group members, e.g. agricultural production co-operatives, to join groups. However, it turned out that the creation of a group by existing co-operatives still faced legal barriers. Co-operatives operating in rural areas usually operate in many directions and their members are also non-agricultural producers. The prerequisites resulting from the Act on Agriculture Producer Groups required long-term and costly changes in the co-operative, and in some cases even made it impossible for some of them to obtain the status of an agricultural producer group.

Therefore, it was important for co-operatives that the Sejm passed on 15 December 2006 the Act on amending the Act on agricultural producer groups and their associations and on amending other Acts.<sup>278</sup> It introduced some measures facilitating the creation of groups by co-operatives, taking into account the demands of practitioners in this area. Namely, the co-operative shall run the activity proper for the agricultural producer group if it consists of at least five producers of one product or a group of products who meet the requirements specified for the members forming the agricultural producer group and other requirements specified in Article 3a of the Act have been fulfilled. On the basis of the Act of 15 December 2006 amending the Act on agricultural producer groups and their associations and amending other Acts, the legislator has rightly introduced legal and financial instruments, which are to contribute to the creation of agricultural producer groups. Buildings and structures occupied by a group of agricultural producers, which meet the requirements specified in the Act, were exempted from real estate tax. Changes also occurred in the area of corporate income tax. The income of an agricultural producer group from the sale of products or groups of products for which the group was established, produced in the holdings of its members, has been exempted from taxes, provided that additional conditions specified in the Act are met.<sup>279</sup>

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<sup>277</sup> Dz. U. of 2004 No 162, item 1694.

<sup>278</sup> Dz. U. of 2006 No 251, item 1847.

<sup>279</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 155 et seq.



## THE CONCEPT OF AN AGRICULTURAL CO-OPERATIVE (ITS OBJECTIVES, CRITERIA OF CLASSIFICATION) AND THE BASIC LEGAL ELEMENTS OF THE ORGANISATION OF SUCH ENTITIES

### 3.1. The concept and objectives of agricultural co-operatives

According to the Act of 16 September 1982 on Co-operative Law, a co-operative is a voluntary association of an unlimited number of persons, with a variable composition and a share fund, which conducts joint economic activities in the interests of its members. It should be stressed that Article 1 of the Act stipulates that a co-operative may also carry out social, educational and cultural activities for the benefit of its members and their environment.

An essential feature of co-operatives is that they have an unlimited number of members and that they work together in an organised way to achieve a common objective.<sup>280</sup> As K. Pietrzykowski emphasises, the etymology of the term “co-operative” should be sought in cooperation. In the past, in Polish the co-operative was referred to as “co-activity” or “co-operative activity” (from Latin *cooperatio*, meaning cooperation).<sup>281</sup> Co-operatives are organisations of which membership is voluntary and which are open to all persons meeting the conditions laid down in their rules and statutes, without discrimination on grounds of sex, social status, race, political opinion or religion.<sup>282</sup>

As R. Bierzanek rightly points out, the principle of the membership community requires that the co-operative be treated as a compact social group with a keen interest in appreciating the individual value of its members. The principle of the

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<sup>280</sup> K. Kwapisz, *Prawo spółdzielcze...*, pp. 16-17.

<sup>281</sup> K. Pietrzykowski, *Pojęcie spółdzielni...*, p. 503; K. Boczar, *Spółdzielczość...*, pp. 16-17.

<sup>282</sup> Also see regarding the concept of a co-operative eg. K. Pietrzykowski, *Spółdzielnia a spółka handlowa*, PUG 1991, No 6, p. 65 et seq.; P. Bielski, *Zasady stosowania Kodeksu cywilnego w sprawach ze stosunków prawnych spółki handlowej i spółdzielni*, „Pr. Spółtek” 2010, No 10, p. 38 et seq.; idem, *Spółdzielnia jako przedsiębiorca rejestrowy*, „GSP” 2000 No 2, p. 73 et. seq.; A. Stefaniak, *Prawo spółdzielcze. Ustawa o spółdzielniach mieszkaniowych. Komentarz*, SIP LEX 2014.

loose association of persons, e.g. in capital companies, is the opposite of that of a membership community. In the former organisations, the interests and individual characteristics of each member are of no interest to them. Companies as a rule do not create any obstacles to the assignment of membership rights by the sale of shares or by the transfer of membership by inheritance.<sup>283</sup>

For further deliberations it will be essential to identify two theoretical concepts of co-operative activity: the contract theory and the corporate theory.<sup>284</sup> According to the former, the nature of intra-co-operative relations should be explained only in terms of civil law. The latter, on the other hand, points to the specific nature of these relations, which cannot be interpreted in a manner appropriate to civil law.<sup>285</sup> It is the contract theory that currently prevails in the doctrine and jurisdiction,<sup>286</sup> and it will be discussed further on. K. Pietrzykowski stresses that in matters not regulated directly by the Act on co-operative law, the provisions of the civil code are directly applicable.<sup>287</sup> And so, almost all the provisions of Book One (the General Part) apply, as well as numerous other provisions contained in subsequent books (right in rem, obligations, inheritance law).<sup>288</sup> In its ruling of 8 February 2012 the Court of Appeal in Poznań<sup>289</sup> held that “the civil law co-operative relationships are governed, in the absence of provisions to the contrary contained in co-operative law, by the provisions of civil law. And this, in particular, includes resolutions of co-operative bodies the consequences of which (being acts of law) become subject to relevant provisions contained in the civil code.”

According to the statutory definition, a co-operative is characterised by the pursuit of an economic activity. The obligatory nature of this condition distinguishes it, for example, from an association (which may or may not conduct a business activity). This was stressed by the Court of Appeal in Gdańsk in its ruling of 12 October 1994, which held that “economic activity distinguishes co-operatives from other organisations of an association nature.”<sup>290</sup> It is governed by the statutory definition of co-operatives in Article 1(1) on co-operative law and, as regards farmers associations’ co-operatives, by Article 180(1) and (2) of co-operative law. According to the Court, a resolution of the general meeting of a co-operative to

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<sup>283</sup> R. Bierzanek, *Prawo spółdzielcze...*, p. 21.

<sup>284</sup> K. Pierzykowski, *Pojęcie spółdzielni...*, p. 489.

<sup>285</sup> *Ibidem*.

<sup>286</sup> K. Pietrzykowski, *Pojęcie spółdzielni...*, p. 522 et seq.; M. Gersdorf, in: M. Gersdorf, J. Ignatowicz, *Prawo spółdzielcze, Komentarz*, Warszawa 1985, p. 26; A. Międzyński, *Ochrona praw członka spółdzielni*, ZNUJ 1981, „Prace prawnicze”, No 98, p. 27; K. Pietrzykowski, *Powstanie i ustanie...*, pp. 100-102; Z. Radwański, *Teoria umów*, Warszawa 1977, pp. 157-158.

<sup>287</sup> Judgment of the Supreme Court of 17 September 2008, III CSK 79/08, “Monitor Sądowy” 2009, No 2, p. 36.

<sup>288</sup> K. Pierzykowski, *Pojęcie spółdzielni...*, p. 278.

<sup>289</sup> I ACa 1154/11, LEX No 1133335.

<sup>290</sup> OSA 1995, No 2, p. 7.

suspend its economic activity for an indefinite period of time compromises the nature and purpose of the co-operative as a legal entity and may lead to its liquidation. It is therefore not in line with Article 1 of the Act on co-operative law.<sup>291</sup> Pursuant to Article 3 of the Act of 6 March 2018: Entrepreneurs law<sup>292</sup> an economic activity is an organised activity for gain, performed in one's own name in a continuous manner.<sup>293</sup> It must be stressed that this definition has been shortened in comparison with the one contained in the previous Act of 2 July 2004 on freedom of economic activity.<sup>294</sup> According to that definition, economic activity includes manufacturing, construction, trade and service activities, as well as exploration, prospecting and extraction of minerals from deposits, or a professional activity performed for gain in an organised and continuous manner. The characteristics of an economic activity are the facts that it is organised, exercised in a personal capacity and carried out on a gainful and continuous basis.

The Polish legislation does not stipulate that, when conducting economic activity, a co-operative must, for example, purchase agricultural products only from its members or employ only members of the co-operative.<sup>295</sup> Most jurisdictions no longer have such a rule, although restrictions on transactions with third parties should be noted<sup>296</sup>. Sometimes it is necessary to include a specific provision in the statutes of co-operatives (this is the case, for example, in the German system).

The Polish definition of a co-operative does not indicate how a co-operative should act for its members. The only thing the legislator stated was that in the interests of its members, it carries out joint business activities. According to the Polish PWN Dictionary of Language, "interest" means "usufruct, benefit, and undertaking bringing a financial gain."<sup>297</sup> The accomplishment of the co-operative's goals may be achieved by the economic activity conducted by its member, which leads to an increase in the revenue or a decrease in costs.<sup>298</sup> For example, the co-operative's income will increase if the co-operative increases the collection of its agricultural products at high prices. A reduction in expenditure takes place, for example, when a co-operative group of agricultural producers offers a cheaper means of production or when a co-operative bank offers a cheaper credit. It may also include support for members' households, e.g. the opportunity to buy cheaper foodstuffs or flats or to obtain a loan.<sup>299</sup> Importantly, the Act does not exclude

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<sup>291</sup> Ibidem.

<sup>292</sup> Dz. U. of 2018 item 646.

<sup>293</sup> See more: *Prawo przedsiębiorców. Komentarz*, ed. G. Kozieł, Warszawa 2018.

<sup>294</sup> Dz. U. of 2015, item 584 as amended.

<sup>295</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 160 et seq.

<sup>296</sup> See for example the provisions on an agricultural co-operative in the French *Code Rural*.

<sup>297</sup> *Interes* [online]. PWN [accessed on: 2018-03-09]. Available at: <<http://sjp.pwn.pl/slowniki/interes.html>>.

<sup>298</sup> P. Zakrzewski, *Cel...*, p. 51.

<sup>299</sup> Ibidem, p. 52.

what is known as indirect support in the case of co-operatives, which is, however, characteristic of commercial law companies. It is primarily about seeking profit, which is then shared among the members.<sup>300</sup>

According to K. Pietrzykowski, the wording of Article 1 of the Act on Co-operative Law from 1982 itself – apart from the fact that the purpose of co-operatives is to carry out joint economic activity – does not, in fact, allow for a precise distinction between co-operatives and commercial companies.<sup>301</sup> The author stresses that the goals of a co-operative were more precisely defined in the 1920 Law. The mandatory aim was to increase the income or household of the members by running a joint enterprise, while the optional aim was to raise the cultural level of the members. Such wording in the law made it possible to clearly distinguish the purpose of co-operatives from that of commercial companies.<sup>302</sup> K. Pietrzykowski also points out that commercial companies are essentially geared towards achieving and maximising profits. In co-operatives, however, profit (balance-sheet surplus) should not be an end in itself, but merely a means of achieving the other objectives set out above.<sup>303</sup>

It is also worth referring to the opinion of H. Cioch, in which it has been stressed that the definition of the 1982 Law on co-operatives is fundamentally different from that adopted by the International Co-operative Congress.<sup>304</sup> According to the author, “economic activity conducted by co-operatives serves to satisfy the needs and economic interests of its members”. However, not necessarily, as is the case with commercial law companies, it will be a strictly profit-making activity, i.e. one aimed at achieving economic profits. Therefore, it cannot be said, considering the opinion of H. Cioch, that in each case the co-operative is a classic entrepreneur, such as commercial companies or partnerships.<sup>305</sup>

As a rule, co-operatives carry out their activities mainly on behalf of their members, such as suppliers, consumers or users of goods or services. In carrying out their activities they rely primarily on the work performed by members or on their contribution of goods or services. The aim of these economic operators is, among other things, to secure employment or the exchange and sale of goods and services between the co-operative and its members by concluding membership contracts which are as favourable as possible for the members. According to Polish regulations, a co-operative may also strive to make a high profit. In its justification to the judgment of 7 May 1997, the Supreme Court held that a co-operative is an economic entity aimed at making a profit in the interest of its members. They

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<sup>300</sup> K. Pietrzykowski, *Pojęcie spółdzielni...*, p. 293 et seq.

<sup>301</sup> P. Zakrzewski, *Cel...*, p. 75.

<sup>302</sup> K. Pietrzykowski, *Pojęcie spółdzielni...*, p. 293 et seq.

<sup>303</sup> *Ibidem*.

<sup>304</sup> H. Cioch, *Prawo spółdzielcze...*, p. 48 et seq.

<sup>305</sup> *Ibidem*, p. 48 et seq.

may participate in the distribution of the balance sheet surplus (if it is actually achieved) by receiving a dividend, i.e. an interest rate on the shares. Furthermore, the provision of the optional (additional) shares to which each member is entitled increases the extent to which a member may obtain and, more specifically, anticipate the benefits which any member may expect to obtain.<sup>306</sup>

The co-operative's economic activity must be seen in the context of its basic characteristics, i.e. its economic nature, organisation and continuity. It should be stressed, however, that the legislator does not specify what is meant by gainful activity. The Supreme Court in the justification to the judgment of 4 November 2014<sup>307</sup> stated that "in judicial decisions and in literature, an activity is considered to be gainful if it is carried out with the aim of generating income (profit), understood as a surplus of income over costs incurred." The Court also stressed that the commercial nature of the activity is linked to participation in economic turnover. This requirement is met if the economic activity is carried out by means of (equivalent to) consideration-based mutual services provided in the course of economic transactions.<sup>308</sup>

What is important is the subjective conviction of a given entity that the performance of a certain activity results in a gain.<sup>309</sup> What is also of significance is that when losses are generated (temporarily or over prolonged periods) this does not deprive the entity of the status of a (going concern) business.<sup>310</sup> The characteristics of an economic activity must be clearly distinguished from its profitability.<sup>311</sup> What is more, also acting without the intention of making a profit, but only in order to obtain income to cover the business activity, does not automatically deprive the business activity of its economic character. This is what the Supreme Court ruled in its judgment of 3 October 2014.<sup>312</sup> It is worth noting that the Supreme Court also held that an economic entity may undertake activities related to running a business as well as activities not related to running a business activity. In the court's opinion, activities undertaken by an entity conducting economic activ-

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<sup>306</sup> II CKN 88/97, Legalis No 31109, OSNC 1997 No 11, item 174, p. 46.

<sup>307</sup> I UK 103/14, LEX No 1544222.

<sup>308</sup> Ibidem.

<sup>309</sup> A. Rzetecka-Gil, *Ustawa o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne*, Warszawa 2009, p. 80; M. Sieradzka, M. Zdyb, *Komentarz do art. 2 ustawy o swobodzie działalności gospodarczej*, SIP LEX 2013, also see M. Etel, *Pojęcie przedsiębiorcy w prawie polskim i prawie Unii Europejskiej oraz orzecznictwie sądowym*, Warszawa 2012, p. 179 et seq.

<sup>310</sup> See resolution of the Supreme Court of 30 November 1992, III CZP 134/92, OSNC 1993, No 5, item 79.

<sup>311</sup> A. Wasilewski, *Pojęcie działalności gospodarczej na gruncie prawa polskiego. Dylemat interpretacyjny*, in: *Gospodarka – Administracja – Samorząd terytorialny. Praca poświęcona 45-leciu pracy twórczej Profesor Teresy Rabskiej*, eds. H. Olszewski, B. Popowska, Poznań 1997, p. 543.

<sup>312</sup> V CSK 630/13, LEX No 1509115. Also: the resolution adopted by seven justices of the Supreme Court on 18 June 1991, III CZP 40/91, OSNCP 1992, No 2, item 17 of 6 December 1991 III CZP 117/91, OSNCP 1992, issue 5, item 65.

ity fall within the scope of its business activity if they are related to such activity in a functional way, in particular if they are undertaken to perform tasks related to the objectives of such an entity's activity.<sup>313</sup>

It goes without saying that co-operatives, in principle, engage in a gainful economic activity as defined in the Act on Freedom of Economic Activity and now Entrepreneurs Law Act they seek to obtain revenues. For example, co-operative groups of agricultural producers seek high revenues from the sale of agricultural products, but generally not to maximise profits. On the other hand, Agricultural Production Co-operatives tend to seek a high income, as their members are their employees who are remunerated for their work in the form of a share in the divisible income, in proportion to the contribution of their work. This is not the case in dairy co-operatives. They generally receive a higher price of milk than third parties selling the raw material to dairies. This is because it is a characteristic of this type of co-operative that it concludes favourable contracts with its members. Nevertheless, the balance surplus is also important, as it is usually allocated to the modernisation of processing activities. In some dairies, it is shared among milk producers.

Similarly, there is generally little profit in social co-operatives. The main objective of these entities is to provide work for members, people who are usually excluded and the disabled. However, the co-operative itself acts to generate revenue. There are exceptions to this rule. Article 8 of the Act on Social Co-operative Societies states that the statutory activity of a social co-operative, in the part covering the social and professional reintegration activities and the activity referred to in Article 2(3), is not an economic activity within the meaning of the provisions of the Act on Freedom of Economic Activity of 2 July 2004 and may be carried out as a statutory activity against payment or free of charge. The provisions of Article 8 and Article 9, sections 1 and 2 of the Act of 24 April 2003 on Public Benefit Activity and Voluntary Service shall apply accordingly to the statutory activity against payment.<sup>314</sup>

A problem with the gainful character occurs in housing co-operatives. The activities of a housing association are adapted to its specific tasks. Although not for profit, it is subject to the overarching principle of economy and falls within the concept of economic activity. This was the verdict of the Supreme Court in the judgment of 8 November 2012,<sup>315</sup> as well as of the Court of Appeal in Warsaw in the verdict of 26 May 2014.<sup>316</sup> According to K. Pietrzykowski, there is

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<sup>313</sup> Decision of the Supreme Court of 3 October 2014, V CSK 630/13, LEX No 1509115. For more on the economic activity as a gainful activity see M.A. Waligórski, *Działalność gospodarcza w ujęciu prawa administracyjnego*, Poznań 2006, p. 17 et seq.; A. Suchoń, *Jeszcze o pojęciu działalności rolniczej*, „Rejent” 2017, No 12, pp. 9-28.

<sup>314</sup> Dz. U. of 2010 No 234, item 1536 as amended.

<sup>315</sup> I CSK 199/12, LEX, No 1254613.

<sup>316</sup> I ACa 1629/13, LEX, No 1504523.

no doubt that a housing co-operative carries out an activity without results, which in consequence is not of a profit-making nature. Despite the absence of this characteristic, it must be assumed that it carries out an economic activity which is limited, however, to the direct pursuit of its objectives.<sup>317</sup>

The second feature of economic activity is organisation. The literature distinguishes actions that are aimed at its adoption and implementation.<sup>318</sup> Organisation as a feature of economic activity means that its execution is planned in legal and factual terms. The formal and financial aspects of this process are also important.<sup>319</sup> The former include registration, tax and statistical reporting, and social security obligations. The latter involve e.g. organisational activities related to obtaining financial resources for undertaking business activity, employment of employees, purchase of real estate or conclusion of a lease or rental agreement.<sup>320</sup> The third characteristic of economic activity is also fulfilled in the case of co-operative activity – it is the continuous pursuit of activity. This premise is aimed at eliminating one-off (or occasional, sporadic) undertakings from the concept of economic activity.<sup>321</sup> Continuity confirms the intention of the entity undertaking an economic activity. At the organisational stage, the entrepreneur would not be willing to perform a number of activities that legalise and prepare business activity if it were to have only an incidental dimension.<sup>322</sup> This is particularly evident during the setting-up of co-operatives carrying out agricultural activities, as it entails the contribution of land or other inputs necessary for its implementation.

### 3.2. Agricultural activity as an initial category for defining agricultural co-operatives

It has already been stressed that the term “agricultural co-operative” appears in the literature, but there is no normative definition of the term in the Polish legislation. The starting point for identifying the criterion for classifying a particular entity as an agricultural co-operative will be the analysis of the following concepts: agricultural activity, agricultural holding, agriculture and the agricultural sector.

Pursuant to the Act of 20 December 1990 on farmers’ social insurance,<sup>323</sup> agricultural activity means any plant or livestock production including horticulture,

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<sup>317</sup> K. Pietrzykowski, *Pojęcie spółdzielni...*, p. 278.

<sup>318</sup> M. Sieradzka, M. Zdyb, *Komentarz do art. 2 ustawy o swobodzie działalności gospodarczej*, SIP LEX 2013.

<sup>319</sup> Ibidem.

<sup>320</sup> Ibidem.

<sup>321</sup> Judgment of the Court of Appeal in Szczecin of 30 October 2014: M. Szydło, *Swoboda działalności gospodarczej*, Warszawa 2005.

<sup>322</sup> *Komentarz do art. 2 ustawy o swobodzie...*, op. cit.

<sup>323</sup> Dz. U. of 2017 item 2336.

fruit farming, beekeeping and fishing activities while the agricultural holding, in the light of this legislation, is any holding used for the pursuit of an agricultural activity.<sup>324</sup> A more elaborate definition is contained in the Act of 26 July 1991 on personal income tax,<sup>325</sup> and the Act of 15 February 1992 on company income tax. It refers to the production of plant or animal products in an unprocessed (natural) state from one's own crops or from cultivation or rearing. It also covers, for example, seed, nursery and breeding production, as well as activities where the minimum retention periods of purchased animals and plants, during which biological growth takes place, are at least: (i) 1 month for plants; (ii) 16 days for highly intensive specialised fattening of geese and ducks; (iii) 6 weeks for other slaughter poultry; (iv) 2 months for other animals from the day of acquisition.

The tax acts provide that the special divisions of agricultural production are: cultivation in greenhouses and heated film tunnels, cultivation of mushrooms and their myceliums, cultivation of *in vitro* plants, breeding and rearing of slaughter and carrier poultry, hatcheries of poultry, breeding and rearing of fur and laboratory animals, breeding of earthworms, breeding of entomophages, breeding of silkworms, breeding of apiaries and breeding and rearing of other animals outside the agricultural holding.<sup>326</sup> The keeping of animals in sizes not exceeding those laid down in Annex 2 to the Act does not constitute special division of agricultural production.

It is worth adding that in other legislative acts the legislator uses the term "production activity" or "agricultural production" to define processes related to agricultural activity, running an agricultural holding or using agricultural real estate.<sup>327</sup> According to *Słownik języka polskiego* (Polish Language Dictionary) agricultural production means the cultivation of plants, animal breeding, forestry and fisheries management etc.<sup>328</sup> Whereas pursuant to Article 46<sup>1</sup> of the civil code, manufacturing (production) activity extends to plant and animal production not excluding horticulture, fruit-growing (orchards) and fish farming, such a range of activity/ the scope of such activity results also from the definition of "conducting an agricultural activity" contained in the Act of 11 April 2003 on the shaping of the agricultural system. It covers manufacturing activities in agriculture for crop or livestock production, including horticulture, fruit and fish production.

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<sup>324</sup> For more see R. Budzinowski, *Gospodarstwo rolne i przedsiębiorstwo rolne*, in: *Prawo rolne*, ed. P. Czechowski, Warszawa 2017, pp. 110-111; idem, *Koncepcja gospodarstwa...*, p. 125 et seq.; D. Puślecki, *Spółeczne ubezpieczenie wypadkowe rolników. Zagadnienia prawne* Poznań 2011, p. 94 et seq.; T. Kurowska, *Miejsce i rola działalności rolniczej w prawie rolnym*, „*Studia Iuridica Agraria*” 2017, Vol. XV, pp. 47-70.

<sup>325</sup> Uniform text Dz. U. of 2018 item 1509 as amended.

<sup>326</sup> For more see J. Bieluk, *Działy specjalne produkcji rolnej. Problemy prawne*, Białystok 2013, p. 38 et seq.; idem, *Pojęcie działalności rolniczej w ustawach o podatku dochodowym od osób fizycznych i od osób prawnych*, „*Przegląd Prawa Rolnego*” 2008, No 2 (4), pp. 182-194.

<sup>327</sup> E.g. Article 46<sup>1</sup> of the civil code.

<sup>328</sup> *Słownik języka polskiego...*, p. 982.

In principle, agricultural production activities are based on the exploitation of the natural capacities inherent in animal and plant living organisms. However, the possibilities of influencing the course of biological processes are increasing.<sup>329</sup>

One of the characteristics of a co-operative is that it runs a business. However, in the case of agricultural activity within the scope of the application of the Act of 6 March 2018: Entrepreneurship law (formerly the Act of 2 July 2004 on the freedom of economic activity) there are some differences. Namely, Article 6 of the Act states that the provisions of the Act shall not apply to, inter alia, manufacturing activities in agriculture in the field of agricultural crops and animal husbandry, horticulture, vegetable production, forestry and inland fishing. The Supreme Administrative Court (NSA) in Warsaw ruled on 29 August 2007<sup>330</sup> that “manufacturing activity in agriculture (running an agricultural holding) is an economic activity within the meaning of Article 2 of the Act of 2 July 2004 on freedom of business activity, however, other provisions of the Act do not apply to this activity. The exclusion of the application of the Act applies primarily to farmers running an agricultural holding.” In the rationale for the above decision, the Supreme Court stressed that this provision characterises economic activity as paid and performed in an organised and continuous manner. These are characteristics that are inherent in the running of an agricultural holding. The Court stressed that the exclusion provided for in Article 3 of that Act could not therefore lead to the conclusion that the manufacturing activity in agriculture was not an economic activity as referred to in Article 2 of that Act, but only that that activity was not subject to the regime of the Act on the freedom of economic activity. The Supreme Court rightly pointed out that the way in which the provisions of the Act on the freedom of economic activity were formulated, namely that Article 2 first defined what constituted an economic activity and then Article 3 stated that the provisions of that Act did not apply to the activities referred to in that Article, clearly indicated that the manufacturing activity in agriculture (running an agricultural holding) was an economic activity within the meaning of Article 2 of that Act, but that the other provisions of that Act did not apply to it.<sup>331</sup> It seems that this thesis is still valid in the light of the solutions contained in the Act of 6 March 2018 Entrepreneurs’ law.

However, this otherwise correct judgment of the Supreme Court must be accompanied by a single proviso. An agricultural activity is an economic activity if it is oriented towards sales, i.e. towards profit-making purposes. However, there are still cases where agricultural products obtained from plant breeding or animal husbandry (resulting from agricultural activity) are not sold on but used for personal and family purposes. Then agricultural activity is not an economic activity.

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<sup>329</sup> R. Budzinowski, *Problemy ogólne...*, p. 194 et seq.

<sup>330</sup> II OSK 1618/06, LEX No 364703.

<sup>331</sup> Judgment of the Supreme Administrative Court in Warszawa of 29 August 2007, II OSK 1618/06, LEX No 364703.

In the judgment of 25 April 2013. The Supreme Court ruled that its profit-making character is a fundamental, constitutive feature of an economic activity. The provision of a service is not of a profit-making nature in itself.<sup>332</sup>

Therefore, as rightly emphasised by Roman Budzinowski, it will be justified to state that conducting an agricultural activity may be recognised as a certain specific type of economic activity and the agricultural holding itself may be treated as a specific type of enterprise.<sup>333</sup> Also in the view expressed by M. Waligórski,<sup>334</sup> an agricultural activity may be classified as an economic activity if it is a gainful activity. It is also a manufacturing activity which, according to Waligórski, is performed by its very nature in an organised and continuous manner (by its very nature). While B. Jeżyńska also took the view that, under public law, the characteristics of an agricultural activity do not preclude it from being classified as an economic activity.<sup>335</sup>

Agricultural activity<sup>336</sup> “consists of a sequence of various, usually recurring activities (optional and legal) determined by the natural conditions of agricultural production and the objective of farming. These activities are aimed at the production of goods, but also include the organisation of a set of instruments necessary to carry out this activity (i.e. an agricultural holding).”<sup>337</sup>

Agricultural activity therefore consists of several stages, from the preparation of land for cultivation, to the provision of various agri-technical services, sowing, the purchase of means of production, animal husbandry and breeding, the conclusion of contracts, including cultivation, storage and transport, and the sale of agricultural products. The set of activities constituting the agricultural activity results from the very definition of “activity” contained in the Polish Language Dictionary. It is therefore “a set of activities, actions, undertaken for some purpose, scope, active participation in something, action, work.”<sup>338</sup> There are many different activities involved.

The concept of agricultural activity is linked to the concept of an agricultural holding. Attention is drawn in the literature to the approach to an agricultural holding in its subjective aspect – as a group of components – or in its functional aspect – as a form of agricultural activity.<sup>339</sup> Pursuant to Article 55<sup>3</sup> of the civil code an agricultural holding is considered to be agricultural land with forest land, buildings or parts of buildings, installations and livestock constituting or capable of constituting

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<sup>332</sup> I UK 604/12, Legalis No 737258.

<sup>333</sup> R. Budzinowski, *Gospodarstwo rolne i przedsiębiorstwo...*, p. 114.

<sup>334</sup> See M.A. Waligórski, *Działalność gospodarcza w ujęciu prawa administracyjnego*, Poznań 2006, p. 25 et seq.

<sup>335</sup> See B. Jeżyńska, *Producent rolny jako przedsiębiorca*, Lublin 2008, p. 104 et seq.

<sup>336</sup> R. Budzinowski, *Problemy ogólne...*, p. 194 et seq.

<sup>337</sup> Ibidem.

<sup>338</sup> *Słownik języka polskiego...*, p. 982.

<sup>339</sup> R. Budzinowski, *Koncepcja gospodarstwa rolnego...*, p. 98.

an organised economic unit, and rights related to the management of an agricultural holding. Within the set of components constituting an agricultural holding, agricultural land is given primary importance.<sup>340</sup> In its ruling of 20 September 1991<sup>341</sup> the Supreme Administrative Court stated that “the absence of any of the components of the agricultural holding (e.g. livestock, tools, buildings, etc.) listed in Article 55(3) of the Civil Code does not mean that the other components (e.g. land) do not constitute an agricultural holding.”

As R. Budzinowski pointed out, an agricultural production unit is a set of factors organised in order to perform a specific task. This is the basis for the link between the individual elements (which can be called organisational and functional). It ensures technical and economic unity for the agricultural holding.<sup>342</sup> Intangible assets (rights related to running an agricultural holding) are, as a general rule, connected with the entirety of the tangible assets already organised.<sup>343</sup>

R. Budzinowski points to the following trends in the development of agricultural holdings: expansion of the range of components of an agricultural holding, from land to more and more diversified components; transition from an agricultural holding as a unit of ownership to a holding as an organised economic whole.<sup>344</sup> The definition of an agricultural holding in the civil code does not refer to the area of agricultural land. However, other definitions refer to area standards, e.g. the Act of 15 November 1984 on agricultural tax.

It should also be noted that the natural effect of an agricultural activity is an agricultural product. In the light of the Treaty on the Functioning of the European Union, “agricultural products” are to be taken to mean the products of the soil, products of stock farming and of fisheries and products of first-stage processing directly related to this product. The Court of Justice pointed out that, when defining the term an “agricultural product in its first stage of processing,” the decisive factor was “the economic link between the basic product and the product processed, and not the number of successive stages of processing.”<sup>345</sup> The Treaty provides that products that are subject to the provisions of Articles 39-44 are listed in Appendix I which constitutes an integral part of it.<sup>346</sup> These include, inter alia, dairy products,

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<sup>340</sup> For more on the concept of an agricultural holding see *ibidem*, pp. 71-96. More on an agricultural holding can also be found in E. Kremer, *Odpowiedzialność za zobowiązania związane z prowadzeniem gospodarstwa rolnego*, Zakamycze 2004.

<sup>341</sup> II SA 669/91, *Legalis* No 36960.

<sup>342</sup> R. Budzinowski, *Pojęcie gospodarstwa rolnego według Kodeksu cywilnego (rozważania na tle art. 55<sup>3</sup> k.c.)*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1991, Vol. 3, pp. 59-66.

<sup>343</sup> *Ibidem*.

<sup>344</sup> R. Budzinowski, *Gospodarstwo rolne...*, p. 106 et seq.

<sup>345</sup> For more see M. Korzycka-Iwanow, *Prawo żywnościowe, Zarys prawa polskiego i wspólnotowego*, Warszawa 2007; A. Jurcewicz, *Pojęcia produktów rolnych, producenta rolnego i gospodarstwa rolnego w prawie Wspólnoty Europejskiej*, „Państwo i Prawo” 1995, No 7, p. 70.

<sup>346</sup> Article 38 clause 3 authorises the Council to extend the list contained in Appendix I within two days of the Treaty coming into force. See *ibidem*.

meat and edible meat offal, products of the milling industry, processed meat, fish or crustaceans, molluscs and other aquatic invertebrates, vegetables and certain edible roots and tubers, fruit, processed vegetables, nuts or other parts of plants.

Reference should also be made to the broad concept of agricultural activity in the European Union guidelines for State aid in the agricultural, forestry and rural areas for the period 2014 to 2020.<sup>347</sup> They indicate that 'agricultural activity' means the production, processing and marketing of agricultural products. It should be stressed that EU legislation, apart from the concept of agricultural activity, increasingly includes the concept of the agricultural sector.

On the other hand, a narrower concept of agricultural activity can be noted in the EU regulation on direct payments. The emphasis in this definition on manufacturing activities and land maintenance is linked to the substantive scope of that Union Regulation. It concerns payments under support systems addressed to agricultural producers, and the basis for their granting is among other things the acreage and condition of the agricultural land and the type of cultivated or reared crop<sup>348</sup>.

In the light of the above, it is worth referring to the concept of agricultural activity in foreign legal systems. In Italy, Article 2135 of the Italian Civil Code allows an agricultural entrepreneur (including also an agricultural co-operative) to carry out, in addition to his basic agricultural activity, what are termed related activities, i.e. the handling, storage, processing, commercialisation and enhancement of agricultural products, provided that this concerns products which are predominantly derived from his own cultivation or breeding (in the case of agricultural co-operatives, products supplied by co-operatives and derived from their cultivation or breeding). An agricultural entrepreneur may also carry out an activity which does not involve the production of goods, namely the provision of services, the provision of goods, the carrying out of activities consisting in the enhancement of the value of rural and forest areas and heritage, or agri-tourism.<sup>349</sup>

Within the understanding of Article 2135 of the Italian civil code,<sup>350</sup> the production and sale of electricity and heat from renewable agri-environmental and

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<sup>347</sup> O.J. EU C 204 of 1.07.2014, pp. 1-97.

<sup>348</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009.

<sup>349</sup> For more on the concept of an agricultural holding in the Italian agricultural system see R. Budzinowski, *Prawne pojęcie działalności rolniczej*, „Prawo i Administracja” 2003, p. 167 et seq.; idem, *Nowa definicja przedsiębiorcy rolnego we włoskim kodeksie cywilnym*, „Studia Iuridica Agraria” 2002, Vol. III, pp. 27-38; A. Kapała, *Sprzedaż produktów rolnych...*, p. 182 et seq.; A. Szymecka, *Przedsiębiorstwo rolne we włoskim systemie prawnym (cz. I)*, „Przegląd Prawa Rolnego” 2008, No 1, p. 199 et seq.

<sup>350</sup> This classification was done in Article 1 clause 423 legge 23 dicembre n. 266 (Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato – legge finanziaria 2006). Gazzette Ufficialin. 302 del 29 dicembre 2005, s.o. n. 211.

photovoltaic sources, as well as of fuel derived from plants predominantly from farm land, and the production and sale of chemical products derived from agricultural raw materials predominantly from farm land are also be considered as related activities.<sup>351</sup> However, as emphasised in the literature, it is classified as a typical related activity because it is considered as such under a separate provision. Revised Article 1(423) of Law No 266 of 23 December 2005 (the so-called 2006 Budget Act) considered the production and sale of electricity and heat obtained from renewable sources (biomass) or photovoltaic conducted by agricultural entrepreneurs a related activity. This solution is a clear manifestation of the legislator's response to the current phenomena occurring in agriculture.

In the Italian doctrine<sup>352</sup> the production and sale of energy from renewable sources within the agricultural undertaking is widely interpreted as confirmation of the multifunctional agricultural model and the multifunctional nature of the undertaking, which have been promoted by the European legislature since Agenda 2000 and implemented by the Italian legislature through the reform of Article 2135 of the Italian Civil Code in 2001.<sup>353</sup>

Pursuant to point 2 of Article 29 of the presidential decree No 917 of 1986<sup>354</sup> the following are the main agricultural activities: (a) land and forestry activities; (b) livestock breeding; (c) activities whose main purpose is the processing, preparation or sale of agricultural products and livestock.

In France, the definition of an agricultural activity is laid down in the French agricultural code. Article L 311-1 thereof provides that agricultural activities are all activities directed at the maintenance and control of the biological cycle of plants and animals as one or more of the stages necessary for the development of that cycle, as well as other activities. By contrast, all activities linked to the control and operation of the biological cycle of plants or animals and constituting one or more stages necessary for that cycle to take place, as well as activities carried out by the agricultural producer as a consequence of, or in support of, the production of the product, are considered to be agricultural activities.<sup>355</sup> Notably,

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<sup>351</sup> A. Szymecka, *Przedsiębiorstwo rolne we włoskim systemie prawnym (part. I)*, „Przegląd Prawa Rolnego” 2008, No 1, p. 199 et seq. For more see commentary to Article 2135 of the Italian civil code. I. Canfora, in: *Codice civile commentato, Artt. 1742-2969*, ed. G. Bonilini, M. Confortini, C. Granelli, Torino 2009, pp. 4774-4791; A. Kapała, *Status prawny agroturystyki (studium porównawcze)*, Poznań 2017, p. 55 et seq.

<sup>352</sup> See the literature referred to in G. Strambi, *L'impresa...*, p. 26.

<sup>353</sup> A. Kapała, *Prawne uwarunkowania prowadzenia działalności powiązanych w gospodarstwach rodzinnych – wybrane aspekty porównawcze*, in: *Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej*, ed. P. Litwiniuk, Warszawa 2015, p. 231 et seq.

<sup>354</sup> D.P.R. 22 dicembre 1986, n. 917: *Approvazione del testo unico delle imposte sui redditi*, Gazzette Ufficiali del 31 dicembre 1986, p. 302.

<sup>355</sup> See *Code rural et de la pêche maritime...*, p. 259 et seq. Also see K. Błażejewska, *Prawne aspekty produkcji i wykorzystywania biomasy rolniczej na cele energetyczne*, Poznań 2013, p. 152 et seq.

as regards the association of agricultural producers, under French law the production by one or more farmers of biogas, of electricity from anaerobic digestion, is also an agricultural activity if at least 50% of the feedstock from these farms is used for their production. Revenues generated from trading are considered to be income from the agricultural holding in proportion to the share of the agricultural undertaking in the structure in which it operates (e.g. a co-operative) and under which the energy produced is sold.<sup>356</sup>

Decree No 2011-190 of 16 February 2011 determines the principles of the production of and trading in biogas and electricity from anaerobic digestion.<sup>357</sup> All farmers are now able to diversify their agricultural activities, support the production of and trade in their biogas and anaerobic digestion electricity as part of their own agricultural activities or through the structure of undertakings (e.g. co-operatives, companies), if they have a majority shareholding. This activity must be controlled in the case of producers who are obliged to keep a permanent register of raw materials.

Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agriculture and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union<sup>358</sup> provides in Article 2 that the agricultural sector denotes all business entities dealing with the production of basic agricultural products, their processing and marketing for sales.

### 3.3. Definition and objectives of agricultural co-operatives

On the basis of the above, the author of the present paper takes the preliminary view that agricultural co-operatives are entities which perform an agricultural activity, or some of its stages or activities which may be considered as related or complementary to that activity (e.g. commercialisation of agricultural products,<sup>359</sup>

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<sup>356</sup> For more on the changes in the understanding of the concept of an agricultural activity in as regards the production of biogas and electricity under French law see: K. Paquel, *Produkcja energii z biomasy rolniczej a pojęcie działalności rolniczej w prawie włoskimi francuskim*, „Przeгляд Prawa Rolnego” 2013, No 2, p. 40 et seq. Also F. Roussel, *La méthanisation agricole après la loi du 27 juillet 2010 de modernisation de l’agriculture et de la pêche*, „Revue de droit rural” 2010, No 386, pp. 72-76.

<sup>357</sup> Décret n° 2011-190 du 16 février 2011 relatif aux modalités de production et de commercialisation agricoles de biogaz, d’électricité et de chaleur par la méthanisation, JORF n° 0042 du 19 février 2011, p. 3153, texte n° 27.

<sup>358</sup> O.J. EU 2014, L 193, p. 1 Vol. 1.07.2014.

<sup>359</sup> As B. Jeżyńska rightly pointed out, there is no doubt under EU law that the commercialisation of agricultural products forms a part of the agricultural producer’s production activities. The ECJ has held that an agricultural producer is any operator who has a legal right to manage an agricultural holding and who markets agricultural products. See idem, *Producent rolny ...*, p. 99 et seq.

processing, agro-tourism, renewable energy obtained from agricultural products or by-products of agricultural activity). By reference to the nomenclature provided for in EU legislation, agricultural co-operatives may initially be considered to include operators in the agricultural sector active in the production, processing and marketing of agricultural products and their members, as a general rule, agricultural producers (except, for example, for co-operatives engaged in agricultural production activities, which are known as primary production).

It is worth starting the discussion with agricultural production co-operatives. The Act of 16 September 1982 – Co-operative law provides that these entities include agricultural production co-operatives and other co-operatives engaged in agricultural production. According to Article 138 of this Act, the object of the agricultural activity of an agricultural production co-operative (APC) is to run a joint agricultural holding and to operate for the benefit of the individual agricultural holdings of its members. A co-operative may also engage in other business activities. The legislator used the connecting word “and” to refer to the two basic types of activity of this type of co-operative. It seems that it is right to interpret it in a purposeful way – the APC runs a joint agricultural holding, but it may also operate for the benefit of its members’ individual agricultural holdings. Such an interpretation is also justified by the origins of these entities. They were set up in order to run an agricultural holding, which usually came into being as a result of agricultural land contribution to co-operative constituting a member’s contribution. It is worth explaining that the amendment to the Act on Co-operative Law of 7 July 1994 changed the content of Article 138, which provided that the scope of the APC’s business activity was to run a joint agricultural holding based on the personal work of its members. In addition, the APC was able to carry out manufacturing and service activities within the scope set out in its statutes.

I agree with the interpretation that a co-operative can both run a joint agricultural holding and act for the benefit of individual agricultural holdings of its members. The legislator, by amending the definitions of the APCs and adding that it may also operate for the benefit of its members’ individual holdings, indicated that agricultural production co-operatives should not be linked solely to the running of a joint agricultural holding, but also to activities for the benefit of members’ individual holdings.<sup>360</sup> This wording of the definition takes account of the basic characteristics of a co-operative. According to the Declaration, a co-operative is an autonomous association of individuals who have united voluntarily in order, among other things, to meet their common aspirations and to satisfy their economic and social needs. Thus, agricultural co-operatives run a joint agricultural holding and share the income they earn, on the one hand, and on the other, support

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<sup>360</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 180 et seq.

agricultural holdings and contribute to the fulfilment of the economic needs of co-operatives.

When defining the objectives of the APC, the legislator referred to the concept of an agricultural holding. However, the Act does not define it. Since co-operative law is classified as civil law, it is justified to refer to the definition contained in the civil code. According to the aforementioned Article 55<sup>3</sup> of the Civil Code, an agricultural holding is considered to be an agricultural land together with forest land, buildings or parts of buildings, equipment and livestock, constituting or capable of constituting an organised economic unit and rights related to running an agricultural holding. Within the set of components constituting an agricultural holding, agricultural land is given primary importance.<sup>361</sup> In the case of the APC land may constitute property of that entity or be only in its possession.

In Article 138, the legislator used the term “joint farming”. On the one hand, referring to the definition in the civil code, it is a set of various components, on the other hand, the word “running” refers to processes of a dynamic nature, which can be considered as a reference to a functional approach to an agricultural holding as a form of conducting agricultural activity.<sup>362</sup>

The APC’s economic activity is not limited to the agricultural one. The APC may also engage in other economic activities. The legislation does not limit its types, nor does it define the proportion between agricultural activity and other activities.<sup>363</sup> For many years, agricultural production co-operatives have been carrying out not only agricultural but also non-agricultural economic activities. They were often forced to do so by their poor economic situation and in certain periods they were encouraged to do so by tax regulations.<sup>364</sup>

The provisions of the Act of 16 September 1982 – Co-operative law define the principles of running a joint agricultural holding by agricultural production co-operatives. There are no regulations concerning the activity of co-operatives in favour of individual agricultural holdings. Problems already arise with regard to the very scope of activities of co-operatives and the concept of an individual agricultural holding. Therefore, reference should be made to the general provisions of co-operative law. The term “individual agricultural holding” is not defined in this legislation. However, the Act of 11 April 2003 on shaping the agricultural system includes the terms “family farm” and “individual farmer.” The expression “individual agricultural holding” appears to stem from the distinction between holdings applicable before the political transformation, when as

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<sup>361</sup> More on this see R. Budzinowski, *Koncepcja gospodarstwa...*, pp. 71-96.

<sup>362</sup> On the functionality approach to an agricultural holding see *ibidem*.

<sup>363</sup> See A. Kokot, *Normatywne pojęcie działalności pozarolniczej w rolniczych spółdzielniach produkcyjnych*, „Prawo rolne” 1991, issue 1, pp. 37-49; A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 181 et seq.

<sup>364</sup> A. Kokot, *Normatywne pojęcie...*, pp. 37-49.

a general rule, it was a distinction between natural persons and public or co-operative agricultural holdings. In view of this fact, it would seem reasonable to assume that a co-operative may operate for the benefit of both family farms and those which do not have this status owing to their size and are referred to as large-area farms. However, they are run by private individuals. It seems that this could involve, for example, activities such as the provision of agro-technical services, storage, organisation of the sale or processing of agricultural products.

According to P. Zakrzewski, "it could be any way that would allow the achievement of the goal of conducting business for the benefit of the individual holdings of members. A co-operative may therefore operate by offering only certain services to its members. It may, however, also offer its services to non-members and distribute the proceeds among the members."<sup>365</sup>

Pursuant to Article 178 of the Act on Co-operative Law, apart from the APC, other co-operatives of agricultural production may be established, whose main activity is running a joint agricultural holding. If, in such co-operatives, members – natural persons – are obliged under the statutes to contribute all or part of their land and money and to work in co-operatives, the provisions of Articles 142 to 145, 147 to 149, 151 to 168, 171 and 172 and the provisions of the Civil Code relating to the APCs shall apply to them, in so far as they are not otherwise governed by the statutes. In particular, the statutes may provide for the proper application only of the provisions of Articles 142 to 145, 147 to 149, 151 to 154 and the corresponding provisions of the Civil Code relating to agricultural production co-operatives and, for the rest, of Part I, Title I, Chapter Seven and of the labour law. This applies in particular to the co-operatives set up on the initiative of the farmers' associations, which bring together natural persons.

Since co-operatives can carry out a variety of activities, there is a problem with the recognition that running a joint farm is the main activity of such an entity. The Act does not specify the criterion on the basis of which it is to be determined.

In addition to agricultural production co-operatives, an agricultural holding may also be run by farmers' associations co-operatives. The Act on co-operative law stipulates that the objectives of their activity are first of all the provision of services for agriculture and others resulting from the needs of the rural environment. Such a co-operative may also produce means and materials for agriculture, agricultural processing and agricultural production (running an agricultural holding). This is provided for in Article 180 (2) of the Act on co-operative law. If, apart from legal persons, a co-operative brings together natural persons and is engaged in agricultural production (running an agricultural holding), and its members – natural persons – are obliged under the articles of association resulting from their membership to pay all or part of the land and cash

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<sup>365</sup> Compare P. Zakrzewski, *Cel...*, p. 61.

contributions, the provisions of Articles 142-145, 147-149, 151-154 of the Act and the relevant provisions of the Civil Code concerning agricultural production co-operatives shall apply to them, respectively, unless the statutes provide otherwise.<sup>366</sup> It is worthy of note that the issues related to the establishment of farmers' associations' co-operatives have been regulated in the Act of 8 October 1982 on social and vocational farmers' organisations.<sup>367</sup> An agricultural circle<sup>368</sup> may be a founder and member of a co-operative established to provide services to agriculture and other types of services resulting from the needs of the rural community. Co-operatives shall be subject to the provisions of the Act on co-operative law. Interestingly, the aforementioned Act does not stipulate that it is the farmers' associations that form farmers' associations' co-operatives regulated in Article 180 of the Act on co-operative law although taking into account the name and scope of activities of these co-operatives, it seems that they were to form farmers' associations co-operatives (Article 180 of the Act on co-operative law).

Agricultural co-operatives also include certain social co-operatives that are involved in agricultural activities. Their objectives include running a joint holding using the personal work of their members. The operation of a co-operative is usually connected with the region in which it operates, which is in line with the 7<sup>th</sup> principle of co-operatives, i.e. care for the local community. On 31 March 2018, Act of 15 December 2017 amending the Act on social co-operatives and some other acts<sup>369</sup> came into force. Under the law, the subject of activity of a social co-operative is to run a joint enterprise based on the individual work of its members and workers of the social co-operative. A social co-operative takes action for 1) the social reintegration of the members and workers of a social co-operative, which includes actions designed to rebuild and maintain the skills of participating in the life of local community and carrying out social roles at work, place of residence or stay, 2) the professional reintegration of its members and the workers of a social co-operatives, which refers to actions designed to rebuild and keep the ability to work independently on the job market – and these actions are not taken as part of the business activity conducted by the social co-operative. As for social co-operatives, it needs to be pointed out that every member has the right to work in such a co-operative. These co-operatives are becoming increasingly popular in rural areas, and some of them are related to agriculture and are engaged in agricultural or processing activities. There are also some that deal with agro-tourism or the production of products needed for agriculture or the provision of services related to agriculture.

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<sup>366</sup> See B. Jeżyńska, *Producent rolny...*, p. 192 et seq.

<sup>367</sup> Dz. U. of 1982, No 32, item 217 as amended.

<sup>368</sup> *Podmioty ekonomii społecznej...*, op. cit.

<sup>369</sup> Dz. U. item 2494.

At this point, it is also worth noting that social co-operatives are classified as social economy entities. Their basic principle is the primacy of acting for the benefit of people (members, dependents), and not only for the sake of achieving high profits. It means that for the activity of social economy entities – apart from the economic objective – the social mission is of crucial importance, including first of all the combatting of social exclusion.<sup>370</sup> The literature emphasises that the most important features of these entities include active participation in the private and public sector; location between the state and the market, economic and social mission, priority given to work over capital, limited and equal distribution of profits, democratic decision-making, working for local communities, meeting the needs of participants to an extent that it is not possible for the state or the market to do, high quality and durability of internal relationships, raising resources from various sources, and not only from the market.<sup>371</sup>

As has already been pointed out, some social co-operatives are active in the field of primary farming. Agricultural holdings run by social co-operatives are generally small. This is why organic farming is becoming increasingly popular. Organic farming is the name given to a sustainable plant and animal production system. Organic production, combining environmentally sound farming practices, including a high level of biodiversity, and ensuring adequate animal welfare,<sup>372</sup> is in line with the recommendations of European Union's environmental policies and activities.

Agricultural co-operatives include farmers' co-operatives as well. According to the Act of 4 October 2018 on farmers' co-operatives, this entity is predominantly made up of farmers, fluctuating bodies of persons and variable capital which conduct joint business activity for the benefit of their members.

This Act provides that the subject of activity of a farmers' co-operative is running a business activity for the benefit its members, relating to: 1) planning by the farmers their production of produce or groups of products and adjusting it to market conditions, especially considering their quantity and quality; 2) concentration of supply and handling the sales of products or groups of products produced by the farmers; 3) concentration of demand and handling the purchase of necessary means for the production of products or groups of products.

The farmers' co-operative, additionally to the above activity, can also run an activity relating to: 1) storing, packaging and standardising the products or groups of products produced by the farmers; 2) processing the products or groups

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<sup>370</sup> *Ekonomia społeczna – podstawowe informacje...*, op. cit.

<sup>371</sup> *Podmioty ekonomii społecznej...*, op. cit.

<sup>372</sup> K. Kucharczak, E. Różańska, *Programy rolno środowiskowe jako instrument WPR dla ochrony środowiska w UE i Polsce*, „Ochrona Środowiska i Zasobów Naturalnych” 2012, No 54, pp. 26-38; B. Jeżyńska, *Proekologiczne instrumenty wsparcia zrównoważonego rozwoju obszarów wiejskich*, „Studia Iuridica Agraria” 2012, Vol. 10, pp. 251-264; *Ocena integracji ochrony środowiska z polityką rolną UE* [online]. EU [accessed on: 2017-01-09]. Available at: <<http://eea.europa.eu/>>.

of products produced by the farmers and the marketing of those processed products; 3) providing services for the benefit of the farmers connected with the production of products or group of products by the farmers; 4) selling the products or groups of products produced by the farmers; 5) promoting among its members environmentally friendly cropping techniques, production technology or waste management methods; 6) providing services for the benefits of its members other than the services mentioned in 3). The farmers' co-operative may also run social as well as cultural and educational activities for the benefit of its members and their environment (the income coming from these activities must not account for more than 25% of the income of the farmers' co-operative earned in a given trading year). A farmers' co-operative can be established by at least 10 farmers (Art. 6).

It is also justified to include co-operative agricultural producer groups in the group of agricultural co-operatives. They take over part of the obligations related to e.g. sales, commercialisation, performance of certain agro-technical services or purchase of means of production from co-operatives members conducting an agricultural activity concerned with/dealing with basic agricultural production. According to Article 2 of the Act of 15 September 2000 on agricultural producer groups, groups are set up to adapt agricultural products and the production process to market requirements, the joint marketing of goods, including preparation for sales, centralisation of sales and supply to wholesalers, the establishment of common rules on production information, with particular regard to the harvesting and availability of agricultural products, the development of business and marketing skills and the organisation and facilitation of innovation processes, and the protection of the environment.

The objective of co-operative agricultural producer groups is closely linked to the agricultural activities of the members. These are activities of an agricultural nature (types of activity), or in other words – considered agricultural because of the connection with the agricultural activity conducted by members of the co-operative.

It is also worth adding that agricultural producer groups have their origins in EU legislation. The second Mansholt Plan already emphasised the need for legislation on producer associations. Such associations were to have significant powers to determine the volume of production of individual agricultural products, guaranteed prices and negotiations with food processing entities.<sup>373</sup> Speaking about the normative foundations of groups and associations, it is also worth remembering the Council Regulation EEC No 1360/78<sup>374</sup> of 19 June 1978 on producers'

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<sup>373</sup> A. Lichorowicz, *Problematyka struktur agrarnych w ustawodawstwie Wspólnoty Europejskiej*, Kraków 1996, pp. 34-40.

<sup>374</sup> O.J. EU 1978, L 166, p. 1.

groups and their associations. As is emphasised in the literature the scope of the Regulation was limited to a small area of regions with a structural deficit.<sup>375</sup> This Regulation was replaced by Regulation (EC) No 952/97 of 20 May 1997 on producer groups and associations thereof,<sup>376</sup> subsequently repealed by Regulation (EC) No 1257/1999 on the support of the development of rural areas from the European Agriculture Guidance and Guarantee Funds (EAGGF) and amending and repealing some regulations.<sup>377</sup>

Subsequent Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty on State aid to small and medium-sized enterprises active in the production of agricultural products<sup>378</sup> provided that “producer group” means a group which is set up for the purpose of jointly adapting, within the objectives of the common organisation of the markets, the production and output of its members to market conditions, in particular by the concentration of supplies.

The new Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agriculture and forestry sectors and in rural areas to be compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union<sup>379</sup> points out that “producer group and producer organisation” means a group or organisation set up with the aim of adapting to market requirements the production and production process of producers who are members of such a group or organisation, or of jointly marketing goods, including preparation(s) for their sale, centralisation of sales and delivery to bulk buyers; other activities which may be carried out by producer groups or organisations.

EU legislation does not specify the legal form of a group. It should also be added that Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)<sup>380</sup> points out in the preamble that producer groups and producer organisations help farmers to face together the challenges of increasing competition and consolidating downstream markets in relation to the marketing of their products, also in local markets. Therefore, in the view of the EU legislator, the formation of producer groups and organisations should be encouraged. Member States can give priority to producer groups and organisations of quality products covered by the measure on quality schemes for agricultural products and foodstuffs provided for in the Regulation.

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<sup>375</sup> R. Mögele, F. Erlbacher, *Single Common Market Organisation*, München 2011, pp. 533-540.

<sup>376</sup> O.J. EU 1997, L 142, p. 30.

<sup>377</sup> O.J. EU 1999, L 160, 26.6.1999, p. 80.

<sup>378</sup> O.J. EU 2006, L 358, 16.12.2006, pp. 3-21.

<sup>379</sup> O.J. EU 2014, L 193, 1.07.2014, p. 1.

<sup>380</sup> O.J. EU 2013, L 347, 20.12.2013, p. 487

Polish legislative solutions regarding the creation of agricultural producer groups were constructed on the basis of regulations in force under German law (German Act of 16 May 1969 on the adjustment of agricultural production to market requirements, the so-called Act on the structure of the market).<sup>381</sup> This legal act was therefore ahead of the EU common normative solutions concerning agricultural producer groups, and especially the forms of their support.

In the co-operative group of agricultural producers, the basic, classic feature of the co-operative is very clearly visible. It is a link that must exist between the activities of the enterprise “co-operative” and the co-operative’s gainful activities.<sup>382</sup> The co-operative was given an auxiliary shape. It is intended to support members directly.<sup>383</sup> This is the case in the co-operative group of agricultural producers, as these entities operate only thanks to the holdings of their members. As a rule, the Group does not seek to maximise its profits, and any profit that may be generated is usually allocated for further development. As a rule, the members of the group aim to increase their incomes, for example by obtaining a higher price for agricultural products that are to be of good quality. From a theoretical point of view, it is particularly interesting to define the relationship between a co-operative group of agricultural producers and the agricultural holding of a member. The co-operative takes over some of the stages of agricultural activity carried out by the co-operatives. The agricultural feature is transferred from the agricultural holding to the co-operative. Therefore, in some legislations a co-operative of this type has been recognised as an agricultural entrepreneur (e.g. in Italy). However, the co-operative agricultural producer group itself carries out activities which are generally classified as non-agricultural economic activities.

The co-operative group of agricultural producers operates exclusively on the basis of the members’ agricultural holdings. It can be stated that it is an extension of an agricultural holding, which is confirmed by some regulations treating the group as an agricultural producer. For example, in the light of Article 613(4) of the civil code, an agricultural producer is also understood as a group of agricultural producers or their association. The aim is for the group to conclude contracting agreements. It is precisely this ability to sign (possibility of, among others, signing) contracting contracts by a group of agricultural producers, including those conducted in the form of co-operatives, that indicates the link with the agricultural holding of the members. It should be also mentioned that the Act of 4 October 2018 on Co-operatives of Farmers extends the scope of Article 613(4) of the Civil Code. Under the Act, the status of agricultural producers is also given to the co-operatives of farmers.

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<sup>381</sup> See: justification of the draft amendment of an act on agricultural producer groups, print No 3836 of 2015.

<sup>382</sup> See e.g. P. Zakrzewski, *Cel...*, p. 69.

<sup>383</sup> *Ibidem*.

Agricultural co-operatives also include preliminarily recognised fruit and vegetable producer groups and recognised fruit and vegetable producer organisations within the meaning of the Act of 19 December 2003 on the organisation of the fruit and vegetables and hops market.<sup>384</sup> Like agricultural producer groups, they act on behalf of their members and represent their interests in economic matters, selling not only the agricultural products produced on their farms, but also transporting, storing, packing and jointly purchasing means of production and machinery.<sup>385</sup> The EU regulation states that fruit and vegetable producer organisations shall pursue a specific objective, which is to include, inter alia, ensuring that production is planned and adjusted to demand, in particular as regards quality and quantity; concentration of supply and marketing products manufactured by their members; optimisation of production costs and stabilisation of producer prices; promotion and provision of technical assistance with regard to the use of environmentally-friendly cultivation methods and production techniques. In general, it can be said that groups and organisations take over one or more of the stages involved in running an agricultural activity.<sup>386</sup>

Also co-operative organisations of agricultural producers may be classified as agricultural co-operatives, especially those producing milk.<sup>387</sup> Like agricultural producer groups, they take over one or more stages of the agricultural activity carried out by their members. Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products<sup>388</sup> right from the preamble, points out that producer organisations and their associations may play a useful role in concentrating the supply, improving marketing and planning and adapting production to demand, in optimising production costs and stabilising producer prices, conducting surveys, promoting best practice and offering technical assistance, managing by-products and administering the risk management tools available to their members, thus helping to strengthen the position of producers in the food supply chain (point 131).

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<sup>384</sup> Dz. U. of 2011 No 145, item 868 as later amended.

<sup>385</sup> See Regulation of the Council (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and detailed provisions on some agricultural products, O.J. EU L 299 of 16 November 2007, p. 1; secondary regulation of the Commission (EU) establishing detailed principles of the application of Council Regulation (EC) No 1234/2007 of 7 June 2011 on the fruit and vegetable sector and the sector of processed fruit and vegetables; O.J. EU L 157 of 15 June 2011, p. 1.

<sup>386</sup> Ibidem. O.J. EU 2012, L. 343 of 14.12.2012, p. 1.

<sup>387</sup> See also D. Mierzwa, in e.g. *Spółdzielczość rolnicza w procesie zmian*, in: *Wieś i rolnictwo w procesie zmian. Szanse rozwojowe rolnictwa w przestrzeni europejskiej*, eds. S. Sokołowska, A. Bisaka, Opole 2008; eadem, *W poszukiwaniu nowego modelu spółdzielczości rolniczej*, Wrocław 2005; eadem, *Restrukturyzacja i perspektywy rozwoju spółdzielni mleczarskich regionu dolnośląskiego na tle rozwiązań francuskich*, Wrocław 2003.

<sup>388</sup> See [online]. MP [accessed on: 2017-12-09]. Available at: <<http://mleczarstwpolskie.pl/>>.

The preamble of that Union act also stresses that the existing rules on the definition and recognition of producer organisations, their associations and inter-branch organisations should be harmonised, amended and extended in order to provide for their possible recognition on application under a statute established in accordance with this Regulation for certain sectors. In particular, the statutes of a producer organisation should ensure that such bodies be set up at the initiative of producers and be controlled in accordance with principles enabling members who are producers to exercise democratic control over their organisation and its decisions.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products provides that it is sufficient for a milk producer organisation to pursue one or more of the following objectives: to ensure that production is planned and adjusted to demand, in particular in terms of quality and quantity; to concentrate supply and market outlets on the products produced by its members; to optimise production costs and to stabilise producer prices (Article 154(3) of the Regulation). The EU Regulation No 1308/2013 also indicates that an organisation may negotiate a contract on behalf of its members who are farmers, for part or all of their joint production, for the delivery of raw milk by a farmer to a processor of raw milk or a purchaser. The EU legislator has indicated that an organisation may negotiate, but does not have to. This means that it is up to this organisation to decide whether or not to engage in such activities. Organisations, similarly to groups, take over some of the activities performed by co-operatives within the framework of their agricultural activity.

It should be noted that co-operative producer organisations may also operate in other markets. Article 152 of Regulation 1308/2013 provides that Member States may, at their request, recognise producer organisations which pursue a specific objective covering one or more of the following: ensuring the planning and adjustment of production to demand, in particular with regard to quality and quantity; concentrating supply and marketing of the products produced by their members, including direct sales; optimising production costs and returns on investments in order to maintain environmental and animal welfare standards and stabilising producer prices; promoting and providing technical assistance for the use of environmentally sound cultivation practices and techniques and of responsible animal welfare practices and techniques; by-products and waste management, in particular to protect the quality of water, soil and landscape and preserve or encourage biodiversity; managing mutual investment funds.

In my opinion, agricultural co-operatives also include co-operatives of producers of agricultural products registered as Protected Designations of Origin, Protected Geographical Indications and Traditional Specialities Guaranteed, in which agricultural producers have a predominant share. As defined in the European

Commission and Parliament Regulation (EU) No 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs, a 'group' denotes any association regardless of its legal form, bringing together predominantly food producers or food processors whose activity is connected with the same product.

These groups play a key role in the application process for the registration of designations of origin and geographical indications as well as traditional specialities guaranteed and in amendments to specifications and requests for revocation of the registration. The objects of such groups, which are also conducted in the form of co-operatives, are defined in Article 45 of the Regulation. Such groups are entitled to, *inter alia*:

(a) participate in activities designed to ensure quality assurance, reputation and authenticity of the products in the group on the market, by monitoring the use of the names in commercial matters and, where necessary, informing the competent authorities;

(b) take action to ensure adequate legal protection of the protected designation of origin or geographical indication and of the intellectual property rights directly related thereto;

(c) prepare information and promotional measures to inform consumers about the characteristics of products which constitute their added value;

(d) develop activities to ensure compliance of the product with its specification. Therefore, the Group takes over the activities related to the sale of products and development of activities related to the guarantee of compliance of the product with its specification.<sup>389</sup>

In my opinion, there are many arguments supporting the inclusion of dairy co-operatives in agricultural co-operatives. First of all, like co-operative agricultural producer groups, they take over certain activities related to the agricultural activity conducted by their members, i.e. agricultural producers. The aim is to collect milk from the members and to support the cattle farms run by the members. The legislation lacks a definition of dairy co-operatives. The scope of activity is therefore determined by the statutes. These are entities that usually deal with collecting and processing milk. At the same time, it is worth noting that there are dairy co-operatives involved only in buying (collecting) milk which take no part whatsoever in from production. However, they are but a few. It should be noted that under the Treaty dairy products are considered an agricultural product and are listed in Annex I. In addition to these basic activities, certain dairy co-operatives also regularly work to develop the breeding and rearing of co-operative dairy cattle, increase milk production and milk quality, combat livestock diseases and promote hygiene and prevention, as well as

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<sup>389</sup> See more A. Kapała, A. Suchoń, *Z prawnej problematyki oznaczeń geograficznych produktów rolnych oraz środków spożywczych w Polsce i we Włoszech* in: *Wybrane problemy prawa materialnego i procesowego. Teoria i praktyka*, Vol. IV, ed. K. Knopek, J. Mucha, Poznań 2016.

support the organisation of holdings specialising in the production and supply of milk. Such measures have a positive impact on the development of agricultural holdings of milk producers and the milk market.

Dairy co-operatives, which also process milk, allow producers to participate in the next stage of the food chain, i.e. to earn income not only from the sale of milk but also from the surplus on the balance sheet of their processing activities. It should be noted that some dairy co-operatives will be able to obtain the status of farmers' co-operatives. According to the Act of 4 October 2018, a farmers' co-operative may run a business activity relating to the processing of products or groups of products produced by farmers and to trading in processed products obtained this way.

What is worth mentioning is that the Act of 20 February 2015 on Renewable Energy Sources<sup>390</sup> introduces the definition of an energy co-operative. Under the Act, the energy co-operative refers to the co-operative as defined in the Act of 16 September 1982 on Co-operative Law conducting business activity designed to generate: a) electricity in renewable energy sources installations of capacity not exceeding 10MW or b) biogas in renewable energy installations with a capacity not exceeding 40 million cubic meters per year or c) heat in CHP renewable energy installations with a thermal capacity not exceeding 30 MW<sub>t</sub> – and to balance, distribute and trade in electricity, biogas and/or heat, for the energy co-operative's and its members' own use, connected to the defined distribution network with voltage lower, than 110 kV and/or gas distribution network and/or central heating network within an area of rural and rural-urban communes as defined in the public statistics. Such co-operatives can be established also by agricultural producers in order to build biogas plants which use agricultural products or the by-products of agricultural activity.

The question arises whether, if these (running) co-operatives, including the co-operative groups of agricultural producers, co-operative organisations of agricultural producers (also of fruit and vegetables), meet the requirements listed in Act of 4 October 2018, they can be entitled to act also as farmers' co-operatives. To do that, as a rule, it is necessary to make changes to the statute of a co-operative and its name. Under Article 4 of the Act, the name of a co-operative of farmers includes the designation "Farmers' co-operative." Additionally, in some cases it might be necessary to increase the number of members.

In this respect, various interpretations should be noted. Although the Act of October 4, 2018 does not contain any direct regulations stated that currently operating co-operatives after fulfilling the requirements can be register as "Farmers' co-operative but it should be noted that the Act also does not include such a ban. Therefore, in the author's opinion, it would be reasonable to adopt an in-

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<sup>390</sup> Dz. U. of 2015, Item 478, as amended.

terpretation allowing functioning co-operatives of agricultural producers to be recognised as farmers' co-operatives.

To conclude this chapter, it may be worth adding that, hypothetically, European co-operatives can also be agricultural co-operatives. In such a case, the subject of their activity would be an agricultural activity or, alternatively, they could take over some of the stages of this activity normally carried out by farmers who are members of co-operatives. So far, no co-operative has been established in Poland that would deal with this area of activity.<sup>391</sup> However, such activity is included in the objectives of an SCE (the European Co-operative Society–ECS). According to the Union Regulation already referred to in Chapter II, the purpose of an ESC is to meet the needs of its members and/or to support their economic and/or social activities, in particular by concluding agreements with them for the supply of goods or services or for the performance of work within the framework of the activities which it carries out or commissions the ECS to carry out. In addition, an ECS may have as its objective to meet its members' needs by promoting, in the manner laid down above, their participation in the economic activity of one or more ECSs and/or national co-operatives (Article 1(3) of the EU Regulation). The legal basis for the activities of the entities discussed is the Council Regulation No. 1435/2003/EC of 22 July 2003 on the Statutes for a European Co-operative Society, supplemented by Council Directive No. 2003/72/EC of 22 July 2003,<sup>392</sup> containing provisions concerning the involvement of the employees of a European Co-operative Society and the Act of 22 July 2006 on the European Co-operative Society.<sup>393</sup>

The latter is a Polish legislative act regulating the establishment, organisation and activity of European Co-operative Society in areas not regulated in the Regulation. The European Co-operative Society was founded to implement the tasks that are typical of a co-operative, but it has many features that are characteristic of commercial companies, especially public limited companies (plcs). It is nevertheless a new legal form, separate from national co-operatives.<sup>394</sup> Taking into account the fact that the subscribed capital of such co-operatives is at least 30 000 euro and the principles of their formation and operation are rather complicated, such entities that would be classified as agricultural co-operatives have not yet developed in Poland. Consequently no further attention will be given to the principles of operation of such co-operatives in Poland in this book.

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<sup>391</sup> In Poland, a European Co-operative Society in the medical sector was founded in Inowrocław under the name of „Flandria” Spółdzielnia Europejska z o.o. See [online]. Flandria [accessed on: 2018-09-22]. Available at: <<http://flandria.pl/>>.

<sup>392</sup> O.J. EC No L. 207 of 18 August 2003, p. 25.

<sup>393</sup> Dz. U. of 2016, item 7.

<sup>394</sup> P. Zakrzewski, *Spółdzielnia europejska jako nowy typ osoby prawnej*, „Kwartalnik Prawa Prywatnego” 2008, No 1, pp. 5-20; M. Piotrowska, *Spółdzielnia europejska – zarys zagadnienia*, „Edukacja Prawnicza” 2007, No 5, pp. 3-11.

### 3.4. Legal aspects of the organisation of agricultural co-operatives

#### 3.4.1. Founders of agricultural co-operatives

Pursuant to Article 6 of the Act on Co-operative Law, persons intending to establish a co-operative (founders) adopt the co-operative statute and confirm its acceptance by affixing their signatures. A general provision stipulates that the number of founders of a co-operative may not be less than 10 if the founders are natural persons and 3 if the founders are legal persons. The problem arises when the formation of co-operatives by both natural and legal persons is considered and comes down to the question of whether 3 legal entities are sufficient for the establishment of co-operatives by natural and legal persons or whether there must be a total of 10 members. In its resolution of 17 January 1991, the Supreme Court held that “the number of founders of a co-operative whose members may include both natural persons and legal persons cannot be less than 10.”<sup>395</sup>

Co-operative law distinguishes between two categories of founders of a co-operative.<sup>396</sup>

One is those who obtain their membership *ex lege* upon the registration of the co-operative. According to Article 17 § 1 of the Act on co-operative law, founders of co-operatives who have signed the statute become members of the co-operative upon its registration. The other category includes those who become members after the co-operative has been founded.

The Act on co-operative law provides that any natural person with full legal capacity who meets the requirements specified in the statute may be a member of a co-operative, and consequently such a person may also be a founder, unless the Act provides otherwise. A person of legal age, i.e. over eighteen, has full legal capacity. In addition, the statutes may determine the cases in which membership of persons with limited or no legal capacity is permissible. However, they may not be members of the co-operative’s organs. They may attend the general meeting through their legal representatives. Minors over thirteen years of age and partially incapacitated persons also have limited legal capacity to perform acts in law.

The legislation provides, for some agricultural co-operatives, for fewer than ten founders to set up such an entity and, in addition, lays down requirements for the members of the co-operative (or its founders). In agricultural production co-operatives the number of founders who are natural persons may not be less than five. At the same time, special provisions of co-operative law specify the re-

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<sup>395</sup> III CZP 77/90, Legalis No 27207.

<sup>396</sup> See H. Cioch, *Zarys prawa spółdzielczego*, Warszawa 2006, p. 23 et seq.

quirements to be met by members of agricultural production co-operatives. These may be farmers who are:

1. owners or natural holders of agricultural land;
2. tenants, users or other dependent holders of agricultural land;
3. and may also include other persons with qualifications useful for working in a co-operative.

The co-operatives of agricultural circles, on the other hand, used to be set up by agricultural circles. According to the Act of 8 October 1982 on the socio-occupational organisations of farmers<sup>397</sup> agricultural circles are voluntary, independent and self-governing, socio-occupational organisations of individual farmers representing the occupational and social interests of all of them. A member of an agricultural circle may be (i) a person running an individual agricultural holding as the owner, holder or user; (ii) an adult member of the family of a farmer referred to in point (i) who works on the holding he runs; (iii) a person who has given up his agricultural holding for retirement or for a pension. The statutes may provide for the admission to the agricultural circle of other persons whose work is directly connected with agriculture.

Another co-operative that can carry out agricultural activity is a social co-operative. The Law on social co-operatives provides that the number of founders of such an entity may not be less than three if the founders are natural persons and two if the founders are legal persons. This legislative act as amended<sup>398</sup> provides that where the founders of a social co-operative are three natural persons, the social co-operative is obliged to accept as members and to employ within 12 months of the date of entry of the social co-operative in the National Court Register at least two of the persons referred to in Article 4(1) of the Act. A social co-operative shall have no fewer than five members in the case of natural persons, two members in the case of legal persons and not more than fifty members.

A social co-operative can be set up by, e.g. the unemployed, the disabled as provided for in Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, persons up to 30 years old and over 50 years old who have the status of a job seeker, unemployed as prescribed in Act of 20 April 2004 on Employment Promotion and Labour Market Institutions, and persons who are seeking employment but are not in employment or not performing any other gainful work.

On the other hand, after the entry into force of the amendment of 25 July 2008, i.e. after the amendment of the Act of 16 September 1982 – Co-operative Law,<sup>399</sup> co-operative groups of agricultural producers may be founded by no fewer than

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<sup>397</sup> A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 205 et seq.

<sup>398</sup> Amendments made pursuant to Act of 15 December 2017 on the amendment to the Act on social co-operatives and some other Acts. (Dz. U. item 2494).

<sup>399</sup> Dz. U. No 163, item. 1014.

5 entities. And so, natural persons and legal persons running an agricultural holding within the meaning of the provisions on agricultural tax or carrying out agricultural activity within special divisions of agricultural production may establish a co-operative whose founders may not be fewer than five, but only in a situation where this entity is established solely for the purpose of organising itself into an agricultural producer group within the meaning of the Act of 15 September 2000 on agricultural producer groups and their associations and amending other acts, or into a preliminarily recognised fruit and vegetable producer group or a recognised fruit and vegetable producer organisation within the meaning of the Act of 19 December 2003 on the organisation of the markets in fruit and vegetables and hops.

In defining the entities which may be the founders of a co-operative set up to form an agricultural producer group, the Act on agricultural producer groups makes reference to an 'agricultural holding' referred to in the Act of 15 November 1984 on agricultural tax. It ought to be considered whether the founders of such a co-operative can only be founders who are subject to agricultural tax or sections of special agricultural production, or whether it is sufficient that the entity runs an agricultural holding within the meaning of the provisions on agricultural tax. It should be noted that members of an agricultural producer group may not be entities which are not subject to agricultural tax or sections of special agricultural production.

It seems justified to claim that the concept of an agricultural holding under the Act of 15 November 1984 on agricultural tax should not be applied to entities which are taxpayers of agricultural tax due for the land that constitutes an agricultural holding. It seems appropriate to assume that any operator of an agricultural holding within the meaning of the agricultural tax legislation or operator of an agricultural activity within the section of special agricultural production may be a member of a co-operative intending to form an agricultural producer group. A different interpretation would be appropriate if the provision provided that an entity which is subject to agricultural tax may be a member of a group. The amendment of the Act on agricultural producer groups of 11 September 2015, which entered into force on 18 December 2015, does not significantly modify the scope of entities that may establish them. These entities continue to include natural persons, organisational units without legal personality and legal persons who run an agricultural holding within the meaning of the agricultural tax regulations or a section of special agricultural production as part of their agricultural activity. It is these that can be organised into groups of agricultural producers. What is new is the reference to European Union legislation in the field of the concept of agricultural activity under which agricultural activity means agricultural activity within the meaning of Article 4(1) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council

of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. This concept is also discussed in Chapter III.<sup>400</sup>

The Act on Agricultural Producer Groups also enables the creation of agricultural producer groups based on co-operatives that have already been founded and are in operation. Article 3a of the Act provides that a co-operative may also carry on its activities as a group if it consists of at least five producers of one product or group of products who meet the requirements laid down in Article 2 and other Acts on agricultural producer groups. The law does not require that all members of a co-operative meet the criteria set out in the law. As a result of such a wording of the provision it was possible to form groups of agricultural producers by co-operatives of agricultural associations or co-operatives "Samopomoc Chłopska." The amendment of the Act on agricultural producer groups of 11 September 2015, amended Article 3a, indicating, among other things, that all producers of one product or product group included in it must meet the requirements set out in Article 2. This amendment was clearly to the disadvantage of the free formation of co-operatives that are already in operation.

Article 4 of the Act of 4 October 2018 on farmers' co-operatives, provides that a farmers' co-operative is a voluntary association of natural or legal persons who: 1) run an agricultural farm in the meaning of agricultural tax regulations or conducting an agricultural activity referring to special branches of agricultural production, which are the producers of agricultural products or of groups of these products or which breed fish, hereinafter referred to as the "farmers", 2) are not farmers and conduct an activity related to storing, sorting, packing or processing agricultural products or groups of these products or fish produced by the farmers referred to in point 1, or service activities supporting agriculture, including those referred to in point 1, services using machines, tools or devices for the production of agricultural products by these farmers or groups of these products, or fish hereinafter referred to as the "entities which are not farmers". A co-operative of farmers can be established by at least 10 farmers.

Turning to fruit and vegetable producer groups and organisations, it should be noted that pursuant to Article 6 of the Act on co-operative law (simplifying the establishment of co-operatives) and the Regulation of the Ministry of Agriculture and Rural Development, the founders of pre-recognised co-operative fruit and vegetable producer groups were to be natural persons and legal persons producing at least one of the products listed in the product groups in respect of which the entity applies for preliminary recognition and which were specified in the Annex to the Regulation of the Ministry of Agriculture and Rural Development of 19 September 2013 on the conditions for the preliminary

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<sup>400</sup> See more A. Suchoń, *Jeszcze o pojęciu działalności rolniczej*, „Rejent” 2017, No 12.

recognition of producer groups in fruit and vegetables, recognition of producer organisations in fruit and vegetables and the conditions and requirements to be met by plans for recognition by producers of fruit and vegetables on the territory of the Republic of Poland. The minimum number of founders is to be 5. The provisions provided for additional requirements. For example, a producer who was a member of a fruit and vegetable producer organisation and in respect of whom the Marshal of the Province had issued a decision to withdraw recognition as a fruit and vegetable producer organisation could not become a member of a preliminarily recognised fruit and vegetable producer group as regards the products for which the producer organisation was recognised within five years of the date on which the decision became final.

It should be stressed that preliminarily recognised groups can no longer be formed. On the other hand, an association of fruit and vegetable producers, such as a co-operative, can be recognised as a fruit and vegetable producer organisation if it is formed by at least five producers, each of whom produces at least one of the products listed in the product groups for which it applies for recognition and which are set out in the Annex to the Regulation of 19 September 2013. Moreover, the total value of products produced by producers and sold in a selected 12-month period, commencing not earlier than 1 January of the third year preceding the year in which the application for recognition as a producer organisation for fruit and vegetables was lodged and ending not later than 31 December of the year preceding the year in which the application for recognition as a producer organisation for fruit and vegetables was lodged, shall amount to at least PLN 500 000.

Further considerations will focus on dairy producer organisations which, as indicated, may also be set up in the form of co-operatives. Under the existing regulations, the organisation is to be made up of a minimum of 20 milk producer members. The regulations do not indicate a minimum milk production per member, but only that, taken together, a milk producer organisation must produce and market not less than 2 million kg of milk or milk products per year produced as part of that milk quantity. At the same time, during the 12 months preceding the month of lodging the application, at least 20 members of that organisation are required to have manufactured and marketed milk or milk products. All milk or milk products produced on the holdings of its members shall be marketed through the organisation. As of 1 September 2017, the competent authority for the recognition of milk producer organisations and those operating in other markets, associations of producer organisations and inter-branch organisations has been the Director of the ARiMR (Agency for Restructuring and Modernisation of Agriculture) Regional Branch with jurisdiction over the applicant's registered office.

The Act on Co-operatives does not provide for any simplifications when establishing a dairy co-operative. Therefore, 10 natural persons or 3 legal persons are required. Its members are mainly milk producers.

### 3.4.2. Statutes of agricultural co-operatives

In the first instance, the founders of a co-operative have to determine the content of the statute and then adopt a resolution. The statute does not have to be in the form of a notarial document – a simple written form is sufficient. At the same time, however, there are no such simplifications as in the case of the limited liability company. Article 157<sup>1</sup> of the Code of Commercial Companies and Partnerships indicates that the articles of association of a limited liability company may also be concluded with the use of a template of the articles of association of a limited liability company that is available in the IT system – concluding a memorandum of association using this template requires filling in a form in the IT system and affixing an electronic signature to it.

There are some problems in determining the legal nature of the statutes of a co-operative. As K. Pietrzykowski emphasised, this issue is one of the most controversial theoretical issues of co-operative law. The author has distinguished the following positions in this respect:<sup>401</sup>

1) the agreement theory, recognising that the statutes of a co-operative is an agreement (or a specific type of agreement) entered into by its founders by placing their signatures on it,<sup>402</sup>

2) the normative theory – its supporters claim that the statutes constitute a normative act of subjective law, i.e. it is the internal law of a co-operative,<sup>403</sup>

3) a mixed theory pursuant to which until the co-operative is registered, its statutes are of an agreement nature but become an internal normative act of this co-operative upon its registration,<sup>404</sup>

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<sup>401</sup> After K. Pierzykowski, *Pojęcie spółdzielni...*, p. 318 et seq.

<sup>402</sup> W. Chrzanowski, *Nowe prawo spółdzielcze, analiza zmian*, Warszawa 1983, pp. 22-23; M. Gersdorf, in: M. Gersdorf, J. Ignatowicz, *Prawo spółdzielcze...*, p. 26; A. Miączyński, *Ochrona praw członka spółdzielni*, ZNUJ 1981, „Prace prawnicze”, No 98, p. 27; K. Pietrzykowski, *Powstanie i ustanie stosunku...*, pp. 100-102; H. Popiołek, *Stanowisko prawne członków rady i zarządu spółdzielni*, Warszawa 1970, p. 46 et. seq.; Z. Radwański, *Teoria umów*, Warszawa 1977, pp. 157-158.

<sup>403</sup> A. Klein, *Ewolucja instytucji osobowości prawnej*, in: *Tendencje rozwoju prawa cywilnego*, ed. E. Łętowska, Warszawa 1993, p. 90; M. Miemieć, *Pojęcie statutu w nauce prawa*, „AUWr” 1975, Prawo, No 338, p. 166.

<sup>404</sup> K. Pietrzykowski, *Pojęcie spółdzielni...*, p. 318 et seq.; R. Bierzanek, *Prawo...*, pp. 52-53, 68-69; S. Wróblewski, *Ustawa o spółdzielniach*, Kraków 1921, pp. 13-14.

4) the followers of the 4<sup>th</sup> stance claim that the statutes of a co-operative contain norms that fall within the group of social norms adopted by social organisations.<sup>405</sup>

The prevailing position in judicature is that the statutes are a specific type of agreement (point 1). This point of view is also supported by the author of this publication. As a result of many judgments of the Supreme Court, the provisions of the statutes are the conventionally introduced norms applicable to co-operatives and co-operative members, which results in the fact that it is institutionally connected with the regime of civil law legal transactions.<sup>406</sup> Hence its provisions should be interpreted in accordance with the directives resulting from Article 65 of the civil code.<sup>407</sup> Apart from this, in matters regulated pursuant to the civil code based on the references made to it in the co-operative's regulations, the provisions of the statutes of a co-operative may be considered to be substantive law within the understanding of Article 393<sup>1</sup> point 1 of the code of civil procedure.<sup>408</sup> Pursuant to the principle of the freedom to contract, the provisions of the statutes may be shaped freely, albeit within the limits specified in Article 351 of the civil code.<sup>409</sup> This means that the parties concluding the agreement may establish a legal relationship at their own discretion, as long as its content or purpose does not conflict with the nature of the relationship, the law or the principles of social coexistence.

The Act on Co-operative Law specifies, first of all, the mandatory elements of the statutes, among others: the designation of the name with the addition of a "co-operative"<sup>410</sup> or "a co-operative" indication of the registered office, objectives and duration of the co-operative if formed for a fixed time, the rights and obligations of members, principles and the manner of acquiring membership, resignation from membership, termination and expulsion of members. As shown in judgments of the Supreme Court, the provisions of the statutes of a co-operative may be considered to be substantive law within the understanding of Article 393<sup>1</sup> point 1 of the code of civil procedure.<sup>411</sup> Moreover, the provisions

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<sup>405</sup> For more see M. Wierzbowski, *Akty normatywne organizacji spółdzielczych*, Warszawa 1977, pp. 64-66.

<sup>406</sup> e.g. judgment of the Supreme Court of 23 May 1989, III CZP 34/89, OSNA-PiUS 1990, No 6, item 80; judgment of the Supreme Court of 15 April 1999, I CKN 1088/97, OSNC 1999, No 11, item 193, or judgment of the Supreme Court of 25 July 2003, V CK 117/02 (unpublished).

<sup>407</sup> See judgment of the Supreme Court of 23 May 1989 III CZP 34/89, OSNAPiUS 1990, No 6, item 80.

<sup>408</sup> V CSK 86/09, LEX No 627242.

<sup>409</sup> Ibidem.

<sup>410</sup> The Court of Appeal in Białystok in its judgment of 23 October 2014 (I ACa 411/14) recognised that the concept of a co-operative refers to a legal person and certainly does not cover individual, specific natural persons, but at most all the members of a co-operative, LEX No 1544671.

<sup>411</sup> Judgment of the Supreme Court of 30 September 2009, V CSK 86/09, LEX.

of the civil code are directly applicable to the statutes of a co-operative, and in particular the provisions of Articles 56, 65 and 58.<sup>412</sup>

Founders of agricultural co-operatives when drafting the respective statutes ought also take into account other provisions.<sup>413</sup> In the case of agricultural production co-operatives, co-operative law provides that the statutes shall contain rules on remuneration for the use of contributions. It may also provide that the member owning the land is obliged to contribute all or part of the land to the co-operative, or that a member has the right to a farmland parcel (and specify, for example, the size of the parcels and how they are to be apportioned). Where the statutes provide for the payment of a land contribution, the statutes should lay down rules and a date for its withdrawal in the event of the termination of the co-operative's membership and rules for the partial withdrawal of the land contribution during the period of membership. The statutes should also lay down rules and a deadline for the final settlement of accounts between the member withdrawing the land contribution and the co-operative.

Under Article 5 of the Act of 4 October 2018 on Farmers' Co-operatives, except for the provisions of Article 5 § 1 of the Act on Co-operative Law, the statute of the co-operative of farmers includes at least: 1) the principles used by the co-operative of farmers for accepting new members who are farmers and entities which are not farmers; 2) a minimum membership period in the farmers' co-operative which cannot be shorter than a trading year; 3) the time limit for a member of the co-operative of farmers to notify his or her the intention of withdrawing from the membership of the co-operative of farmers, which must not expire later than three months prior to a trading year; 4) the rules and scope of information provided by the members of the co-operative of farmers on an activity run by the members, especially about the cultivated area, crops and production volume of the products or groups of products; 5) the rules for production of products or groups of products applied by the members of the co-operative of farmers who are farmers, including the rules for the quantity and quality of products and the methods used to prepare them for sale; 6) the rules for the use, lease or rent by the farmers' co-operative of non-monetary contributions and the payment rules for their use, lease or rent; 7) the type and scope of responsibility of members of the co-operative of farmers; 8) the steps against a member of the co-operative of farmers who does not fulfil statutory obligations or does not meet the requirements laid down in the Act, including the reasons for excluding and removing the mem-

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<sup>412</sup> Judgment of the Supreme Court of 20 November 2002, V CKN 1474/00, LEX. See judgment of the Supreme Court of 23 May 1989, III CZP 34/89, OSNAPiUS 1990, No 6, item 80 and judgment of the Supreme Court of 15 April 1999, I CKN 1088/97, OSNC 1999, No 11, item 193.

<sup>413</sup> The taking into account the requirements resulting from the Act on agricultural producer groups simplified the procedure for registration of a group already at the stage of preparation of the statute.

ber of the co-operative of farmers from that co-operative; 9) a detailed method and rules for dividing the balance surplus and covering losses; 10) the rules for deciding about the number of votes that every member of the co-operative of farmers who is a legal person has.

In the case of co-operative agricultural producer groups, it would be appropriate, right at the stage of drawing up the statutes<sup>414</sup> to include in them the requirements resulting from the act on agricultural producer groups related to the founding act. This concerns in particular rules on the admission to the group of new members and on exit from the group, rules governing the sale of products or groups of products by members through the group; rules on the provision of information by members of the group on sales volumes and prices of products for which the group is established but sold outside the group; rules on the establishment and use of a special fund (if any).

The founding act may also include provisions relating, in particular, to the supply of means of production to group members, rules for the common use of agricultural equipment, the promotion of products or groups of products placed on the market, the storage, packaging and standardisation of products or groups of products. Therefore, the statutes indicate the activities within the agricultural activity conducted by the co-operatives and taken over by the co-operative. At the same time, it should be noted that they are detailed in such documents as the Group's regulations or membership agreements, which will be discussed further in this study.

### 3.4.3. Shares and member entry fees in agricultural co-operatives

A member of a co-operative is required to pay an entry (registration) fee the function of which (as indicated in the literature) is to pay the fee for joining the co-operative.<sup>415</sup> The date by which this is to be done should be specified in the statutes, and in the event of non-compliance, Article 471 of the Civil Code shall apply. The legislation does not provide any guidance on the level, or amount of the entry fee. However, it should not be too high, as it would restrict access to co-operatives for new members, i.e. violate the principle of the open door. For example, the 1920 Act indicated that the registration fee could not exceed half of the share price.<sup>416</sup>

The Act of 4 October 2018 on Farmers' Co-operatives states that the statute may prescribe that the amount of an entry (registration) fee amounts to: 1) a specific amount or 2) a quotient of a decimal part, as specified in the statute, of the

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<sup>414</sup> Of course, it is possible that after registration with the National Court Register a resolution will be passed on the amendment of the statutes, but this will prolong the group registration procedure and cause additional costs.

<sup>415</sup> See P. Zakrzewski, *Majątek...*, p. 69 et. seq.

<sup>416</sup> *Ibidem*.

current reserves of the co-operative of farmers and the number of the members of the co-operative of farmers – as at the end of the calendar year directly preceding the year when a member joined the co-operative of farmers.

The co-operative member is also obliged to contribute the declared shares in accordance with the provisions of the statutes. Regarding the contribution of shares, the shares may be mandatory, i.e. necessary for inclusion in the membership of the co-operative, or optional (also called further shares).<sup>417</sup> As regards the organisation of the co-operative enterprise, an important provision is one stating that the statutes may provide for members to make contributions to the property of the co-operative or for their use by the co-operative, based on a different legal relationship. This document should then specify the nature and extent of the co-operative's right to contributions, the amount of the contributions and their nature if they are in kind, the time limits for their payment, the rules on valuation and reimbursement in the event of the co-operative's liquidation, the withdrawal of a member or the termination of membership for other reasons and on other cases provided for in the statutes. The role of the contribution is to provide the co-operative with the assets it needs to carry out its economic activities.<sup>418</sup> The issue of contributions is also regulated in the legislation on agricultural production co-operatives. The statutes of co-operatives may provide that a member owning land is to contribute all or part of the land to the co-operative. The co-operative law stipulates in Article 141 § 2 that a contribution may consist of either land or buildings, or parts thereof as well as other equipment permanently connected with the land, located on such land at the time of the making of the contribution. Unless otherwise provided in the statutes or in the agreement with the member, the co-operative shall acquire the right to use the land contribution made by the member at the time when the contribution is taken over.

The Civil Code also contains specific provisions on the use of land by agricultural production co-operatives. They are intended to provide greater stability in terms of the co-operatives' land ownership. For example, buildings and other equipment erected by an agricultural production co-operative on the contributed land become the property of the agricultural production co-operative. The same applies to trees and other plants planted or sown by a co-operative. Article 279 of the Civil Code contains an example of a derogation from the principle of *superficies solo cedit*. It follows from the provision that buildings and other equipment permanently connected with the ground do not belong to the components of the ground. However, the Civil Code does not contain any definition of buildings or equipment. In this respect, it is worth referring to the provi-

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<sup>417</sup> Judgment of the Court of Appeal in Szczecin of 24 August 2011, I ACa 433/1, OSASz 2012, No 1, pp. 43-68.

<sup>418</sup> See P. Zakrzewski, *Majątek spółdzielni*, Warszawa 2003, p. 79.

sions of the Act of 7 July 1994 – Construction Law.<sup>419</sup> According to its provisions, a building is a construction object permanently connected with the ground, separated from the surrounding space by means of built partitions and having foundations and a roof (Article 3(2)).

The statutes of a co-operative may require its members to make a specific contribution in cash. The co-operative may accept as part of this contribution such means of production as livestock, fodder, seed, equipment, machinery and tools for use on the common farm. These funds are to be valued at their current value and prices at the date of the contribution. The cash contribution and the means of production contributed towards it shall be converted in accordance with the rules laid down in the statutes.

As has already been pointed out, some social co-operatives are active in the agricultural sector. In order to perform this task, it is necessary to organise an agricultural holding based on agricultural land (in the case of crop production) or buildings (in the case of animal production). It is natural that a social co-operative can use the land when it enters into a tenancy agreement or when it acquires it. However, it may be particularly difficult to perform a sale agreement, i.e. to pay for the property, because it will be necessary to dispose of cash funds. It would therefore be a good idea if members contributed agricultural land. Since the Act on social co-operatives does not contain separate provisions on the issue of land contributions, reference should be made to the Act on co-operative law.

The Act of 4 October 2018 on Farmers' Co-operatives introduces new legal solutions regarding the shares. The statute of the co-operative may provide for the annual establishment of the number of shares that particular members are entitled to in proportion to their percentage in the total value of the products or groups of products purchased by the co-operative from its members in the trading year directly preceding the year when the number of shares was established. In such a case 1) the number of shares that particular members are entitled to is established based on a resolution adopted at the general meeting by a majority of two-thirds of votes in the presence of at least half of those entitled to vote; 2) the statute lays down the rules and date of the contributions of shares or return of contributions of shares (Article 11 of the act).

Under the Act of 4 October 2018 on Farmers' Co-operatives, the statute may provide for the number of shares to be established in another way than the one described above.

In principle, agricultural producer groups, preliminarily recognised fruit and vegetable group or producer organisations do not carry out agricultural activities within the area of primary production. Hence they do not need agricultural land

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<sup>419</sup> Dz. U. of 2013 item 1409 a later amended. A similar structure of separate ownership of buildings and devices occurs in the case of perpetual usufruct of buildings and devices. See R. Kosior, *Zakres pojęcia nieruchomości budynkowej w świetle art. 231 k.c.*, „Rejent” 2003, No 9, p. 69.

in order to start up their activities. However, taking into account the fact that they assume one of the stages of agricultural activity conducted by co-operatives, it is important that they contribute developed land or construction land – e.g. storage rooms, warehouses, buildings for business purposes, or movables, e.g. machinery or equipment.

#### **3.4.4. Bodies in agricultural co-operatives**

In the light of relevant regulations, the persons intending to establish a co-operative (its founders) appoint the members of the management board and the supervisory board. This appointment falls within the competence of the general meeting or the organisational commission composed of at least three persons (Article 6 of the Act on Co-operative Law).

The main, and obligatory, body is the Management Board. There is no doubt that its efficient and effective operation contributes, in general terms, to the development of co-operatives. Its composition and the number of members are specified in the statutes. The statutes may provide for a single or multi-member board and lay down the requirements to be met by a member of the board or by a single-member president. The composition of the Management Board may be made up of members or non-members. In the case of co-operative groups of agricultural producers, the board is often composed of members, who are agricultural producers. By contrast, the members of the management board of a dairy co-operative are, in principle, persons who are not engaged in agricultural activity relating to milk production and not members but those who have relevant training or experience in managing such agri-food undertakings. The management board manages the co-operative's activities and represents it externally. In addition, the law provides that decisions that are not reserved by law or the provision of the statutes to other bodies shall also be taken by the management board.

The supervisory board is, in principle, a mandatory body. Exceptions include, for example, agricultural producer groups, pre-recognised fruit and vegetable producer groups and recognised fruit and vegetable producer organisations operated as co-operatives, as well as agricultural production co-operatives where the number of members does not exceed ten. The board is then not appointed unless the statutes provide otherwise, and its competence is exercised by the general meeting of members. There are no additional requirements from the legislator as regards the non-appointment of boards in such co-operatives. This is not dependent on the number of employees, as is the case in Austria, for example. The law on social co-operatives, on the other hand, provides that in those of them where the number of members does not exceed fifteen, the supervisory board is not elected, unless the statutes provide otherwise. In such

a case, the competence of the supervisory board is exercised by the general meeting. The scope of activity of the supervisory board includes, among others things, the adoption of business plans and social and cultural activity programmes, as well as the supervision and control of co-operative activity through the examination of periodical reports and financial statements, and approval of the organisational structure of the co-operative. Although the control and supervisory functions are the core and most characteristic of the supervisory board's activities, they are not the only ones. At the same time, it is not advisable to delegate too many management functions to the supervisory board. This recommendation was articulated in the verdict of the Supreme Court in the judgment of 12 December 2012.<sup>420</sup>

The activities undertaken by the supervisory board may be divided into: controlling (supervising), acting in the name and on behalf of the co-operative and other activities commissioned to the board in the statutes or the general meeting.<sup>421</sup>

Under the Act of 4 October 2018 on Farmers' Co-operatives the supervisory board of the co-operative of farmers consists of the members of the co-operative of farmers who are farmers (art. 8).

The general meeting is the principal organ of the co-operative.<sup>422</sup> It must be convened by the Management Board at least once a year, within six months of the end of the financial year. In order to protect the rights of members and democratic control by members (the second principle of co-operatives), a regulation under which the board also convenes a general meeting at the request of the supervisory board, or at least 1/10, but not less than 3 members, is important, if this power has not been reserved in the statutes for more than one member. However, in co-operatives where the general meeting is replaced by a meeting of representatives, the management board also convenes it at the request of e.g. 1/3 of those attending a meeting of representatives. A request to convene a general meeting must be submitted in writing, stating the purpose for which it is to be convened (39 of the Article).

A characteristic feature of co-operatives is the principle that each co-operative member has one vote – regardless of the number of shares held. This is in line with the second co-operative principle (democratic membership control). Co-operatives have equal rights and are actively involved in shaping their policies and decision-making. At the same time, this regulation provides that the

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<sup>420</sup> Judgment of the Supreme Court of 12 December 2012, III CSK 49/12, LEX No 1307551.

<sup>421</sup> R. Bierzanek, *Prawo spółdzielcze...*, p. 216 et seq.

<sup>422</sup> All members of the management board should be notified of the date and agenda of the meeting to be held and the resolution to convene the meeting should be taken. Adopting a resolution in breach of the applicable rules, e.g. by omitting one of the members of the management board, renders the convocation of a general meeting defective, and thus possibly also defective or non-existent. See K. Pietrzykowski, M. Wrzołek-Romańczuk, *Dopuszczalność odwołania walnego zgromadzenia*, „Przegląd Prawa Handlowego” 2000, No 12, p. 1 et seq.

statutes of co-operatives, of which only legal persons may be members, may lay down a different rule for determining the number of votes to which their members are entitled.

The exclusive competence of the general meeting includes, among other things, adopting directions for the development of economic, social and cultural activities; examining the supervisory board's reports, approving annual reports and financial statements and adopting resolutions on motions of co-operative members, supervisory board or management board members in these matters and granting a vote of approval ("*absolutorium*") to members of the management board members for the proper delivery of their duties, as well as adopting resolutions regarding the sale of real estate.

The Act on Co-operative Law provides for the possibility of transition from the direct democracy system to the indirect democracy of co-operatives.<sup>423</sup> The statutes may provide for a replacement of the general meeting of members by a representative meeting if the number of members exceeds the number indicated in the statutes. In this case, rules for determining the number of representatives, their election and the duration of their representation should be specified. These regulations apply primarily to dairy co-operatives. The time, place and agenda of the meeting of the representatives shall also be communicated to all members of the co-operative in the manner specified in the statutes. A non-representative member of a co-operative may attend a meeting of representatives without voting rights.

However, the replacement of a general meeting by a meeting of representatives is sometimes criticised in the doctrine. For example, Z. Niedbała emphasised that the participation of a member in the general meeting and co-deciding through participation in voting belongs to the area of the fundamental rights of the organisation. Co-operative self-governance is in fact the ability to "...decide on the co-operative's own affairs within the limits of the law in a democratic way, i.e. directly involving its members in the management while ensuring the full equality of all its members."<sup>424</sup>

The right of all members to participate in the meetings and vote on draft resolutions is one of the most important corporate rights. As regards agricultural co-operatives, meetings of representatives are often held in dairy co-operatives or pig producer co-operatives. This is necessary in view of the large number of members. For example, in 2011 MLEKPOL had 13,834 members, of whom 530 were new members admitted in that year.<sup>425</sup> Each co-operative member

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<sup>423</sup> Z. Niedbała, *Formy demokracji wewnątrz spółdzielczej w spółdzielniach mieszkaniowych*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2009, issue 4, p. 45.

<sup>424</sup> M. Gersdorf, J. Ignatowicz, *Prawo spółdzielcze. Komentarz*, Warszawa 1985, p. 17.

<sup>425</sup> *MLEKPOL podsumował rok* [online]. Grajewo [accessed on: 2015-09-02]. Available at: <[http://e-grajewo.pl/wiadomosc,MLEKPOL\\_podsumowal\\_rok,17631.html](http://e-grajewo.pl/wiadomosc,MLEKPOL_podsumowal_rok,17631.html)>. By the way, it is worth mentioning that co-operative banks have a large number of members. For example: in 2012. Krakowski Bank Spółdzielczy had 35 000 members in several provinces, Bank Spółdzielczy in Kielce – 12 000

has the right to participate in the general meeting and should be notified of the time, place and agenda of the meeting. The method of notification and the time limits for doing so are laid down in the statutes. Minutes of the general meeting must be drawn up and made available to the members of the co-operative. In addition, any member of the co-operative or the management board may bring an action for the annulment of a resolution of the general meeting, which must be brought within six weeks of the date of the general meeting. The legislator also protects the members who have not participated in the meeting owing to a defective convocation. Then the action is brought by a member absent from the General Meeting within six weeks from the date of this member's becoming aware of the resolution, but not later than one year from the date of (the holding of) the General Meeting. A decision of the court establishing the non-existence or invalidity of a resolution of the general meeting or repealing a resolution shall have legal effect in respect of all the members and bodies of the co-operative. Such rights of members are part of the second co-operative principle, i.e. democratic membership control.

The general meeting may dismiss those members of the management board who have not been granted the approval (*absolutorium*) pursuant to Article 38(1) (2)), irrespective of which body (in accordance with the statutes) elects the members of the management board. In this case, the provision of Article 41 § 1 of the Act on co-operative law, according to which the general meeting may only adopt resolutions on matters included in the agenda, announced to the members within the time limits and in the manner specified in the statute, shall not apply. A member may not appeal against a resolution whereby he or she has been deprived of membership of the Management Board.

### **3.4.5. Registration of agricultural co-operatives in the National Court Register and entry in registers related to agriculture**

An extremely important activity at the stage of organising an agricultural co-operative is the submission of documents to the National Court Register for entry in the register of entrepreneurs. This must be done on the official printed form prescribed by the applicable provisions.<sup>426</sup> The application must be accompanied by a number of documents, including the statutes, specimen signatures and others. It should be clearly emphasised that a co-operative may only start its business activity after it has been registered in the National Court Register as there is no form for a co-operative in the course of organisation, contrary to the case of

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in several poviats, See *Wystąpienie Krajowej Rady Spółdzielczej do Marszałka Sejmu RP*, December 2010 [online]. KRS [accessed on: 2014-10-02]. Available at: <<http://krs.org.pl>>.

<sup>426</sup> KRS-W5 (obligatory), other, e.g. KRS-WM, KRS-WK, KRS-WL.

companies with share capital for which such a form is provided in the Polish Code of Commercial Companies and Partnerships.<sup>427</sup>

A co-operative acquires legal personality only when it is entered in the National Court Register. Under the Act of 4 October 2018 on farmers' co-operatives, the name of such a co-operative includes the designation "Farmers' Co-operative" and is written in the National Court Register and the statutes.

Starting up a business by an agricultural co-operative or extending its scope often requires an entry in additional registers relating to agriculture. Agricultural co-operatives, both those conducting primary agricultural activity and co-operative groups or producer organisations, intending to use EU funds, must upon registration in the National Court Register file an application with the Agency for the Restructuring and Modernisation of Agriculture (ARiMR) to obtain an identification number (agriculture producer, producers' organisation). The procedure was laid down in the Act of 18 December 2003 on the national system of producer registers, the register of agricultural holdings and the register of payment applications. In the light of this legislative act, not only individuals are agricultural producers. Such a term may also apply to a legal person or an organisational unit without legal personality which is: (a) the owner of an agricultural holding, or (b) a farmer within the meaning of Article 2(a) of Regulation No 73/2009, or (c) the owner of an animal.

A question arises as to what activities an agricultural co-operative has to undertake in order to start an organic activity within an agricultural holding. These procedural issues are regulated by the Polish Act of 25 June 2009 on organic farming.<sup>428</sup> Pursuant to Article 4 of the Act, a declaration that activities are being undertaken in the field of organic farming must be submitted to certification bodies for acceptance. It requires a form drawn up by the Chief Inspector of Commercial Quality of Agro-Food Products which can be downloaded from the website. It should be noted that the certification body may request additional information or clarification, within a specified time limit, of the information contained in the declaration of organic farming activities in so far as this is necessary to ascertain that the conditions laid down in the legislation on organic farming for the pursuit of such activities or the importation of such produce are met.<sup>429</sup>

A more complicated procedure is related to the registration of co-operatives as agricultural producer groups. After obtaining an entry in the National Court Register, the co-operative has to apply for registration with the Agency for Restructuring and Modernisation of Agriculture, which keeps a register of agricultural producer

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<sup>427</sup> Act of 15 September 2000 Kodeks spółek handlowych (uniform text Dz. U. of 2017 item 1577 as amended).

<sup>428</sup> Dz. U. of 2015 item 497.

<sup>429</sup> For more on organic farming see K. Leśkiewicz, *System jakości produktów rolnictwa ekologicznego. Aspekty prawne*, Poznań 2011.

groups. Article 7 stipulates that the competent director of the Agency for Restructuring and Modernisation of Agriculture will issue a decision on the recognition of a group if it meets the conditions laid down by law and then, following the approval of a business plan, will subsequently enter the group in the register of groups.

Once a co-operative group of agricultural producers has been registered in the register of entrepreneurs in the National Court Register currently kept by the Agency for the Restructuring and Modernisation of Agriculture, it may start running its business. The process itself of setting up a company, and in particular of its financial resources, is not complicated or expensive in this case. What is needed is the registered office of the co-operative, and sometimes additional storage facilities for agricultural products or vehicles. Unlike agricultural co-operatives, these groups do not run an agricultural holding. As a rule, it is only in the course of their business that the group purchases additional machines, equipment or warehouses.

Agricultural producer groups, including those operating in the form of co-operatives, may form associations of agricultural producer groups. The Act on agricultural producer groups stipulates that the President of the Agency for the Restructuring and Modernisation of Agriculture determines, by way of an administrative decision, that the association meets certain conditions and then enters it in the register of associations. An association may be created for the following purposes in particular: organising and coordinating the supply of the means of production or the disposal of products or groups of products produced by the group in the course of its economic activities; storing and preparing for marketing products or groups of products and their first processing. Some of the examples of objectives of the association's activity indicated by the legislator are the activities performed by co-operatives within the framework of their agricultural activity. Thus, this activity may be taken over by the association (e.g. the supply of means of production or the storage and the sale of agricultural products).

Additional registration steps also had to be taken by co-operative operators interested in setting up a pre-recognised fruit and vegetable producer group in order to be able to apply for recognition as a producer organisation only at a later stage. Such a procedure resulted from Article 125e of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products.<sup>430</sup> It states that '(...) in Member States which acceded to the European Union on 1 May 2004 or thereafter, producer groups may be formed as a legal entity or clearly defined part of a legal entity on the initiative of farmers growing one or more products of the fruit and vegetables sector or of products of that

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<sup>430</sup> O.J. E.U. L 299 of 16.11.2007, p. 1.

sector solely intended for processing, with a view to being recognised as a producer organisation. Such producer groups may be allowed a transitional period in which to meet the requirements for recognition as producer organisations in accordance with Article 122 and, in order to qualify, they must submit a phased recognition plan to the competent Member State, the approval of which signals that the period has begun and constitutes preliminary recognition. The transitional period may not exceed five years.

Following the period of recognition and the fulfilment of a number of requirements, a fruit and vegetable producer organisation becomes eligible for membership in a fruit and vegetable producer organisation.<sup>431</sup> The total value of products produced by producers and sold within a given 12-month period<sup>432</sup> must be at least PLN 500 000. Moreover, producers may belong to only one producer organisation in respect of a product and shall be obliged to market their entire production through that organisation. However, there are exceptions to this rule. The Regulation of the Minister of Agriculture and Rural Development of 11 December 2008 on the maximum part of production or products eligible for selling to consumers for their own needs stipulates that a member of a fruit and vegetable producer organisation recognised for one group may sell to consumers, for their own needs, not more than 20% of the volume of his production directly on his farm or outside it, but in the case of an organisation recognised for two or more product groups, not more than 25%.

In order to qualify as recognised producer organisations, producer groups which are granted preliminary recognition must submit an application meeting the requirements of the rules, including information on the number of members of the producer organisation and the value of the products produced by the members of the producer organisation and sold during a reference period as defined by the rules. Such associations already have at their disposal appropriate buildings, equipment, machinery and means of transport acquired during the process of recognition. Such infrastructure and staff enable efficient transport, warehousing, storage, packaging and marketing of the fruit and vegetables produced by the members of the organisation.<sup>433</sup>

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<sup>431</sup> ARiMR, *Najczęściej zadawane pytania i odpowiedzi – uznane organizacje producentów* [online]. RKB [accessed on: 2017-01-06]. Available at: <<http://arimr.gov.pl/pomoc-unijna/inne-formy-pomocy/pomoc-na-rynku-owocow-i-warzyw/najczesciej-zadawane-pytania-i-dpowiedzi-uznane-organizacje-producentow.html>>.

<sup>432</sup> Starting not earlier than 1 January of the third year preceding the year of submission of the application for recognition of a producer organisation for fruit and vegetables and ending not later than 31 December of the year preceding the year of submission of the application for recognition as a producer organisation for fruit and vegetables.

<sup>433</sup> *Strategia krajowa dla Zrównoważonych Programów Operacyjnych organizacji producentów owoców i warzyw w Polsce na lata 2010-2013*, appendix to the information of the Minister of Agriculture and Rural Development of 18 August 2011, Dz. U. MRiRW No 19, item 27.

### 3.4.6. Work or the supply of agricultural products by members of an agricultural co-operative

Depending on the objectives of each agricultural co-operative, what really matters is either the work of its members on the co-operative's agricultural holding or the supply to the co-operative of agricultural products produced by the holding. These activities are important for both the organisational and the operational phase. They are therefore presented in a separate section.

It is worth starting the discussion by considering agricultural production co-operatives (APCs). A member of the APC who is fit for work has the right and obligation to work in that entity as determined annually by the management board, in accordance with the needs arising from the business plan. This is provided for in Article 155 of the Act on Co-operative Law. However, this is not a classic employment contract under the Labour Code, as has been emphasised by the common courts in their extensive case law. The Court of Appeals in Kraków in the judgment of 19 December 2012<sup>434</sup> asserted that although some of the rights and obligations arising from the work of a member of an agricultural production co-operative may be similar or identical to those arising from an employment relationship, a member of an agricultural production co-operative may not, as a result of the legislature's decision, perform work under an employment contract, and that therefore the employment relationship of a member of an agricultural production co-operative may not be the basis for the member's work in an agricultural production co-operative.<sup>435</sup>

Article 2 of the Labour Code provides that an employee is a person employed on the basis of a contract of employment, appointment, selection, nomination or a co-operative contract of employment. On the other hand, the legislation does not provide for any form of employment in a production agricultural co-operative that exists in a labour co-operative. This refers to Article 182(3) of the Act of 16 September 1982 on the Law on co-operatives, which provides that the employment relationship between a co-operative and its member is established by a co-operative employment contract.<sup>436</sup> As A. Stefaniak stated, the membership relationship in an agricultural production co-operative is in its entirety and in consequence also in the part related to work a civil law relationship<sup>437</sup> (Supreme Court of 24 October 1996)<sup>438</sup>. Thus it is a certain specific form of performing

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<sup>434</sup> III AUa 1022/12, LEX No 1246715.

<sup>435</sup> Ibidem.

<sup>436</sup> See Rationale to the judgment of the Supreme Court of 25 April 2012 I UK 384/11.

<sup>437</sup> A. Stefaniak, *Komentarz do art. 155 ustawy – Prawo spółdzielcze*, OSNC1997, No 2, item 19.

<sup>438</sup> See Rationale to the judgment of the Supreme Court of 24 October 1996, III CZP 111/96, OSNC 1997, No 2, item 19.

work by members of agricultural production co-operatives, exempted from the protective regulations of labour law.<sup>439</sup>

Such a structure of performing work is often disadvantageous for members of co-operatives. For example, in the judgment of 28 May 2013, the Court of Appeal in Gdańsk ruled that the period of employment in an agricultural production co-operative cannot be considered as a period of work under special conditions for the purpose of obtaining an early retirement pension. A member of an agricultural production co-operative is not an employee and only an employee is entitled to such a benefit.<sup>440</sup> Rulings of other courts have followed the same pattern.<sup>441</sup> In its judgment of 20 March 2003 the Supreme Administrative Court<sup>442</sup> stated that work performed within the framework of membership of an agricultural production co-operative is not to be treated as work in particular (specific) conditions.

Nevertheless, work performed by a member of an agricultural production co-operative is similar to an employment relationship. Here reference should be made to the judgment of the Supreme Court of 16 November 2006.<sup>443</sup> Although there exists no employment relationship separate from the membership relationship between a member of an agricultural work co-operative and a co-operative, the resulting right and obligation to work as a member of the co-operative are becoming increasingly similar to the employment relationship regulated by the provisions of the labour code, and in particular to the employment relationship of members of a work co-operative (a co-operative employment relationship). In the opinion of the Supreme Court, “the lack of regulation concerning the rights of a member of an agricultural production co-operative who has been unjustifiably deprived of work justifies *per analogiam*, also in the current social and economic situation, the application of the provision of Article 188(2) of the Act on co-operatives to the determination of the scope of these rights.”

It is worth mentioning here that, for example, Article 161, paragraph 1 of the Act on co-operative law stipulates that members and their family members working in a co-operative are entitled to benefits related to pregnancy, childbirth and childcare on the terms specified in the labour law. However, a resolution of the general meeting of an agricultural producer co-operative stating that “members shall work under the same conditions as employees” cannot alter the legal nature of their employment.<sup>444</sup> If a person initially employed on the basis of a contract

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<sup>439</sup> See Rationale to the judgment of the Supreme Court of 2 February 1993, III CZP 164/92, OSNC 1993, No 7-8, item 127. Also see L. Brzozowski, *Odpowiedzi na pytania dotyczące niektórych przepisów o nagrodach jubileuszowych, part I.*, „Służba Pracownicza” 1990, No 9, p. 11.

<sup>440</sup> III AUa 1910/12, LEX No 1322451.

<sup>441</sup> Judgment of the Supreme Court of 21 October 2009, I UK 115/09, LEX No 558571.

<sup>442</sup> II SA/Łd 2276/01, „Pr. Pracy” 2003, No 9/42.

<sup>443</sup> I CKN 311/00, Legalis No 277129.

<sup>444</sup> III UK 92/07, OSNP 2009, No 5-6, item 80.

of employment from outside the group of co-operative members subsequently becomes admitted as a member of the co-operative, the contract of employment is terminated.<sup>445</sup>

The regulations also provide for separate rules concerning remuneration. Members are remunerated for their work in the form of a share of distributable income according to their workload. Detailed rules for evaluating the contribution of labour to determine the share of members in the distributable income (created after subtracting deductions from the general income; Article 166 of the Act on co-operative Law) or the deductions for funds as provided for in Articles 168 and 171 of the Act on co-operative law,<sup>446</sup> is determined by the general meeting which takes into account the working conditions, skills and qualifications needed for the work, and the level of responsibility for the function performed.<sup>447</sup> The statutes of a co-operative should define a unit as a measure of the evaluation of its members' workload contribution. On the other hand, the Act on co-operative law does not contain separate regulations concerning the remuneration of members of agricultural production co-operatives in the form of bonuses and prizes. Such a possibility, however, is not precluded.<sup>448</sup>

As explained by the Supreme Court in its judgment of 18 March 1986,<sup>449</sup> the regulation in Article 158 of the Act on co-operatives of the method of remunerating members of agricultural production co-operatives for work, i.e. in the form of a share in the income of the co-operative in accordance with the contribution of work, does not exclude the possibility of introducing additional remuneration by the statutes, in the form of bonuses and prizes depending on the rules laid down in the statutes.<sup>450</sup>

The Act on co-operative law stipulates that when assigning work to members, the co-operative should take into account their professional and personal qualifications. Their identification should therefore be a matter for the co-operative and should take account of its objectives and size. In addition to its members, a co-operative may also employ members of the co-operative's household, who are considered to be any member of the family, as well as other persons if they live in and manage a joint household with them. Thus, the legislature has taken account of the fact that the farms of the APCs were created mainly from the farms of members,

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<sup>445</sup> Also see Z. Niedbała, *O kontrowersjach pracowniczego zatrudnienia członków zarządu spółdzielni*, „RPEiS” 2004, No 3, p. 127 et seq.

<sup>446</sup> A. Stefaniak, *Komentarz do art. 168 ustawy – Prawo spółdzielcze*, SIP LEX 2014.

<sup>447</sup> See judgment of the Supreme Court of 18 January 2001, V CKN 191/00, OSNC 2001, No 9, item 131, OSG 2002 No 1, item 5, “Gazette of the Supreme Court” 2001, No 5, p. 10, B. Inf. Pr. 2001, No 3, Legalis No 49631.

<sup>448</sup> See A. Stefaniak, *Komentarz do art. 158...*, op. cit.

<sup>449</sup> IV CR 19/86, OSNC 1987, No 2-3, item 43.

<sup>450</sup> M. Gersdorf, *Wynagradzanie członków rolniczych spółdzielni produkcyjnych w świetle zmian ustawy Prawo spółdzielcze – „PiZS” 1996*, No 4, p. 12 et seq.

who usually ran them together with their families. A household member is entitled to remuneration for his or her work in accordance with the regulations applicable to the member, unless the agreement stipulates otherwise. The Act also provides that members and their household members are entitled, first, to annual leave in the amount and according to the rules set forth in the Statutes (the Statutes also define the manner of calculating the remuneration due for leave), and second, to benefits related to pregnancy, childbirth and childcare on the principles set forth in the provisions of the Labour Law.

The Act on co-operative law introduces the principle that members may pursue their claims in court without having first exhausted the intra-co-operative procedure. The claims of a member and a member of the household for work performed are subject to a statute of limitations of three years from the date on which the claim became due. An important point is that Article 165 of the Act on co-operative law stipulates that the remuneration of a member and a member of the household for work enjoy the same protection as that provided by law for the remuneration of an employee. In a judgment of 24 June 1985, the Supreme Court ruled that a member of an agricultural production co-operative who was deprived of his job as a result of unjust dismissal or exclusion from the co-operative may claim, pursuant to Article 471 of the civil code, appropriate compensation for the resulting loss. The compensation to be paid to a member of a production co-operative should be based on the average income which he or she would have earned if he or she had not been unjustly deprived of the job for the period of unemployment, which however may total no more than six months.<sup>451</sup> In turn, in the judgment of 16 November 2000, the Supreme Court expressed the opinion that the lack of regulation concerning the rights of a member of an agricultural production co-operative unjustifiably deprived of work justifies *per analogiam*, also in the current social and economic situation, the application of the provision of Article 188(2) of co-operative law for the determination of the scope of these rights.<sup>452</sup>

Some co-operatives provide for a transitional period prior to admitting a member, termed a candidate period, during which the main aim is to ascertain the professional skills of the candidate as a future member of the co-operative and his/her ability to cooperate with other members of the co-operative. Thus a question arises as to the nature of such a relationship – whether candidates to such a co-operative have a civil law relationship or an employment relationship with the co-operative during the period in which they perform their work. In its resolution of 2 February 1993, the Supreme Court ruled that the relationship between the candidate for membership of an agricultural production co-operative and that co-operative in terms of the provision of work is of a civil law nature.<sup>453</sup> In its justification,

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<sup>451</sup> II CR 203/85, OSNC 1986, No 6, item 101.

<sup>452</sup> I CKN 311/00, LEX No 52413.

<sup>453</sup> Resolution of the Supreme Court of 2 February 1993, III CZP 164/92, Legalis No 27969.

the Supreme Court stated that “the Act on co-operative law, apart from determining the necessary content of the co-operative statutes, leaves co-operatives free to shape other statutory provisions, and thus also, among other things, to determine the requirements to be met by a person applying to become a member. The basis for the candidate’s employment with an agricultural production co-operative is therefore a traineeship contract, which obliges the candidate to work for a co-operative on a membership basis.”

In the Court’s opinion, therefore, this is a specific form of employment of persons in the co-operative business, exempt from the protective regulations of the labour law. Although the traineeship contract is in fact similar to a fixed-term contract in which the candidate is treated as a member of an agricultural production co-operative within the scope of his or her employment obligations, such a candidate does not enjoy any rights as a member. The employment of a candidate for membership of an agricultural production co-operative therefore takes place within the framework of a civil law relationship similar to that of membership.<sup>454</sup> Such a view of the Supreme Court has also been reflected in the literature.<sup>455</sup>

In the case of social co-operatives, it should be stressed that each member has the right to work for such a co-operative. The Act on social co-operatives provides that the employment relationship between a social co-operative and its member is to be established on the basis of a co-operative contract of employment and in the way laid down in Article 201 of the Act of 16 September 1982 – Co-operative law. This latter provision provides that the statutes may provide for the employment of all or part of the members not on the basis of a co-operative contract of employment but on the basis of a labour-intensive contract, a contract of mandate or a work contract, as appropriate for the type of activity of the co-operative.

Article 77 (2) of the labour code provides that the employment relationship based of a co-operative contract of employment is regulated by the Act on co-operative law, and to the extent not otherwise regulated by this legislative act, the provisions of the labour code shall apply accordingly. Similarly, Article 199 indicates that in matters not regulated by the provisions of Articles 182-198, the provisions of the labour law shall apply accordingly to a co-operative employment contract, with the exception of the provisions on the conclusion of probationary employment contracts. The provisions of the Act on co-operative law contain separate regulations concerning, among others, termination and expiry of this agreement, as well as the exclusion or expulsion of a member from the co-operative.

A social co-operative may employ persons who are not members of the co-operative, however their total number (indicated in Article 4, paragraph 1 of the Act) may not be less than 50% in relation to the total number of members of the co-operative and persons employed by the social co-operative. The right

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<sup>454</sup> Ibidem.

<sup>455</sup> E.g. see K. Pietrzykowski, *Powstanie i ustanie...*, p. 41 et seq.

to remuneration of a member of a social co-operative does not include the right to a share in the balance sheet surplus.

Another set of rights and obligations of co-operatives exists in co-operative agricultural producer groups. As already indicated, these co-operatives take over part of the obligations of the co-operatives in respect of their agricultural activities. However, these obligations vary and depend, in the vast majority, on the product or group of products for which the co-operative group is established. There is no doubt that the main duty of agricultural producers is to supply co-operatives with exactly these agricultural products. This follows not only from the law and the statute itself, but also from the member contract. When deciding whether or not to become a member of an agricultural producer group, the member generally has to sign a membership contract. The content of such a contract depends on the scope of the group's activity and is related to the regulations concerning agricultural markets.<sup>456</sup> In particular, it lays down rules for cooperation between an agricultural producer who is a member of a group and a co-operative with regard to the production on the holding of the products for which the group is established (e.g. cereals, sheep, poultry) and the sale of the products to their co-operative, which then sells them, as a general rule, to third parties. As a rule, such an agreement also includes the rules of procurement of means of production, meeting the technological requirements of production, including quality, delivery schedule and financial settlement principles.

A member contract concluded with a co-operative agricultural producer group is generally considered to be an unnamed contract. However, it contains elements of a cultivation contract. An agricultural producer undertakes to produce certain agricultural products of the required quality and a group undertakes to collect them. Some groups call member contracts cultivation contracts. However, they are generally wider in scope than cultivation. They complement the general principles of the relationship between the group and the agricultural producer as set out in the Act and in the act founding the co-operative. At the same time, it should be stressed that the contract concluded with a co-operative is combined with a cultivation contract or a sales contract concluded by a co-operative group of agricultural producers. There is a correlation between the obligations of an agricultural producer group under a sale/purchase agreement that are acquired from members of agricultural products and the obligations of co-operatives laid down in the member contracts. Member contracts often stipulate that a group becomes the owner of a product after it has been supplied by an agricultural producer and as such issues an invoice. Undoubtedly, an important element of such a contract is the quality control procedures and the rules of production of agricultural products, as well as sanctions for non-performance of the contract.

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<sup>456</sup> See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 233 et seq.

Member contracts often contain a description of the production technology used by the producer, the provision of access to the holding for authorised group representatives, an obligation to provide the group with the information necessary for planning the work (quantities delivered, dates, off-group sales, etc.) and other matters.<sup>457</sup> The contract will also normally include provisions on promoting the products of the members of the group, negotiating contracts on behalf of the members of the group, providing the means of production, providing marketing information to the members, prohibiting activities in competition with the members' holdings.<sup>458</sup>

An agricultural producer, by choosing to establish or join a group, acquires the opportunity to receive a higher price for agricultural products, use cheaper means of production, share agricultural equipment, storing, packing and standardising products or groups of products. At the same time, the fact that a group takes over certain activities related to the economic activity conducted by a co-operative results in the agricultural producer giving up the freedom to decide on the principles of cultivation of a given product. It concerns the rules of its production, including those concerning the quality and quantity of products or groups of products and the manner in which they are prepared for sale, their sales, the supply of means of production, the rules of providing information on the sales volume and prices obtained for the products for which the group was established and which are sold outside the group.

Reference should also be made to the agreements concluded by dairy co-operatives with dairy farmers. Each co-operative has an internal model contract which is sent to new members. These contracts are generally referred to as cultivation contracts, milk delivery contracts or member contracts for the delivery of milk. They result in the agricultural producer's obligation to deliver to co-operatives, as a rule, all milk produced (or e.g. 80%), to comply with the requirements set out in the legal regulations and internal documents prepared on the basis of these regulations and standards. This includes, for example, obtaining a veterinary certificate for the production of "Extra" class milk and equipping the farm with adequate facilities for storing and collecting milk. The co-operative, on the other hand, undertakes to collect milk, examine its quality and pay the producer for the quality of the raw material in a timely manner, at prices set by the management board. In addition, the contract may extend the contracting authority's obligations to provide continuous instruction and advice in order for the producer to

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<sup>457</sup> Compare a sample of a member contract in e.g. Krajowa Rada Spółdzielcza, *Organizacja i funkcjonowanie grup producentów rolnych*, ed. W. Boguta, Warszawa 2008, p. 192 et seq.

<sup>458</sup> See a sample of a membership agreement e.g. Krajowa Rada Spółdzielcza, *Instrukcja postępowania przy zakładaniu spółdzielni jako grupy producentów rolnych* [online]. KRS [accessed on: 12-02-2014]. Available at: <[http://www.krs.org.pl/images/Robocze\\_jl/GRP/Pdfy\\_1/4\\_Instrukcja%20postep.pdf](http://www.krs.org.pl/images/Robocze_jl/GRP/Pdfy_1/4_Instrukcja%20postep.pdf)>.

achieve “Extra” class milk. The contract between the parties is usually concluded for an indefinite period of time with the possibility of termination by notice, and the conditions for termination or withdrawal from the contract are set out in the statute of the co-operative. If a member fails to comply with the cultivation contract and does not meet the conditions laid down in the statutes, he or she may be deprived of membership and be struck from the register of co-operative members.

The Court of Appeal in Białystok I (Civil Division) in the judgment of 9 April 2014<sup>459</sup> asserted that a contract entered into by parties that they termed “a contract for the supply of milk” is *de facto* an unnamed contract, most similar to a cultivation contract regulated in Article 613 of the civil code, even if the contract between the parties does not specify precisely the quantity of milk that an agricultural producer is to produce and deliver. In this case, it should be stressed that the quantity of milk produced depends on a number of factors, including natural factors. Given the specific nature of the product, it is not possible to determine precisely how much milk the contracting party will be able to produce over a given period. The parties cannot indicate any specific quantity of milk that an agricultural producer is to produce and deliver to the defendant.<sup>460</sup> On the other hand, it should be noted that the parties may specify in the contract the quantity of milk which the contracting party undertakes to produce and deliver as precisely as possible, by obliging the producer to deliver all the milk produced on the holding.<sup>461</sup>

Worthy of note and approval is also the recent approach to this issue shown by the Supreme Court which in its judgment of 4 March 2015<sup>462</sup> when the Court held that “pursuant to Article 613(1) of the civil code for the validity of the said contract it will suffice to indicate the required quantity of agricultural product produced at a given time at the designated holding known to the contracting party.”

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<sup>459</sup> I ACa 866/13, Legalis No 895122.

<sup>460</sup> *Ibidem*.

<sup>461</sup> *Ibidem*.

<sup>462</sup> IV CSK 437/14, LEX No 1677053.



# SELECTED LEGAL ELEMENTS OF THE OPERATION OF AGRICULTURAL CO-OPERATIVES

### 4.1. Acceptance of new members to agricultural co-operatives

An agricultural co-operative as an organised unit may undertake an economic activity specified in its statutes. However, at the same time it may, during its operational period, supplement and modify its organisational structure. It may also enlarge the membership by taking in new members. What must be emphasised here is that the prerequisite for joining a co-operative is the submission by an applicant of a declaration and its subsequent acceptance by the competent authority of the co-operative in question. This requirement does not apply to the founders of a co-operative. The procedure for joining a co-operative is provided for in Article 16 of the Act on co-operative law.

The declaration should be submitted in writing and should contain the name and surname of the applicant, the applicant's place of residence and, if the applicant is a legal person, its name and registered office, the number of declared shares, information on contributions (if the statutes provide for such contributions) and other information provided for in the statutes. It is essential that the declaration aimed at obtaining membership in a co-operative is signed by the applicant and when the latter is a legal person or an unincorporated entity, by a person in a position to represent it. Following the judgment of the the Supreme Court of 19 February 2004, the membership declaration of a person joining a co-operative may be submitted by proxy.<sup>463</sup>

The resolution to accept a membership declaration should be adopted within one month from the date of its submission. Only the statutes may introduce a different time limit. As a rule, the acceptance of a new member is done at a general meeting by way of a resolution. Where the accepting authority is not the general meeting, the statutes should indicate to which body an appeal against a decision refusing admission is to be lodged and determine the time limits for lodging and

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<sup>463</sup> IV CK 74/03, Legalis No 64228.

considering such an appeal. The notification of refusal should contain a statement of reasons. Following an appeal, the final decision must be issued for the party concerned in writing within two weeks from the date when a resolution refusing membership was adopted.

In practice, doubts have arisen as to whether a person who has submitted a membership declaration has a claim to membership of the co-operative. Both literature and judicature recognise that the Act on co-operative law does not grant a person who expresses a readiness to join a co-operative a claim to be admitted to the group of members. Moreover, in the judgment of 31 January 2002, the Supreme Court<sup>464</sup> stated in the grounds for its decision that the legislator assumed that, in accordance with the principle of self-governance of co-operatives, only the authorities of co-operatives may decide and determine whether the applicant has met the requirements for membership of the co-operative in question. In the court's opinion, there have been exceptions to this rule, for instance if the claim for acceptance to a co-operative has been made on a specific basis, e.g. the statutes of the co-operative, or a contract concluded with the co-operative, or a specific provision to that effect.<sup>465</sup>

Regarding the stage of the organisation of a co-operative, there are also requirements to be met by founders and members. In the case of agricultural production co-operatives, co-operative groups or organisations of agricultural producers, their founders and members were predominantly to be agricultural producers and persons with qualifications useful for working in co-operatives. For social co-operatives, on the other hand, membership may also be granted to persons other than those referred to in Article 4(1) and (2) of the Act (i.e., *inter alia*, the unemployed or the disabled), if their work for this entity requires special qualifications not possessed by other members of the co-operative in question. However, the number of such persons may not exceed 50% of the total number of members of a social co-operative. In the case of co-operatives engaged in agricultural activities, their founders or members may be persons suitably qualified to work on an agricultural holding or in special sections of the agricultural production. In addition, the Act provides that membership in a social co-operative may be obtained by persons with a limited legal capacity (as referred to in Article 4(1) of the Act).

Regarding farmers' co-operatives, its founders are at least 10 farmers. However, members of these co-operatives may also be other persons, not necessarily farmers who must nevertheless satisfy the requirements listed in the Act of 4 October 2018 on farmers' co-operatives. And so, the Act provides that a farmers' co-operative consists of at least ten members who are farmers unless statutes provide for a higher number of members who are the farmers. The farmers'

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<sup>464</sup> Judgment of the Supreme Court of 31 January 2002, IV CKN 646/00, Legalis No 55434.

<sup>465</sup> *Ibidem*.

co-operative must not refuse to accept a farmer or an entity which is not a farmer as a member if they meet the requirements specified in the Act or in the statutes. Regarding members who are not farmers, the Act states that they can be natural or legal persons who are not farmers but who conduct an activity related to storing, sorting, packing or processing agricultural products or groups of these products or fish produced by the farmers.

Agricultural producers also constitute the basis for the formation of preliminarily recognised fruit and vegetable producer groups, but in the case of recognised organisations (which may also take the form of co-operatives) those not active in this field may also join. This issue was addressed in the Regulation of the Minister of Agriculture and Rural Development of 7 June 2004 on the conditions of accession of legal persons and natural persons who are not producers of fruit and vegetables to producer organisations.<sup>466</sup> This Regulation provides that legal persons or natural persons other than fruit and vegetables producers may join a fruit and vegetable producer organisation if the statutes or the contract of a fruit and vegetable producer organisation indicate, *inter alia*, the possibility and the procedure for admission to this organisation of a legal person or a natural person other than a fruit and vegetable producer, and determine the rights and obligations of a legal person or a natural person other than a fruit and vegetable producer. Another requirement is that a legal or natural person other than a fruit and vegetable producer has the technical means, enabling such a person to store, stock, sort or pack fruit or vegetables. Also a natural person who is not a fruit and vegetable producer, or a person who supervises the activities of a legal person who is not a fruit and vegetable producer, or another person employed by it, may become a member, provided that such a person possesses the professional qualifications necessary to manage the activities of a producer organisation.

It should therefore be pointed out that in the case of co-operative members of recognised fruit and vegetable producer organisations also, there is also a connection with the agricultural produce (in this case fruit and vegetables) produced by other members using the technical means of a co-operative or using the professional qualifications of a member of this co-operative, enabling such a member to manage the activities of a producer organisation.

According to the existing legal provisions, a producer of fruits and vegetables may not be a member of a producer group granted preliminary recognition for more than five years.

The Act on agricultural producer groups also introduces the minimum period of membership of an agricultural producer group organised in the form of a co-operative. It is three years, starting from the date of the decision to enter the agricultural producer group in the register.

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<sup>466</sup> Dz. U. of 2004 No 144, item 1522.

## 4.2. Rights and obligations of members of agricultural co-operatives

The opinion expressed by K. Pietrzykowski should be shared: that the membership relationship in a co-operative is a civil-law relationship of a permanent nature.<sup>467</sup> This means that it is a relationship which is not based on a single act or an omission to act but one that lasts for a specified period of time. A legal relationship is usually understood as a social relationship governed by legal norms and sanctioned by the State.<sup>468</sup> There are as many membership relationships in a co-operative as there are members.<sup>469</sup> The proper operation of an agricultural co-operative requires provisions that will guarantee its rights and encourage it at the same time to active participation in the co-operative. Article 18 (1) of the Act of 16 September 1982 states that all members have the same rights and obligations arising from the membership of a co-operative. This provision answers one of the basic principles of co-operatives, i.e. the equality of co-operatives and their members.

The rights enjoyed by the members of a co-operative may be divided into non-property and property rights.<sup>470</sup> The former may be exercised from the very moment the membership relationship is established, which means that they are usually of a concrete character (some, however, are abstract in nature).<sup>471</sup> Non-property rights include, first of all, the right to participate in a general meeting or a meeting of a member group; electing and being elected to the co-operative's authorities (management board, supervisory board); receiving a copy of the statutes and rules, becoming acquainted with resolutions of the co-operative's authorities, minutes of meetings of the co-operative's authorities, or requiring the competent authorities to consider applications concerning co-operatives' activities. Property rights are of an abstract nature and become concrete as a result of further events during the membership relationship.<sup>472</sup> Obligations arising from the membership relationship may be divided, as well as rights, into property and non-property obligations.

Obligations deriving from the membership relationship are also of a property or non-property nature. They include, among others, observance of the law, provisions of the statutes and rules based on them; taking care of the welfare and development of the co-operative and participating in the performance of

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<sup>467</sup> K. Pierzykowski, *Charakter prawny stosunku członkostwa w spółdzielni*, in: *Prawo rzeczowe. System Prawa Prywatnego*, Vol. 4, ed. E. Gniewek, SIP Legalis 2012, p. 328 et seq.

<sup>468</sup> Z. Ziemiński, *O metodzie analizowania stosunku prawnego*, „PiP” 1967, No 2, p. 195 et seq.

<sup>469</sup> K. Pierzykowski, *Charakter prawny...*, p. 328 et seq.

<sup>470</sup> J. Ignatowicz, *System ochrony praw członków spółdzielni*, „SKN” 1987, No 2, p. 37 et seq.; S. Grzybowski, *Prawo spółdzielcze w systemie porządku prawnego*, Warszawa 1976, p. 120; T. Misiuk, *Sądowa ochrona praw członków spółdzielni*, Warszawa 1979.

<sup>471</sup> K. Pietrzykowski, *Zmiany w prawie...*, pp. 1047-1053.

<sup>472</sup> *Ibidem*.

its statutory tasks. In the grounds for its judgment of 21 April 2005, the Supreme Court stressed that the Court of Appeal's position that the members of co-operatives (or their representatives) should be able to take actions aimed at meeting the needs of the circumstances and allow activities consistent with the interests of the co-operative, even with an element of defiance of procedure, was correct.<sup>473</sup>

Both the doctrine and the case law emphasise that the rights and obligations arising from the membership relationship are identical for all co-operative members while their derivative rights and obligations are differentiated.<sup>474</sup> A member of a co-operative is not liable to creditors for its debts. A member participates in covering the co-operative's losses only up to the amount of the declared shares. Co-operatives are entities that guarantee rights to their members. Each member has one vote, regardless of the number of shares held. The statutes of a co-operative of which only legal persons may be members may lay down a different principle for determining the number of votes to which its members are entitled.

The Act of 4 October 2018 on farmers' co-operatives contains further regulations. Its Article 7 provides that if the farmers' co-operative consists only of legal persons and the statutes do not provide for any other way of determining the number of votes than the one laid down in Article 36 § 2 sentence one of the Act on co-operative law, none of the members is allowed to have more than 20% of a total number of votes at the general meeting, also indirectly: 1) by having directly or indirectly a bigger number of votes at the general meeting, the meeting of shareholders or the meeting of members also as a pledgee or a user or on the management board of another legal person that is a member of the co-operative of farmers, and based on agreements with other persons; 2) if members of the management board of a legal person which is a member of the co-operative of farmers account for more than half of the number of members of the management board of another legal person which is a member of the farmers' co-operative.

According to Article 32 of the Act on co-operative law, the statutes may provide that in the matters specified therein, a member has the right to appeal against a resolution of the co-operative's authority to another authority indicated in the statutes. In this case, the statutes should specify the rules and procedure of intra-co-operative proceedings, and in particular the deadlines for lodging an appeal and its consideration. This gives members the opportunity to assert their rights. The regulations concerning resolutions and the possibility of taking legal action are also important.

The property rights and obligations of members of co-operatives are connected with the pursuit of an agricultural activity. In agricultural production co-operatives, a member has the right and obligation to work on an agricultural holding. This is provided for in Article 155 of the Act of 16 September 1982.

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<sup>473</sup> II CK 608/04, LEX No 1110950.

<sup>474</sup> See e.g. judgment of the Supreme Court of 20 June 2007, V CSK 125/07, Legalis No 89618.

The same applies to social co-operatives engaged in agricultural production. However, in co-operative producer groups, co-operative fruit and vegetable producer groups and co-operative agricultural producer organisations, their members generally conclude membership agreements for the supply of agricultural produce produced on the farm to a co-operative or enter into agreements under the specific sections of agricultural production.

It is also worth mentioning new solutions regarding rights relating to shares and non-cash contributions in farmers' co-operatives. Namely, pursuant to the Act on farmers' co-operatives, a former member of it and a person indicated by a deceased member as a person to whom the farmers' co-operative is obliged to return the shares after their death, is entitled to sell the shares to another member of the same co-operative. The purchaser of the shares is obliged to notify the co-operative about purchasing the shares within 7 days of the date of purchasing the shares.

Under Article 12 of the Act on the Farmers' Co-operative, the member of the co-operative of farmers who is the owner of the non-monetary contribution to the co-operative is entitled to dispose of that contribution but is obliged to notify the co-operative of farmers in writing about the intention to dispose of such contribution at least 12 months prior to the action unless the statute provides for an earlier date for that action.

### 4.3. Assets of agricultural co-operatives

As a rule, the co-operative possesses assets already at the stage of organisation. These assets, as a rule, increase during the course of the co-operative's economic activity. However, it should be noted that a co-operative may, in principle, also be created despite having no assets or funds.<sup>475</sup> As is pointed out in the literature, the requirement for assets in a co-operative is not the same as in the case of companies which are under an obligation to contribute capital before registration in the National Court Register.<sup>476</sup> The assets of agricultural co-operatives come mainly from registration fees, shares and other assets, e.g. land, buildings, and machinery contributed by members, and the rules for collecting these assets have been specified in the Act on co-operatives and in their statutes. Another extremely important, and often basic, source of wealth creation of co-operatives is the income generated by their agricultural activity or financial resources from the EU or Polish funds. This is in particular true of co-operative groups of agricultural producers,

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<sup>475</sup> P. Zakrzewski, *Majątek...*, p. 36 et seq.

<sup>476</sup> Ibidem. As far as a joint-stock company is concerned, an exception to the rule that for the establishment of a joint-stock company the shareholders are required to make contributions to cover the entire share capital, Article 309 § 3 and § 4 of the Polish Code of Commercial Companies and Partnerships, e.g. shares acquired for cash contributions should be paid for at least 1/4<sup>th</sup> of their nominal value before the registration of the company.

social co-operatives or other co-operative entities.<sup>477</sup> Since a co-operative operates to meet the needs of its members, it must take their interests into account when acquiring assets (e.g. when buying machinery, equipment or building storage facilities to be used by members for agricultural activities on their farms or on the common holding, in the case of an agricultural production co-operative).

According to Article 3 of the Act on co-operative law, the assets of a co-operative constitute the private property of its members. This provision raises interpretative doubts. It should be remembered that a co-operative is a legal entity and creates its own assets. Therefore, many authors rightly stress that this provision is unnecessary. For example, Z. Kuniewicz<sup>478</sup> noted that since a co-operative has legal personality, its assets (or, more precisely, its property, although Article 3 does not use this term) belong to the co-operative and not to its members. There cannot be a situation in which a legal person is deprived of property.<sup>479</sup> It is also worth noting that under the laws of many countries not all the assets of a liquidated co-operative are divided among its members, and their parts are transferred to a special co-operative development fund.

In the judgment of 9 July 2003<sup>480</sup> the Supreme Court held that under Article 3 of the Act on co-operative law amended in 1994 co-operatives are not deprived of their property and members of co-operatives are not co-owners within the meaning of civil law, but the property belonging to the co-operative, as a legal person, is only included in the category of private property, and is no longer – as it used to be – of a co-operative nature. In the reasons for this judgment it was emphasised that the doctrine and jurisprudence correctly indicate that this provision does not refer to property within the meaning of civil law. It is only an economic and not a legal concept.<sup>481</sup>

#### 4.4. Financial management of agricultural co-operatives

According to the general provisions of the Act on co-operative law, the basic own funds created in a co-operative are:

- 1) an equity fund resulting from the payment of members' shares, write-offs for members' shares, from the distribution of balance-sheet surplus or from other sources specified in separate regulations;
- 2) a resource fund resulting from payments of registration fees, part of the balance sheet surplus or other sources specified in separate provisions.

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<sup>477</sup> K. Kwapisz, *Prawo spółdzielcze...*, p. 22 et seq.; A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 245 et seq.

<sup>478</sup> Z. Kuniewicz, *Kilka uwag o nowelizacji prawa spółdzielczego*, „Radca Prawny” 1995, No 1, p. 26.

<sup>479</sup> *Ibidem*.

<sup>480</sup> III KK 334/02, LEX No 80298.

<sup>481</sup> *Ibidem*.

As A. Stefaniak rightly pointed out, unlike the share capital of companies, the equity fund is variable in nature (it is made up of a variable amount). There is no statutory lower limit, i.e. the statutory minimum, which is usually created not exclusively from contributions of member shares (it does not have to be the sum of the nominal value of shares). The reserve fund, on the other hand, is the equivalent of the reserve capital created by companies.<sup>482</sup>

Separate regulations concerning the funds are included in the regulations on agricultural production co-operatives. Article 167 of the Act states that the main equity funds created in this type of co-operative also include share capital and a resource fund. The first one is made up of payments of membership shares, write-offs for membership shares, division of general income or other sources specified in separate regulations; the second one is made up of registration fees paid by members, part of the general income, property values received free of charge or other sources specified in separate regulations.

The Act on social co-operatives, on the other hand, provides that this type of co-operative may create other funds of its own, as provided for in the provisions of the Act of 16 September 1982 on co-operative law or in the statutes, e.g. repair, investment, company social benefits fund, award fund. At the same time, detailed rules for creating and managing funds are set out in the rules adopted by the supervisory board, with the exception of the rules of the company social benefits fund.<sup>483</sup> They may be used by the members of the co-operative.

The Act of 4 October 2018 on farmers' co-operatives regulates the funds of a co-operative. The co-operative of farmers creates the following funds of its own: 1) members' fund that consists of members' shares; 2) current reserves consisting of joining fees paid by the members and not less than 10% of the balance surplus; 3) mutual funds consisting of payments amounting to at least 3% of the balance surplus, which is intended to develop and promote the co-operative of farmers (Article 13 of the Act of 4 October 2018).

The co-operative of farmers can establish other funds of its own regulated in separate acts or in its statute. The heirs of a deceased member are entitled to the members' fund. The statute may exclude the right to the members' funds of a member who has been excluded from the co-operative of farmers (Article 13).

According to the Act on agricultural producer groups of 2000, these groups may create a special fund. The level of and the principles for reimbursement of the special fund are laid down in the founding act. Disbursements from the special fund are intended to pay advances to members of the group in respect of products or groups of products supplied and for other purposes as defined in the Act. There is no doubt that such a fund is of great importance for members of co-operatives running an agricultural holding. Sales of groups of agricultural products obtained

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<sup>482</sup> A. Stefaniak, *Komentarz do art. 78 ustawy – Prawo spółdzielcze*, SIP LEX 2014.

<sup>483</sup> J. Blicharz, *Komentarz do art. 11 ustawy o spółdzielniach socjalnych*, SIP LEX 2012.

from members are spread over a period of time. With its buildings and warehouses, a co-operative often stores agricultural products and the transfer of ownership takes place when a high price is received.

For example, one of the statutes of an agricultural producer group states that a co-operative may set up a special fund for the payment of advance payments to members for the supplies of pigs to provide assistance in the event of natural or exceptional disasters and to provide loans to members for the development and modernisation of the production base. The Fund is made up of write-offs from the distribution of the balance surplus, write-offs from the sale of pigs and part of the aid for agricultural producer groups. The amount to be contributed to the fund is apportioned among the accounts of each member in proportion to the value of their sales in the financial year in question by the pig co-operative produced on their holdings.<sup>484</sup>

The Act on co-operative law stipulates that a co-operative operates on the principles of economic calculation and provides benefits to its members. In this provision, the legislator stressed that co-operatives are central to each co-operative entity. In its judgment of 24 May 1995, the Supreme Court recognised that every member enjoys the fundamental right of access to the benefits of co-operatives and that this right, like any other subjective right, is protected.<sup>485</sup> According to the Act of 16 September 1982, a member of a co-operative is not personally liable for the co-operative's debts (in respect of his or her personal assets) but nevertheless participates in the coverage of its losses up to the limit of the declared shares.<sup>486</sup> The co-operative, on the other hand, is liable for all its debts.

A co-operative is obliged to keep accounts in accordance with the principles set forth in separate regulations. This applies mainly to the Accounting Act of 29 September 1994.<sup>487</sup> Section VII of the Act on co-operative law contains provisions concerning the balance sheet surplus. This surplus constitutes the co-operative's profit after deduction of income tax and other compulsory charges resulting from separate statutory provisions. The balance surplus is subject to distribution based on a resolution of the general meeting, with the reservation that at least 5% of it is to be allocated for increasing the resource fund, if the level of this fund is below the amount of the obligatory shares contributed. The rules for the distribution of the balance sheet surplus among members of the co-operative are specified in the statutes. These regulations of the Act on co-operative law are

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<sup>484</sup> Krajowa Rada Spółdzielcza, *Instrukcja postępowania...*, op. cit.

<sup>485</sup> I CRN 63/95, Legalis No 29312.

<sup>486</sup> The Supreme Court in its decision of 17 November 2005 (IV CSK 6/05) held that Article 19(3) of the 1982 Act on co-operative law, which excludes a member's liability for the co-operative's obligations towards its creditors, cannot be understood or interpreted as relieving a debtor *in rem* of his liability towards his mortgage creditor, even if he is a member of the co-operative LEX No 399745.

<sup>487</sup> Dz. U. of 2013, No 330 as later amended.

in line with the third principle of co-operative activity – the principle of the economic participation of members.

The Act also provides that if the distribution of a portion of the balance sheet surplus among members is to take the form of an interest rate on shares, such a distribution should take into account the former members (or their heirs) who are entitled to claims for the payment of shares. More attention should be paid to the verdict of the Supreme Court of 20 June 2007<sup>488</sup> in which the Court held that the principle of equal rights resulting from membership of a co-operative does not mean that all members have the same share in the balance sheet surplus. In the Grounds to this verdict the Supreme Court stressed that the principle of equal rights of members, as laid down in Article 18 (1) of the Act of 16 September 1982, refers only to the rights deriving from the membership of a co-operative and not to the derivative rights referred to in Article 18(7) of that Act. Further on, the Supreme Court pointed out that the literature distinguished between the absolute and relative equality of co-operative members. In particular, absolute equality is manifested by the principle of “one member – one vote”, according to which each member has one vote, regardless of the number of shares held (Article 36 § 3 of the Act).

However, in the Court’s view, a similar understanding of the principle of equality with regard to the distribution of the balance sheet surplus would mean that the surplus be shared between the members without taking into account their contributions or their personal performance, which would be unfair and unjust. Therefore, in the Court’s opinion, the right of members to participate in the balance surplus can only be referred to as the principle of relative equality or the principle of equality of opportunity. One of the basic international principles of co-operatives is the “return on purchases” principle, according to which the distribution of the balance surplus among the members is made in proportion to their transactions with the co-operative.<sup>489</sup>

It is also worth referring to the thesis formulated by the Court of Appeal in Katowice in the judgment of 5 August 1992<sup>490</sup> in which the Court held that “the balance sheet surplus distributed among the members is a kind of compensation to the members for the use of their shares by the co-operative. The amount of this surplus depends on the co-operative’s annual income.” Hence, according to the Court, “its distribution in the form of interest on shares cannot be related to the shares of the last year to which the surplus relates. It must take into account the whole year, i.e. the period during which the shares remained at the co-operative’s disposal.”<sup>491</sup>

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<sup>488</sup> V CSK 125/07; OSNC-ZD 2008, No 2, item 38, Biul. SN 2007, No 11, item 15, LEX No 320041.

<sup>489</sup> *Ibidem*.

<sup>490</sup> I ACr 371/92, LegalisNo32928; OSA 1993 No 9, item 70, p. 36, OSA/Kat. 1992 No 3, p. 12.

<sup>491</sup> *Ibidem*.

As regards agricultural production co-operatives, in the special provisions of Chapter 5 of Cooperative Law (Art. 166 and next) co-operative funds, income and distribution thereof of the Act, the concept of general income, not balance sheet surplus, is applied. It has been defined by the legislator as the difference between the revenue obtained from production and services in a given accounting year, including extraordinary profits, and the sum of the costs incurred on this activity less any extraordinary losses and taxes due, plus or minus the difference in the value of stocks between the balance at the end of the accounting year and the balance at the beginning of that year. In determining the overall income, account shall be taken of the co-operative's contribution to the financial results of other organisations. This income is subject to distribution on the basis of a resolution of the general meeting, with the reservation that the agricultural production co-operative allocate at least 3% of its general income to the resource fund, if this fund does not reach the level of the contributed obligatory shares (Article 168 of the Act on co-operative).

The Act of 4 October 2018 on farmers' co-operatives provides that part of the balance sheet surplus left after making contributions to the funds is intended to achieve the goals specified in the resolution adopted at the general meeting. Further on in the Act, Article 13 provides that monies gathered in the mutual fund account are devoted to the development and promotion of farmers' co-operatives. Balance sheet losses are to be covered from the resources fund and if their level extends beyond that of the resources fund, from other funds of a farmers' co-operative, other than the mutual fund, in a manner and on terms and conditions specified in the statutes. If the losses incurred in a given financial year cannot be covered in a manner indicated above, they may be covered over the next five successive financial years.

As regards co-operative agricultural producer groups, the law does not introduce separate provisions for the distribution of the balance sheet surplus. Therefore, the general provisions of the Act on co-operative law apply. The statutes frequently provide that part of the balance sheet surplus remaining after the write-off (5% of the surplus is allocated to increasing the resource fund if the fund does not reach the level of the contributed mandatory shares) is to be used for purposes specified in a resolution of the general meeting. The amounts to be paid to members are distributed, having taken into account the member's trading volume with the co-operative. If the shares declared by a member have not been fully paid up, the amounts due to the member for the distribution of the balance sheet surplus are credited against the member's incomplete shares.<sup>492</sup> The inclusion of the amount of trading with the co-operative in the distribution of the balance-sheet surplus is part of the third co-operative principle. It proposes, *inter alia*, that the

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<sup>492</sup> Krajowa Rada Spółdzielcza, *Instrukcja postępowania...*, op. cit.

members allocate their surpluses for one or all of the following purposes: the development of their co-operative, possibly, by creating a reserve fund of which at least part should be indivisible; benefits for the members in proportion to their transactions with the co-operative; and promotion of other activities approved by the members.<sup>493</sup>

#### **4.5. Membership of agricultural co-operatives in co-operative associations and the National Co-operative Council**

During their operation, agricultural co-operatives may establish and join auditing associations. The Act of 16 September 1982 on co-operative law provides that the number of founders of an auditing association may not be less than ten. Their aim is to provide assistance to member co-operatives in their statutory activities, while their tasks include, among others, vetting the affiliated co-operatives; conducting instructional, advisory, cultural and educational, training and publishing activities for the affiliated co-operatives; representing the interests of the affiliated co-operatives before the authorities of the state administration and local self-government bodies. The register of auditing associations is to be kept by the National Co-operative Council.

In Poland, there are several unions associating agricultural co-operatives. An example is the National Auditing Association of Agricultural Production Co-operatives. It was established on 30 June 1992 at the Founding Congress in Warsaw by representatives of 205 agricultural production co-operatives from 40 regions and 2 co-operative associations from Chodzież and Świdnica. Currently, it associates 126 agricultural production co-operatives, 1 co-operative group of agricultural producers and 7 co-operative unions of regional or provincial range.<sup>494</sup> Taking into account the number of co-operatives associated in these associations, the National Association gathers together a total of about 470 agricultural production co-operatives, i.e. about 60% of all co-operatives active throughout the country. Through its training, advisory and publishing activities, the National Association also cooperates with a significant group of co-operatives that are not members of any organisational structure.<sup>495</sup> It also aims to deal with current issues concerning co-operatives involved in agricultural activity.

In accordance with the Action Programme adopted at the 6th National Congress of Delegates in November 2013, the main objective of the National Union

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<sup>493</sup> *Deklaracja Spółdzielczej Tożsamości...*, op. cit.

<sup>494</sup> See, *Cele i zadania Krajowego Związku* [online]. KZRRSP [accessed on: 2018-09-09]. Available at: <<http://kzrrsp.pl/172>>.

<sup>495</sup> *Ibidem*.

is to conduct activities aimed at improving the functioning of co-operative agricultural holdings under the conditions of the revised rules of the Common Agricultural Policy in the new financial perspective 2014-2020 and to provide comprehensive assistance to associated co-operatives and co-operative organisations in making extensive use of the funds stemming from the structural funds for agriculture and rural areas. In these measures, the overarching aim is to ensure equal treatment of agricultural production co-operatives no different from that exercised towards other operators and to eliminate the existing and foreseeable constraints affecting larger area agricultural holdings.<sup>496</sup>

The National Association of Dairy Co-operatives – Auditing Union is based in Warsaw. It is a voluntary, self-governing organisation bringing together dairy co-operatives and other co-operatives whose objects are directly or indirectly linked to the production, processing and marketing of milk and milk products. Currently, it has 93 members, including 85 dairy co-operatives and 9 dairy co-operatives.<sup>497</sup> Social co-operatives, on the other hand, may associate in the National Auditing Union of Social Co-operatives. According to its statutes, the objectives of the Union's activity include, among others, cooperation and assistance in the establishment of social co-operatives and in the performance of statutory tasks, training of employees and members of co-operatives, initiation of co-operative education, initiation and development of cooperation between co-operatives, as well as cooperation with scientific and research institutions.<sup>498</sup>

The National Union of Groups of Producers of Fruit and Vegetables with its registered office in Warsaw should also be mentioned. It is the first nationwide trades union organised by producer groups. It has the legal form of a co-operative made up of pre-recognised groups and recognised organisations. Its main tasks are to represent the interests of associated producer groups and organisations vis-à-vis governmental institutions and organisations related to the fruit and vegetable market, to promote cooperation between groups, to provide assistance to associated entities in their statutory activities, and to organise and develop the fruit and vegetable market by strengthening the position of fruit and vegetable producer groups and organisations in a comprehensive manner.<sup>499</sup>

The main body of the co-operative self-government is the National Co-operative Council with its registered office in Warsaw. Its tasks include, among others, representing the Polish co-operative movement in Poland and abroad; cooperation with the main state bodies in matters concerning the co-operative movement;

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<sup>496</sup> Ibidem. See more A. Suchoń, *Prawna koncepcja spółdzielni...*, pp. 251 et seq.

<sup>497</sup> *O KZSM* [online]. MP [accessed on: 2018-07-12]. Available at: <<http://mleczarstwo.polskie.pl/menu-1/o-kzsm>>.

<sup>498</sup> Statutes of the All-Poland's Auditing Association of Social Co-operatives (Ogólnopolski Związek Rewizyjny Spółdzielni Socjalnych [online]. OZRSS [accessed on: 2018-08-09]. Available at: <<http://ozrss.pl/zwiazek/statut/>>.

<sup>499</sup> See [online]. MP [accessed on: 2014-02-12]. Available at: <<http://grupyogrodnicze.pl/home>>.

initiating and issuing opinions on legislative acts concerning co-operatives which are of key importance to them; initiating and developing cooperation between co-operatives and propagating the idea of co-operative cooperation.<sup>500</sup>

The operation of auditing associations and the National Co-operative Council is in line with both the fifth co-operative principle (education, training and information) and the sixth principle (cooperation between co-operatives). The cooperation of co-operatives within auditing associations and the National Co-operative Council provide co-operatives, especially those in need of relevant professional experience, with education and training in order to contribute effectively to the development of their co-operatives. The co-operative movement strengthens co-operation within local, national, regional and international structures. The highest body of co-operative self-government is the Co-operative Congress convened every four years by the National Co-operative Council, which determines the number, rules and procedure for the election of delegates to the Congress.

Under the Act of 4 October 2018 on farmers' co-operatives, they can establish associations of farmers' co-operatives that on behalf of and for the benefit of their members, run the activity defined in Article 6(2) of the Act, or may join such associations. The association of farmers' co-operatives can also run social as well as cultural and educational activities for the benefit of their members as a member of that association. The National Co-operative Council runs a register of the associations of farmers' co-operatives. The rules for running the register and the data it includes are laid down by the National Co-operative Council.

On 31 March 2018, the Act of 15 December 2017 amending the Act on social co-operatives and some other acts<sup>501</sup> came into force. An innovation which has been introduced is that social co-operatives can set up a co-operative consortium in the form of an agreement to: 1) increase the economic and social potential of the associated social co-operatives or 2) jointly organise the network of production, trade or services or 3) jointly promote co-operative or economic action, or 4) promote common trademarks as mentioned in the Act of 30 June 2000 on industrial property law.<sup>502</sup>

#### **4.6. Cultivation contracts concluded by agricultural co-operatives**

The main, fundamental influence on the operation of agricultural co-operatives is exercised by the legal and agricultural contracts concluded by these entities, and

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<sup>500</sup> For more see Article 259 of the Act on co-operative law.

<sup>501</sup> Dz.U. of 2017 Item 2494.

<sup>502</sup> See more A. Suchoń, *Co-operatives in the face of challenges of contemporary agriculture...*, pp. 303-310.

resulting from their agricultural activity. These are, largely, contracts for the cultivation and sale of agricultural products and for the lease or use of agricultural land. As the literature rightly points out, the purpose of the cultivation contract<sup>503</sup> is to link agricultural production to its distribution onto the market by ensuring the agricultural producer markets for his products. Meanwhile, processing and marketing co-operatives can obtain agricultural products that are essential for their activities. Such contracts are important and necessary owing to the seasonal nature of the agricultural activity, its dependence on weather conditions and the relatively long production process.<sup>504</sup> The literature draws a distinction between production and trade cultivation contracts.<sup>505</sup> The former is believed to consist of continuous cooperation in production and in supervision by the contracting authority over the production process.<sup>506</sup>

Commercial contracting, on the other hand, is only aimed at achieving the final product within specified parameters. It is similar to a regular contract of sale, but only with the proviso that it always concerns a product which is still to be made.<sup>507</sup> As rightly ruled by the Regional Court in Gdańsk in its judgment of 21 October 2013<sup>508</sup>, the subject of a cultivation contract is the provision of a future performance not yet existing at the time when a contract is made. Production means the production of an agricultural product, as a general rule, from scratch.<sup>509</sup> As is stressed in the literature, the essential elements of a cultivation contract therefore include not only the delivery of a specific product, but also its production process.<sup>510</sup> Cultivation contracting is consensual, binding, payable, reciprocal and causal.<sup>511</sup> It therefore displays the characteristics typical of contracts for trading in things (economically defined as goods).<sup>512</sup> As a nominate contract it is regulated in the civil code. Its characteristics include the production and supply of certain agricultural products.<sup>513</sup>

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<sup>503</sup> See: e.g. W.J. Katner, *Kontraktacja*, in: *System Prawa Handlowego*, Vol. 5, ed. S. Włodyka, SIP Legalis 2014; B. Zdziennicki, *Kontraktacja produktów rolnych. Funkcje i problemy organizacyjne*, Warszawa 1975; D. Łobos-Kotowska, *Współczesne funkcje umowy kontraktacji* in: *Współczesne problemy prawa rolnego i cywilnego. Księga jubileuszowa Profesor Teresy Kurowskiej*, eds. D. Łobos-Kotowska, P. Gała, M. Stańko, Warszawa 2018.

<sup>504</sup> Ibidem.

<sup>505</sup> M. Korzycka, A. Stelmachowski, *Kontraktacja*, in: *Prawo zobowiązań – część szczegółowa. System Prawa Prywatnego*, Vol. 7, ed. J. Rajski, Warszawa 2018, SIP Legalis, p. 249 et seq. Also J. Szachułowicz, *Kontraktacja*, in: *Komentarz do k.c.*, Vol. II, ed. K. Pietrzykowski, Warszawa 2000, pp. 159-183.

<sup>506</sup> See more A. Suchoń, *Z prawnej problematyki umowy kontraktacji w praktyce*, „Przegląd Prawa Rolnego” 2017, No 1, p. 165 et seq.

<sup>507</sup> M. Korzycka, A. Stelmachowski, *Kontraktacja...*, p. 305 et seq.

<sup>508</sup> XV C 694/12, LEX No 1719227.

<sup>509</sup> Ibidem.

<sup>510</sup> M. Korzycka, A. Stelmachowski, *Kontraktacja...*, p. 305 et seq.

<sup>511</sup> Judgment of the Supreme Court of 4 March 2015, IV CSK 437/14, Legalis No 1231811.

<sup>512</sup> Grounds for the judgment of 4 March 2015, IV CSK 437/14, Legalis No 1231811.

<sup>513</sup> B. Zdziennicki, *Kontraktacja*, in: *Prawo rolne*, ed. P. Czechowski, Warszawa 2013, p. 399 et seq.

What is important is that agricultural co-operatives may act both as an agricultural producer (an APC, a social co-operative, a farmers' co-operative, or a group of agricultural producers) or a contracting producer (e.g. a dairy co-operative or other.). In its judgment of 19 May 1964<sup>514</sup> the Supreme Court ruled that cultivation contracts impose on a breeder an obligation to raise animals and deliver them for a fee to the co-operative while the co-operative is under an obligation to buy them. According to the court, the above mutual obligations of the parties belong to the essence of a cultivation contract, which is reflected in the provisions of the new civil code providing for a separate cultivation contract as a typical contract.

However, in its judgment of 7 August 1975<sup>515</sup> the Supreme Court found that "a cultivation contract, which is also intended to provide for a modern production orchard to be set up in a planned manner, constitutes an implementation of assumptions according to which horticultural co-operatives are to regionalise, on a multiannual basis, horticultural production on land with appropriate economic and environmental conditions. The determining factor of a cultivation contract is the circumstance that one of the parties to the contract is an agricultural producer who produces and sells agricultural products."<sup>516</sup> However, the civil code fails to contain a definition of an agricultural producer,<sup>517</sup> but the latter is defined in other legislative acts, e.g. in Article 3(2) of the Act of 18 December 2003 on the national system for keeping records of producers, records of agricultural holdings and records of payment applications. By adding § 4 to Article 613 it indicated that the term agricultural producer includes also a group of agricultural producers or their association and farmers' co-operatives.<sup>518</sup>

By concluding a cultivation contract, a co-operative group of agricultural producers, which does not, as a general rule, own land, undertakes to produce and deliver to the contractor a specified quantity of agricultural products of a specified type and the contractor undertakes to receive those products within the agreed time limit, pay the price and provide certain additional performances if the contract or special provisions so provide.<sup>519</sup> Thanks to the membership agreements

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<sup>514</sup> II CR 612/63, LEX No 5704.

<sup>515</sup> III CRN 179/75, LEX No 7732.

<sup>516</sup> The Court of Appeal in Białystok I ACa 866/13, Legalis No 895122 – Civil Division I in the verdict of 9 April 2014.

<sup>517</sup> I ACa 866/13, Legalis No 895122. Before the change of the definition that came into force on 1 October 1990 a producer was one running an agricultural, horticultural or breeding holding.

<sup>518</sup> Added pursuant to Article 25 of the Act of 15 September 2000 on groups of agricultural producers, their associations and amendments to other legislative acts.

<sup>519</sup> For more on additional performances in a cultivation contract see in particular A. Stelmachowski, *Kontraktacja...*, p. 307 et seq. and literature quoted therein; H. Chołaj, *Kontraktacja produktów rolnych. Studium ekonomiczne*, Warszawa 1965; A. Klein, *Pojęcie umowy i stosunku zobowiązaniowego kontraktacji według k.c., „SC” 1972*, Vol. XIX; W. Kozak, *Kontraktacja produkcji roślinnej*, Warszawa 1954; Z. Policzekiewicz, *Odpowiedzialność stron stosunku kontraktacji w obrocie powszechnym*, Warszawa 1980; A. Stelmachowski, *Kontraktacja produktów rolnych*, Warszawa 1960;

and the resulting obligation to produce and deliver agricultural products with specific parameters to the group, a co-operative of agricultural producer groups may fulfil the provisions of the cultivation or sale contract.<sup>520</sup> It can therefore be considered that the legislator has confirmed that a group operates only thanks to (the existence of) agricultural holdings, and for them, taking over part of their obligations related to agricultural activity.

It is also worth quoting the conclusion of the Court of Appeal in Gdańsk, which in its judgment of 12 February 2013<sup>521</sup> adjudicated that the subject of contracting is not the delivery of a product originating anywhere, but the production and delivery of a product produced on the farm of a given (nominated) agricultural producer. Own production is an essential element of the cultivation contract. Therefore, in the case of agricultural producer groups, the subject of contracting is agricultural products produced on the agricultural holdings of its members.<sup>522</sup>

It is important to define the subject of the cultivation contract. In the light of the civil code, an agricultural producer undertakes to produce and deliver a specified quantity of agricultural products of a specified type. At the same time, the quantity of agricultural products may also be indicated in the contract by the area in which they are to be harvested. In this context, a problem arises that has already been highlighted in dairy contracts, namely whether it is possible to indicate that the subject of the contract is the supply to a dairy co-operative of all the milk produced on the farm by the co-operative. In this respect, lower courts assumed that it was an unnamed agreement, similar to a cultivation agreement. The difference from the cultivation contract was to be seen only in the fact that the quantity of milk to be delivered by the milk producer during the contractual period was not specified in the contract. As already indicated, the Supreme Court took a different stance in its judgment of 4 March 2015,<sup>523</sup> asserting that for a cultivation contract to be valid pursuant to Article 613(1) of the civil code it is sufficient to indicate the required quantity of agricultural products of a specific type as the 'whole' of such a product produced at a given time in a designated, named and known contracting agricultural holding.

In the context of additional benefits, the co-operative group of agricultural producers, owing to the significant volume of agricultural products, generally has a better chance of negotiating more favourable conditions in this respect.<sup>524</sup> As is rightly emphasised in the literature, the provision of financial assistance

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B. Zdziennicki, *Kontraktacja produktów rolnych. Funkcje i problemy organizacyjne*, Warszawa 1975; idem, *Zagadnienia prawne kontraktacji*, Warszawa 1978.

<sup>520</sup> A. Suchoń, *Z prawnej problematyki zakładania i prowadzenia działalności...*, pp. 221-242.

<sup>521</sup> V ACa 1043/12, LEX No 1313249.

<sup>522</sup> Ibidem.

<sup>523</sup> IV CSK 437/14 1, LEX No 1677053.

<sup>524</sup> See more A. Suchoń, *Komentarz do przepisów o kontraktacji (art. 613–626 k.c.)*; in: *Komentarz do Kodeksu cywilnego*, Vol. II, ed. M. Gutowski, Warszawa 2016, pp. 615-654.

by the contracting authority, consisting e.g. in the payment of advances on account of a contract, is intended to secure the financial resources necessary for the agricultural producer to produce agricultural products.<sup>525</sup> Such assistance may take the form of purchases of means of production, e.g. seeds, plant protection products, fertilisers or cuttings.<sup>526</sup> However, the provision of means of production to the agricultural producer may also be realised based on separate agreements or contracts.<sup>527</sup> As regards agri-technical and zoo-technical support, it is closely linked to the process of agricultural activity of agricultural producers, members of a co-operative group of agricultural producers.

The cultivation contract is extremely important for co-operative agricultural producer groups. Particularly at the beginning of their existence, attractive conditions, which will encourage other agricultural producers to associate, are important. This issue therefore deserves more attention. Currently, contracting parties, e.g. rapeseed processors, often use template contracts. The question is whether this is consistent with the applicable legislation. It therefore seems appropriate to clarify that templates (“forms”) is a term used in doctrine to describe any pre-prepared (i.e. pre-contractual) ready-made clauses in the form of general terms and conditions, models, terms and conditions, rules, etc. They are drafted without the context of a specific contractual relationship and define the content of future individual contracts in a uniform manner.<sup>528</sup>

Therefore, a better solution would be to conclude contracts by agricultural producer groups, including co-operative ones, which negotiate the terms of contracts on behalf of agricultural producers. A larger scale of agricultural products to be produced and supplied by agricultural producer groups ensures the possibility of concluding more favourable contracts, for instance in terms of price determination. There is no doubt that taking into account the purpose of co-operatives, i.e. acting in the interests of their members, it is important to determine the price for agricultural products – the higher the price, the higher the revenues for agricultural producers. According to the civil code, the essential element of the contract in question is the contractor’s commitment to pay the price, i.e. a specified sum of money. However, the determination of the price does not require a specific amount of money to be included in the agreement. It is sufficient that the parties indicate the basis on which the price is to be determined.

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<sup>525</sup> E. Niezbecka, *Kontrakcja*, in: *Zobowiązania – część szczególna*, Vol. III, part. 2<sup>nd</sup> ed. A. Kidyba, Warszawa 2014, p. 269 et seq.; M. Korzycka, A. Stelmachowski, *Kontrakcja...*, p. 315 et seq.

<sup>526</sup> E. Niezbecka, *Kontrakcja...*, p. 275 et seq.

<sup>527</sup> J. Pisuliński, *Glosa do wyroku SN z 7 października 1990 r.*, III CRN 256/86, OSP 1990, No. 103, item 185.

<sup>528</sup> See more about contract templates e.g. E. Łętowska, *Ochrona niektórych praw konsumentów. Komentarz*, Warszawa 2001, p. 75 et seq.; Z. Radwański, A. Olejniczak, *Zobowiązania*, Warszawa 2012, pp. 317–319 and p. 403 et seq.

At this point, it is worth recalling the thesis of the Supreme Court's judgment of 27 June 2002.<sup>529</sup> The Court found that in order to determine the price, the parties to a cultivation contract may use a reference to purchase prices paid at a given time and place by a given economic operator. However, setting a fixed price in a contract may not always be beneficial for the agricultural producer. The co-operative agricultural producer group, which signed a contract in October, for example, in which the price of agricultural products, such as wheat or rape, was fixed, could not predict whether prices would rise after the harvest. If that is the case, the agricultural producer will, in performance of the contract, suffer damage if he is paid less than the price he would have received if he had sold the agricultural products to another operator outside the cultivation contract.

On the other hand, non-performance of the contract would result in the necessity to pay a high contractual penalty for non-performance of the contract. In such a situation, it may turn out that it is more appropriate to determine the price flexibly (e.g. as variable and calculated on the basis of rapeseed prices at the MATIF Paris Stock Exchange and the EUR exchange rate). However, it obviously must be made clear that everything depends on the market situation.

As has already been stressed, the end result of the production of agricultural products is influenced by a number of factors – not only the appropriate cultivation or breeding by the agricultural producer, but also, to a large extent, natural and atmospheric factors. The occurrence of unfavourable conditions, such as hurricane, hail, flood (despite proper flood protection) may render the delivery of agricultural product impossible at the agreed time and therefore a failure on the part of the agricultural producer to satisfy the contractual obligation. In this case, the question arises as to when he should inform the contracting party. Is it only when the contract is due or earlier?

Under Article 623 of the civil code, if a cultivation contract imposes an obligation on the producer to notify within a specified period the inability to deliver the subject of contracting owing to circumstances for which the producer is not liable, a failure to fulfil this obligation by the producer excludes the possibility of invoking such circumstances. This does not apply, however, if the contracting party was aware of the above circumstances or if they were generally known. This means that if flooding of agricultural crops or frost has caused damage which results in no or lower yields, the contracting authority must be informed immediately if the contract so requires. However, it must be made clear that such an obligation must be a contractual one. In the absence of a contractual provision, there is no obligation to do so.

In the case of the conclusion of a cultivation contract by a co-operative group of agricultural producers, the implementation of this requirement becomes

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<sup>529</sup> IV CKN 1165/00, LEX No 80264.

very complicated. A co-operative does not directly own an agricultural holding. As a rule, therefore, it is the member of the co-operative who should provide the information to the group and to the contracting entity. Some agreements concluded by the group also provide for the possibility for a member of the group to provide information directly.

One of the characteristics of a cultivation contract is the right of the contracting party to exercise supervision and control pursuant to Article 617 of the civil code. It is, however, a right and not a duty. This right relates to the production cycle of the agricultural product and concerns in particular the technical conditions of cultivation or breeding.<sup>530</sup> As J. Szachułowicz rightly points out, the contracting party's rights to supervise and control are important from the stage of taking the first steps, which make up the initial work of making the product, until it is completely produced.<sup>531</sup>

As already indicated, dairy co-operatives generally conclude cultivation or delivery contracts with their members. At the same time, in addition to these contracts, sales contracts known as commercial ones are often signed, e.g. with milk producer groups, while cultivation contracts are concluded less frequently. In the future, if milk producer organisations are set up, contracts will also be concluded with them. Therefore, it is justified to refer to EU regulations. Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, provides that where a Member State decides that every delivery of raw milk by a farmer to a processor of raw milk on its territory must be covered by a written contract between the parties, or decides that first purchasers must make a written offer for a contract for the delivery of raw milk by the farmers, then that contract or tender must comply with the conditions laid down in that Regulation. It must be prepared in writing before delivery and must include, in particular, the price to be paid for the delivery, which must either be fixed and specified in the contract or be calculated by combining various factors laid down in the contract (which may include market indicators reflecting changes in market conditions, the quantity delivered and the quality or composition of the raw milk delivered); the volume of raw milk that may or must be delivered, together with the duration of such deliveries; the duration of the contract, which may be limited or unlimited, with termination clauses; details of the time limits and procedures for payment; the arrangements for collecting or delivering the raw milk; and the rules applicable in cases of force majeure. It should be noted that the contracts signed by dairy co-operatives do, in principle, contain these elements.

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<sup>530</sup> J. Krzyżanowski, *Kontraktacja*, in: *Kodeks, cywilny. Komentarz*, Vol. II, Warszawa 1972, p. 1356.

<sup>531</sup> J. Szachułowicz, *Kontraktacja*, in: *Komentarz do k.c.*, Vol. II, ed. K. Pietrzykowski, SIP Legalis 2005, p. 168.

EU legislation also provides that, by way of derogation, a contract or an offer of a contract is not required where raw milk is delivered by a farmer to a co-operative of which that farmer is a member, provided that the statutes of that co-operative or the rules and decisions contained therein or resulting therefrom contain provisions having similar effects to those referred to above.

#### **4.7. Lease of agricultural land and legal provisions governing the purchase of real estate by agricultural co-operatives**

According to the statistical data about 20% of land managed by Agriculture Production Co-operatives is leased out by owners who are either private parties or the State or municipal entities.<sup>532</sup> It should be noted that lease agreements<sup>533</sup> are concluded by other agriculture co-operatives (social co-operatives, groups of agricultural producers). However, according to the legal provisions, a member of a co-operative could and may still contribute to the co-operative by leasing out his land. Therefore, the legal regulations on lease have a significant impact on the functioning of agricultural co-operatives that carry out an agricultural activity. After all, agricultural land is the backbone of this activity.

The status of a lessor affects the legal regulations and the content of the agreement concluded by the co-operatives. The provisions concerning the lease agreement itself are included in the civil code (Articles 693-709). They mainly apply to private lease. In turn, for the so-called state lease<sup>534</sup> other legislative acts also apply, namely the Act of 19 October 1991 on the management of agricultural property of the State Treasury and secondary legislation based

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<sup>532</sup> See [online]. KZRRSP [accessed on: 2015-02-02]. Available at: <<http://www.kzrrsp.pl/>>.

<sup>533</sup> According to art. 693 civil code by the contract of tenancy (lease) the landlord undertakes to give to the tenant (lessee) a thing for use and collection of profits for a definite or an indefinite period of time and the tenant undertakes to pay to the landlord the rent agreed on. See Polish Civil Code See [online]. Kodeks cywilny [accessed on: 2018-12-02]. Available at: <<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640160093>>. See also *The Civil Code*, translation, *English version of Polish Civil Code*, Legis SIP.

<sup>534</sup> The state lease was connected with the rental of land from the State Land Fund and since 1991 from the AWRSP. It was undoubtedly the activity of the Agricultural Property Agency (now National Support Centre for Agriculture) that has contributed to the rise in popularity of lease in agriculture. Since Poland's accession to the European Union, lease has been becoming more and more common way to manage and run agricultural farms. On the one hand, the prices of agricultural lands have been on the rise since 2004 and lessees can run their agricultural production within the Common Agricultural Policy under the same rules as owners. Not all agricultural producers, on the other hand, meet the conditions to purchase agricultural real estate and therefore they turn to lease. See more A. Suchoń, *Prawna ochrona trwałości gospodarowania na dzierżawionych gruntach rolnych*, Poznań 2006, p. 10 et seq.

on it.<sup>535</sup> With regard to the lease of agricultural land from local government units, the applicable laws in addition to the provisions of the civil code, include the Act of 21 August 1997 on real estate management. Hence, as can be seen, the current legal framework for the lease of agricultural land is diverse.

In the case of private land lease, as most of the provisions of the civil code are of a relatively binding nature, the stability of this relationship actually depends on the parties to the contract and the provisions of the contract. The Polish Civil Code gives the parties full freedom to conclude a contract of lease of agricultural land for a short period of time or for an indefinite period of time. Such leases are unstable.<sup>536</sup> The longer the lease term, the greater stability for the parties as well as certainty about their rights and obligations. Article 700 of the Civil Code, which allows the lessee to demand a reduction in the rent in negative circumstances e.g. hurricane, hail, fire, flood or plant freezing, is in principle beneficial. Pursuant to this article, if owing to circumstances that the lessee is not liable for and that are not his or her responsibility, the usual revenue from the lease object has been subject to a substantial reduction, the lessee may demand the reduction in the rent due for a given economic period. This provision, however, causes doubts of interpretation.

An essential factor in guaranteeing the stability of farming is the possibility of purchasing leased agricultural lands. Therefore, high importance is given to the right of pre-emption vested in the lessee of agricultural real estate. It has been regulated in the Act of 11 April 2003 on shaping the agricultural system. Pursuant to Article 3, in the event of the sale of agricultural real estate, the lessee is entitled to the right of pre-emption, if: 1) the lease contract has been made in writing with a certain date and was performed for at least 3 years starting from that date and 2) the purchased agricultural real estate is part of the family farm of the purchaser. It must be stressed that for a dozen or so years, since 16 July 2003 when the Act of 11 April 2003 on shaping the agricultural land came into being, until 29 April 2016, the right of pre-emption of leased agricultural land was also due to co-operatives of agricultural production. This right has not been available for co-operatives of agricultural production since 30 April 2016 (date of the coming into force of the amendment of 14 April 2016 to the Act of 11 April 2003 on shaping the agricultural system).<sup>537</sup>

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<sup>535</sup> Ordinance of the Minister of Agriculture and Rural Development of 14 January 2009 on the detailed procedure of conducting tenders for the lease of real estate of the WRSP Resource, (Dz. U. of 2013, item 1142; Regulation of the Minister of Agriculture and Rural Development of 19 November 2017 on detailed premises for deferral, division into instalments or redemption of the Agricultural Property Agency's receivables and on the procedure to be followed in such cases, Dz. U. of 2017 No. 210, item, as amended.

<sup>536</sup> See more A. Suchoń, *The Lease and Sale of Agricultural Real Estate in Poland – Legal and Economic Aspects*, "EU agrarian Law." The Journal of Slovak University of Agriculture in Nitra" 2017, No 6, pp. 43-47.

<sup>537</sup> See J. Bieluk, *Komentarz do ustawy o kształtowaniu ustroju rolnego*, Warszawa 2016.

Pursuant to the Act of 11 April 2003 on shaping the agricultural system after the amendment of 14 April 2016,<sup>538</sup> agricultural real estate can be purchased only by an individual farmer, unless the act specifies otherwise. The act specified that the above-mentioned rule does not apply to, for example, next of kin,<sup>539</sup> territorial self-government units, State Treasury or the Agricultural Property Agency (now National Support Centre for Agriculture) acting on its behalf, legal entities acting on the basis of provisions on the relationship between the State and the Catholic Church in the Republic of Poland, on the relationship between the State and other churches and religious associations and on guarantees of the freedom of conscience and religion, national parks (in the event of the purchase of agricultural real property for purposes in connection with the protection of the natural environment), as a result of succession and specific bequest.<sup>540</sup>

These limitations result from Article 23 of the Constitution stipulating that the basis of the agricultural system of the State is the family farm.<sup>541</sup> A family farm, in turn, is a unit run by an individual farmer, that is a natural person who is an owner, holder of perpetual usufruct, autonomous possessor or lessee of agricultural real property, whose combined area of arable land does not exceed 300 hectares, who holds agricultural qualifications and has been residing for a period of at least 5 years in the commune in whose territory at least one of the agricultural real estates forming part of the family farm is located, and who has been running this farm personally throughout that period.<sup>542</sup>

At the same time, the provisions provide for some exceptions allowing the purchase of agricultural real estate based on permission issued by the National Support Centre for Agriculture upon the request of a seller or a buyer if the statutory conditions have been met. Statistical data indicate that in the majority of cases, the National Support Centre for Agriculture does issue such permissions for the transfer of ownership of agricultural real estate, especially in connection with requests submitted by vendors. Pursuant to the Act of 11 April 2003 on shaping the agricultural system consent may be granted at the request of the seller if: a) he/she demonstrates that it was not possible for the entities referred to in paragraphs 1 and 3 (mainly individual farmers) to acquire agricultural real estate, b) the buyer guarantees the proper conduct of agricultural activity, c) as

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<sup>538</sup> A. Jurcewicz, *Wpływ ustawy z dnia 14 kwietnia 2016 r. o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa na kształtowanie ustroju rolnego – zagadnienia wybrane*, „*Studia Iuridica Agraria*” 2017, Vol. XV.

<sup>539</sup> Under the Act on Shaping the Agricultural System, next of kin refers to descendants, ascendants, brothers or sisters, children of brothers or sisters, spouse, adoptive parents and adopted children.

<sup>540</sup> A. Suchoń, *The Lease and Sale...*, pp. 43-47.

<sup>541</sup> R. Budzinowski, A. Suchoń, *Purchasing and renting agricultural land in Poland: Legal Framework and practical issues*, “*CEDR Journal of Rural Law*” 2017, No 2.

<sup>542</sup> See J. Bieluk, *Komentarz do ustawy...*, p. 10 et seq.

a result of the acquisition there will be no excessive concentration of agricultural land.

Under the Act on shaping the agricultural system, if the National Support Centre for Agriculture rejects a written request of the seller (submitted within a month from the day on which the refusal to grant permission becomes final), such state legal person is obliged to submit a statement about purchasing agricultural real estate at its market price. Therefore, if an agricultural production co-operative wishes to purchase agricultural land and there are no individual farmers willing to do so, it will be able to enter into a sales contract when the seller obtains the consent issued by the National Support Centre for Agriculture.

It must be stressed that the Act on Shaping the Agricultural System expressly excludes from its scope properties which are designated in the local zoning plan for a purpose other than agricultural and agricultural property for which a final and binding decision on conditions of construction and land development designating the land for non-agricultural purposes was issued before the Act entered into force. This means that an agricultural production co-operative may acquire ownership of agricultural land which is defined as agricultural land in the land and building register, but which is already intended for non-agricultural purposes in the zoning plan.

The lease of real estate from the Agricultural Property Agency is regulated in the Act of 19 October 1991 on managing the agricultural property of the State Treasury. Before 1992, the lease of agricultural lands was based mainly on extending leased lands in order to enlarge the surface area of already existing agricultural farms. Then, the lease of agricultural lands became the main title to organise independent agricultural farms.<sup>543</sup> In the first phase of privatisation, at the beginning of the 1990s, it was necessary to pass state property to private entities in order to ensure continuity of production. By the end of December 2010, the Agricultural Property Agency took over properties of a surface area amounting to over 4, 740, 424 ha. For many years lease was the main form of managing agricultural property.<sup>544</sup> Currently (as at end of August 2018), there is more than 1 million of agricultural land from the Agricultural Property Stock of the State Treasury<sup>545</sup>.

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<sup>543</sup> See A. Lichorowicz, *Pozycja prawna gospodarstw wielkotowarowych w polskim ustawodawstwie rolnym. Uwagi de lege lata, de lege ferenda*, „Kwartalnik Prawa Prywatnego”, 2003, Vol. 3, p. 599.

<sup>544</sup> ANR, *Raport roczny za 2010*, [online]. ANR [accessed on: 2016-11-07]. Available at: <<http://anr.gov.pl>>. For many years lease was the main form of managing property. In 1995, more than 2 million 745 thousand ha was leased in Poland, in 1996 – 2 million 928 thousand ha, 1998 – 2 million 810,5 thousand ha, 2002 – 2 million 407.5 thousand ha. ANR, *Raporty roczne*, [online]. ANR [accessed on: 2016-11-07]. Available at: <<http://anr.gov.pl>>.

<sup>545</sup> See also [online]. KOWR [accessed on: 2018-11-07]. Available at: <<http://www.kowr.gov.pl/zasobKOWR>>. KOWR, *Sprawozdanie z działalności Krajowego Ośrodka Wsparcia Rolnictwa w 2017 roku*, p. 40 et seq.; [online] KOWR, [accessed on: 2018-10-14]. Available at: <<http://www.kowr.gov.pl/analiza/sprawozdania>>.

Under Article 39 of the Act of 19 October 1991, the lease contract is made following a public written or oral tender.<sup>546</sup> The contract of lease of agricultural real estate is made, in principle, for a period of 10 years. It needs to be stressed that under the Act the tender is not conducted if the existing lessee submitted to the National Support Centre for Agriculture a declaration of intention to continue the lease of real estate in compliance with new conditions arranged with that institution, with the reservation that the lease rent cannot be lower than so far<sup>547</sup>. The lease rent is defined in the contract as a sum of money or the financial equivalent of a relevant amount of wheat. It is paid six calendar months in arrears. Detailed conditions for setting the amount of rent are laid down in the Regulation of the Minister of Agriculture and Rural Development of 1 October 2016 on the method of setting the lease rent in contracts of lease of real estate from the Agricultural Property Reserve of the State Treasury. Currently, agricultural property is usually leased to individual farmers by the National Support Centre for Agriculture, but there are examples of agricultural production co-operatives having entered into such contracts a few years ago and the lease has been extended for further periods.

Under Article 29 of the Act of 19 October 1991 on the management of agricultural real estate of the State Treasury, the lessee of the real estate purchased is entitled to the pre-emption right to purchase the real property from the Reserve at the price set in the way prescribed in the Act on condition that the lease has lasted for at least 3 years. As of 30 April 2016,<sup>548</sup> the previous owner is not entitled to the pre-emption right to purchase and it is generally forbidden to sell agricultural state real estate. The rule applies, however, only to agricultural lands of a surface area not bigger than 2 ha. The sale of dpo lands with the surface of 2 ha or bigger than 2 ha requires the permission of the Minister of Agriculture and Rural Development. This means that currently agricultural production co-operatives that lease land for at least 3 years may purchase land of up to 2 ha provided that the National Support Cen-

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<sup>546</sup> R. Michałowski, *Nowy kształt przetargu pisemnego przy sprzedaży nieruchomości z Zasobu Własności Rolnej Skarbu Państwa*, „*Studia Iuridica Agraria*” 2016, Vol. XIV, pp. 89 – 101.

<sup>547</sup> See also Zarządzenie Dyrektora Generalnego Krajowego Ośrodka Wsparcia Rolnictwa: 103/2017/Z z 9 października 2017 roku w sprawie wydzierżawiania nieruchomości Zasobu Własności Rolnej Skarbu Państwa, zmienione Zarządzeniem nr 28/2018/Z; Zarządzenie nr 28/2018/Z Dyrektora Generalnego Krajowego Ośrodka Wsparcia Rolnictwa z 22 lutego 2018 r. zmieniające Zarządzenie nr 103/2017/Z z 9 października 2017 r. w sprawie wydzierżawiania nieruchomości Zasobu Własności Rolnej Skarbu Państwa; Zarządzenie nr 95/2017/Z Dyrektora Generalnego Krajowego Ośrodka Wsparcia Rolnictwa z dnia 6 października 2017 roku w sprawie wykonywania umowy dzierżawy nieruchomości Zasobu Własności Rolnej Skarbu Państwa [online]. KOWR [accessed on: 2018-10-14]. Available at: <<http://www.kowr.gov.pl/zasob/dzierzawa-nieruchomosci>>.

<sup>548</sup> On 30 April 2016, the Act of 14 April 2016 on suspending the sale of agricultural land of the Agricultural Property Reserve of the State Treasury and the amendment to certain other acts came into force. Article 1 of the Act brings a significant change, which is the fact that within 5 years from the date of its entry into force, the Act suspends the sale of property or part of it included in the Agricultural Property Reserve of the State Treasury.

tre for Agriculture wishes to sell it. Land with a larger area requires the approval of the Minister of Agriculture and Rural Development.<sup>549</sup>

An important issue for the operation of Agriculture Production Co-operatives is the possibility of acquiring land contributions. The assurance of this possibility is meant to ensure continuity of management. Pursuant to Article 147 of the Act on co-operative law, in the case of a paid transfer of the ownership of a land contribution by a member of a co-operative, the co-operative has the right of pre-emption. At the same time, it should be noted that this does not apply in the case of a transfer of the ownership of a contribution in favour of another member of the same co-operative. This provision refers to the transfer of ownership against payment, e.g. a contract of sale. Therefore, the right of pre-emption does not apply where a member of a co-operative enters into a contract of donation or an annuity (for benefits) agreement. Importantly, this provision does not introduce any area restrictions regarding the right of pre-emption of co-operatives. In addition, it is not limited to agricultural land only. Currently, there is a problem with the purchase of a land contribution when it falls under the regime of the Act on shaping the agricultural system. These are land contributions falling within the definition of agricultural real estate under the above-mentioned Act. Therefore, changes in this area are planned. Namely, according to the draft amendment of 25 May 2018,<sup>550</sup> para. 2 Article 147 of the Act on co-operative law, is to read as follows: "Where the ownership title to a land contribution is transferred against payment, the co-operative has the right of pre-emption. This does not apply where the ownership title to a land contribution is transferred to a member of the same co-operative, or in the case of an individual former or a next of kin of such farmer understood within the provisions of the Act of 11 April 2003 on shaping the agricultural system".

Agreements related to the activity of APCs include a contract of use. The legislator has taken into account the specificity of agricultural production co-operatives by introducing provisions in the civil code specifically dedicated to use by agricultural production co-operatives. Under the civil code provision, the use of land owned by the State Treasury may be established in favour of an agricultural production co-operative as a perpetual right or as an indefinite right. The provision of Article 271 of the Civil Code et seq. expired with respect to land that was included in the WRSP (Agricultural Property Agency of the State Treasury) (currently: KOWR – National Centre for Assistance to Agriculture), and the Act of 19 October 1991 does not provide for such a form of development as use. On the other hand, the use may be of land managed (developed) by

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<sup>549</sup> See more *Ustawa o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa. Komentarz*, ed. P. Czechowski, Warszawa 2018; P. Litwiniuk, *Ewolucja rozwiązań normatywnych w zakresie gospodarowania nieruchomościami rolnymi Skarbu Państwa*, „*Studia Iuridica Agraria*” 2017, Vol. XV.

<sup>550</sup> See [online]. MRiRW [accessed on: 2018-09-02]. Available at: <<http://www.minrol.pl/>>.

*starosts* (village mayors) performing government administration tasks included in the “State Treasury Real Estate Reserve.” The Act on the management of real estate provides for the general possibility of disposing of real estate owned by the State Treasury (or by local governments) by way of charging it with limited property rights.<sup>551</sup>

Dairy co-operatives are often perpetual users.<sup>552</sup> These entities have built processing plants on land given to them in perpetual usufruct. The objects of perpetual usufruct may only be landed property: 1) owned by the State Treasury, located within the administrative boundaries of towns and land located outside these boundaries, but included in the spatial management plan of the town and allocated for the realization of tasks relating to its management (Article 232 § 1 of the Civil Code); 2) as well as land owned by units of local government or their unions (art. 232 § 1 of the Civil Code); 3) moreover, in cases stipulated in the special regulations the object of perpetual usufruct may also be other land of the State Treasury, units of local government or their unions (Article 232 § 2 of the Civil Code) (see Fig. 1).<sup>553</sup>

The subject of perpetual usufruct may also be agricultural lands. Therefore, some of the agricultural co-operatives which undertake agriculture activities also use this legal form. Perpetual usufructuaries, like owners, have a right to use real estate, make use of it and dispose of the vested right. The difference of the perpetual usufruct right in relation to the ownership right stems from, above all other characteristics, that the perpetual usufruct right is limited in time, since it expires after the period of time for which it was granted, unless it was extended beforehand. A perpetual usufructuary as a rule is limited in terms of the admissible manner of use of perpetually leased land and is obliged to manage that land in a specific time, under pain of loss of the vested right. The perpetual usufruct right is connected with the obligation to pay what is termed the first fee and next annual fees, which amounts may be indexed.<sup>554</sup>

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<sup>551</sup> For more see E. Gniewek, *Kodeks cywilny...*, p. 676 et seq.; idem, *Użytkowanie*, in: *System prawa rzeczowego, Prawo rzeczowe*, Vol. 4, ed. idem, Warszawa 2012, p. 386 et seq and e.g. S. Dmowski, *Władanie nieruchomościami rolnymi przez rolnicze spółdzielnie produkcyjne*, in: *Księga Pamiątkowa ku czci sędziego S. Rudnickiego*, Warszawa 2005, p. 71 et seq.; J. Szachułowicz, in: *Kodeks cywilny*, Vol. I, ed. K. Pietrzykowski, Warszawa 2000, p. 576 et seq.

<sup>552</sup> For more information about perpetual usufruct see e.g.: Z. Truszkiewicz, *Użytkowanie wieczyste – zagadnienia konstrukcyjne*, Zakamycze 2006; E. Gniewek, *Użytkowanie wieczyste*, in: *Kodeks cywilny. Księga druga. Własność i inne prawa rzeczowe. Komentarz*, Zakamycze 2001.

<sup>553</sup> The Supreme Court in its verdict of 21 June 1968 (III CRN 139/68, OSNCP 5/69, item 90) expressed an opinion that acquisition of perpetual usufruct based on the granting of the right by a state agency on real estate not being an object of state ownership is not possible, even when the acquirer acted in good faith, trusting the land and mortgage registers.

<sup>554</sup> A. Suchoń, A. Dobek, K. Wajszczuk, W. Wielicki, *Perpetual usufruct. Legal and economic issues, Problems of transformation and appraisal*, Poznań 2009, p. 20 et seq.

Generally the time limit for perpetual usufruct is ninety – nine years (art. 236 § 1 sentence 1 of the Civil Code). The legislator admits the possibility of a contractual establishment of a shorter time limit, of at least forty years, “in exceptional cases, when the economic objective of perpetual usufruct does not require the lease of land for ninety- nine years” (Article 236 § 1 sentence 2 of the Civil Code). Within the last five years before the expiry of the time limit stipulated in the contract, the perpetual usufructuary may demand its extension for a further period, from forty to ninety- nine years. However, the perpetual usufructuary may earlier present such a demand if the period of depreciation of outlays intended on the used land is much longer than the time remaining to the expiry of the time limit stipulated in the contract. A refusal to extend it is admissible only if it is due to important social interest. A vindicative claim is applied to protect the perpetual usufruct right in accordance with Article 222 § 1 of the Civil Code. Thus a perpetual usufructuary may demand from a person, who actually holds the real estate perpetually leased to him, to have the real estate released to him (unless this person has the right to hold the real estate effective in relation to the usufructuary). A vindicative claim of a perpetual usufructuary is also effective against the owner.

In the case of perpetual usufruct of built-up land a complex legal and material situation occurs. One real estate comprises land (landed property) and it remains the object of ownership of the State Treasury or local government unit and it is perpetually leased to another person. In contrast, the building erected on this land constitutes an object of ownership (building real estate) separate from land. Thus perpetual lease of a built-up landed property occurs with the simultaneous sale of buildings and other facilities located on this land. (Co-)ownership of buildings is acquired by all perpetual co-usufructuaries. Thus it is necessary for the competent agency of the State Treasury, local government unit or union, concluding a contract on perpetual lease of land, to simultaneously sell the buildings (or other facilities). Otherwise the contract on perpetual usufruct of built-up land would be invalid as illegal (Article 58 § 1 of the Civil Code).

Expiry of the perpetual usufruct right causes automatically the loss of the ownership right to buildings (and other facilities). There is a problem of settlements between the owner of land and perpetual usufructuary. In accordance with the Civil Code, a perpetual usufructuary is entitled to compensation for the buildings and other facilities erected or purchased by him. Compensation should be equal in amount to the value of these buildings and facilities determined on the day of expiry of perpetual usufruct. However, there is no title to compensation for buildings and other facilities erected against the terms of the contract (Article 33 item 3 of the Act on real estate management).

#### 4.8. Legal instruments supporting the organisation of agricultural co-operatives and their operations by the use of Polish public funds and EU funds

A discussion on financial support for agricultural co-operatives should begin with the definition of the term 'public funds'. According to the Act of 27 August 2009 on public finance,<sup>555</sup> public funds include *inter alia* public revenues, funds from the European Union's budget and non-repayable funds from the aid granted by the Members of the European Free Trade Association (EFTA) as well as other non-repayable funds from foreign sources. Upon Poland's EU membership, Polish agriculture became covered by the Common Agricultural Policy and the rules of financing and conducting agricultural activity changed. One of the basic sources of the income earned by agricultural producers is direct payments.<sup>556</sup>

In the years 2015-2020 all member states, including Poland, have introduced a new system of direct payments according to the Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the Common Agricultural Policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009.

They are also available to agricultural co-operatives conducting an agricultural activity. Currently, the issue of payments is regulated by the Act of 5 February 2015 on payments under direct support schemes.

Poland introduced the following elements of the direct payment system. They may be granted to a farmer (also legal persons like co-operatives) who has obtained an identification number according to the provisions governing the national system of registers of producers, agricultural holdings and payment applications. The total area of land, i.e. the approved area, held by an eligible farmer cannot be less than 1 hectare. Importantly, the word 'farmer' means not only a natural person but also a legal person or a group of natural or legal persons, irrespective of the legal status of the group or its members under national law, providing that the holding is situated in the area covered by the territorial scope of the Treaties, as defined in Article 52 of the Treaty on European Union, in conjunction with Articles 349 and 355 TFEU, and the farmers in question carry out an agricultural activity.<sup>557</sup>

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<sup>555</sup> Dz. U. of 2017, item 2077 as amended.

<sup>556</sup> More on the origin of the system of agricultural direct payments in the EU and the reform, see E. Tomkiewicz, *Podstawowe instrumenty prawne polityki rynkowej*, in: *Wspólna Polityka Rolna. Zagadnienia prawne*, eds. A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, Warszawa 2004, p. 92 et seq.; idem *Wspólna polityka rolna po reformie 2003 r.*, „*Studia Iuridica Agraria*” 2005, Vol. V, p. 211 et seq.

<sup>557</sup> Article 4 (1a) *Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within*

The direct payment system consists, among other things, of the basic payment for farmers, voluntary redistributive payments, payments for farmers observing agricultural practices known as being beneficial for the climate and the environment, voluntary payment to farmers in areas with natural constraints, and payments disbursed to young farmers just setting up an agricultural business.<sup>558</sup>

As of 2015, an important element of the reformed system of direct support has been an active farmer criterion. If a farmer does not meet certain requirements, he will be excluded from direct payments in a given year.<sup>559</sup> It is important for agricultural co-operatives that basic payments are not only made in respect of the land owned by farmers. In the light of Article 7(6) of the Act of 26 January 2007 on payments under direct support schemes, which has been in force for the last few years,<sup>560</sup> where the agricultural parcel is subject to autonomous and dependent ownership, area payments are due to the dependent holder. Article 18 of the current law also provides that, where an agricultural parcel or an animal for which a farmer applies is subject to an autonomous and dependent right of ownership, the direct payment is to be granted to the dependent holder. This means that payments under the direct support scheme are due to an agricultural co-operative in its capacity as a lessee of agricultural land or as a user. Moreover, the parties may not stipulate in a contractual provision that it will be the owner of the land who will apply for the payment because he is entitled to EU funds.

An innovation is a payment in favour of young farmers addressed not only to natural persons but also to legal persons, including co-operatives, provided that at least one natural person meeting the criteria of a young farmer (under 40 years of age) has started to exercise effective and sustainable control over the legal person in question as regards decisions concerning management, benefits and financial risks in the first year of the legal person's application for a payment for young farmers.

Alongside these payments, agricultural co-operatives can also benefit from some programmes under the Rural Development Plan 2014-2020; before a brief presentation of some, it will be worth pointing out that earlier on agricultural co-operatives

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the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, whose holding is situated in the territory of the Republic of Poland. For more see D. Łobos-Kotowska, *Działalność rolnicza jako przestanka uzyskania uprawnienia do płatności*, „Studia Iuridica Agraria” 2013, No 11, p. 61 et seq.

<sup>558</sup> ARiMR, *Płatności dla obszarów z ograniczeniami naturalnymi lub innymi szczególnymi ograniczeniami (tzw. płatność ONW) podstawowe informacje* [online]. ARiMR [accessed on: 2018-11-08]. Available at: <<http://www.arimr.gov.pl/pomoc-unijna/prow-2014-2020/dzialanie-13-platnosci-dla-obszarow-z-ograniczeniami-naturalnymi-lub-innymi-szczegolnymi-ograniczeniami-tzw-platnosconw-podstawowe-informacje.html>>.

<sup>559</sup> ARiMR, *Płatności bezpośrednie w roku 2018* [online]. ARiMR [accessed on: 2018-10-05]. Available at: <<http://www.arimr.gov.pl/pomoc-unijna/platnosci-bezposrednie/platnosci-bezposrednie-w-roku-2018.html>>.

<sup>560</sup> Dz. U. of 2008 No 170, item 1051 as amended.

were beneficiaries of the aid provided for in the Rural Development Plan for 2007-2013, such as the “Modernisation of agricultural holdings.”<sup>561</sup> The aid was granted in the form of reimbursements for a part of the costs, including construction, reconstruction or renovation combined with the modernisation of buildings or facilities used for agricultural production, as well as the purchase of machinery, equipment or devices for such production. It should be stressed, however, that the aid under this scheme was granted and paid up to a limit of PLN 300 000 per beneficiary and holding. This means that both a small family farm and an APC could benefit from the same amount of aid. At the same time, it should be stressed that among co-operative members or their successors are those who many years earlier transferred their farms, often forcibly, to the APC. Agricultural co-operatives, especially social ones, conducting organic farming also benefited from EU funds assigned for this purpose. Agricultural co-operatives running agricultural holdings are also interested in environmental protection initiatives in agriculture, i.e. primarily the agri-environmental and climatic activities. These issues have been regulated in the Ordinance of the Minister of Agriculture and Rural Development of 18 March 2015 on detailed conditions and procedure for granting financial aid under the plan entitled “Agri-environmental and climatic activity” for the years 2014-2020.<sup>562</sup>

Among other things, it provides for a five-year agri-environmental and climate commitment, as referred to in Article 28(3) of Regulation No 1305/2013, for a specific package or its variant, known as the agri-environmental and climate commitment, and which lays down the conditions under which payments may be granted.

As regards the new Rural Development Plan for 2014-2020, agricultural co-operatives may apply for funds from the “Investments in fixed assets” programme, including support for tangible or intangible investments in agricultural holdings. They are aimed at improving the competitiveness of agricultural holdings and their environmental effects. In the sector of processing and marketing agricultural products and infrastructure related to agricultural development their aim is to facilitate land consolidation. Aid for the Sub-Action ‘Investments in agricultural holdings’ covers three types of operations: modernisation of agricultural holdings; investments in holdings located in Natura 2000 areas; investments in holdings located in Specific Exposure Areas.<sup>563</sup>

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<sup>561</sup> Ordinance of the Minister of Agriculture and Rural Development of 17 October 2007 on detailed conditions and the procedure for granting financial aid under the plan “Modernisation of agricultural holdings within the framework of a Rural Areas Development Plan for the years 2007-2013” Dz. U. No 193, item 1397 as amended.

<sup>562</sup> Dz. U. of 2015, item 415 as amended. ARiMR, *Obszary proekologiczne – podstawowe informacje* [online]. ARiMR [accessed on: 2018-10-05]. Available at: <[http://www.arimr.gov.pl/pomoc-unijna/platnosci-bezposrednie/platnosci-bezposrednie-w-roku-2018/platnosc-za-zazielenienie/obszary-proekologiczne.html](http://www.arimr.gov.pl/pomoc-unijna/platnosci-bezposrednie/platnosci-bezposrednie-w-roku-2018/platnosci-bezposrednie-w-roku-2018/platnosc-za-zazielenienie/obszary-proekologiczne.html)>.

<sup>563</sup> PROW 2014-2020 [online]. MR [accessed on: 2015-01-08]. Available at: <<http://www.minrol.gov.pl/Wsparcie-rolnictwa-i-rybolowstwa/PROW-2014-2020>>.

The sub-Action “Aid for investment in the processing, marketing and development of agricultural products” is relevant for agricultural co-operatives and is aimed at micro, small and medium-sized enterprises active in the processing and wholesale trade of agricultural products. The Ordinance of the Minister of Agriculture and Rural Development of 5 October 2015<sup>564</sup> on detailed conditions and the procedure for granting and disbursement of financial aid under the sub-Action “Support for investments in the processing, marketing or development of agricultural products” of the Rural Development Programme for 2014-2020 provides that the beneficiaries of the project may be, in addition to natural persons, legal persons or organisational units without legal personality which have a registered business in the field of processing or marketing of agricultural products and operate as micro-, – small- or medium-sized enterprises.

Poland’s membership of the European Union made it possible for dairy co-operatives to benefit from EU funds as well. For example, in the period 2007-2013, dairy companies, as enterprises processing agricultural products, were beneficiaries of funds from the European Agricultural Fund for Rural Development (EAFRD) under the Rural Development Programme entitled: Increasing the value added to the primary agricultural and forestry production. As is stated in the RDP “support for processing of agricultural products is particularly important, as this sector is one of the very important branches of the Polish economy, both in terms of employment and the value of production.”

The legislator has been adopting the instruments intended to incentivise the establishment of agricultural producer groups, including those in the form of co-operatives. The instruments include tax benefits or financial support. The Regulation of the Minister of Agriculture and Rural Development of 2 August 2016 on the detailed conditions for granting, paying and repaying the funding under the action “Setting up producer groups and producer organisations” included in Rural Development Program for 2014-2020<sup>565</sup> lays down that the order of granting the EU funding depends on the sum of points given under the following criteria: e.g. the group is organized in the form of a co-operative (3 points). As opposed to limited liability companies, co-operatives usually associate a large number of members, especially those which associate the agricultural producers of pigs. Such legal regulations make the co-operative agricultural producer groups increasingly popular and help them to associate larger numbers of agricultural producers.<sup>566</sup>

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<sup>564</sup> Dz. U. item 1581 as amended.

<sup>565</sup> Dz. U. item 1284.

<sup>566</sup> It can be exemplified by some statistical data. In October and November 2016, there were more than 30 new co-operative agricultural producer groups (there was no company) entered into the register of groups in the region of Wielkopolska. In the region of Łódzkie – more than 30 new co-operative groups, in the region of Opolskie – 6 co-operatives (and two groups in the form of a company) and in the region of Podkarpackie – 5 new co-operative groups. According to the

An agricultural producer who decides to set up or join a group can get a better price for agricultural products, use cheaper means of production, jointly use agricultural machines, store, pack and standardise products or groups of products.<sup>567</sup>

Co-operatives, conducting one of the stages of agricultural activity but qualified according to the Polish Classification of Activities as a non-agricultural business activity, have to pay taxes on general terms, like any other legal person.

At the same time, the Act on Corporate Income Tax provides for tax incentives for entities associating agricultural producers in groups of agricultural producers, including those run in the form of co-operatives. According to Article 17 sec. 1 point 49 of this legal act, this is the income of a group of agricultural producers entered in the register, obtained from the sale of products or groups of products the group was created for, produced on the farms of its members spent on behalf of members of this group in a tax year or the following year is exempt from income tax. Paragraphs 9 and 10 of the Article specify that the expenditure incurred for the benefit of members include the purchase of means of production means given to the members of the group and the training given to the members of the agricultural producer group.

However, according to the Act of 12 January 1991 on local taxes and charges, this is the buildings and structures occupied by a group of agricultural producers entered into the register and used exclusively for the activity of selling the products or product groups produced on the farms of group members that are exempt from property tax within the scope defined in Article 4 par. 2 of the Act of 15 September 2000 on groups of agricultural producers and their associations, in accordance with its founding act. The expression “occupied by a group of buildings and structures” raises some doubts of interpretation.

Tax preference is also introduced by the Act of 4 October 2018 on farmers' co-operatives. For example, buildings and structures or parts of buildings and land occupied by a farmers' co-operative or an association of farmers' co-operatives for the activities defined in Article 6 (1) and (2) of the Act of 4 October 2018 on farmers' co-operatives, owned or in perpetual usufruct by a farmers' co-operative or an association of farmers' co-operatives which operate as a microenterprise within the meaning of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, are exempt from property tax. On the other hand, the aforementioned Act on corporate income tax states that the income of farmers' co-operatives within the meaning of the Act of 4 October 2018 is exempt from this tax which operates as a microenterprise within the meaning of Annex I to Commission Regulation (EU) No 651/2014

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registered maintained by the Agricultural Market Agency, currently Agency for Restructuring and Modernisation of Agriculture (ARMA).

<sup>567</sup> See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 430 et seq.

of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, originating from the sale of agricultural products or groups of these products or fish, due to which the farmers' cooperative was established, produced on holdings or special branches of agricultural production of its members.

This aid for farmers' co-operatives is as a rule granted within the *de minimis* framework referred to in the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid Text with EEA relevance – where such aid is granted to entities running an economic activity other than agricultural.<sup>568</sup>

#### 4.9. Supervision and audit of the activities of agricultural co-operatives

As has already been pointed out, starting up an agricultural co-operative must be proceeded not only by an entry in the register of entrepreneurs of the National Court Register, but often in additional registers related to the agricultural sector as well. Such a procedure determines the undertaking of additional control measures by institutions specified in the regulations and sometimes supervision over agricultural co-operatives. This is to prevent irregularities and rectify errors.<sup>569</sup> It should be underlined that additional supervision and controls are not related to the legal form of the co-operative, but are a consequence of the activity carried out by the co-operative in question in the agricultural sector. Thus they constitute an external factor that distinguishes agricultural co-operatives from other co-operative entities.

A brief initial reference to the notion of supervision and control is necessary. The literature emphasises the lack of a legal definition of these terms, stressing at the same time that they are not identical. As a rule, control is considered to be verification of the facts compared with the situation postulated by the law. These activities are subject to examination and assessment of the compliance of the entity audited with the applicable provisions of law, comparing facts with what should be the case and drawing conclusions from them.<sup>570</sup> J. Starościk points out that control consists in observing specific phenomena, analysing their charac-

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<sup>568</sup> If a co-operative carries out an agricultural activity, then under the *de minimis aid in agriculture*.

<sup>569</sup> *Nadzór a kontrola administracji publicznej* [online]. Prawo24.pl [accessed on: 2015-04-05]. Available at: <<http://prawo24.pl/a/nadz%C3%B3r-a-kontrola-administracji-publicznej>>; J. Jagielski, *Kontrola administracji publicznej*, Warszawa 1999.

<sup>570</sup> *Ibidem*.

ter and presenting observations to managing bodies. The controlling agents observe and report the conclusions.<sup>571</sup> On the other hand, supervision is a broader concept and should be understood as the power to intervene with authority in the activities of the controlled entity, whereas controlling agents are not allowed to interfere in the way in which the entity operates.<sup>572</sup> What is important is that supervision includes control, while the exercise of control does not necessarily involve the right to apply supervisory measures.<sup>573</sup>

In the case of economic audit, it is appropriate to refer to the definition of T. Rabska, who emphasises that audit is usually understood as “checking the correctness of certain phenomena or actions, analysing and evaluating them, determining audit results and drawing conclusions.”<sup>574</sup> Auditing should be a source of information and inspiration. According to T. Rabska, despite the fact that supervision is based on the inspection of activities, supervisory powers go beyond mere checking. They also include the right to directly interfere with the activities of the entity being inspected. In Rabska’s opinion, the supervisory measures must be clearly identified in the legal regulations and named (e.g. amendment or repeal of the decision, financial sanctions).<sup>575</sup>

Agricultural co-operatives that carry out manufacturing activities in agriculture and receive aid under the direct payment scheme are subject to administrative audit by the Agency for Restructuring and Modernisation of Agriculture. The auditing activities are performed by persons authorised by the President of the ARMA. They are authorised, inter alia, to enter the holding; access the animals; consult documents relating to the subject-matter of the controls, make copies, extracts or duplicates of these documents and secure them; and take samples for subsequent examination. Where an agricultural producer does not agree with the findings of the report, he may raise reasoned objections in writing against the findings contained in the report to the director of the ARMA Regional Branch within 14 days from the date of delivery of the report, unless the farmer who was present at the inspection raised reasoned objections against the findings of the report to the person who prepared it immediately afterwards.

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<sup>571</sup> S. Starościak, *Prawo administracyjne*, Warszawa 1978, p. 349 et seq.; idem, *Zarys nauki administracji*, Warszawa 1971, p. 356 et seq.; idem, *Elementy nauki administracji*, Warszawa 1964, p. 187 et seq.

<sup>572</sup> A. Kubica, *Kontrola a nadzór, (część I)* [online]. UMWD [accessed on: 2017-09-05], Available at: <[http://umwd.dolnyślask.pl/fileadmin/user\\_upload/Dobre\\_prawo/Dokumenty/Artykuly/A. Kubica\\_art\\_cz.I.pdf](http://umwd.dolnyślask.pl/fileadmin/user_upload/Dobre_prawo/Dokumenty/Artykuly/A._Kubica_art_cz.I.pdf)>.

<sup>573</sup> W. Dawidowicz, *Zagadnienia ustroju administracji państwowej w Polsce*, Warszawa 1970, p. 35 et seq.

<sup>574</sup> T. Rabska, *Prawo administracyjne stosunków gospodarczych*, Warszawa-Poznań 1978, p. 230 et seq.

<sup>575</sup> *Ibidem*.

According to the Act on agricultural producer groups, the activity of groups is currently supervised by the director of the ARMA regional branch competent for the registered office of the group. As part of the supervision he performs checks of, among others, the correctness and consistency of the data contained in the application, with the actual state disclosed in the business plan, and checks the fulfilment by the co-operative group of the conditions referred to in Article 3 or 3a of the Act as well as the implementation of the business plan. The checks are performed (i) before the administrative decision confirming that the group meets the conditions for entry in the register of groups and (ii) at least every two years from the date of the date of issuance of such a decision. Once every quarter, the President of the ARMA provides the minister in charge of agricultural markets with a summary list of information on the checks, inspections, audits carried out and information on the manner in which the recommendations or conclusions, if any, have been implemented or addressed by the group. The Agency for the Restructuring of Agriculture also audits fruit and vegetables organisations, milk producers and other organisations established in accordance with the regulations.

#### 4.10. Vetting in agricultural co-operatives

Vetting is a characteristic feature of a co-operative.<sup>576</sup> As a rule, it has a positive impact on its operation and contributes to its development. The Act defines the objectives of vetting broadly – they include checking the compliance of the co-operative with the law and the provisions of its statutes, conducting business in the interest of all members, checking the expediency, cost-effectiveness and reliability of the implementation by the co-operative of its economic, social and cultural objectives, pointing out to members irregularities in the activities of co-operative bodies, providing organisational and guidance assistance in remedying irregularities and improving the activities of the co-operative.<sup>577</sup>

The provisions introduce the principle that at least once every three years, a co-operative is obliged to submit to a vetting legality check. This obligation is extended when a co-operative is in liquidation when it changes to annual vetting. Each subsequent vetting covers the period starting with the last one. However, a co-operative may request that all or part of its activities, or only certain elements thereof, be scrutinised at any one time. This may be done at the request of the general meeting, the supervisory board or one fifth of the members of the co-operative. This raises the question of who should perform the task. Vetting is primarily carried out by the

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<sup>576</sup> The word vetting (Polish “lustracja” stems from Latin *lustrare* – cleanse or purity). *Lucrum* in the ancient times consisted of assessing by a censor, every five years, the registers of citizens in order to strike off or move names to the list of ordinary citizen. For more see R. Bierzanek, *Prawo spółdzielcze...*, p. 216 et seq.

<sup>577</sup> For more see K. Pietrzykowski, *Spółdzielnie mieszkaniowe. Komentarz*, edition 7, SIP Legalis 2013 (commentary to Article 91 of the Act – Co-operative law – No 4).

competent auditing associations in the co-operatives associated in them. In the case of agricultural co-operatives, this is, for example, the National Association of Dairy Co-operatives, the Auditing Union, and the National Auditing Association of Agricultural Production Co-operatives. Vetting is then carried out free of charge as part of a membership fee.<sup>578</sup> On the other hand, agricultural co-operatives which are not members of an auditing association commission, appoint an auditing association or the National Co-operative Council to carry out vetting for a fee.

The regulations stipulate that vetting may be carried out by a person with vetting rights issued by the National Co-operative Council. The Council also specifies the eligibility criteria for inspectors and the procedure for vetting. The outcome of the vetting process most often indicates the following irregularities: infringement of the law by co-operative bodies, incorrect financial settlements between the co-operative and its members, lack of reliability and objectivity of the vetting carried out.<sup>579</sup>

The provisions on vetting are not developed in the Act on co-operative law. Therefore, additional documents are important for its proper implementation. For example, according to the "Instruction on Vetting Co-operative Organisations"<sup>580</sup> examinations are either full (consisting in the examination of the entire activity of the co-operative by vetting), partial (the examination of a part of the activity of the co-operative based on statements made by the co-operative's self-governing bodies to auditing associations or the National Co-operative Council), checking (a second examination or an inspection done by another inspector in order to determine whether the findings of the examination, challenged by the self-governing bodies of the co-operative, are correct).<sup>581</sup> The literature stresses that the inspector should be guided by the following principles: the legality of proceedings, the objective recognition of the results of vetting, reliable documentation of the vetting results, their contradictory character, evidencing or proving the findings, the objectivity subjectivity and comprehensiveness of the examination.<sup>582</sup> In the light of the regulations, the inspector is obliged to keep secret all information about the co-operative's activity obtained during the vetting process. This confidentiality does not apply vis a vis the authorities of the co-operative under vetting, the auditing association which it has appointed, the inspector the National Co-operative Council or the judicial authorities.<sup>583</sup>

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<sup>578</sup> Also see A. Stefaniak, *Komentarz do art. 91 ustawy – Prawo spółdzielcze*, SIP LEX.

<sup>579</sup> A. Domagalski, *Lustracja Spółdzielni* [online]. KRS [accessed on: 2018-10-02]. Available at: <[http://www.krs.org.pl/index.php?option=com\\_content&view=article&id=108&Itemid=82](http://www.krs.org.pl/index.php?option=com_content&view=article&id=108&Itemid=82)>.

<sup>580</sup> Krajowa Rada Spółdzielcza, *Instrukcja o lustracji organizacji spółdzielczych* [online]. KRS [accessed on: 2018-08-12]. Available at: <[http://krs.org.pl/index.php?option=com\\_content&view=article&id=107&Itemid=177](http://krs.org.pl/index.php?option=com_content&view=article&id=107&Itemid=177)>.

<sup>581</sup> *Ibidem*.

<sup>582</sup> I. Drozd-Jaśniewicz, W. Witowski, *Metody i technika pracy lustracyjnej*, Warszawa 2007, pp. 31-37.

<sup>583</sup> A. Stefaniak, *Komentarz do art. 91...*, op. cit.

The vetting procedure extends to the sequence of activities, starting with the opening of the protocol and continuing through to the signing of the protocol and its transmission to the vetting unit, in order to hold a post-vetting meeting.<sup>584</sup> The Act on co-operative law equips the inspector with extensive rights. They are necessary for carrying out the vetting properly.<sup>585</sup> When performing the inspection, the inspector is entitled, at least once every three years, to: access all the co-operative's premises and facilities; inspect all the files and documents; make copies and extracts; check the assets of the co-operative; request the ordering of inspection inventories of assets; request written or oral explanations from the co-operative's organs; and request explanations from the co-operative's employees in relation to matters covered by the audit in a similar manner.<sup>586</sup> There is no doubt that the vetting protocol is an extremely important document. The data contained therein should be reliable, objective and contain documented results of the vetting. It should constitute a formal basis for an objective assessment of the entity. This in turn has an impact on the post-vetting procedure, which is a reassessment of the vetting results, and on the improvement of the operation of the co-operative. Furthermore, information on the economic and financial situation of the co-operative, the quality of its management and the effectiveness of its asset management should be communicated to its members.<sup>587</sup>

However, it should be stressed that the institution of vetting itself receives different assessments both in practice and in doctrine. It is considered by some politicians to be unreliable and ineffective. This is why proposals are being made for changes to the vetting system so that it can be carried out not by inspectors but by the state administration.<sup>588</sup> Criticism is also sometimes voiced among members of co-operatives, particularly in view of the obligation not only to make available but also to publish most of the information hitherto available only to certain co-operative bodies and relevant services.<sup>589</sup> In my opinion, auditors should, as to date, be appointed by auditing associations or the National Co-operative Council.

#### 4.11. Merger of agricultural co-operatives

The inclusion of Poland in the Common Agricultural Policy and the progressing globalisation processes have also accelerated the processes of merging co-operatives, especially dairy co-operatives. In order to maintain the competitiveness of the Polish dairy industry, it is necessary, first of all, to improve technological ef-

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<sup>584</sup> I. Drozd-Jaśniewicz, W. Witowski, *Metody...*, p. 38 et seq.

<sup>585</sup> A. Stefaniak, *Komentarz do art. 91...*, op.cit.

<sup>586</sup> Ibidem.

<sup>587</sup> I. Drozd-Jaśniewicz, W. Witowski, *Metody...*, p. 103 et seq.

<sup>588</sup> A. Domagalski, *Lustracja...*, op. cit.

<sup>589</sup> Ibidem.

efficiency and reduce the costs of milk production and processing.<sup>590</sup> Consolidation is a complex process. It requires the careful preparation of an action plan. It is also often associated with additional costs, which may discourage the management of many dairies from undertaking such an exercise. However, a well-designed merger is an opportunity to strengthen the market position of many co-operatives. On the other hand, failure to take such action, passive expectation of an improvement in the market situation, usually lead to a deterioration of financial standing. Concentrations usually result in lower production costs, full utilisation of production capacity, a wider product range, increased production potential, expanded distribution network, or lower advertising and marketing expenditures.<sup>591</sup>

In the light of the Act of 16 September 1982 on co-operative law, a co-operative may at any time consolidate with another, which is done pursuant to resolutions of the general meetings of the merging entities, adopted by a majority of two thirds of the votes. Such a decision should include, *inter alia*, the identification of the acquiring co-operative, an adoption of the statutes serving as a basis for its future activities and the date of the merger. However, the Supreme Court ruled in its resolution of 29 December 1995 that after the actual merger of co-operatives, the court may not refuse an application for entry of the merger data in the register of co-operatives on the sole ground that the resolutions of the general meetings of the merging co-operatives did not correctly determine the date of the merger.<sup>592</sup>

It should be stressed that the Act on co-operative law provides only one way of a consolidation through merger, i.e. a transfer of all assets of a co-operative (acquired) to another co-operative (acquiring). This is a significant limitation compared to a limited liability company, as the code of commercial partnerships and companies provides for two ways:

1) by transferring all the assets of the company (being acquired) to another company (the acquiring company) in exchange for shares which the acquiring company issues to the shareholders of the company being acquired (merger by acquisition);

2) by establishing a capital company to which the assets of all the merging companies are transferred in exchange for shares in the new company (merger by the formation of a new company).

Co-operative law does not provide for the possibility of establishing a new co-operative to which the assets of the merging co-operatives will be transferred.

Those who were members of the co-operative being acquired at the time of the merger become members of the acquiring co-operative. In its judgment

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<sup>590</sup> For example, by increasing the utilisation of production capacity, restructuring assets to eliminate unnecessary asset costs, improving the efficiency and effectiveness of sales.

<sup>591</sup> Decision of the President of the UOKiK No DKK-89/2011 [online]. UOKiK [accessed on: 2018-09-02]. Available at: <<https://uokik.gov.pl/download.php?plik=10598>>.

<sup>592</sup> III CZP 180/95, OSNC 1996, No 4, item 49, Legalis No 29679.

of 12 February 2003, the Supreme Court held that Article 100 of co-operative law, according to which the members who are members of the target co-operative at the time of the merger become members of the acquiring co-operative, does not infringe the principle of non-transferability and inalienability of membership in the co-operative. It is not a question of transferring membership from one entity to another, but of clarifying the status of the members of the co-operative being acquired in the acquiring co-operative. The same is true in the case of the division of co-operatives (see Article 112 of the Act on co-operative law). These are cases where membership arises by operation of law (or the Act).<sup>593</sup> Importantly, the statutes of the merged co-operatives must not diminish the acquired economic rights of their members. Payments in respect of shares shall be entered in the accounts of the members of the co-operative being acquired at the rates indicated in the accounts in respect of the amount of the capital being acquired.

In some situations, the merger of agricultural co-operatives must be approved by the President of the Office of Competition and Consumer Protection in Warsaw. This applies in particular to large dairy co-operatives.<sup>594</sup>

Consolidation of co-operatives requires the management to solve a number of legal problems. As business entities, entrepreneurs have various rights, such as those resulting from perpetual usufruct, lease, trade mark as well as obligations, such as tax obligations. In the judgment of 27 May 1994, the Court of Appeal in Wrocław ruled that “in the event of the merger of a co-operative, the incorporation of an organisational unit of a co-operative into another co-operative, the division and liquidation of the co-operative, the property right to use the real property is transferred to the legal successor of the co-operative with universal succession”. In the court’s opinion, however, universal succession of assets takes place if the appropriate procedure for the transfer of assets, regulated in the co-operative law, has been observed.<sup>595</sup>

Under co-operative law, as a result of the merger, the assets of the acquired co-operative are transferred to the acquiring co-operative, and the creditors and debtors of the former become the creditors and debtors of the latter. Experts predict that the situation in the European and global markets and the ongoing globalisation will lead to a further consolidation of dairy co-operatives. The Act on social co-operatives, on the other hand, stipulates that a social co-operative may merge only with another social co-operative. This reservation does not apply to other co-operative entities. This means that hypothetically other agricultural co-operatives, such as a dairy co-operative and a dairy co-operative group of milk producers, may consolidate. However, such a combination could have a negative impact, e.g. on the collection of EU funds by a co-operative group of agricultural

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<sup>593</sup> I CKN 4/01, Legalis No 58163.

<sup>594</sup> *SM Mlekovita i Tomaszowska SM mają zgodę UOKiK na połączenie* [online]. GW [accessed on: 2015-02-05]. Available at: <[http://wyborcza.biz/Gieldy/1,132329,17153296,SM\\_Mlekovita\\_i\\_Tomaszowska\\_SM\\_maja\\_zgode\\_UOKiK\\_na.html#ixzz3ZLe2rodH](http://wyborcza.biz/Gieldy/1,132329,17153296,SM_Mlekovita_i_Tomaszowska_SM_maja_zgode_UOKiK_na.html#ixzz3ZLe2rodH)>.

<sup>595</sup> I ACr 275/94, LEX.

producers. On the other hand, it may be a good solution for co-operative milk producer groups which face difficulties in continuing to operate effectively at the end of the EU funding period.

#### **4.12. Termination of membership of a co-operative**

The co-operative principle of the open door not only allows the possibility of joining a co-operative upon successful fulfilment of prescribed conditions stipulated in the law or the statutes, but also the possibility of resigning from membership. In addition, membership may be terminated as a result of the member's exclusion, expulsion or death. At the same time, it must be remembered that each withdrawal from the co-operative involves the reimbursement by the co-operative of the equivalent of the amounts due in respect of the shares. If a large number of members of a co-operative resign at the same time, or if they hold shares of high value, such a move may have a negative impact on the overall operation of an agricultural co-operative (in particular on its the financial stability and continuity of business, for example on maintaining the continuity of milk deliveries and the availability of sufficient time to find the necessary raw material). On the other hand, the termination of membership of a large number of entities (co-operatives) forming a co-operative group of agricultural producers may lead to the dissolution of this group, owing to the requirement of the minimum number of members to form a group and the quantity of the agricultural products delivered to co-operatives. Hence the importance of a longer notice period.

The time limits and period of notice are stipulated in the statutes. Membership will terminate the day after the expiry of the period of notice. Termination of membership is a unilateral legislative act, independent of the reasons for such termination. Nor is the consent of the co-operative required. It is effective from the moment that it becomes known to the co-operative in such a way as to enable it to acquaint itself with its contents.<sup>596</sup> At the same time, it should be noted that the legal provisions on some agricultural co-operatives introduce additional notice periods.

Under Article 5 of Act on the Co-operatives of Farmers the statute of the co-operative of farmers includes the time limit for a member of a co-operative of farmers to notify about the intention of withdrawing from membership of the co-operative of farmers, which must not expire later than 3 months prior to a trading year. In the case of co-operative groups of agricultural producers, the information on the intention to withdraw from the group should be submitted in writing at least 12 months before the end of a given year of its operation.

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<sup>596</sup> Grounds for the judgment delivered by the Supreme Court on 6 March 2009, II CSK 513/08, Legalis No 244060.

The rules of termination of membership in organisations of fruit and vegetables producers, including those organised in the form of co-operatives, were laid down in the Regulation of the Minister of Agriculture and Rural Development of May 2011 on the termination of membership in organisations of fruit and vegetables producers, which also stipulates the period during which the withdrawing party will not be allowed to join a preliminarily recognised group of fruit and vegetables producers.<sup>597</sup> A member of a fruit and vegetable co-operative producer organisation may terminate its membership of that organisation in writing, stating the reasons for the termination and the dates set out in that legislation.

The question also arises as to whether the membership relationship can be terminated by mutual agreement of the parties. In the grounds for the judgment of 6 March 2009, the Supreme Court<sup>598</sup> pointed out that in the light of Article 22 of the co-operative law, it is not permissible for the membership relationship to be terminated by mutual agreement of the parties without observing the period of notice provided for in the statutes. According to the Supreme Court, therefore, no notice of termination or dissolution of membership *per facta concludentia* can be accepted, for example as a result of the member's withdrawal of shares.<sup>599</sup>

However, since membership in an agricultural co-operative is generally obtained following approval by the relevant bodies and the membership relationship is governed by civil law, it should, in the author's view, be possible for the parties to terminate the membership relationship by mutual agreement. This is of particular importance in a case where, for example, a member of a co-operative agricultural producer group takes early agricultural retirement or is unable to work. In such a case, however, the successor should join the co-operative and continue to be bound by the obligation for the former co-operative member to supply, for example, agricultural produce. Membership may only be terminated by a co-operative by expulsion or exclusion (removal of a member from the register of members).

The exclusion or removal of a member should be for exceptional reasons or in exceptional cases, as the decision of the relevant authorities on the compulsory termination of membership may adversely affect both the operation of the co-operative's agricultural holding (e.g. in the case of co-operative groups of agricultural producers) and the financial standing of the ex-member in the case of social co-operatives or agricultural production co-operatives (owing to the loss of remuneration for work). Moreover, a reduction in the number of members may have negative consequences for the operations of a co-operative as regards, for example, the requirement to comply with the minimum annual

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<sup>597</sup> Dz. U. of 2011 No 105, item 619 as amended.

<sup>598</sup> II CSK 513/08 [online]. SN [accessed on: 2015-02-08]. Available at: <<http://www.sn.pl/Sites/orzecznictwo/Orzeczenia2/II%20CSK%20513-08-1.pdf>>.

<sup>599</sup> Compare judgment of the Supreme Court of 27 November 1962, I CR 369/62, „NP” 1964, No 1.

volume of production of goods or the prescribed minimum number of members of an agricultural producer group in the case of co-operative groups of agricultural producers. It may also adversely affect the performance of obligations within an agricultural holding run by an agricultural production co-operative.

The Act on co-operative law stipulates that a member may be excluded from a co-operative if, owing to his wilful misconduct or gross negligence, the continued membership of such a member is incompatible with the provisions of the statutes of the co-operative or with accepted principles of social norms.

The statutes generally set out the grounds for exclusion and allow it, for example, if a member deliberately acts to the detriment of the co-operative or against its interests, including being engaged in a competing business or showing gross negligence, intentionally misleading the co-operative in order to acquire certain rights, or having been convicted of an economic offence by a final judgment of a court of law.<sup>600</sup> The basic, necessary conditions for exclusion are, first of all, the occurrence of wilful misconduct, i.e. the attitude towards the wrongful act has been conscious. Another situation may be where a member, being aware of the harmful effect of his conduct, wishes to so act, or agrees to it, or has demonstrated gross negligence.<sup>601</sup>

Another way in which membership may be terminated is by decision of the appropriate bodies to remove a member from the register of members of the co-operative. A member who does not perform his duties in accordance with the statutes, through no fault on his part, may also be removed from the register of co-operative members. However, the grounds for such a removal should be set out explicitly in the statutes. This means that the removal may only be used when an event specified in the statutes has occurred e.g. when a member loses legal capacity to perform legal transactions or to perform work in a permanent manner, or when has no longer the specific qualifications specified in the statutes; or fails to fulfil the obligations specified in the statutes for reasons beyond his control; or when he has failed to sell agricultural produce to the co-operative for more than one year for reasons for which he is not responsible.<sup>602</sup> This catalogue of reasons cannot be arbitrarily expanded either by the co-operative or the court.<sup>603</sup>

Under the statutes, the supervisory board or the general meeting of the co-operative in question may decide on the exclusion or removal.

The termination of membership is important in terms of the payment of shares and the reimbursement of the land contribution. Under the Act on co-operative law,

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<sup>600</sup> For a model sample of the statutes of an agricultural co-operative see [online]. KRS [accessed on: 2018-08-10]. Available at: <[www.krs.org](http://www.krs.org)>.

<sup>601</sup> Ibidem.

<sup>602</sup> Ibidem.

<sup>603</sup> See judgment of the Court of Appeal in Wrocław of 10 July 2013 (I ACa 675/13, *Legalis*, No 743626).

the contribution of a former member is paid out based on the approved financial statements for the year in which the member ceased to be a member of the co-operative. Thus the date of termination of membership is not significant, as has been confirmed by the Court of Appeals in Warsaw in its judgment of 6 February 1996.<sup>604</sup> The manner and date of the repayment are set out in the statutes.

A former member is not entitled to a resource fund and has no access to other assets of the co-operative, subject to Article 125 § 5a of the Act on co-operative law. This provision provides that where a resolution provides for the distribution of all or part of the remaining assets to members, this distribution is to take account of former members who had not been paid all their shares by the time the co-operative was converted or liquidated. On the other hand, paragraph 3 of the said Article provides that a proportional repayment of shares is made from the balance remaining after all creditors are satisfied and after the amounts sufficient to cover all claims that are not yet enforceable or are questioned by the debtor have been deposited with the court. However, the repayment cannot be made earlier than six months from the date when the creditors of the co-operative are called to submit their claims.

The reimbursement of the land contribution in the event of termination of membership is an important issue as well. This is important for both the former co-operative and the APC in view of the sustainable running of the farm. Reimbursement of the contribution implies termination, the exclusion, expulsion or death of a member. In the first three instances, the accounts are settled directly between the member and the co-operative in accordance with the rules laid down in the statutes. The main task of the co-operative is to run an agricultural holding. In many cases, the land transferred to the co-operative was already developed and the buildings erected on it were used for animal production, or there was a processing plant in place, which formed the basis of the activities of the co-operative. However, the member remains the owner of the contribution (unless the statutes provide otherwise) and his right to dispose of the item cannot be restricted. A member of a co-operative may therefore sell or donate its land contribution to a co-operative. In the event of death, the contributed piece of land will pass to the heirs. However, in the case of a paid transfer the co-operative will have a pre-emptive right to purchase the contribution.

The rules and the deadline for the withdrawal of the contribution in the event of the termination of membership in a co-operative should be laid down in the statutes. Importantly, this document may also provide an overview of a partial withdrawal of contributions. Such a possibility is welcomed by many members. Some of them are interested in recovering part of their agricultural land from the

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<sup>604</sup> See judgment of the Court of Appeal in Warszawa of 6 February 1996 (I ACr 1196/95, *Legalis*, No 33933).

co-operative and using it, for example, for setting up an agricultural business to be run by the member of a co-operative himself or his family members. In this situation, such a member can still be a member of the co-operative and work in it but also run his own farm. Some members do so in order to form a co-operative group of agricultural producers together with the APC.

It should be remembered that the objectives of the APC include not only running a joint agricultural holding, but also activities for the benefit of the individual agricultural holdings of its members. A member withdrawing his contribution re-acquires the same land that he previously contributed, unless it is contrary to the common economic needs. If this is the case, equivalent land is returned to that member, having regard to the interests of both (Article 148 § 3 of the Act on co-operative law). If there is a difference in the area or value in use of the land returned, the settlement between the parties takes place at market prices as at the settlement date. However, a number of problems of interpretation arise with regard to the phrase "common economic needs". It is their occurrence that justifies the granting of replacement land to a member. Such a solution is not always beneficial for the owner of the land, but it is to ensure the stable operation of the co-operative. It seems that such needs will particularly apply in the case of land under, for example, agri-environmental schemes, aid for organic farming or, in the case of built-on land, where buildings are used for livestock farming, animal husbandry or processing activities. Many co-operatives have incurred high costs in adapting their premises to meet EU requirements and it would be difficult to change their premises.

At the same time, it should be noted that the legislator, taking into account the productive nature of the land contribution and the costs associated with the erection of buildings by an agricultural production co-operative, stipulated in Article 279(2) of the Civil Code that if a usufruct of land expires, the ownership of the plot on which buildings or facilities owned by the co-operative are located may be taken over by the co-operative against payment of the value at the time the usufruct expires. Trees and plants planted or sown by the co-operative become the property of the owner of the land.

There is no doubt that the provisions of the Civil Code strengthen the position of the agricultural production co-operatives. In the event of the termination of the use of the land constituting a contribution to a co-operative, the co-operative may take over the land against payment, provided that the buildings have been erected on that land. If the owner refuses to enter into a transfer agreement, the agricultural co-operative will have a claim against the owner and may take legal action. It is rightly assumed in the literature that a final court ruling pursuant to which the landowner is obliged to submit a declaration of will to transfer the ownership right to the land to a co-operative replaces this declaration of will (Article 64

of the Civil Code, in conjunction with Article 279, para 2 of the Civil Code, in conjunction with Article 1047 of the Civil Code).<sup>605</sup>

It is also worth referring to the new regulations concerning the termination of membership in the Act on farmers' co-operatives and the liquidation of this entity. According to this act the member of a farmers' co-operative who has withdrawn from the co-operative upon their notice or has been removed as they stopped running an agricultural farm or a special branch of agricultural production, may within six months of the day when the membership stopped, transfer their shares to the person who has taken over the agricultural farm or a special branch of agricultural production provided the person is a member of the same co-operative or has applied to become a member of the co-operative. The share transfer agreement in the above-mentioned cases is made in writing under pain of invalidity with a notarised certification of the signatures. The above rule is not applied if the transfer of an agricultural farm or a special branch of agricultural production was made as a result of paid purchase. If the person has neither joined the co-operative of farmers nor applied to become a member of that co-operative or if the member has transferred the ownership of an agricultural farm or a special branch of agricultural production as a result of a paid purchase, the share of the former member is paid based on an approved financial statement for the year when the member stopped being a member of the co-operative of farmers following the path and dates laid down in the statute (Article 11).

Moreover, Article 16 of the Act of 4 October 2018 on farmers' co-operatives provides that an auditing union that brings together the farmers' co-operatives or the National Co-operative Council (for the farmers not associated in the auditing union), adopts a resolution to put the co-operative of farmers into liquidation if: 1) the activity run by the farmers' co-operative grossly violates the law or the statutes; 2) the farmers' co-operative has been registered in violation of law; 3) the farmers' co-operative has not been running a business activity for at least a year.

The co-operative of farmers can lodge an appeal against the resolution in court within six weeks from the day it was served together with the justification. If the appeal is not lodged within the statutory time limit or if the decision to dismiss the claims or to discontinue the proceedings comes into force, the Auditing Union or the National Co-operative Council gives notice to the National Court Register of the initiation of the liquidation procedure and appoints a liquidator (Art. 16).

Another important provision of the Act of 4 October 2018 on farmers' co-operatives is that of its Article 17 regarding the event of liquidating the co-operative, when the property of the farmers' co-operative which is left once the contributions have been returned and the creditors have been satisfied is divided proportionately to the shares held by the members of this co-operative.

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<sup>605</sup> E.g. A. Dadańska, *Użytkowanie przez rolnicze spółdzielnie produkcyjne*, in: *Kodeks cywilny. Komentarz. Vol II. Własność i inne prawa rzeczowe*, ed. A. Kidyba, SIP LEX 2012, p. 242 et seq.

# FINAL CONSIDERATIONS

## 5.1. Conclusions

These deliberations, based not only on Polish but also on EU legislation, and the wealth of writings on the subject, have provided sufficient material to identify trends in the development of agricultural co-operatives, allowing us to highlight their characteristics and the differences from other co-operatives.

The starting point leading to the identification of these developmental trends will be a brief look at the history of these entities and the legal regulations governing them since the partition period (when they were first created). In the Prussian Partition there was a considerable number of agricultural and commercial co-operatives under the name “Rolnik” (“Farmer”), the purpose of which was to provide their members with products they needed for agricultural production, and to ensure the sale of cereals and other agricultural products they produced.<sup>606</sup> During that time, there were also other co-operatives being created, including dairy co-operatives and parcel and settlement co-operatives; owing to the latter farmers could acquire agricultural land more easily.

Undoubtedly, the fact that Poland regained independence and subsequently, in 1920, adopted the Act on co-operatives contributed to the development of the co-operative movement and co-operatives. The Act was an extremely modern piece of legislation for the time. Co-operatives started to enjoy a period of prosperity, which extended to include co-operatives bringing together agricultural producers (e.g. dairy co-operatives, agricultural services co-operatives, those purchasing and marketing cattle and pigs, egg co-operatives, poultry co-operatives, the agricultural tools trade, pasture co-operatives, cereal cleaning co-operatives, processing co-operatives such as distilleries, bakeries, sugar factories, etc.).<sup>607</sup> The operations of co-operatives were also influenced by legal regulations pertaining to agriculture. At that time, however, the catalogue of these regulations was not very extensive. Hence in the interwar period, the most common co-operatives

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<sup>606</sup> M. Brodziński, *Oblicza polskiej spółdzielczości wiejskiej*, Warszawa 2014, p. 31 et seq.

<sup>607</sup> *Spółdzielnia wiejska jako jedna z głównych form wspólnego gospodarczego działania ludzi*, ed. W. Boguta, Warszawa 2011, p. 28; M. Brodziński, *Oblicza...*, p. 53 et seq. request s A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 370 et seq..

where those supporting agricultural activity conducted by agricultural producers and processing.

In the period after the end of II World War the most significant development was to be seen in co-operatives conducting agricultural activity, i.e. co-operatives of agricultural production. The popularity of such entities resulted from the fact that the Poland of that time was a socialist state characterised by the collectivisation of agriculture. Moreover, the agricultural reform led to the liquidation of large and medium-sized agricultural holdings. The new co-operative entities that appeared were governed by new laws reflecting their formation. Not only new normative concepts were implemented, such as: agricultural production co-operatives, other co-operatives of agricultural production, specialist co-operatives, co-operatives of farmers associations, but also separate regulations dedicated to these entities were adopted, which took into account their specific features distinguishing them from other co-operative entities. An example is the regulation in the civil code concerning the use of State Treasury land that provided for the possibility of acquiring it by way of ownership. Financial forms of support for such co-operatives as well as administrative regulations were also introduced.

After 1989, many agricultural co-operatives were dissolved and their role generally weakened. Moreover, the dependence of co-operatives on the state in the times of socialism, followed by frequent loss of their self-governing and social character, contributed to the strengthening of the negative image of co-operatives among the rural population.<sup>608</sup> Another reason for the significant weakening of agricultural co-operatives was related to the legislation. However, after 1989, there existed co-operatives engaged both in agricultural activity and in the support of member holdings, taking over certain stages of agricultural activity (mainly dairy co-operatives).

New challenges and opportunities for the development of agricultural co-operatives came with Poland's accession to the European Union although some normative changes had taken place earlier. As early as 1994, while modifying the definition of an agricultural production co-operative, the legislator specified that its purpose was to run a joint agricultural holding and to carry out activities for the benefit of the individual agricultural holdings of its members.

Following the accession to the European Union, agricultural co-operatives in Poland continue their operations and keep developing in the a different direction as before. What has changed, however, is that now more importance is given to co-operatives which support their members who run agricultural and agriculture-related activities. There are co-operatives which take over various stages of the agricultural activity of their members. Some engage also in the processing of the agricultural produce produced by their members. There are also co-operatives engaged in agricultural processing activity as a result of which

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<sup>608</sup> See [online]. KRS [accessed on: 2013-05-05]. Available at: <[www.krs.org.pl](http://www.krs.org.pl)> see more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 371 et seq.

their members can work on agricultural lands. These co-operatives are however of much lesser significance than they were immediately after World War II.

The above-mentioned trends in the development of agricultural co-operatives influence the development of legislation. The current trend of the development of agricultural co-operatives is in line with the development of EU policies. It is connected with, e.g. the necessity to enhance the competitiveness of agricultural producers, the protection of regional products, social economy, energy, environment protection and processing. All the amendments to the Common Agricultural Policy and EU policies make a co-operative a complex legal body and, at the same time a dynamic unit. The activity of agricultural co-operatives is increasingly being influenced by the regulations connected with the development of agricultural law and food law.

EU membership ensures greater stability of the agricultural co-operative sector. Fewer co-operatives are going into liquidation, especially if they are large and economically stronger. Consequently the number of large co-operatives (100 and more ESU) has been growing in the total number of co-operatives engaged in agricultural activities. At the same time, the financial situation and management efficiency of many agricultural production co-operatives have improved. Progress has also been made as regards the technical equipment of co-operatives.<sup>609</sup> The development of co-operatives is often financed from EU sources. However, the changes to the CAP 2014-2020 may bring about a negative impact on the financial situation of some agricultural co-operatives.

Some social co-operatives also carry out agricultural activities, particularly in organic farming. It is a new type of co-operative activity introduced in 2003. Initially, it was regulated by the Act on co-operative law (amended in 2003), and later by the Act of 27 April 2006 on social co-operatives. Their objectives are to run a joint undertaking based on, predominantly, the personal work of its members. Following Poland's accession to the European Union, interest in establishing agricultural producer groups, also in the form of co-operatives acting for and in the interest of co-operatives could be observed. The Act on agricultural producer groups itself was passed as early as 2000, but only amendments to it and the possibility of obtaining EU funds led to the development of entities bringing together agricultural producers. Co-operative groups of agricultural producers sell the agricultural produce produced on the members' agricultural holdings, market it, and store and deliver the means of production. This creates additional development opportunities and increases the competitiveness of agricultural producers on the market. Some of them have acquired shareholdings in processing companies.

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<sup>609</sup> W. Dzun, M. Adamski, *Spółdzielnie produkcji rolnej przed i po wejściu Polski do UE*, „Zagadnienia Ekonomiki Rolnej” 2010, No 2, pp. 42-61. See more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 373 et seq.

In the fruit and vegetable market, on the one hand, we are witnessing the disappearance of fruit and vegetable co-operatives from the market, still common before the political transformation. However, there are preliminarily recognised fruit and vegetable producer groups or recognised fruit and vegetable producer organisations that opt for this form of doing business together. These entities are in line with the EU rules for the development of the fruit and vegetable market and can count on financial support. Also noteworthy are co-operatives involved in the promotion of regional or local products produced by their members.

Co-operatives may also apply for the status of a milk producer organisation or another industry organisation. The new economic environment has contributed to the consolidation of dairy co-operatives.

After the political transformation, agricultural co-operatives have evolved towards those that fit in with the classic definition of co-operatives and co-operative principles. In co-operative groups of agricultural producers, the basic classic feature of co-operatives, i.e. the link that should exist between the activity of the enterprise termed a “co-operative” and the economic activity of its members, is very clear<sup>610</sup>. The co-operative has been given an auxiliary shape, as it is supposed to support its members directly<sup>611</sup>. This is the case in the co-operative group of agricultural producers. These entities function only thanks to the holdings of their members. As a rule, they do not seek to maximise profit, and any profits they make are usually allocated to further development. They also set up funds to support the incomes of farmers, members of the co-operative who are agricultural producers. The members of the group generally aim to increase their income, if only by getting a higher price for agricultural produce of supposedly good quality.

As far as the formula for the organisation and operation of co-operatives is concerned, civil law regulation is of fundamental importance. This is because both the co-operative relationship and the agricultural activity are civil in nature.<sup>612</sup> The considerations carried out have shown a growing impact of extensive legal regulations concerning agriculture, often of an administrative nature, on the activity of the entities in question. What must be noted also is the Europeanisation of regulations shaping the concept of agricultural co-operatives in the scope of their organisation and operational formula, especially in the context of external factors. Financial assistance is one of the instruments encouraging the organisation of co-operative groups of agricultural producers or social co-operatives. It is connected with the necessity to fulfil legal premises and sometimes also with complicated regulations concerning the of state aid.

Agricultural co-operatives carrying out agricultural activities, such as the agricultural production co-operatives and social co-operatives, are obliged to meet

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<sup>610</sup> See e.g. P. Zakrzewski, *Cel...*, p. 69.

<sup>611</sup> *Ibidem*, p. 72.

<sup>612</sup> On the nature of the agricultural activity see R. Budzinowski, *Koncepcja gospodarstwa...*, p. 142.

many requirements relating to environmental protection and animal welfare. Dairy co-operatives, on the other hand, such as milk collectors and processors, are obliged to operate in accordance with the provisions of the EU milk market and food law. The Europeanisation of regulations affecting the organisation and operation of agricultural co-operatives is connected precisely with the expansive development of agricultural law<sup>613</sup> and food law.

However, the greater impact of European and administrative legislation on the activities of agricultural co-operatives does not mean that civil law is depreciated. It remains extremely important, particularly in internal relations and when concluding agreements for pre-contracted deliveries relating to the agricultural sector. The basic legal relationship of a co-operative is a civil relationship of membership, and when it is established, the member co-operative acquires a number of rights and obligations towards the co-operative. The subjects of this relationship are, on the one hand, the members of a co-operative and, on the other hand, the co-operative itself.<sup>614</sup> It should be expressly stated that joining a co-operative and the subordination of a member to a co-operative is voluntary and not compulsory. It is precisely the voluntary nature of this subordination that is expressed by the possibility, under the law and the statutes, of freely joining and withdrawing from the co-operative.<sup>615</sup>

To sum up, it should be noted that the development of agricultural co-operatives began with co-operatives supporting farmers during the Partitions and the interwar period, where they took over one or more stages related to the agricultural and processing activities of their members, and then moved on to being co-operatives conducting agricultural activities in the period after the Second World War (which were predominant). In addition to agricultural production co-operatives, there were also those supporting the agricultural activities of the members of the co-operative and those engaged in processing. However, they were of lesser importance. Following EU membership, there are still trends in the development of agricultural co-operatives in two directions. However, this trend is reversed – co-operatives supporting their members in their agricultural activities and those associated with them, i.e. taking over the various stages of the co-operative's agricultural activity, are becoming increasingly important. Some of them are also involved in the processing of agricultural produce produced by co-operatives. At the same time, there are co-operatives engaged in agricultural manufacturing activity which provide work for members of co-operatives on an agricultural holding, but their importance is much smaller than in the period after the World War II.

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<sup>613</sup> Tendencies in the development of agricultural law – see *idem*, *Problemy ogólne prawarolnego...*, p. 73 et seq.

<sup>614</sup> B. Słotwiński, *Z teoretycznych...*, p. 14 et seq.

<sup>615</sup> *Ibidem* see more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 373 et seq.

These trends in the development of agricultural co-operatives have an impact on the development of legislation. What is observed is that legal regulations concerning the organisation and functioning of agricultural co-operatives are being extended. At the same time, the normative basis for co-operatives of agricultural production was widely regulated in the period after the Second World War. The political transformation, the principles of the market economy and the acquisition of EU membership have resulted in the legislator becoming more focused on the association of agricultural producers selling agricultural produce and supporting other stages of agricultural activity. Both the development of agricultural co-operatives and the legislation regulating the form of their organisation and operation were strongly influenced by political and historical factors as well as socio-economic needs. The current trend in the development of agricultural co-operatives is in line with the development of EU policies. This is related, for example, to the need to increase the competitiveness of agricultural producers, the protection of regional products, the social economy, energy, environmental protection and processing. A co-operative is a complex legal entity and at the same time a dynamic unit in the context of taking into account changes in CAP and EU policies. The growing impact of regulations related to the development of agricultural law and food law on the activities of agricultural co-operatives should be noted.<sup>616</sup>

These considerations allow us to identify the characteristics of agricultural co-operatives which make them stand out from other co-operative entities in Poland (these are *de lege lata* conclusions). At the same time, it must be pointed out that, in view of the diversity of agricultural co-operatives, it is difficult to identify fully uniform attributes. However, this does not preclude the identification of certain common elements.

The basic characteristic of agricultural co-operatives is their objectives, i.e. activities linked to the agricultural sector or, in other words, to different parts of the food chain. Some agricultural co-operatives are active in the production of agricultural produce, others take over several of its stages (e.g. agrotechnical services, purchase of means of production, sales, marketing of agricultural products, consultancy) or processing.<sup>617</sup> The inclusion of co-operatives from a functional point of view – by the type of activity they carry out – determines their recognition as agricultural. Therefore, the basic element of distinguishing an agricultural co-operative is precisely its specificity and form of activity.<sup>618</sup>

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<sup>616</sup> More on the expansion of agricultural law see R. Budzinowski, *Współczesne tendencje rozwoju prawa rolnego*, „Studia Iuridica Agraria” 2009, Vol. VII, p. 17 et seq.; P. Czechowski, A. Niewiadomski, *Tendencje rozwoju polskiego prawa rolnego w związku z uzyskaniem członkostwa Polski w Unii Europejskiej*, „Studia Iuridica Agraria” 2009, Vol. VII, p. 30 et seq.

<sup>617</sup> Co-operatives providing agricultural services for the production of agricultural products should also be distinguished see more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 374 et seq.

<sup>618</sup> R. Budzinowski, *Problemy ogólne prawa rolnego...*, p. 194 et seq.

An agricultural co-operative is either an agricultural farm and, at the same time, an enterprise (this refers to co-operatives which run agricultural activity) or an enterprise which includes elements typical of agricultural farms, e.g. warehouses to store agricultural produce, agricultural equipment and milk tankers the establishment of agreements connected with an agricultural activity of co-operative members, e.g. a contract of delivery of pre-contracted agricultural produce, sales of agricultural produce.

The type of activity is critical for the legislator to specify the features of members of agricultural co-operatives. The co-operatives bring together, mainly, agricultural producers or entities whose jobs are connected with running an agricultural activity. Co-operative members have both economic ties with a co-operative (they provide legal products, work) as well as legal ones (acceptance of membership, membership agreement, employment agreement). It is not until an organised co-operative entity is supported by the activity run by its members that it can achieve its goals. In short, a member of a co-operative generally works for a co-operative agricultural holding or seeks to develop his own agricultural holding through the co-operative.

The unique character of agricultural co-operatives was taken into consideration by the legislator also in respect of their structure. It is particularly evident in respect of agricultural production co-operatives. There are separate regulations governing the definitions, the number of founders, the statutes or contributions in land. Owing to the fact that agricultural lands constitute the main element of agricultural farms, contributions in land are governed by separate regulations relating to their definition, pricing, usage and the disposal of land. As for the co-operatives which support their members in running their agricultural and related to agricultural activity, there are relatively numerous regulations governing groups of agricultural producers as well as the preliminarily recognised and recognised organisations of fruit and vegetable producers. For these, separate solutions have been implemented as regards the number of founders and the bodies of a co-operative. On the other hand, the Act on agricultural producer groups or on the organisation of fruit and vegetable markets and on the hops market provides for separate requirements concerning, among others, the elements of the statutes, rights and obligations of members, the supervisory board of groups or organisations, including co-operatives, bringing agricultural producers together in an association.

The type of activity carried out by agricultural co-operatives is also responsible for the extensive procedure of their formation before commencing any activity laid down in the statutes. Not only the Act on co-operative law, but also the regulations related to the agricultural sector are often applicable. This is true, for example, of the registration of agricultural producer groups, fruit and vegetable producer organisations or milk purchasers, agricultural producers, and organic farms.

The type of activity run by agricultural co-operatives influences also the way they function (joining the co-operatives by new members, rights and duties of members, finance management, assets, membership of co-operative associations by agricultural co-operatives, termination of membership, a contract of delivery of pre-contracted agricultural produce, legal principles of disposing of lands, taxes). A characteristic feature of agricultural production co-operatives is that a member who is able to work has the right and obligation to work in the co-operative as determined annually by the management board in accordance with the needs arising from the co-operative's business plan. In addition to its members, the co-operative may also employ members of their households. On the other hand, in trade co-operatives, members usually enter into membership agreements and it is from these that the rights and obligations related to their agricultural activity arise, most often as regards the delivery of agricultural products to co-operatives and the adjustment of production to the requirements set by the co-operative.

The activity of agricultural co-operatives in the agricultural sector also influences the agricultural contracts made by co-operatives, especially contracts of delivery of pre-contracted agricultural produce, contracts for sales of agricultural produce, lease contracts and other contracts regulating the disposal of lands or the use of EU or Polish funds. Agricultural co-operatives may operate as an agricultural producer (an agricultural production co-operative, a social co-operative, a group of agricultural producers) and a pre-contracting party (e.g. a dairy co-operative). As far as the lease of agricultural lands is concerned, a co-operative of agricultural production has the right of first refusal with respect to leased agricultural lands and the contributions in land. The civil code includes also separate regulations regarding the use of land by agricultural production co-operatives. 'Contractualisation' increasingly often has an impact on the activity of agricultural co-operatives (as an instrument designed to meet goals set for the administration of agriculture). This phenomenon may be observed not only in the market policy (agreements concerning the production and sales of agricultural produce), but also in connection with land development.<sup>619</sup>

A distinctive feature of the operation of agricultural co-operatives is the fact that they use a wide range of European funds addressed to enterprises from the agricultural sector, for example, the European funds originating from the first as well as the second pillar of the Common Agricultural Policy (e.g. direct pay-

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<sup>619</sup> R. Budzinowski, *Współczesne tendencje rozwoju...*, p. 23 and the literature quoted in respect of contractualisation, e.g. F. Bruno, *Strumenti contrattuali di governodell'agrocoltura: ilcasofrancese*, „Diritto e Giurisprudenza Agraria e dell'Ambiente” 2000, No 12, p. 720; F. Adornato, *Od kontraktu rolnego do kontraktualizacji programowanej*, „Przegląd Prawa Rolnego” 2007, No 1, p. 209 et seq.; idem, *Nowa rola kontraktu między licznymi modelami rolnictwa, wielością źródeł i rozwojem obszarów wiejskich*, „Przegląd Prawa Rolnego” 2007, No 2, p. 13 et seq.

ments, agri-environmental payments, modernisation of agricultural farms, groups of agricultural producers). Agricultural co-operatives use the incentives and benefits aimed at agricultural producers running an agricultural activity. These are preferences, for example, concerning agricultural tax and exemptions from property tax for buildings forming part of an agricultural holding. The legislator also took into account the specificity of agricultural producer groups, including those run in the form of co-operatives, by providing for reliefs from property tax and corporate income tax.

Another characteristic feature of agricultural co-operatives when compared to other co-operative entities is the fact that they are subject to supervision and vetting. This applies in particular to agricultural producer co-operatives, i.e. co-operative agricultural producer groups, preliminarily recognised and recognised fruit and vegetable producer organisations.

## 5.2. *De lege ferenda* remarks

To sum up it should be stated that the legal provisions regulating agricultural co-operatives, their organization and operation are trying to respond to the challenges of modern agriculture although there is no doubt that further legislative changes are necessary. The proposal to create a new model of agricultural co-operatives seems justified. Namely, a broadly understood Act on agricultural co-operatives ought to be adopted. The regulations should consider, for instance, international co-operative principles. They constitute part of the Statement of the Co-operative Identity and regulate the nature of a co-operative as a business entity and its uniqueness compared with a company; legal regulations should be neither too protectionist nor too liberal – balanced regulations should rather be opted for. More issues should be handled in a general meeting and regulated in the statute. The most effective are the instruments which encourage the parties to behave in a particular way by means of various incentives, especially financial ones; a new model of agricultural co-operatives should refer to legal acts of Western European countries, especially French, Italian and German ones; a new concept of co-operatives should refer to the specificity of an agricultural activity and respond to current social and economic needs faced by the entities running an activity, including market requirements and growing competition.

As indicated in the reference books, the law is one of the instruments for shaping reality and, at the same time, reality is reflected in the law.<sup>620</sup> As a result, the regulations must be adjusted to economic changes in terms of both an organisational aspect (especially prompt and effective actions of co-operative bodies) and

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<sup>620</sup> R. Budzinowski, *Koncepcja gospodarstwa rolnego*, Poznań 1992, p. 144 et seq.; see more A. Suchoń, *Prawna koncepcja spółdzielni...*, p. 430 et seq.

running a business. Stronger emphasis should be put on functional aspects which allow for an easy extension of the objectives of activity. What is more, the changes should be directed at empowering the members by giving them a bigger say in management and responsibility.

On the one hand, it is the uniqueness of agricultural co-operatives which gives a basis for the objectives of their activities that needs to be taken into consideration and, on the other – market principles and external factors. The new Act on agricultural co-operatives should include two parts. A general part would comprise a definition of an agricultural co-operative as well as the provisions on its structure and operation (those which differ from the provisions included in a general Act on co-operative law; in the matters not regulated in the proposed act, the provisions of co-operative law would apply). The second part, however, the specific one, would cover some selected branches, i.e. co-operatives of farmers, dairy co-operatives, agricultural production co-operatives or co-operatives of agricultural circles. The discussion about a new concept of agricultural co-operatives should be focused, among other things, on the definition of agricultural co-operatives, their types and scope of activity, their members as well as the issues connected with their structure and operation.

As far as the definition is concerned, it may be assumed that agricultural co-operatives are co-operatives which run an agricultural activity (agricultural production co-operatives) or co-operatives of agricultural producers and their goal is to satisfy their members' common needs connected with running an agricultural farm (a common one or belonging to the members), in particular the needs relating to supplying production means, sales of agricultural produce, agricultural and technical services, repairing machines and devices, producing animal feed or fertilizers, consulting as well as enhancing both the qualifications and income of the members. The co-operatives of agricultural producers may also deal with the processing of agricultural produce or generate renewable energy as long as they use agricultural produce or by-products connected with the agricultural activity of their members.

The Act on agricultural co-operatives should therefore cover also co-operatives of agricultural producers (farmers co-operatives, co-operatives of agricultural producers, dairy co-operatives, "Samopomoc Chlopska" co-operatives and others). These are co-operatives which aim at running a common activity by farmers-producers for the benefit of their agricultural farms, in particular supply, sales, processing, marketing, improving the business quality of agricultural produce. These entities need also to include co-operative – agricultural biogas plants or more widely, those connected with renewable energy. The agricultural producers have biomass, which is the basic element of generating biogas but usually they do not have the means to build biogas plants.

There is no doubt that the introduction of a separate concept of a farmers' co-operative, as well as legal instruments facilitating the establishment and operation of such entities under the new Act of 4 October 2018 on farmers' co-operatives, constitutes an important factor for the development of co-operatives. This Act is also in line with European development trends in farmers' co-operatives. At the same time, in the author's opinion, it would be necessary to consider making some changes relating, for instance, to the introduction of a clear definition of a farmers' co-operative. Under the Act of 4 October 2018 farmers' co-operatives are distinguished based on the nature of their activity and the characteristics of their members. It is also worth considering some solutions that exist in other legal systems, such as provisions for co-operative investors. As the Act of 4 October 2018 on farmers' co-operatives is only just coming into force, it will only be possible to assess these regulations and their impact on the development of farmers' co-operatives after a certain, albeit short, period of validity. However, there is no doubt that its adoption should be assessed positively as another stage of the development of the co-operative movement in Poland.

In the opinion of the author of this book, some changes to a national definition of agricultural activity and simplified solutions of organising the structure of agricultural co-operatives and the instruments which will guarantee better continuity of entities are needed. Therefore proposals of changes to some other legal acts are important, including those relating to taxes, the purchase of property by co-operatives, using the right of pre-emption, the contribution in land or agriculture land lease.



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# ASPECTOS LEGALES PARA CREAR Y ORGANIZAR LAS COOPERATIVAS AGROALIMENTARIAS EN POLONIA

## Resumen

El tema de estudio de esta monografía se centra en los aspectos legales para organizar y gestionar las cooperativas agroalimentarias en Polonia. El término “cooperativa agroalimentaria” en sí no forma parte del lenguaje jurídico polaco. Aparece en los trabajos de investigación, proyectos de leyes y en algunos ordenamientos jurídicos extranjeros. No obstante, la nueva ley sobre cooperativas de agricultores del 04 de octubre de 2018, como su nombre indica, introduce las bases normativas del funcionamiento de tales sujetos. Tienen por objetivo realizar la actividad comercial a favor de los socios de la cooperativa agroalimentaria en el ámbito concerniente p.ej. a la concentración de la oferta y la gestión de la venta de productos o grupos de productos fabricados por los agricultores. Sin embargo, junto con las cooperativas que emerjan a base de la ley que se acaba de mencionar, desde hace muchos años se documenta la existencia de las cooperativas fundadas por los productores agroalimentarios, tales como cooperativas lecheras, grupos cooperativos de productores agroalimentarios o las cooperativas como “Samopomoc Chłopska” [lit. Autoayuda Agrícola]

Bajo el término de „cooperativa agroalimentaria” la Autora hace referencia a las entidades cooperativas que se dedican a la producción agroalimentaria (gestión de una explotación agraria) u otras – que asumen al menos una de las etapas de esta actividad, y/o – en un marco más amplio – también las que operan en el sector agrícola. Los socios de la cooperativa entendida en estos términos los constituyen principalmente los productores agrícolas.

Toda entidad necesita tener bien definidos los aspectos legales de su organización y funcionamiento. La organización de una entidad consiste en crear cierto sistema de jerarquías y otros recursos que posibiliten la colaboración enfocada a alcanzar una meta común determinada previamente. Una entidad organizada puede llevar a cabo una actividad mercantil determinada por los estatutos, pero, a su vez, durante su funcionamiento puede complementar y modificar la estructura organizativa. En el proceso del funcionamiento intervienen, por tanto, las actuaciones de hecho y los actos jurídicos; la reglamentación jurídica que las rige resulta variada y concierne, entre otros, a tales aspectos como: fusión, inspección, reglas económicas, celebración de contratos, captación de fondos, aplicación de deducciones o exenciones fiscales, etc.

Hasta la fecha en el marco de la doctrina jurídica no se ha constatado la existencia de una monografía en inglés que aborde la organización y el funcionamiento de las

cooperativas agroalimentarias en Polonia. El presente libro sería, por tanto, el primero escrito en inglés que comenta esta problemática.

La autora se vio impelida a tratar el tema del concepto jurídico de cooperativas agroalimentarias por toda una serie de factores – de índole cognitiva, social y económica, práctica y también teórica – relevantes para el desarrollo del derecho agrario y el de cooperativas. Una cooperativa constituye una entidad importante en el marco de la agricultura. Teniendo en cuenta que se trata de una entidad del sector agrícola, habría que analizarla bajo el prisma de las categorías conceptuales básicas del derecho agrario, tales como: explotación agraria, producción agroalimentaria, producto agrícola, productor agrícola.

La presente monografía tiene por objetivo evaluar y presentar los principios legales (circunstancias) para organizar y gestionar las cooperativas agroalimentarias en el contexto de las necesidades socioeconómicas, del desarrollo de la agricultura y también de la economía agroalimentaria dado que son entidades de estructura compleja y carácter heterogéneo. Cabe mencionar también la importancia de señalar las tendencias presentes en el desarrollo de las cooperativas agroalimentarias y las decisiones del legislador sobre la fórmula jurídica para organizar y gestionar un tipo de cooperativa específico en función de optar por un modelo determinado de su estructura y en el sistema de construcción particular y también en su relación con otras instituciones, recalcar la idiosincrasia de las cooperativas agroalimentarias ante otras entidades de carácter cooperativo.

El libro se compone de cinco capítulos. En el primero (Consideraciones previas) se explican el título y la evaluación del estado de la investigación; la motivación a la hora de optar por el tema de estudio, el objetivo de la monografía y las hipótesis que sirvieron de base para formular el concepto y el marco de la investigación, y, a la vez, se comenta la metodología aplicada.

El punto de partida del segundo capítulo es la evolución de los principios y movimientos ideales del cooperativismo. Se enfocan principalmente las ideas del liberalismo económico y el solidarismo cristiano, que gozan de popularidad también en el siglo XXI. Dado el objetivo del estudio la Autora se ha referido a la política y el Derecho de la Unión Europea. Se hace hincapié en la Política Agrícola Común, para cuya realización desde hace muchos años se recurre, entre otros conceptos, precisamente al movimiento cooperativo.

Las consideraciones comprendidas en este capítulo se centran también en la presentación de cómo se han ido formando los actos reglamentarios sobre las cooperativas en el territorio polaco en el periodo de la repartición y de entreguerras. A continuación se pasa a analizar la legislación sobre cooperativas de la época posterior a la Segunda Guerra Mundial. Las cuestiones abordadas en este capítulo resultan imprescindibles para determinar las tendencias en el desarrollo de las cooperativas agroalimentarias.

El tercer capítulo lo encabezan la definición de una entidad cooperativa, las actividades comprendidas en su objeto social y sus características, junto con los principios de la creación de esa. Posteriormente se explican los conceptos de actividad agraria y producto agrícola como categorías de partida para el surgimiento de las cooperativas agroalimentarias. Este prisma permitió determinar las cooperativas pertenecientes

al grupo de las agroalimentarias. Las consideraciones se enfocan en el concepto de cooperativa, las actividades de objeto social de las cooperativas de producción agroalimentaria, cooperativas sociales que realizan actividad agraria, cooperativas de agrupaciones, grupos cooperativos de productores agrícolas, agrupaciones de productores de frutas y hortalizas prerreconocidas y también las organizaciones cooperativas de productores de frutas y hortalizas reconocidas, organizaciones cooperativas de productores agroalimentarios (principalmente de leche), cooperativas que actúan a favor de productos protegidos y cooperativas lecheras, cooperativas de agricultores.

A continuación se presenta el procedimiento de crear una cooperativa, en lo concerniente a los socios fundadores, estatutos, acciones, derechos de inscripción, registro, órganos y estructura. Se comenta el marco legislativo básico derivado de la Ley sobre Derecho de cooperativas y el concerniente a las cooperativas agroalimentarias derivado de la reglamentación legislativa relacionada con la agricultura.

En la parte final del capítulo se encuentran consideraciones sobre la labor de los socios en las cooperativas de producción agroalimentaria y también las condiciones de los contratos de asociación en los grupos cooperativos de productores agrícolas, así como en las cooperativas lecheras. En el cuarto capítulo se exponen algunos aspectos legales para crear y gestionar las cooperativas agroalimentarias. Las consideraciones giran en torno a la incorporación de nuevos socios a una cooperativa agroalimentaria, sus derechos y obligaciones, los bienes, la economía financiera, siempre teniendo en cuenta la especificidad resultante de la reglamentación sobre las cooperativas agroalimentarias. A continuación se presentan también las cuestiones concernientes al contrato de cultivo, al de arrendamiento rural, es decir, contratos comunes celebrados por las cooperativas agroalimentarias. Cabría subrayar también la relevancia del apoyo normativo público de la organización y la gestión de las cooperativas agroalimentarias. De ahí que esta cuestión quede comentada en este capítulo. A modo de conclusión se planean ciertas consideraciones respecto al control y a la supervisión de la actividad de las cooperativas agroalimentarias, la inspección, la fusión y la finalización de la pertenencia a una cooperativa. El último capítulo pretende resumir tales cuestiones como la evolución de las cooperativas agroalimentarias y su idiosincrasia ante otras entidades cooperativas, así como breves conclusiones de lege ferenda.

En el resumen la Autora constata que el desarrollo de las cooperativas en el territorio polaco partió de las cooperativas que prestaron apoyo a las explotaciones agrarias en el periodo de la repartición y el de entreguerras – al asumir una o más etapas relacionadas con actividad agroalimentaria e industrial de los socios – hasta que se llegaron a crear cooperativas que se dedicaban a la actividad agroalimentaria en el periodo posterior a la Segunda Guerra Mundial (el impacto de estas resultó mayor). Junto con las cooperativas de la producción agraria hubo también otras que prestaron apoyo a la actividad agroalimentaria de los socios de la cooperativa y que adicionalmente se dedicaban a la industria. Sin embargo, no tuvieron tal transcendencia. Después de que Polonia entrara en la Unión Europea las cooperativas también tienden a evolucionar en dos direcciones. No obstante, se observan tendencias opuestas – cobran cada vez más importancia las cooperativas que se encargan de prestar apoyo a los socios en su actividad agraria y la actividad resultante es decir, la de asumir alguna etapa de actividad agraria de los cooperativistas. También las hay que se involucran

en la industria utilizando los productos agrícolas fabricados por los cooperativistas. Existen, a su vez, las cooperativas que se dedican a la actividad agroalimentaria productora que garantizan empleo a los coopeativistas en una explotación agraria, sin embargo, su papel resulta mucho menos relevante en comparación con el del periodo posterior a la Segunda Guerra Mundial. Dichas tendencias en el desarrollo de las cooperativas agroalimentarias repercuten en las medidas legislativas futuras. En consecuencia la actual legislación sobre las cooperativas agroalimentarias está en proceso de ampliación.

Según la Autora la reglamentación legislativa que rige el funcionamiento y la gestión de las cooperativas agroalimentarias procura hacer frente a los desafíos de la agricultura actual (por citar algunos ejemplos, véanse las leyes que modifican la Ley del 16 de septiembre de 1982 sobre Derecho de cooperativas o la ley del 04 de octubre de 2018 sobre cooperativas de agricultores), aunque indudablemente se evidencia la necesidad de futuras modificaciones de la legislación. De ahí que en un futuro resulte de gran utilidad adoptar una Ley especial sobre cooperativas agroalimentarias.

*Traducción Patrycja Domaradzka*

# RECHTLICHE ASPEKTE DER ORGANISATION UND DES FUNKTIONIERENS VON DEN LANDWIRTSCHAFTLICHEN GENOSSENSCHAFTEN IN POLEN

## Zusammenfassung

Ziel dieses Buches ist es, sich mit den rechtlichen Aspekten der Organisation und des Funktionierens von landwirtschaftlichen Genossenschaften auseinanderzusetzen in Polen. Der Begriff „landwirtschaftliche Genossenschaft“ selbst gehört nicht zur juristischen Fachsprache. Es kommt in der Literatur, in den Gesetzesentwürfen und fremden Rechtssystemen vor in Polen. Das neue Gesetz über die Genossenschaften der Landwirte vom 4. Oktober 2018 führt, wie der Name selbst, normative Grundlagen für das Funktionieren solcher Institutionen ein. Gegenstand deren Aktivität ist der Betrieb eines Gewerbes für die Mitglieder einer landwirtschaftlichen Genossenschaft im Bereich z.B. der Konzentration des Angebotes und der Organisation des Vertriebs von den durch Landwirte hergestellten Produkten bzw. Produktgruppen. Neben den Genossenschaften, welche auf Grund des oben genannten Gesetzes entstehen werden, funktionieren allerdings seit vielen Jahren die von den landwirtschaftlichen Produzenten gegründeten Genossenschaften solche wie Milchgenossenschaften, genossenschaftliche Gruppen der Agrarproduzenten bzw. „Samopomoc Chłopska“ [*Selbsthilfe der Bauern*].

Die Autorin dieses Buches setzt voraus, dass zu der Genossenschaft der Landwirte genossenschaftliche Träger zählen, welche sich mit der Agrarproduktion beschäftigen (einen landwirtschaftlichen Betrieb führen) und andere – welche, mindestens eine Etappe dieser Tätigkeiten übernehmen, oder im breiteren Sinne – im Agrarsektor tätig sind. Zu den Mitgliedern einer so verstandenen Genossenschaft gehören vor allem die Agrarproduzenten.

Für jede Wirtschaftseinheit sind rechtliche Aspekte der Organisation und Funktionierens wichtig. Die Organisation des Tätigwerdens eines Wirtschaftsteilnehmers stellt den Prozess dar, während dessen ein System von Menschen und sonstigen Ressourcen errichtet wird, das die Zusammenarbeit zum Erreichen eines zugrunde gelegenen, gemeinsamen Ziels ermöglicht. Eine organisierte Einheit kann den Betrieb eines kraft der Satzung festgelegten Gewerbes übernehmen und darüber hinaus gleichzeitig während der Ausübung dieser wirtschaftlichen Tätigkeit die Organisationsstruktur ergänzen und modifizieren. Das Funktionieren umfasst somit tatsächliche Tätigkeiten als auch Rechtsgeschäfte. Dabei unterscheiden sich die auf sie angewandten Vorschriften und betreffen zum Beispiel Zusammenschlüsse, Überwachungen, Wirtschaftsgrundsät-

ze, Vertragsabschlüsse, Finanzmittelgewinnung, Inanspruchnahme von Vergünstigungen und Steuerermäßigungen usw.

In den rechtlichen Publikationen wurden bisher keine Versuche unternommen, eine Monographie über die Organisation und das Funktionieren der landwirtschaftlichen Genossenschaften in Polen in der englischen Sprache zu verfassen. Das vorliegende Buch stellt somit die erste Publikation in einer Fremdsprache dar, in der die aufgegriffene Problematik behandelt wird.

Mein Vorhaben, das Konzept der landwirtschaftlichen Genossenschaften mit den rechtlichen Themen auseinanderzusetzen, bekräftigen verschiedene Argumente – kognitive, gesellschaftliche und wirtschaftliche, praktische – und theoretische, die für die Entwicklung des Agrar- und Genossenschaftsrechts relevant sind. Die Genossenschaft funktioniert innerhalb der Landwirtschaft als wichtige Institution. Da sie zu Unternehmen des Agrarsektors zählt – ist sie durch ein Prisma der wichtigen Begriffskategorien des Agrarrechts, das heißt des landwirtschaftlichen Betriebes, der landwirtschaftlichen Tätigkeit, des Agrarproduktes und Agrarproduzenten zu betrachten.

Ziel dieses Buches ist es, rechtliche Grundsätze (Voraussetzungen) zu bewerten (darzustellen), welche für die Organisation und das Funktionieren der landwirtschaftlichen Genossenschaften im Kontext von gesellschaftlichen und wirtschaftlichen Bedürfnissen, Entwicklung der Landwirtschaft sowie Agrar- und Ernährungswirtschaft bei Berücksichtigung der Tatsache, dass es Träger von komplexer Struktur und uneinheitlichem Charakter sind, wichtig erscheinen. Im Rahmen der Überlegungen sind auch die folgenden zwei Fragen relevant: die Darstellung von den Entwicklungstendenzen der landwirtschaftlichen Genossenschaften und Entscheidungen des Gesetzgebers in Bezug auf die rechtliche Formel der Organisation und des Funktionierens der jeweiligen Genossenschaftsarten, welche sich wiederum in der Wahl des entsprechenden Modells für ihren Aufbau und ihr detailliertes Struktursystem sowie in der Verknüpfung mit anderen Institutionen widerspiegeln, als auch die Darstellung der typischen Merkmale von landwirtschaftlichen Genossenschaften im Vergleich mit anderen genossenschaftlichen Körperschaften.

Das Buch ist in fünf Kapitel unterteilt. Erstes Kapitel (Einführende Überlegungen) umfasst die Erläuterung des Themas und Bewertung des Forschungsstandes, die Begründung der Wahl der Forschungsthematik, das Arbeitsziel und Ausgangsannahmen für die Formulierung des Konzeptes sowie den Grundriss der Struktur dieser Monographie als auch Bemerkungen zu der Arbeitsmethode.

Der Ausgangspunkt des zweiten Kapitels bildet die Darstellung der Entwicklung der genossenschaftlichen Grundsätze und der Ströme der Genossenschaftsidee. Ein besonderes Augenmerk wird auf die Idee des wirtschaftlichen Liberalismus und des christlichen Solidarismus gelegt. Diese Ideen sind nach wie vor im XXI. Jahrhundert populär. Angesichts des Arbeitsziels war es notwendig, an die Politik und das Recht der Europäischen Union anzuknüpfen. Die Analyse konzentriert sich vor allem auf der Gemeinsamen Agrarpolitik, bei deren Durchführung seit vielen Jahren eben unter anderem Genossenschaftsidee verwendet wird. Im Rahmen dieses Kapitels wird auch überlegt, wie die rechtlichen Regulationen betreffend Genossenschaften sich auf polnischem Gebiet in der Zeit der Besetzung Polens im XVIII. und XIX. Jahrhundert

und in der Zwischenkriegszeit entwickelten. Danach werden die Überlegungen auf die genossenschaftliche Gesetzgebung nach dem Zweiten Weltkrieg fokussiert. Die in diesem Kapitel aufgeführten Fragestellungen sind für die Festlegung von Entwicklungstendenzen der landwirtschaftlichen Genossenschaften unerlässlich.

Drittes Kapitel definiert an erster Stelle den Begriff, den Gegenstand der Tätigkeit und die Merkmale einer Genossenschaft sowie die Grundsätze für die Gründung einer Genossenschaft. Weiter werden die Begriffe landwirtschaftliche Tätigkeit und Agrarprodukt als Ausgangskategorien für das Unterscheiden der landwirtschaftlichen Genossenschaften interpretiert. Durch ein Prisma dieser Begrifflichkeiten eben wurden solche Genossenschaften aufgezeigt, die zu den landwirtschaftlichen Genossenschaften zugeordnet werden können. Die Überlegungen konzentrieren sich auf den Begriff, den Gegenstand der Tätigkeit von den Agrarproduktionsgenossenschaften, Sozialgenossenschaften, welche die landwirtschaftliche Tätigkeit führen, Maschinenringen, landwirtschaftlichen Gruppen der Agrarproduzenten, vorläufig anerkannten Genossenschaftsgruppen von Obst- und Gemüseproduzenten, genossenschaftlichen Organisationen der Agrarproduzenten (hauptsächlich Milchproduzenten), Genossenschaften, die sich mit den Schutzprodukten beschäftigen, Milchgenossenschaften, Genossenschaften der Landwirte. Im weiteren Verlauf des Kapitels wurden die Prozedur der Gründung einer Genossenschaft, darunter Gründer, Satzung, Anteile, Einschreibgebühr für die Genossenschaft, Registrierung, Organe und Struktur beschrieben. Dargestellt werden grundlegende rechtliche Lösungen, die aus dem Genossenschaftsgesetz hergeleitet werden als auch die, welche Bezug zu den landwirtschaftlichen Genossenschaften herstellen und aus den mit der Landwirtschaft verbundenen Regulationen folgen. Dieses Kapitel beenden Überlegungen, welche seine Aufmerksamkeit auf die Arbeit ihrer Mitglieder bei den Genossenschaften, die die landwirtschaftliche Tätigkeit betreiben, konzentrieren und welche die Bedingungen der Verträge der Mitgliedschaft bei den genossenschaftlichen Gruppen der Agrarproduzenten sowie bei den Milchgenossenschaften behandeln.

Im Rahmen des vierten Kapitels wurden rechtliche Grundlagen für das Funktionieren der landwirtschaftlichen Genossenschaften dargestellt. Betrachtet wurden vor allem die Aufnahme neuer Mitgliedschaft der landwirtschaftlichen Genossenschaft, Pflichte und Rechte der Mitglieder, Vermögen, Finanzwirtschaft unter Berücksichtigung der Spezifität, die aus den einzelnen Regulationen betreffend landwirtschaftliche Genossenschaften resultiert. Weiter wurden auch Fragen erläutert, die mit der Vertragslandwirtschaft, den Pachtverträgen von landwirtschaftlichen Flächen, welche als populär gelten und durch die landwirtschaftlichen Genossenschaften oft abgeschlossen werden, verbunden sind. Wichtig ist hier auch die rechtliche Unterstützung der Organisation und des Funktionierens der landwirtschaftlichen Genossenschaften aus öffentlichen Mitteln. Aus diesem Grunde wurde auch diese Frage im vorliegenden Kapitel geklärt. Der letzte Abschnitt des Kapitels beinhaltet Ausführungen bezüglich Kontrolle und Aufsicht über die Tätigkeiten der landwirtschaftlichen Genossenschaften, Überprüfung, Zusammenschluss und Beendigung der Mitgliedschaft bei einer Genossenschaft.

Letztes Kapitel umfasst die Zusammenfassung, in der der Versuch gewagt wird, die Entwicklung der landwirtschaftlichen Genossenschaften und die typischen Merkmale

im Vergleich zu anderen Genossenschaften sowie kurze Schlüsse *de lege ferenda* darzustellen. Zusammenfassend konnte die Autorin unter anderem feststellen, dass die landwirtschaftlichen Genossenschaften auf polnischem Gebiet sich von den die Bauernhöfe unterstützenden Genossenschaften in der Zeit der Teilung Polens im XVIII. und XIX. Jahrhundert und in der Zwischenkriegszeit – die, eine bzw. einige Etappen der landwirtschaftlichen Tätigkeit und der Verarbeitung ihrer Mitglieder übernahmen – bis zu den Genossenschaften, die ihre landwirtschaftliche Tätigkeit nach dem Zweiten Weltkrieg betrieben (und welche von größter Bedeutung waren), entwickelten. Neben den Agrarproduktionsgenossenschaften funktionierten auch diese, welche landwirtschaftliche Tätigkeit ihrer Genossenschaftsmitglieder unterstützten und zusätzlich mit der Verarbeitung beschäftigt waren. Sie waren aber wenig bedeutend. Nach dem EU-Beitritt kann weiter beobachtet werden, dass die Entwicklungstrends der landwirtschaftlichen Genossenschaften sich in zwei Richtungen fortbewegen. Dieser Trend hat sich aber umgekehrt – von immer größerer Bedeutung sind Genossenschaften, die sich damit beschäftigen, ihre Mitglieder bei den landwirtschaftlichen Tätigkeiten und damit verbundenen Geschäften, das heißt bei der Übernahme verschiedener Etappen der landwirtschaftlichen Tätigkeit der Genossenschaftler, zu unterstützen. Einige von ihnen engagieren sich auch in die Verarbeitung, bei der die von den Genossenschaftlern hergestellten Agrarprodukte genutzt werden. Gleichzeitig funktionieren Genossenschaften, welche produktive landwirtschaftliche Tätigkeit betreiben und damit den Genossenschaftlern im landwirtschaftlichen Betrieb die Arbeit anbieten, diese aber weniger von Bedeutung als nach dem Zweiten Weltkrieg sind. Die oben aufgeführten Entwicklungstrends der landwirtschaftlichen Genossenschaften beeinflussen die Gestaltung der Gesetzgebung. Die Erweiterung der rechtlichen Regeln, die die landwirtschaftlichen Genossenschaften betreffen, stellt den richtigen Weg dar. Nach Meinung der Autorin wird bemüht, rechtliche Vorschriften, die die Organisation und das Funktionieren von landwirtschaftlichen Genossenschaften regeln, so zu gestalten, damit sie den Herausforderungen der gegenwärtigen Landwirtschaft gerecht werden (als Beispiel sind hier die Änderungen des Gesetzes Genossenschaftsrecht vom 16. September 1982 bzw. das Gesetz über die Genossenschaften der Landwirte vom 4. Oktober 2018 zu benennen), obwohl es außer Zweifel steht, dass weitere Änderungen der Gesetzgebung vonnöten sind. Deswegen lohnt es sich, in Zukunft ein gesondertes Gesetz über die landwirtschaftlichen Genossenschaften zu verabschieden.

*Übersetzung Renata Plota-Piec*



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This monograph is the first book in English devoted to legal aspects of the organisation and work of agricultural co-operatives in Poland. The author rightly points to the rich history of the agricultural co-operative movement in Poland, referring, among other things, to the activities of Stanisław Staszic at the beginning of the 19th century and the Act of 29th October 1920 on co-operatives. The concept, activity, types of agricultural co-operatives, legal principles of their establishment (founders, statutes, contributions and shares, bodies, registration) and functioning (assets, financial matters, contracting agreements, mergers, vetting) are presented. The deliberations focus primarily on agricultural production co-operatives, co-operatives groups of agricultural producers, dairy co-operatives and farmers' co-operatives (the latter have been introduced by the Act of 4th October 2018) and have allowed the author to draw many interesting conclusions, including *de lege ferenda*.

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