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HOW CO-OPERATIVE ARE SOCIAL CO-OPERATIVES?

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ABSTRACT

There is a trend — promoted by advocates of a social economy — to use co-operatives as instruments for serving the general interest and providing goods and services of public utility, not as an effect of successful co-operative work, but as an object of new social or “general interest co-operatives”. It is ignored that co-operatives are basically self-help organizations which derive their internal strength from combined self-interest of their members. In this paper it is shown how international organizations and national lawmakers try to create legal frameworks in which co-operatives can develop their activities for the benefit of their members and in general interest, based on examples from Italy, France, Portugal, Spain, Quebec/Canada, the United Kingdom, Germany and the Republic of Korea (as a most recent example). The author tries to locate different types of co-operatives existing in the countries under review on a continuum between self-help organizations and general interest organizations. Based on an analysis of type-specific elements of co-operative structure, problems are analyzed which result from deviations from the ‘classical’ and tested model of co-operative society. It is discussed, how co-operative development can be promoted by introducing new forms of co-operatives and new structural elements and by government support. The conclusion is that only with a clear profile as self-help organizations serving not exclusively but mainly their members can co-operatives succeed in facing the challenges of social, economic and technological change.

KEY WORDS: co-operative concept, self-help organization, general interest organization, hybrid organization, legal framework

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I INTRODUCTION — WHY THIS TOPIC?

The question, ‘how co-operative are social co-operatives’ is discussed not only since 2003, when in the SCE Regulation the object of co-operative societies was not only defined as promotion of the economic interests of their members, but was broadened (extended) to cover also promotion of their members’ social interests. In 2006, the legal definition of co-operatives in the German Co-operative Societies Act (§ 1 GenG) was amended and broadened further to include promotion of members’ social and cultural interests in the co-operative mandate.

Co-operative societies have always been perceived as special economic and social organizations, but this was not expressly stated in the legal definition. In the ICA Statement on the Co-operative Identity of 1995, promotion of the economic interests of their members by a jointly owned and patronized co-operative enterprise remains in focus. But promotion of their members’ social interests — e. g.

by education — is one of the seven co-operative principles. Self-help and solidarity are among the co-operative values and “concern for community” is stated as the 7th Co-operative Principle, provided that such policy is approved by the members.

Since spreading of the concept of “Social Economy” in the 1980-ies, it is discussed, whether co-operatives are part of a pluralistic market economy or of Social Economy. It is uncontested, that co-operatives are (or should be) doing business differently from capitalist enterprises, not aiming at maximum (short-term) profit for distribution among shareholders and that co-operatives are not focussing on capital and profit, but on people and on meeting their members’ (long-term) needs in sustainable development.

This has led to a discussion of opposing views: Are co-operatives self-help organizations with the mandate to promote the (mainly economic) interests of their members, which does not exclude transactions with non-members and positive external effects for non-members and for the community? Or are co-operatives socio-economic organizations serving not only their members but also non-members and even the general interest: social co-operatives or even “general interest co-operatives” (GIC).

1.1. Co-operative societies as a special form of economic and social organization and their type-specific legal pattern

How can members be attracted to join a voluntary organization? How can the ‘co-operative advantage’ as an incentive to become and remain a member be made visible and tangible? What are the internal driving forces of co-operatives? In co-operative societies, self-interest can be combined with group-interest and social responsibility opening new opportunities for the individual and for the group to reach their individual and common goals.

Working together in co-operatives has always been a reaction change. Already in the 19th century in Europe, co-operatives were formed as a reaction to needs caused by economic, social, demographic, technological and environmental change. In Germany, a problem of ecological sustainability was the starting point of the co-operative idea. High population growth and over-use of land for agricultural production led to insufficient crops to feed a growing population. The results were hunger and migration, e. g. to America. Invention of chemical fertilizers and pesticides made it possible to increase agricultural production by small farmers, grouped together in village co-operatives to finance modernization of farming methods and to escape from usurers. In France, Germany and the United Kingdom (UK), craftsmen were reacting to industrialization by joining together

in co-operative banks to finance modernization of their production methods² or to organize supply with consumer goods of good quality at a fair price.

Today, working together in co-operatives is a reaction to *demographic change*. In industrialized countries, change is expressed by low birth rates, an increasing number of old people living longer, rural-urban migration; reduced private and public services and infrastructure in rural areas. In developing countries, signs of change are high birth rates, increased mobility, social and political unrests, urbanization and migration, and poverty partly caused by climate change.

Local and regional businesses are increasingly exposed to *economic change*, facing competition by international combines and global players. Stationary trade and crafts are challenged by the mobility of on-line trade. Rural exodus is forcing village stores, pubs and other facilities to close down, deteriorating the living conditions of rural areas.

Technological change in form of new production, transport and information technologies, new sources of energy, new media are causing a revolution in production of goods and services and in communication.

Local versus global: Today, working together in co-operatives offers an alternative to an increasingly global economy, characterized by high mobility of ideas, capital and labour. Co-operatives can strengthen their position by emphasising their local and regional roots and their closeness to members, linked with vertically integrated co-operative networks, allowing to combine the advantages of local presence with the advantages of economies of scale (small in front — big in the back, Rabobank).

The entire organizational and legal structure of the “classical” model of co-operatives is designed for best possible fulfilment of the mandate of member-promotion over an extended period of time:

- Making it relatively easy to join and to withdraw (open and voluntary membership),
- Offering members participation as owners and users of the co-operative enterprise,
- Working with a variable share capital and the obligation to build up indivisible reserves,
- Working for member-promotion which implies not-for-profit orientation.

In addition to the “classical” model of co-operative self-help organizations, new hybrid forms of organization are emerging. In some countries such general

² M. STAPPEL, «The ICA Blueprint for a Co-operative Decade and the idea of the Co-operative as a self-help organisation being part of a market economy», in MÖLLS/MÜNKNER Eds., NOMOS, Baden-Baden 2015, pp. 55-57.

interest projects are carried out in special legal forms, in others they work as general interest ‘co-operatives’:

In the UK: Community Interest Companies (CIC) and Community Benefit Societies (BenCom): Societies with its business being or being intended to be conducted for the benefit of the community.³

In France: Community and District Associations (CDAs) (régies de quartier et de territoire), registered as associations (charter of 1994); with economic and social objectives, working as non-profit organizations with social orientation, carrying on business but not for making profit; with different categories of members like multi-stakeholder co-operatives (MSCs)⁴. The question is whether the legal form of association is the suitable legal pattern for such organizations, or whether the form of SCIC would be more appropriate.

Similar activities are carried out by social co-operatives or ‘general interest co-operatives’, e. g. in Italy, France, Spain and Portugal but also in Quebec/Canada, Poland and for example in the Republic of Korea.

Depending on their objects and legal construction, self-help organizations (SHOs), business organizations and social organizations can be classified according to their places on two continuums, pointing in different directions:

Continuum 1: SHOs — hybrid forms — commercial business organizations

Hybrid forms are **commercialized co-operatives**, with their legal framework being “strengthened” by approximation to the company model (non-using investor-members, autonomous, professional management, fixed minimum capital, partly divisible reserves) and **co-operative companies**, i.e. a company turned into a co-operative company by applying the principle of identity of owners and users: Shares only for users; service only to shareholders; no incentives for external investors. On continuum 1, co-operative companies are close to SHOs.

Advantages of co-operative companies are regional roots, clearly different from anonymous global players, working only with users producing the product processed in the co-operative factory (e. g.: milk in case of dairy co-operative, sugar beets or cane in case of sugar factory) as members and shareholders .

Disadvantages: limited number of potential shareholders, no incentives for external investors, no speculative gains with invested capital, shares not freely transferable (i.e. no market and accordingly no market price for such shares), surplus distribution in proportion to business done with the co-operative enterprise as patronage refund.

³ I. SNAITH, «Chapter 35 United Kingdom», in CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London, 2013, p. 791.

⁴ <www.regiedequartier.org>.

Such hybrid legal forms were designed to meet special requirements, best covered by a company-style financial structure, i.e. where strong and fixed equity capital is required from the outset to finance investments. This is combined with type-specific patterns of co-operative membership, while governance and capital structure are adjusted to the company model.

In India, producer companies were introduced in 2002 as a special form of organization (Companies Amendment Act of 2002), having the uniqueness of the cooperative form of enterprise. The intention was to solve the challenges of rural producers in the emerging liberalized and competitive environment, particularly owing to lack of resources and businesslike institutions⁵ or

Continuum 2: SHOs — hybrid forms — general interest organizations

Genuine co-operatives are mainly composed of user-members, having member-promotion as their principal objective but also generating positive external effects benefiting non-members and even the general public. They have their place on the continuum close to genuine SHOs. But co-operatives are not necessarily the expression of pure self-interest of members and group egoism. Social responsibility is among the co-operative values and care for community is the 7th co-operative principles of the ICA, moving co-operatives closer to the general interest organization. This is clearly expressed in Art. 1 of the Co-operative Framework Law of Korea of 2014: The co-operative purpose is defined as “*facilitating independent, self-supportive, autonomous activities of co-operatives, thereby contributing to social integration and balanced development of the national economy*” — as an effect, not as an objective.

Hybrid forms are multi-stakeholder co-operatives (MSCs), collective interest co-operatives (SCICs) and general interest ‘co-operatives’ (GICs), operating like social co-operatives, with similar objectives, e. g. Italy, France, Portugal, Spain, Québec/Canada and Korea.

To answer the question “how co-operative are social co-operatives?” it is important to understand the difference between social co-operatives and general interest organizations. The borderline between these two types of organization is the presence or absence of the **self-help element**: Another important criterion for distinguishing co-operatives from general interest associations is the **composition of the membership group**.

In **France**, to qualify for registration as a SCIC, the object of the organization has to be promotion not only, but also of members, with at least three categories of members of which there must be user-members and worker-members (Art.

⁵ G. VEERAKUMARAN, «Chapter 20 India», in CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London 2013, p. 451.

19-septies, L. 1947). Without user-members and/or worker-members there cannot be official recognition/registration as a co-operative society.

In **Québec/Canada**, according to Art. 226.1 of the co-operative law of 1997, “a co-operative of solidarity is a co-operative, which simultaneously consists of members who are users of the services offered by the co-operative and members working in the co-operative.

Furthermore, each person or organization having an economic or social interest in achieving the goals of the co-operative can also be a member. These members are referred to in the following as promoting members”.

Social solidarity co-operatives consisting only of promoting members are not allowed under Law 1997 (Art. 226.9, 226.11, 226.12, 226.13) and may even be dissolved ex-officio.

In the **Republic of Korea**, in the Framework Act on Cooperatives, Act No.12866, 30. Dec. 2014, Partial Amendment (Enforcement Date 01. Jul, 2015), a social co-operative is defined as “*a co-operative that carries out business activities related to the enhancement of the rights and interests, and the welfare of local residents or provide social services or jobs to disadvantaged people ... but that is not run for profit*” (Art. 1). On continuum 2, such social co-operatives come close to general interest organizations.

Art. 85 (Authorization for Establishment, etc.):

“(1) *When it is intended to establish a social cooperative, at least five persons qualified for membership shall prepare articles of association as promoters, table the articles of association at the inaugural general meeting for a resolution, and then obtain authorization there for from the Minister of Strategy and Finance*”. Such application for authorization has to be accompanied by the articles of association of the planned co-operative society and a business plan.

1.2. Community or general interest organizations (associations, enterprises, co-operatives)

In which way are general interest organizations different from genuine (bona fide) co-operatives? How can this difference be expressed in clear terms?

The ICA in its Blueprint for a Co-operative Decade 2012-2020 has a special section with the title: “*Build the Co-operative Message and Secure Co-operative Identity*”.⁶ In this section it is stated that “the market-place for ‘social’ or ‘ethical’ business is a crowded one — privately owned business models have been re-imagined or re-branded, for purposes beyond the pursuit of profit maximization — using the language and messages of co-operatives. How do co-operatives

⁶ ICA. Blueprint for a Co-operative Decade 2012-2020, Geneva 2013, p. 20.

distinguish themselves in this context?” “How do they second guess and out-pace investor-owned corporations?” “Co-operatives have their principles, they fundamentally are different. Their abiding values of participation and sustainability are not just bolted on a conventional business model, but structure how they are owned, governed, managed and evaluated.” “But how can an ‘authentic’ co-operative society be distinguished from an ‘inauthentic’ one?”

In its Blueprint, the ICA stresses that there must be “clarity as to how co-operatives are to be defined and distinguished — creating a powerful sense of shared identity, co-operative message or brand, which differentiates this form of business”. Unfortunately, this clarity of message, essential for the credibility of the co-operative form of organization, is sometimes missing in the Blueprint. Some co-operative basics are omitted: self-help and solidarity as key elements of co-operative identity, the type-specific objective of member-promotion and the mandate of promoting members and, furthermore, a clear idea of the envisaged economic order and the role of co-operatives in this order.⁷

1.3. Why are associations not suited for economic objectives?

There are indications that ‘social co-operatives’ or ‘general interest co-operatives’ were introduced because large associations with economic activities needed a government authorization which was difficult to obtain. Therefore, the way out was to work under the ‘co-operative’ label.

Generally, associations are not considered to be a suitable legal framework for carrying out economic activities as their primary object and not only as a supplementary activity for the following reasons: For associations, there is no prescribed minimum capital, no guarantee capital in form of reserves, no external audit and accordingly, no protection of members and creditors against losses. This is the reason why associations carrying on business usually require a special permission, authorizing such activities, linked to conditions like the obligation to submit annual reports and to be subject to external audit – similar to the rules for co-operative societies. There are several cases where large associations with extended economic activities (e. g. the German Automobile Club, ADAC) were found to misuse the relatively liberal legal form of association for uncontrolled business operations.

Urban Nothdurfter draws attention to the increasingly institutionalized role of social co-operatives in Italy, combined with a growing dependence of such co-operatives on public funds. In this way, such co-operatives are turning into instruments in the hands of public administration while losing their identity as

⁷ S. MÖLLS, S. / H-H MÜNKNER, «Blueprint of the International Co-operative Alliance (ICA) for a co-operative decade – a Critical Analysis, Marburg Colloquium 2013», Marburger Schriften zur genossenschaftlichen Kooperation 117, Nomos, Baden-Baden, 2015, pp. 116-118.

self-help organizations of citizens. On continuum 2, they are moving closer to general welfare organizations. However, Nothdurfter also underlines that in Italy social co-operatives are enjoying a high reputation.⁸

When working successfully, all types of co-operatives generate positive external effects. MSCs allow combination of member interests with community interests. This is what Nothdurfter calls a “welfare-mix”, in which citizens and other stakeholders (community facilities, enterprises) are collaborating in the region. Social co-operatives as MSCs demonstrate, how horizontal and vertical lines of responsibility can be combined in networks.⁹ The Community and District Associations (*régies de quartier et de territoire*) in France prove, that similar effects can be achieved in the legal form of association.

In France, Portugal and Spain, the introduction of social co-operatives was inspired by the Italian experience.¹⁰

2 DEFINITION OF CO-OPERATIVE SOCIETY

2.1. On international level

It is internationally recognized that the world co-operative movement with the ICA representing more than 200 national co-operative federations from 97 countries, with more than 1 billion members is a global phenomenon to reckon with. In its project Global 300, the ICA presents the 300 largest co-operative enterprises with a combined annual turn-over of 2 trillion US Dollars in 2010 and a combined economic strength equalling the GDP of Canada or Spain.¹¹ This international recognition has found its expression in documents adopted and published on international level by the ICA, UN, ILO and EU.

2.1.1. *International Co-operative Alliance (ICA) 1995*

The ‘Statement on the Co-operative Identity’ of the ICA, adopted in Manchester in 1995, does not only contain a list of the co-operative values and of seven co-operative principles, but also a definition of what a co-operative society is:

⁸ U. NOTHDURFTER, «Sozialgenossenschaften im Südtiroler Sozialwesen», in ELSEN, Susanne (Hrsg.) (2011): *Ökosoziale Transformation, solidarische Ökonomie und die Gestaltung des Gemeinwesens*, AG SPAK Bücher, Neu-Ulm, S 2011, p. 345.

⁹ U. NOTHDURFTER, «Sozialgenossenschaften im Südtiroler Sozialwesen», cit. , p. 377.

¹⁰ D. HIEZ, «Chapter 17 France», in: CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London 2013, p. 400.

¹¹ ICA Blueprint 2013, cit., p. 2.

“A co-operative is an autonomous association of persons united to meet their economic, social, and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.”

This definition is used in the UN Resolution presenting “Guidelines aimed at creating a supportive environment for the development of co-operatives” adopted at 88th plenary session, 19 December 2001, A.RES.56.114), and also in ILO Recommendation 193 of 2002 concerning the promotion of co-operatives.

35 years earlier, the ILO had already given a definition of co-operatives in its “Recommendation concerning the role of co-operatives in the economic and social development of developing countries” (Recommendation 127 of 1966):

Art. 12 (1) (a): Essential characteristics of co-operatives:

“... an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organization, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate.”

2.1.2. United Nations (UN) — Guidelines aimed at creating a supportive environment for the development of cooperatives

In Resolution (A/56/572), 2001, Cooperatives in social development; Annex: Guidelines aimed at creating a supportive environment for the development of cooperatives, (A/56/73, E/2001/68), the UN General Assembly adopted the following definition of the term ‘co-operative society’:

Par. 2: “Governments recognize that the cooperative movement is highly democratic, locally autonomous but internationally integrated, a form of organization of associations and enterprises whereby citizens themselves rely on self-help and their own responsibility to meet goals that include not only economic but also social and environmental objectives, such as overcoming poverty, securing productive employment and encouraging social integration.”

In par. 11, it is stated that the organization of associations and enterprises on the basis of co-operatives values and principles should be acknowledged by the law as being legitimate. The law should recognize the contribution of co-operatives to national life and the status of the co-operative movement as a significant

stakeholder within society. Regarding the definition of co-operatives, reference is made to the “Statement on the Co-operative Identity”, adopted by the ICA in 1995.

2.1.3. International Labour Conference, ILO Recommendation 193, 2002

In 2002, after many years of preparatory work, the ILO adopted a recommendation concerning the promotion of co-operatives worldwide, also containing reference to the ICA Statement on the Co-operative Identity of 1995.¹²

Art. 2: “For the purposes of this recommendation, the term “co-operative” means an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”.

In Art. 3, reference is made to the co-operative values and principles as listed in the ICA Statement on the Co-operative Identity of 1995.

“The promotion and strengthening of the identity of co-operatives should be encouraged on the basis of:

- (a) Co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others; and*
- (b) Co-operative principles as developed by the international co-operative movement and as referred to in the Annex hereto. These principles are: voluntary and open membership; democratic control; member economic participation; autonomy and independence; education, training and information; co-operation among co-operatives; and concern for community.”*

2.1.4. Commission of the European Communities (2004): Council Regulation (EC) No. 1435/2003 of 22 July 2003

In 2003, a new legal framework for European co-operative societies was adopted by the Commission of the European Communities. In the Preamble to

¹² H-H MÜNKNER, «Chances of Co-operatives in the Future, Institute for Co-operation in Developing Countries», Papers and Reports No.31, Marburg, 1995, pp. 243-257.

Regulation No. 1435/2003, the following definition of co-operative societies is given:

(10) “A European co-operative society (hereinafter referred to as SCE) should have as its principal object the satisfaction of its members’ needs and/or the development of their economic and/or social activities in compliance with the following principles:

- its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,*
- members of the SCE should also be customers, employees or suppliers or should be otherwise involved in its activities,*
- control should be vested equally in members although weighted voting may be allowed, in order to reflect each member’s contribution to the SCE,*
- there should be limited interest on share and loan capital,*
- profits should be distributed according to business done with the SCE or retained to meet the needs of members,*
- there should be no artificial restriction on membership,*
- net assets and reserves should be distributed on winding up according to the principle of disinterested distribution that is to say to another co-operative body pursuing similar aims or general interest purposes.”*

SCE Regulation, Art. 1 (3):

“An SCE shall have as its principal object the satisfaction of its members’ needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. An SCE may also have as its object the satisfaction of its members’ needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national co-operatives. An SCE may conduct its business through a subsidiary.”

SCE Regulation, Art. 1 (4):

“An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.”

2.1.5. Summary — Definition of the term “Co-operative Society” on international level

These quotations of international statements on co-operatives show, that there is a common basis regarding the definition, values and principles of co-operative societies, as expressed in the ICA Statement on the Co-operative Identity of 1995, which have thereby become part of public international co-operative law.¹³

2.2. Definitions of the term “co-operative society” on national level

On national level, definitions of the term “co-operative society” vary. While some lawmakers refer to the ICA definition, others have their own long tradition of defining what a co-operative society is. In the UK, a special way is used by defining partly within the law, partly outside the law, what a co-operative society cannot be.¹⁴

“A society which aims on or intends to carry on business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with the society or any other person cannot be a co-operative society” (par. 1 (3) IPSA/CCBSCUA 2010).

An organization formed by people most of whom are not using its services, cannot be a co-operative society. The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business (FCA).

An organization with restricted membership cannot be a co-operative society. There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members.¹⁵

¹³ H. HENRY, «Chapter 2, Public International Co-operative Law», in CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London, 2013, pp. 70 f.

¹⁴ I. SNAITH, «Chapter 35 United Kingdom», cit., p. 741.

¹⁵ I. SNAITH, «Chapter 35 United Kingdom», cit., p. 741.

2.2.1. Co-operatives in Italy

In Italy, the Constitution of 1948 defines co-operatives as organizations “with a mutual character (*scopo mutualistico*) without private speculation purposes”.¹⁶ The Italian Civil Code (ICC) contains regulations on co-operative societies (Art. 2511 – 2545-octiesdecies) also applicable to special co-operatives, if not explicitly excluded.¹⁷

In general, co-operative societies are defined as “societies with variable capital and mutual purpose registered in the register of co-operative societies of Art. 2512. The institutional aim of a co-operative is to transact with its members/owners or to employ them, trying to maximize their utility as users, providers or workers”.

The special mutual purpose of co-operative societies distinguishes them from companies and also from associations and foundations. This is true for co-operatives in general, but not with regard to special co-operatives. Such special co-operatives, e. g. social co-operatives, may be formed for the provision of goods and services also for non-members (Art. 2520 (2) ICC). Fully non-mutual co-operatives are only permitted, if a special law so permits (Art. 2520, par. 2 ICC). The law on social co-operatives of 2001 is perceived as such special law.

Art. 1 of National Law on social co-operatives, Law n. 381 of 1991:

(1) “social co-operatives have as their object to pursue the general interests of society in the promotion of human beings and in social integration of citizens by means of:

(a) social, health-care and education services,

(b) execution of different activities and provision of agricultural, industrial, economic and other services, which aim at integrating disadvantaged persons into working life.

(2) Social co-operatives are subject to provisions governing the activity in which these co-operatives operate as far as they are compatible with the provisions of this law.”

Under Italian co-operative law, a distinction is made between prevalently mutual co-operatives (where transactions with members are higher than 50 percent of the total transactions) and non-prevalently mutual co-operatives referred to as “other co-operatives”. Such “other co-operatives” are not obliged to act preva-

¹⁶ A. FICI, «Chapter 22 Italy», in CRACOGNA et al eds.: International Handbook of Co-operative Law, Springer, Heidelberg, New York, Dordrecht, London 2013, p. 481.

¹⁷ A. FICI, «Chapter 22 Italy», cit., p. 483.

lently with their members, and not to report on the volume of their activities with them. Antonio Fici considers this difference to be not relevant under organizational law, but only under tax law.¹⁸

This opinion is not uncontested. In organization law the general rule is that “the object determines the form”. This means that in case of co-operatives the object of member-promotion is reflected in type-specific rules for membership, governance and financial structure. Member-orientation of Italian general interest co-operatives can be deduced from the composition of the membership group. If the provisions governing general interest co-operatives expressly provide that not more than fifty percent of the members may be voluntary members (Law n. 381 of 1991, Art. 2 (2)), while for the remaining fifty percent of members general co-operative law applies, this means that they must be user-members, worker-members or promoting members.

The votes of promoting members may not exceed one third of the total of the votes of all members (Law n. 59/1992, Art. 4 (2)). Promoting members may be appointed to serve on the board, but the majority of the board members must be co-operators, i.e. user-members or worker-members (Law n. 59/1992, Art. 4 (3)). All this shows that also in case of social co-operatives, members play an important role.

2.2.2. Co-operatives in France

In France, co-operatives are regulated by the general law of 1947 (L 1947) with amendments. In 2001, Title II-ter was added introducing co-operatives for collective interest, (*sociétés coopératives d'intérêt collectif*, SCIC).

According to Art. 1 L 1947,

“Co-operatives are societies whose main objects are:

To reduce, for the benefit of its members and by the common effort, the cost price and possibly the selling price of some products and some services, by fulfilling the function of firms or intermediaries, whose remuneration would increase its price;

Second, to improve the quality of products provided to its members or produced by its members and sold to the consumers;

Third, and more generally, to contribute to the satisfaction of needs and to the promotion of economic and social activities of its members or produced by its members as well as to their training.

¹⁸ A. FICI, «Chapter 22 Italy», cit., p. 484.

Co-operatives may act in any field of human activity”.

This implies that under French general co-operative law, the object of co-operative societies is member-promotion.

In 2014, a new definition of co-operative societies was introduced by the Law on Social and Solidarity Economy (law n° 2014-856 of 31 July 2014). According to article 24 of this law “*the co-operative is a company created by several persons willingly associated in order to satisfy their economic and social needs by their common efforts and the creation of the necessary means*”.

2.2.3. Co-operatives in Spain

In Spain, co-operative law is highly fragmented. In addition to the national co-operative law n. 27 of 1999, there are 15 regional laws and 6 laws or decrees by branches of activity.¹⁹

In Art. 1, law n. 27 of 1999, a co-operative is defined as a “company (sociedad) established by people who associate to conduct business activities directed at meeting their economic and social needs and aspirations on the basis of freedom to join and to leave voluntarily, and having a democratic structure and operation, in accordance with the principles stated by the International Co-operative Alliance, as provided for in this law”.²⁰

A co-operative has a clearly mutual purpose with objects intended to provide services to its members, in contrast to companies, which have a clear for-profit purpose. However, the mutual nature of co-operatives is not absolute. Their by-laws may allow to engage in activities or to provide services to non-members, within limits set by law (art. 4), depending on the type of co-operative. For example, non-member employees may not work more hours per year than 30 % of the total hours per year worked by members; in credit co-operatives loans to non-members may not reach 50 % of its total assets. There are no limits to transactions with non-members in case of consumer and user co-operatives. Breach of these limits can be sanctioned by a fine or by loss of tax benefits.²¹

Co-operatives for social initiative are regulated separately in art. 106 of the Co-operative Societies Act n. 27 of 1999, following the model of Italian social co-operatives (see *infra*, pp. 13, 14).

¹⁹ I. G. FAJARDO GARCÍA, «Chapter 33 Spain», in: CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London, 2013, p. 704.

²⁰ I. G. FAJARDO GARCÍA, «Chapter 33 Spain», *cit.*, p. 705.

²¹ I. G. FAJARDO GARCÍA, «Chapter 33 Spain», p. 707.

2.2.4. *Co-operatives in Portugal*

In Portugal, the cooperative is defined in Article 2.1 of the Portuguese Cooperative Code (PCC), Law No. 119/2015, entered into force on 30.09.2015, as an “*autonomous association of persons, united voluntarily, of variable composition and capital, which, through cooperation and mutual assistance of its members and in obedience to cooperative principles aims not at profit but at satisfying economic, social, or cultural needs and aspirations of the said members.*”

The distinctive features of this type of legal entity are the social object of the cooperative (the mandate to satisfy the economic, social, or cultural needs of its members while remaining a non-profit entity), the way of management of the cooperative (cooperation and mutual assistance of members, compliance with cooperative principles as stated in article 3 of the PCC –reflecting the Cooperative Principles of the ICA) and its type-specific financial structure (variable share capital).

In Portugal, the object of cooperative societies has an economic and a social dimension beyond member-promotion. The mandate of co-operatives is not limited to meeting the needs of their members but also covers the task to promote the interests of the community in which the co-operative society operates. In article 3 of the Portuguese Co-operative Code (PCC) it is stated that “*co-operatives work for the sustainable development of their communities through policies approved by their members*”. They have to offer education and training to their members, elected representatives and employees and to inform the general public about the nature and benefits of cooperation.

Being rooted in their communities, co-operatives generate stable jobs not threatened by relocation. According to article 3 of the PCC, co-operatives have the special responsibility to ensure that the development of their communities is economically, socially and culturally sustainable. The PCC provides for a mandatory reserve fund “*for cooperative education and technical and cultural training of members and employees of the cooperative as well as of the community*” (article 97 PCC), to which at least 1 % of the annual surplus derived from transactions with members have to be allocated. This reserve — generating assets that are allocated to social purposes, to the benefit of cooperative workers, and the social environment — is seen as one of the most distinctive features of cooperatives compared with other types of enterprise.²² Similar special reserve funds for

²² D. A. MEIRA, O regime económico das cooperativas no Direito Português: o capital social, Editora Vida Económica, Porto, pp. 162-167.

education, training and cooperative development can be found in the co-operative law of Italy²³ and Spain.²⁴

2.2.5. *Co-operatives in Germany*

In Germany, co-operative societies are a special type of business association, regulated by a general co-operative societies act (Genossenschaftsgesetz, GenG), covering all types of co-operatives and all branches of activity. Co-operative societies are a hybrid form of organization between association, partnership and company. The organization is designed for pursuing long-term objectives: incorporation, by-laws, open membership and corporate structure (governing and controlling bodies/organs). All rights and obligations of members are linked to the person of the member and not to the capital contribution. Procedures for affiliation and withdrawal of members are uncomplicated. The purpose and mandate of co-operative societies is member-promotion, i.e. to generate economic and social advantages for members in a way being defined in detail by the members in the society's by-laws.

The type-specific elements of co-operative organizational structure are:

- Dual nature: being composed of two elements: co-operative group and co-operative enterprise;
- Dual role of members: Being owners and users of their co-operative (principle of identity of owners and users);
- Variable share capital and indivisible reserves from undistributed surplus.

Motivation for membership is self-help combined with mutual aid and expectation of a “co-operative advantage”.

The co-operative model is protected by the following legal provisions: A minimum number of members (reduced in 2006 from 7 to 3) and an active co-operative enterprise (simple co-operative holdings are not recognized as co-operative societies). The general co-operative law has gradually been amended to meet the needs of large and growing co-operative societies by approximation to the company model, leading subsequently to the need to introduce special rules for small co-operatives.

²³ In Italy, cooperatives must allocate 3 % of their annual surplus to the mutual fund set up by the federation of which the cooperative society is a member and used to promote and finance new cooperative enterprises or to promote research projects, regulated in article 11 of Law 59/1992, A. FICI, «Chapter 22 Italy», cit., pp. 489, 499.

²⁴ In Spain, 5% of the surplus from transactions with members has to be allocated to the education and promotion fund, regulated in Ley de Cooperativas (LC) 27/1999, art. 58 (1), I. G. FAJARDO GARCÍA, «Chapter 33 Spain», cit., p. 711.

There are no special provisions for ‘social co-operatives’, but the door was opened for multi-stakeholder co-operatives, e. g. by allowing to admit non-using investing members (§ 8 (2) GenG). Carrying on business with non-members is left to be decided in the by-laws. Promoting general interest may be decided by the members, provided it does not become the sole or main purpose of the co-operative society (§ 1 (2) GenG).

The German Co-operative Societies Act was amended in 2006. In § 1 GenG a co-operative society is now defined as follows:

“(1) Societies with a variable number of members, which have as their object to promote the income or economy of their members or their social or cultural needs by means of a jointly owned and operated enterprise (co-operative societies) acquire the legal status of a registered co-operative society according to this Act.

(2) Participation in societies or other organizations of persons including corporations under public law is permitted, provided that it serves:

- (i) the promotion of the income or economy of their members or their social or cultural needs/aspirations (...); and*
- (ii) the non-profit making activities of the co-operative society, without this being the sole or principal object of the society.”²⁵*

2.2.6. Co-operatives in the Republic of Korea

Framework Act on Cooperatives (Enforcement Date 01. Jul, 2015.) Act No.12866, 30. Dec, 2014, Partial Amendment

Chapter I, General Provisions

Article 1 (Purpose):

“The purpose of this Act is to facilitate independent, self-supportive, and autonomous activities of cooperatives, thereby contributing to social integration and balanced development of the national economy by providing for basic matters regarding the establishment and operation of cooperatives.”

²⁵ H.-H MÜNKNER., «Chapter 18 Germany», in: CRACOGNA et al (2013): International Handbook of Co-operative Law, Springer, 2013, p. 417.

Article 2 (Definitions):

“The terms used in this Act shall be defined as follows:

1. The term “cooperative” means a business organization that intends to enhance its partners’ rights and interests, thereby contributing to local communities by being engaged in the cooperative purchasing, production, sales, and provision of goods or services.”

Article 6 (Basic Principles):

(1) “Each cooperative, federation of co-operatives, social co-operative, or federation of social co-operatives shall apply its best endeavours to serve its members in carrying out its business activities.

(2) Each cooperative, federation of cooperatives, social cooperative, or federation of social cooperatives shall be voluntarily organized, shall own property in common, and shall be operated democratically.

(3) No cooperative, federation of cooperatives, social cooperative, nor federation of social cooperatives shall conduct any business activity for speculative investment or shall be engaged in any business affair or activity only for interests of some of members.”

These quotations from the Korean Framework Law of 2014 prove that basically the international co-operative principles are followed.

2.2.7. Summary — Definition of the term “co-operative society” in national laws

This list of legal definitions of the term “co-operative society” in national co-operative laws clearly shows that the mandate of a genuine co-operative society is to promote the economic and social/cultural interests of its members, and that the co-operative values and principles agreed upon by the member organizations of the ICA in 1995, are strongly influencing national lawmakers.

3 DEFINITION OF SOCIAL CO-OPERATIVE

The term “co-operative” in the denomination of social co-operatives implies that people or institutions are working together — co-operate — for individual and common benefit. Members join co-operatives when they are expecting a ‘co-operative advantage’. This is the main motivating force for co-operation. Such

co-operative advantage can be direct: better conditions or results when working together than the individual could expect when working alone. Co-operative advantage can also be indirect, e. g. by improving the living and working conditions in the community or region in which the members of the co-operative society live and work. Whether members are benefiting directly or indirectly is sometimes difficult to distinguish. Economic advantages are easier to measure than social or cultural advantages.

By broadening the object of co-operative societies from promotion of mainly economic interests of their members to the promotion also or even mainly of social or cultural interests, it has become more difficult to distinguish between objectives of the co-operative society and positive external effects of co-operative operations. Where co-operatives work successfully, they usually have positive external effects on fellow citizens, the community and the region: The basic difference between co-operatives and general interest organizations is that co-operatives are working according to the motto “we for us” and general interest organizations are working according to the motto “we for you”. Co-operatives may extend their activities and services beyond their membership group and also serve non-members, but such transactions with non-members are usually limited by law or in the by-laws. Unlimited transactions with non-members on equal conditions makes the ‘co-operative advantage’ disappear, devalue membership and invite free-riders.

The ‘classical’ co-operative model gave co-operative societies a clear mandate to promote the economic interests of their members. It was designed for a relatively homogeneous membership group. All members had to be simultaneously owners and users of their co-operative enterprise (principle of identity of owners and users). This allowed to work under clear and relatively simple rules (e. g. one member – one vote).

By introducing multi-stakeholder co-operatives with different categories of members, a heterogeneous membership group, a membership-mix, was generated for which complicated rules had to be made, to avoid that one category of members would dominate the others, e. g. limited plural voting, rules securing fair representation of each group of members in the governing and controlling bodies, distinction between routine and business decisions, where plural voting is applied and decisions on basic matters (e. g. amendment of by-laws, merger, dissolution), where the principle ‘one member – one vote’ is still valid. At the same time, a new borderline between co-operatives and general interest organizations was established: the *composition of the membership-group*. A co-operative consisting only of investing members or promoting members cannot be a genuine co-operative society (e. g. SCICs in France and social solidarity co-operatives in Québec/Canada).

3.1. Italy — Co-operatives for Social Solidarity — Social Co-operatives

The first law on Co-operatives for Social Solidarity was Regional Law N° 24 of October 1988, of the Autonomous Region Trentino-Southern Tyrol/Alto Adige.

Art. 1 Goals

“Integrated production and workers’ co-operatives as well as co-operatives providing social services are officially recognized and form a special category of ‘social co-operatives’, which are at the same time production and workers’ co-operatives.”

The legal definition in art. 1 of this law was broadened as compared to the conventional interpretation of the mutuality principle, typical for Italian co-operatives. In case of co-operatives for social solidarity, the entrepreneurial activity is directed towards meeting goals of solidarity, i.e. not towards meeting the needs of specific groups and categories, but of general interest for society as a whole. Social co-operatives are created by the initiative of self-organised groups of citizens, who carry out social activities designed to meet the needs of the local community in a new participatory manner. In the meantime, the provisions governing social co-operatives have been developed further in the national law on co-operative societies.

Italy, National Law on Social Co-operatives, Law n. 381 of 8 November, 1991

“Art. 1 Definition

(1) Social co-operatives have as their object to pursue the general interests of society in the promotion of human beings and in social integration of citizens by means of

(a) social, health-care and educational services,

(b) execution of different activities and provision of agricultural, industrial, economic and other services, which aim at integrating disadvantaged persons into working life.

(2) Social co-operatives are subject to provisions governing the activity in which these co-operatives operate as far as they are compatible with the provisions of this law.

(3) Irrespective of the firm name chosen, it must contain the designation “social co-operative”.

With regard to membership, there are limitations and expansions.

3.2. France — Co-operative society for collective interest (*société coopérative d'intérêt collectif* (SCIC))

In France in 2001, a new type of co-operative society was introduced, the Co-operative Society for Collective Interest (SCIC) by law 2001/624 of 17 July 2001), included as art. 19-quinquies in the General Co-operative Act of 1947. This new type of co-operative society is based partly on the Italian model of social co-operative. Five categories of members of SCICs are defined (art. 19-septies): workers, users, volunteers, public bodies and investors.²⁶

Art. 19-quinquies contains the legal definition of SCIC:

“Co-operatives for collective interest are companies with variable capital, which operate under commercial law subject to the provisions of this law.

They have as their object to produce goods and services in the general interest and of social utility.”

The object of SCICs is different from the general objects of co-operatives defined in art. 1 of the Law of 1947. Some see the definitions Co-operative Society and SCIC as not being compatible, because instead of aiming at the satisfaction of their members' interests, the object of SCICs is to produce or supply public interest goods of *social utility*.²⁷

SCICs are submitted to public control which is stronger than for any other co-operative. To establish a SCIC, the founder-members have to obtain permission from the public administration, which is checking whether the criterion of social utility is fulfilled (art. 19-terdecies). Art. 28-bis of Law of 1947 is permitting conversion from association to co-operative and in particular to SCIC.²⁸

3.3. Portugal — Co-operatives for Social Solidarity, 1998

In Portugal, the co-operative character co-operatives for social solidarity as self-help organisations is clearly stressed, as shown in the following quotations:

Legislative decree n^o 7/1998 of 15 January 1998 governing co-operatives of social solidarity

²⁶ D. HIEZ, « Chapter 17 France», cit., p. 400.

²⁷ D. HIEZ, « Chapter 17 France», cit., p. 400.

²⁸ D. HIEZ, « Chapter 17 France», cit., p. 401.

Art. 1. Scope

“Co-operatives for social solidarity and their higher level organisations are governed by this legislative decree and where no provisions are contained, by the Co-operative Code” (of 1996).

Art. 2. Concept

“(1) Co-operatives for social solidarity are those which by means of co-operation and self-help of their members, subject to co-operative principles and without a view to profit, work for the satisfaction of the common social needs and for the promotion and integration mainly of the following sectors:

- a. Help for disadvantaged groups, in particular youths, the handicapped and the aged.*
- b. Help for disadvantaged families and communities, with the aim of improving their living conditions and their socio-economic integration.*
- c. Help for Portuguese citizens living outside of Portugal during their stay abroad and after returning to Portugal, if they are in economic difficulties.*
- d. Help for groups of persons suffering from disease, old age and serious economic hardship.*
- e. Promotion of the integration of socially excluded persons by offering access to education and training.*

(2) Beyond the enumeration contained in the foregoing subsection, co-operatives for social solidarity can undertake other activities of similar nature and, within the limits defined by the Co-operative Code, offer services to third parties.

(3) Using the co-operative form does not exempt from applying for permissions, licences and other legally required formalities, while the authorities in charge of granting such permissions have to respect the special nature and social functions of the co-operatives.”

In Portuguese co-operative law, the co-operative character of co-operatives for social solidarity is more clearly expressed than in the co-operative laws of Italy and France: Self-help, the mandate of member-promotion and limits for transactions with non-members.

3.4. Spain — Co-operatives for Social Initiative, 1999

In Spain, co-operatives for social initiative are regulated in Art. 106 of the Co-operative Societies Act n. 27 of 1999, following the Italian model of social co-operatives, leaving the co-operative character of such organizations unclear:

Art. 106

(1) “Social initiative co-operatives are non-profit co-operatives, which irrespective of the class to which they belong have as their objectives either the provision of welfare services through health, education, cultural or other activities of a social nature, the conduct of any economic activity with the purpose of integrating those who suffer any kind of social exclusion into the labour market and, in general, meeting social needs that are not being attended to by the market.

(2) Public entities and organisations can participate as members in such a way as the statutes of the co-operative provide.

(3) The legal provisions of the class of co-operatives to which the co-operative of social initiative belong apply.

(4) Co-operatives of any class which meet the requirements of par. (1) of this article, shall use the designation “iniciativa social” in their firm name.”

It is interesting to note that instead of using the term “social co-operative” in then firm name, the designation “social initiative” is prescribed.

3.5. Québec, Canada — Co-operatives of Solidarity, 1997

Co-operative Societies Act of Quebec of 5 June, 1997 (QCA), Title II 1, contains articles 226.1-226.14 governing co-operatives of solidarity. Regarding the objects of co-operatives of solidarity, Title II 1 does not contain special provisions so that the general provisions apply.

Co-operatives in Canada are primarily oriented to meet the needs of their members while adhering to principles of democratic control. Members’ needs are anticipated in the objects of each co-operative and often entail the provision of remuneration proportional to patronage rather than ownership.²⁹

²⁹ T. PETROU, «Chapter 1 Canada», in CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London, 2013, pp. 294, 295.

In QCA, section 3, a co-operative is defined as “a legal person in which persons or partnerships having economic, social and cultural needs in common unite for the prosecution of an enterprise according to the rules of co-operative action to meet those needs”. The rules referred to in this definition required for ‘co-operative action’ have also been drawn from the ICA principles and are listed in the law.³⁰

In the definition of co-operatives of solidarity, main emphasis is laid on the *composition of the membership group*, excluding groups composed solely of promoting members.

Art. 226.1

“A co-operative of solidarity is a co-operative, which simultaneously consists of members who are users of the services offered by the co-operative and members working in the co-operative.

Furthermore, each person or organization having an economic or social interest in achieving the goals of the co-operative can also be a member. These members are referred to in the following as promoting members.”

Art. 226.9

“The Minister may order any co-operative ex-officio to amend its by-laws if the society has no user-members or worker-members among its members, so as to cease to come under the provisions of this part of the law.

If the society fails to comply with such order within 60 days from signing the order, the minister may amend the by-laws ex-officio.”

3.6. Republic of Korea — Social co-operatives, 2014

The co-operative law of the Republic of Korea is included in this survey, because it is of recent date (2014) and contains a special chapter on social co-operatives, in which similar approaches are reflected as found in the European rules on social co-operatives. However, the role of government in promoting and supervising co-operative development differs to some extent from government’s role in European co-operatives.

Framework Act on Cooperatives (Enforcement Date 01. Jul, 2015.) Act No.12866, 30. Dec, 2014, Partial Amendment

³⁰ T. PETROU, «Chapter 1 Canada», cit., pp. 295, 296.

Chapter I, General Provisions

Article 1 (Purpose):

...

3. *“The term ‘social cooperative’ means a cooperative that carries out business activities related to the enhancement of rights, interests, and welfare of local residents or provides social services or jobs to disadvantaged people, among cooperatives under subparagraph 1, but that is not run for profit.”*

Chapter IV, Social Co-operatives

Section 1 Establishment

Article 85 (Authorization for Establishment, etc.)

*“(1) When it is intended to establish a social cooperative, at least five persons qualified for membership shall prepare articles of **association as promoters, table the articles of association at the inaugural general meeting for a resolution, and then obtain authorization therefor from the Minister of Strategy and Finance.**”*

3.7. Summary on Social Co-operatives

As already mentioned earlier, the ICA in its Blueprint for a Co-operative Decade 2012-2020 stated that the market-place of social enterprises is a crowded one (supra, p. 5). On the continuum between genuine co-operatives based on self-help of their members and general welfare associations, social and general interest co-operatives are hybrid forms tending towards assimilation to general welfare associations.

In Italy, social and general interest co-operatives were introduced in the 1980-ies, in the autonomous region Trentino-Alto Adige and in 1991 on national level. This model has found many followers in Central and Southern Europe: France, Portugal, Spain, but also for example in Poland (PIECHOWSKI 2013, pp.613-615), North Africa, in Québec/Canada and Latin America and for example in the Republic of Korea. The Italian model of social co-operative society is not followed for example in the UK and in Germany.

Another relatively recent innovation is the admission of different categories of members besides the ‘classical’ form of user-members: non-using investing members, promoting members, voluntary members, enterprises working in the community or region as well as private and public corporations.

In France, David HIEZ sees finding a common definition covering both co-operatives and SCICs as a problem: The relationship between co-operators and their co-operative is different, but the goals have to be the same.³¹

In the general co-operative law of 1947, main concern was to describe co-operative specificity and distinction from other groups, e. g. economic interest groups. Introduction of SCIC in 2001 was an innovation, a bridge between association and co-operative society, inspired by the Italian social co-operative of 1991. SCICs were defined as co-operatives but with a different social object, which had important theoretical and practical consequences. Different answers are given to the questions of democratic control, open door, independence (e.g. from trade unions and political parties), regarding distribution of surplus and activities with non-members.

According to Art. 19-quinquies: SCICs have as their object the production and supply of collective goods and services *in the general interest and for social utility*, without defining clearly what ‘social utility’ means. According to David HIEZ, ‘social utility’ is different from individual and general interest and fits into Social Economy. The social object of SCICs is no longer or at least not only satisfaction of the needs of members, but is targeted explicitly to third parties. Membership is not a condition for obtaining services from SCICs (Art. 19-sexies). SCICs were introduced without regard to their compatibility with the general definition of co-operatives in Art. 1 L 1947 which remains focussed on the needs of the members (exclusivity rule).³²

While members remain the core also of SCICs, the exclusivity rule is restricted (co-operatives may conduct up to twenty percent of their transactions with non-members (Art. 3 L 1947)). Increasing attention is paid to multi-membership, notably including employees (e. g. in Agricultural co-operatives). More emphasis is laid on care for the community. By requiring co-operatives to deliver goods services of social utility a clear borderline is not defined. From the perspective of social economy, David HIEZ sees no conflict between SCICs and other co-operatives, with the SCIC being more clearly targeted to serve the community, moving closer to the general welfare association on continuum 2.

4. ELEMENTS OF CO-OPERATIVE STRUCTURE

According to the ICA Statement on the Co-operative Identity of 1995, co-operative principles are not hard and fast rules to be followed by the letter, but “guidelines for putting co-operative values into practice”.

³¹ D. HIEZ, «Chapter 17 France», cit., p. 400.

³² D. HIEZ, «Chapter 17 France», cit., p. 400.

Without being expressly mentioned, the key element of co-operative structure is the principle of identity of owners and users, creating incentives to participate actively as co-owner and preferred customers, by offering members exclusive co-operative advantages and by creating trust in the self-controlled system. This principle allows limitation of conflicts of interest between owners and users, typical for business organisations

The object of co-operative societies is pursuing a long-term, mainly economic purpose, combined with additional social and/or cultural objectives: After amendment of the co-operative law in Germany in 2006, also mainly social or cultural objectives are possible. This is in clear contrast to the usual object of investor-driven and commercial enterprises, which is short term profit.

To secure autonomy and independence of co-operatives, their co-operative enterprise has to be economically viable and has to allow accumulation of a self-financed stock of capital from undistributed surplus, creating a stable financial base for the operations of the co-operative society without depending on external investors or support.

Variable/voluntary membership, together with relatively simple conditions for admission and withdrawal, are important for safeguarding long-term existence of the co-operative society even beyond the lifespan of the individual member. Furthermore this element serves as a filter to keep the membership group homogeneous or, in a multi-stakeholder co-operative, to bring and keep together all those operators interested in reaching the common objectives. This element also serves to avoid unwilling membership and passive members.

Organizational structure — internal democratic structure — is based on equal voting rights (one member – one vote). This element of co-operative structure is allowing and encouraging active member-participation. It avoids what is normal in commercial organizations, that those contributing more dominate those contributing less and the rich dominating the poor. This democratic structure is threatened by introducing plural voting – which, accordingly, should be strictly limited.

These clear rules are abandoned in case of general interest co-operatives, where member-orientation can be deduced from the composition of the membership group. According to the ‘classical’ clear and simple concept of co-operative organization, owners and users have to be identical, non-users cannot be members and non-members cannot be users. Where this concept was abandoned and different categories of members were admitted, this turned co-operative groups from homogeneous to heterogeneous, bringing conflicts of interest between owners (investing members) and users into the society. Under this concept, general interest co-operatives would be a contradiction in terms. However, despite a clear definition of co-operative objectives being the mandate of member-promotion, transaction with non-members are not ruled out. But care for others and for the

community could only be an additional objective or could take the form of positive external effects of co-operatives working successfully. There is a fundamental difference between a co-operative society set up by and for the members, who act for self-help but also in the interest of others and an organization set up for general benefit.³³

Type-specific elements of co-operative financial structure are: variable share capital, refund of shares upon withdrawal at par value (excluding speculative gains), limited return on capital and indivisible reserves (asset lock). This financial structure is tailor-made for organizations starting business with members having limited financial means and looking for gaining strength by working together with others, pooling small resources and determined to establish a solid capital base for their co-operative enterprise – starting with small capital contributions and building up reserves over time from undistributed surplus, different from the company model. These special features of the co-operative model of organization are not “structural weaknesses” or “burdens of the past” which have to overcome or dropped, as some believe. When rightly applied, for projects suitable for collaboration on a co-operative basis, efforts to replace the type-specific co-operative structure by financial instruments from the tool box of company law do not strengthen, but rather weaken the co-operative project reducing member participation and member-support.

Members’ commitment in financing their co-operative society remains important. In their Joint Declaration of the Fifth Asia-Pacific Co-operative Ministers’ Conference of ICA ROAP (1999) held in Beijing 11-16 October 1999, the key role of members’ financial commitment in their co-operative society was highlighted by recommending the following strategy for capitalization of co-operatives:

“When seeking to raise capital, co-operatives should be encouraged to adopt the following strategy: first seek capital from members; if further capital is required it should seek capital funds from other co-operatives within the country or in other countries; and if further capital is required only then should it be sought from other non-co-operative sources” (ICA ROAP 1999, p. 15).

Another important issue is how to measure success of co-operative societies. Where success of an enterprise is not expressed in terms of profit made or return on investment earned, success cannot be read from the balance sheet. In co-operatives with their mandate of member-promotion, special instruments are required to measure success in terms of member-oriented effectiveness (promo-

³³ I. ADDERLEY, 2015, Financial Compliance Authority (FCA), UK, Message sent to the author in July 2015.

tion plan, promotion report) and special forms of audit are needed: Internal and external control (financial and management audit). In case of social co-operatives, additional instruments for measuring success have to be invented, e. g. “bilan sociétal”.³⁴

Generally, conditions for fulfilling the mandate of member-promotion or community benefit are: Economic viability and financial stability of the co-operative enterprise. Co-operatives must be self-financed by members’ contributions and indivisible reserves accumulated from undistributed surplus. Being self-financed is a precondition for autonomy and independence. Co-operatives dependent on external support cannot claim autonomy. The old rule: ‘control follows money’ also applied to co-operatives.

5. TAX TREATMENT

It is generally agreed, that co-operatives should not enjoy privileges. Where tax exemptions are granted, these are not perceived as privileges, but as type-specific tax-treatment. A case in point is whether surplus distributed among members as patronage refund (in proportion to business done by the member with the co-operative enterprise) can be recognized as tax-deductible operation cost of the co-operative enterprise. Under German tax law, several conditions have to be met for such official recognition: The surplus has to be generated from transactions with members, which means that separate accounts have to be kept for transactions with members and with non-members. The surplus has to be paid out to the members following the same standards for all members. Even if these conditions are met, it is left to the discretion of the local tax authorities to grant or refuse deduction from the co-operative’s taxable income.

There are also tax exemptions for co-operatives serving the general interest, e. g. social co-operatives in some European countries. In Germany, general interest housing co-operatives following special rules are exempted from certain taxes.

6. PROBLEMS CREATED BY DEVIATION FROM THE CLASSICAL (TESTED) MODEL OF CO-OPERATIVE SOCIETY

Where the general co-operative law is amended by introducing different categories of members with different rights and obligations, e. g. plural voting, such amendments require complicated additional rules to organize democratic control while avoiding that one category of members may be given or take over a dominating role (e. g. in case of SCIC in France and co-operatives of solidarity in Québec/Canada) with voting colleges for each category of members. The same is

³⁴ H.-H. MÜNKNER, «Bilan Sociétal» – neuer Ansatz zur Messung des Erfolgs von Genossenschaften» in Frankreich, in: ZfgG Band 59, Heft 4/2009, pp. 271-284.

true with regard to introduction of new financial instruments meant to strengthen the equity capital of co-operatives (supra p. 18).

As a result, co-operative law that used to be clear and relatively simple becomes a complex legal framework, e. g. the new Co-operative Law of Finland has 365 sections, of which one quarter deals with new financial instruments, seldom used in practice.³⁵ For co-operatives this means development from a clear to a blurred profile. The clear co-operative message, called for by the ICA, distinguishing co-operatives from commercial enterprises on the one hand and general interest organizations on the other, is lost.

Patchwork amendments influence the practical application of new and old rules, e.g. in case of the legal definition of the term “co-operative” in Art. 1 L 1947 and of the definition of SCIC in art. 19-quinquies L 1947 leading to ambiguities and contradictions between the co-operative mandate of member-promotion on the one hand and the mandate of co-operatives for collective interest (SCICs) to offer services of public utility on the other and influencing practical application. Approximation to the company model regarding governance and financial structures in the general co-operative law are demanded by large and further growing co-operatives. Such amendments are usually not suited for new and small co-operatives, which, accordingly, need special rules or exemptions from the general rules.

Experience with general interest co-operatives is not new. Attempts to regulate “*general interest co-operatives*” can already be found in Sec. 4 of the Maharashtra Co-operative Societies Act of 1961:

“A society, which has as its objects the promotion of the economic interest or general welfare of its members or of the public, in accordance with co-operative principles or a society established with the object of facilitating the operations of any such society may be registered under this Act.”³⁶

In his comments on this section, M. D. VIDWANS uses clear terms:

“What is meant by ‘general welfare’ in this section is not clear”. “The wording of the section is too woolly to stand the test of judicial interpretation, especially when there is no unanimity on what amounts to a co-operative principle itself.” “It is no use saying that key are the ‘accepted co-operative principles’, when this Act itself has deliberately disregarded one of such accepted principles ...”. “Self-help

³⁵ H. HENRY, «Chapter 16, Finland», in CRACOGNA et al eds.: *International Handbook of Co-operative Law*, Springer, Heidelberg, New York, Dordrecht, London, 2013, pp. 376, 377.

³⁶ M. D. VIDWANS, *The Maharashtra Co-operative Societies Act 1960*, Bombay, 1962, p. 26.

is the watchword of co-operation and yet mutuality or mutual help is its cardinal principle”.³⁷

Another example can be found in the Co-operative Societies Act of Singapore, Act N°. 17 of 1979: According to section 4 (1) (b), societies which may be registered under this law include the following:

“A society may be registered which, while having regard to the economic interests of its members in accordance with essential co-operative principles, has, as its object, the promotion of the economic interest of the public generally, or any section of the public”...

This refers mainly to the large consumer co-operatives in Singapore, serving members and non-members alike, while for example in Japan, the law prohibits transactions with non-members by consumer co-operatives.³⁸

7 HOW TO PROMOTE CO-OPERATIVE DEVELOPMENT?

Before people can be taught how to form and run co-operative societies, it is necessary to teach the teachers and to train qualified and experienced co-operative promoters. Success criteria were evaluated by graduates of the degree course in Co-operative Economics at Marburg University (1964-2004): An interdisciplinary approach (combining economic, legal and sociological subject-matters), using teachers who have both theoretical knowledge and practical experience of the subject-matter they are teaching and — for the students — combining teaching and practical training.³⁹

Those offering advice to founder-members and start-ups: Business consultants, lawyers, tax consultants, chartered accountants, staff of chambers of commerce and co-operative federations, have to know their subject thoroughly and must be interested in recommending the legal form best suited for the planned new organization.

For MSCs it is of strategic importance to establish links with the community administration, public authorities and enterprises in the region. Efforts have to be made to pool energies and resources of all operators active in the community or region for a common objective and to generate or strengthen local value chains.

³⁷ M. D. VIDWANS, The Maharashtra Co-operative Societies Act 1960, cit., pp. 27, 28.

³⁸ A. KURIMOTO, «Chapter 23, Japan», in CRACOGNA et al eds.: International Handbook of Co-operative Law, Springer, Heidelberg, New York, Dordrecht, London 2013, p. 511.

³⁹ H.-H. MÜNKNER (ed.), Making Co-operative Promoters - 40 Years ICDC, Report on the degree course in Co-operative Economics and the Institute for Co-operation in Developing Countries (ICDC), University of Marburg/Germany, LIT, Zurich, Berlin, Vienna, Münster, 2015, pp. 23, 24.

In a world dominated by anonymous large combines and business chains, aiming primarily at making short term profit, co-operatives with their emphasis on satisfying their members' needs and on sustainable development, can make the difference. They can build up a good reputation by a business policy avoiding excessive risks according to the Motto: "we only do business we know with people whom we know". They have to make the "co-operative advantage": tangible and visible by presenting promotion plans, promotion programmes and promotion reports. Only co-operatives emphasising their local roots and implementing low risk programmes can mobilize co-operative-specific internal driving forces: "Co-operative individualism", mutual trust among members and the feeling of "better together".

Members can be attracted and bound by offering participation and co-operative advantage, but not by giving members and non-members the same services, inviting free-riders.

To manage the co-operative difference means to practice value-oriented co-operative management rather than copying profit-oriented management from commercial competitors. Economic viability and financial stability can be secured by using a type-specific financial structure, counting on own resources.

To encourage the formation of new societies, first of all it is necessary to spread knowledge about co-operatives, e. g. by adding co-operative subjects to curricula of schools, trade schools, universities, provide textbooks, use new media.⁴⁰

Lawmakers should not make it too complicated to establish new co-operatives as in the case of the SCE Regulations of 2003, for which more simple alternatives can be found. Furthermore, legal cost should be reduced and should not be higher than in case enterprises in other legal form. In Germany this applies to audit fees (pre-registration audit and annual or bi-annual audit) and membership fees in a co-operative audit federation.

8 SELF-HELP ORGANIZATIONS VERSUS WELFARE ORGANIZATIONS

When discussing this issue, a short look into historic experience of RAIFFEISEN and SCHULZE-DELITZSCH in the middle of the 19th century with welfare associations turned into self-help organizations may be useful.

A problem of ecological sustainability was the starting point of the co-operative idea in Germany. Strong population growth resulted in more intensive land use, not allowing the soil to regenerate by natural processes. Decreasing crops and harvest-failures caused impoverishment of the rural population and famines. Usurers drove many farmers into ruin. RAIFFEISEN saw the solution of these

⁴⁰ H.-H. MÜNKNER, *Co-operative Principles and Co-operative Law*, second, revised edition, LIT, Zurich, Berlin, Vienna, Münster, 2015, pp. 167-174.

problems by offering access to financial services to farmers, starting with savings facilities and access to loans at favourable conditions for the construction of stables, purchase of farm machinery, animals, seeds, fertilizer and land.

In 1849 he established the Flammersfelder support association for helping poor farmers and in 1854 the Heddesdorf welfare association. In both cases better-off citizens provided funds to be issued to farmers as loans. The loans often served for purchasing livestock and had to be paid back in equal instalments over five years. In addition, the Heddesdorf welfare association contributed to the education of neglected children, employment of citizens without jobs and the integration of ex-prisoners, and opened a library for the citizens. However, RAIFFEISEN had to realise that welfare associations were lacking economic sustainability. Both associations finally failed. The better-off members had no direct advantage and therefore were not permanently available. The Flammersfelder support association was dissolved. Thereafter, a second association was established in 1864: the Heddesdorf loan association. Members of the new association were mainly those in need. Especially the new character as self-help organisation was securing lasting success.

Some years later, Hermann SCHULZE-DELITZSCH had a similar experience. Many advance associations based on charity⁴¹ and loan facilities for craftsmen had to close shortly after they had been formed. SCHULZE-DELITZSCH saw as a reason that, because of their welfare character, the associations did not control the repayment capacity of the borrowers and the punctual repayment of the loans with the required rigour. The craftsmen receiving support repaid the loans with great delays or not at all. Frequent occurrence of un-repaid loans caused the well-to-do citizens to loose interest.⁴² The advance association established by SCHULZE-DELITZSCH only became successful after re-organization as a self-help organisation. The funds for issuing loans were provided by a growing number of craftsmen, who joined as members and the advance association paid interest. In addition, joint and several liability of all members was introduced. This reorganisation set a sustainable development into motion.⁴³

9 VOLUNTARY MEMBERSHIP IN GENERAL INTEREST ORGANIZATIONS

Where obligations linked to membership in an organization outweigh personal advantages and where participation of all concerned is important for reaching the

⁴¹ The funds for issuing loans were provided by donations and interest free loans from well-to-do citizens.

⁴² H. SCHULZE-DELITZSCH, *Vorschuss-Vereine als Volks-Banken – Praktische Anweisung zu deren Gründung und Einrichtung*“, Leipzig, 1855, pp. 1, 2.

⁴³ H. SCHULZE-DELITZSCH, *Vorschuss-Vereine als Volks-Banken – Praktische Anweisung zu deren Gründung und Einrichtung*“, cit., pp. 12-14.

planned objectives (of individual and general interest), voluntary membership as an organizing principle does not work. Where for example sustainable forest management can only be achieved, if all forest owners co-operate, voluntary membership, meaning that some forest owners could opt for managing their forest in their own way, with a view to short-term profit by neglecting sustainability to save cost, would endanger the development of the entire forest area. When maintaining rights of private ownership of forests, the only solution for guaranteeing sustainable forest management is compulsory membership of all forest owners in public law co-operatives under state control.

In Germany, there is a long tradition of *public law co-operatives* for the promotion of general interest, having their roots in the community, characterized by compulsory and closed membership: All water users, forest owners, hunters, fishermen in the area of operation/region have to join. Members are obliged to fulfil prescribed tasks for securing sustainable development, protection of the biological equilibrium and the environment.⁴⁴

Such public law co-operatives have a dual mandate: promoting the interests of their individual members and at the same time working for sustainable management of natural resources and protection of the environment. Compulsory membership is used as a means of achieving the objects of the organization in the general interest. This does not affect the personal relationship as member of the co-operative in terms of self-administration and allows combining individual advantage (promotion) with serving general interest, i.e. to preserve forests, waters, land and the bio-diversity.

In this case, the co-operative principle of identity of owners and users, pursuing not only economic objectives (for member-promotion) but at the same time serving general interest of the community and the state in sustainable agriculture and water supply, protection of forests, lakes and rivers, employing game wardens, is causing cost to be born by the members.

E.g. forest owners' co-operatives: Formed by the state with compulsory membership of all forest owners in the area of operation, following the rules for sustainable forest management, but having an internal democratic structure (members' right to vote in general meetings). The institutional object of these public law co-operatives is not only to promote the interests of their members but also and mainly to care for protecting the environment under government supervision.

⁴⁴ H. PAULICK, *Das Recht der eingetragenen Genossenschaft*, C. F. Müller, Karlsruhe. 1956, pp. 16-23.

10 PROMOTION OF CO-OPERATIVES BY GOVERNMENT

In Europe, co-operative laws are usually pure organization laws, with government policy for promoting co-operative development being laid down in the constitution (e. g. in Italy) or in policy papers or development plans.

Korean Framework Act on Co-operatives of 2014 contains a whole range of promotional measures, with the following details: management support (art. 10-2); education and training support and human resources development (art. 10-3), a policy of revitalization of co-operatives and social co-operatives including improvement of related statutes (art. 11 (2)) and strategies for co-operative development in a Master Plan (art. 11).

The autonomy of co-operatives is protected (art. 10 (1)), active co-operation of government and co-operative federations is called for (art. 11-2), with the right of co-operatives to be heard by government (art. 10 (3)). The law provides for a council for co-operative policy deliberations, composed of public officials, persons commissioned by the Ministry with knowledge and experience in co-operatives, but obviously without representatives of the co-operative movement and practicing co-operators (art. 11-2).

Use of the services of the co-operative society by non-members is allowed to the extent that does not interrupt its members in using its services, with the exception of services prescribed by Presidential Decree (art. 46).

Chapter IV – social co-operatives

List of business activities:

Article 93 (Business Activities)

“(1) Each social cooperative shall be engaged in at least one business activity as its main business among the following business activities: (Amended by Act No. 12272, Jan. 21, 2014)

1. *Programs for contributing to the renewal of local (...) communities, invigoration of the local economy, enhancement of rights, interests, and welfare of local residents, and resolution of other problems that local communities face;*
2. *Programs for providing the disadvantaged class prescribed by Presidential Decree with social services in the areas of welfare, medical service, or environment;*
3. *Programs to provide jobs for the disadvantaged class prescribed by Presidential Decree;*

4. *Projects entrusted by the central government or a local government;*
 5. *Other projects contributing to the promotion of public service.*
- (2) *The main business referred to in the subparagraphs of paragraph (1) shall be at least 40 percent of the total amount of the entire business of a cooperative (Amended by Act No. 12272, Jan. 21, 2014).*
- (3) *Criteria for judgement of main business under the subparagraphs of paragraph (1) shall be prescribed by Presidential Decree (Newly inserted by Act No. 12272, Jan. 21, 2014)."*

Section 8 - Supervision

Article 111 (Supervision) of social co-operatives:

- (1) *"The Minister of Strategy and Finance shall respect the autonomy of social cooperatives and supervise their business affairs and may issue an order necessary for supervision, as provided for in this Act.*
- (2) *In any of the following cases, the Minister of Strategy and Finance may require a social cooperative (including a cooperative in the process of establishment; hereafter the same shall apply in this Article) to report matters regarding its business and property or may assign public officials under his/her control to inspect the current status of the business affairs of a social cooperative, its accounting books, documents, and other necessary matters."*

II CONCLUSION — WITHOUT SELF-HELP AND MUTUAL AID — NO CO-OPERATIVES

The idea expressed in the ICA Blueprint, that co-operatives are more efficient than investor-owned businesses (ICA Blueprint 2013, p. 14), is debatable. There are field of business where the co-operative model works best and other fields where investor-driven models of organization or general interest associations work better. In case of projects requiring a strong and stable capital basis from the outset, hybrid forms like co-operative companies could combine the advantages of the company model with those of the co-operative model.

By approximating co-operatives to general interest associations and without visible material co-operative advantages to attract and motivate members, type-

specific incentives for voluntary participation are neutralized. It is known from experience that internal driving forces can only be generated, if self-interest of the individual members can be pursued successfully only or better by working together with others having similar interests. The motto of co-operatives is “We for Us” and not “We for You” – but also can include: “We not only for Us but also for You and for the general public”. In this context it is important to distinguish objectives from effects. There is a decisive difference between positive external effects being by-products of co-operatives operating successfully in promoting their members’ interests and organizations in which positive external effects are part their institutional objectives. Non-mutual social co-operatives and in particular general interest ‘co-operatives’ are lacking this specifically co-operative strength.

Other key elements of genuine co-operative organization are autonomy and independence. Without own resources, there can be no independence. It is known from experience that organizations depending on external support will disappear when external support dries up. Members’ commitment in financing their co-operative society remains important.

To meet the real and ostensible needs of large and further growing co-operatives, many lawmakers have reacted by introducing new rules from company law: e. g. investor-members, fixed minimum capital, partly divisible reserves. This may bring co-operatives in a situation where by approximation to the company model, co-operatives lose their clear profile, their credibility as a value-based organization, as well as their internal driving forces.

In some legal definitions of social or “general interest co-operatives” in national co-operative laws, the elements determining their co-operative character are clearly expressed, e. g. in case of social solidarity co-operatives in Portugal, where self-help is mentioned as part of the underlying concept and honorary members remain without voting rights. In Italy and France, the objects of “general interest co-operatives”: serving public interest or offering services of public utility, deviate from the tested model of co-operative society with the mandate to promote only or mainly the interests of their members by means of self-help and mutual aid.

In the Framework Act on Co-operatives of 2014 of Korea, social co-operatives are defined as business organizations having as their object to enhance the rights and interests, and the welfare of local residents or promote social services or jobs for disadvantaged people (article 2). This is in contradiction to article 5 of the same law, where the objectives of co-operatives are described as member-promotion and mutual help between members, repeating a mistake already exposed by M. D. VIDWANS when commenting on the “general interest co-operatives” in the Maharashtra Co-operative Societies Act of 1961 as being in contradiction with the co-operative principles which the same law pretends to follow (supra, p. 20).

In Québec/Canada, special objects of co-operatives for social solidarity are not mentioned in the law, but are implied in the name “co-operative”. In Italy and France, member orientation of general or collective interest co-operatives is not expressly stated in the law but can be derived from the composition of the membership group. In Québec/Canada, co-operatives for solidarity, which only have promoting members, can be dissolved ex-officio.

Finally, to answer the question discussed in this paper, social co-operatives can retain their co-operative character and their internal driving forces, if they remain at least for a substantial part of their operations member-oriented or — using the Italian term — mutual. Totally non-mutual ‘co-operatives’ working in the general interest or for public utility are a contradiction in terms. They are welfare associations and as such may have their merits but also their own rules of functioning.

In a resolution passed by a Co-operative Ministers’ Conference in Beijing organised by the ICA Regional Office for Asia and the Pacific in 1999, the importance of maintaining a strong co-operative profile was underlined in very clear terms:

“Co-operatives contribute their best to society when they are true to their nature as autonomous, member-controlled institutions, and when they remain true to their values and principles (autonomy and independence).”⁴⁵

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