

LEGAL REGULATORY FRAMEWORK OF COOPERATIVE PRINCIPLES

Asen VODENICHAROV

“Neofit Rilski” South-West University, Blagoevgrad, Bulgaria
asenvodenicharov@mail.bg

Abstract: *Cooperatives are an essential structural element of national economies. They contribute to the sustainable and intensive economic growth and to the promotion and development of social market instruments. Due to their specific principles of organization and functioning, cooperatives are distinguished from all other forms of corporate typology, as well as from the state bodies, the non-profit legal entities etc. Their characteristic features are manifested at national and cross-border European level. The principles on the basis of which cooperatives develop their activities and differentiate them from other organizational and legal establishments are emphasized in a number of acts of the European Union such as Council Regulation (EC) No 1435/2003 of 22 July 2003. The Statute for a European Cooperative Society (SCE) points out that their activity is based on „the specific features of cooperatives” and that „cooperatives are primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents”. The article analyzes the national legal frameworks and the European regulatory framework of the cooperative principles: voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information, co-operation among co-operatives and concern for community. The relationships between them as well as those in the context of the normative regulation of cooperative values are explored.*

Keywords: cooperative society, cooperative, cooperative principles, cooperative values.

1. Introduction

Cooperatives are an economic, legal and social phenomenon that arose at the founding meeting of the *Rochdale Society of Equitable Pioneers* on 24th October 1884. This first consumers’ cooperative was established in England and pioneered the institutionalization of cooperatives in Europe. This date became the birthday date of the organized cooperative movement on the Old Continent. The principles on which it is based became termed the "*Rochdale Principles*". They formed the first social regulatory framework and became cornerstones for the future evolution of the

internal-cooperative regulation, as well as the legal regulation of these corporate structures *lex ferenda*.

The cooperative movement has grown very fast not only in Europe but also worldwide [1]. Cooperatives have established themselves as an active participant in the overall social life. The members of cooperative structures are 21 per cent of the population of the EC member states. Out of 503 824 373 citizens in the European Community 108 015 993 are cooperative members. Consequently, almost every fifth citizen of the Union is member of a different type of a cooperative company (4,664).

If children up to the age of 15 (15.44% of the EU population) are not taken into account, then one out of every four people living in a member state is a cooperative member (25.56% of the EU population).

2. Legal nature and regulation of cooperative principles

The terms "cooperative society" and "cooperation" are synonymous. The use of either of these terms depends on the national traditions in the respective country. In the United Kingdom, both terms are used simultaneously. In France, the term "cooperative association" is generally used in the titles of the regulations, and in terms of content both terms are equal. In terms of the laws governing cooperatives in the EC member states the situation is similar. In Bulgaria, the first law in this area of studies was entitled the Cooperative Associations Act (also known as the Cooperative Associations Act) of February 17, 1907 [2]. Later, the Cooperatives Act (1948) was adopted. In 1954, a new Cooperative Law and Regulations for Cooperative Organizations came into force [3]. The last Act cooperatives was December, 28, 1999. Council Regulation (EC) No 1435/2003 of 22 July 2003 is entitled on the Statute for a European Cooperative Society (SCE) [4]. In the preamble and in a number of provisions both terms „cooperative society” and „cooperatives” are used synonymously. Such usage is envisaged in a number of community acts. For example, the European Parliament adopted several resolutions such as: 13 April 1983 on cooperatives in the European Community [5]; 9 July 1987 on the contribution of cooperatives to regional development [6] ; on 26 May 1989 on the role of women in cooperatives and local employment initiatives [7]; 11 February 1994 on the contribution of cooperatives to regional development 26 May 1989 on the role of women in cooperatives and local employment initiatives [8] and 18 September 1998 on the role of cooperatives in the growth of women's employment [9].

The concept of "cooperation" as a legal entity is well known in all countries and exists in all languages [10]. It is an intrinsic part of their legal, economic, sociological, philosophical and everyday vocabulary [11].

The establishment and operation of cooperatives is built on the basic principles defined in the Statement on Co-operative Identity (La déclaration sur l'identité coopérative) adopted on the 23 September 1995 by the General Meeting of the International Co-operative Alliance (ICA) held in Manchester on the occasion of the Alliance's Centenary. This happened 111 years after the formulation of „[*Rochdale Principles*](#)”. The Statement enriches the first proclaimed principles and updates them in accordance with the new economic and political realities in Europe and the other continents. It states that: "A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise."

As these principles determine the place and the role of the cooperations in the future development of the world in the conditions of the globalization of economy, the draft of this important document is a subject to discussion at a number of authoritative international and regional forums a such as the UN World Conference on Social Development, The Fourth World Conference on the Situation of Women, etc. It is consulted extensively with a large number of cooperative structures and cooperative activists: professors, business leaders, and representatives of social bodies etc.

The Statement distinguishes between cooperative principles and cooperative values. The catalogue of the latter includes such social norms and rules that are fundamental to any cooperative organization. Specific core cooperative values such as self-help, self-responsibility, democracy, equality, equity and solidarity are formulated. They relate to the collective

life of the cooperative, not only as an economic unit, but also as a social aggregate of individuals who have come together to achieve their common goals.

Cooperative principles are fundamental doctrines that permeate the overall activity of cooperatives. They serve as guidelines for the practical realization of these cooperative values. The principles are interrelated, interdependent and inseparable. They should be seen as intrinsically cumulative. The absence of one of them is detrimental to the action of the others and affects the identity of the cooperative structure.

In particular, these principles are:

2.1. Voluntary and Open Membership

The cooperative is a voluntary organization. All individuals who need its services and who wish to take on the obligations specified in its Statute may become members. There is no possibility to use any legal, economic or other mechanisms to force a person to become a member of a cooperative. There can be no restrictions on the admission of an individual on grounds of gender, social, racial, political or religious discrimination.

The presence of an individual at the Constituent assembly does not make them an *ipso jure* member of the cooperative organization that is being formed. What is required is an explicit personal will and individually formulated desire to become a cooperative member. Any form of administrative coercion, pressure, influence, etc. is inadmissible for the individual's inclusion in the cooperative

2.2. Democratic Member Control

Cooperatives have historically established themselves as democratic entities since their inception as a legal organizational form of business association [12]. They are managed by their members. The members are directly involved in the adoption of all significant decisions of the General meetings [13]. Council Regulation (EC) No 1435/2003 explicitly states that the association's Statute, adopted by the

constituent assembly with the participation of all members of the future organization, must include a minimum set of provisions relating to the subject of activity, conditions, circumstances and procedures for admission, exclusion and withdrawal of members, rules on majority and quorum, etc. (Art. 5 - 4).

Equal voting rights are particularly important. They are based on the "one member - one vote" principle. The regulation imperatively states that "each member of an SCE shall have one vote, regardless of the number of shares they hold." (Art. 59 - 1).

2.3. Member Economic Participation

It is logical that the assets of an organization that is run by its members should be formed by the members themselves. Article 4 (7) of Regulation (EC) No 1435/2003 explicitly states that the statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership. If they stipulate that the majority at General meetings shall be constituted by members who are individuals, and if they lay down a subscription requirement for members wishing to take part in the activities of the SCE, they may not make membership subject to subscription for more than one share. (Art.4 – 7) [14].

Therefore, it can be concluded that an absolute material prerequisite for the emergence of a membership relationship is the contribution of certain shares. They can be imported for cash or non-cash contributions. It is legally determined that the subscribed capital consists of the members' shares in monetary value of the respective national currency. Capital can only be composed of assets that have an economic expression. It is emphasized that the members' shares cannot be issued against an obligation to provide a service. Units are necessarily named and the nominal value for every particular category is the same.

Along with it, the Community Act states that when the accounts for the financial year are considered, the annual General meeting shall by resolution record the amount of the capital at the end of the financial year and its variation by reference to the preceding financial year. At the proposal of the administrative or management organ, the subscribed capital may be increased by capitalization of all or part of the reserves available for distribution, following a decision of the General meeting, in accordance with the quorum and majority requirements for adopting an amendment of the Statutes. New shares shall be awarded to members in proportion to their shares in the previous capital (Art.4 – 8).

2.4. Autonomy and Independence

Cooperatives are autonomous self-help and mutually assisting organizations run by their members. No central [15] or territorial [16] government body may interfere in the activities of these entities. They can transfer their registered office with a decision of the general meeting [17]. The public authorities define the regulatory framework within which cooperatives are set up and operate [18]. It is formulated in a separate common law for cooperatives or for individual types of cooperative organizations depending on the national traditions, the economic environment, the political climate, etc. The Cooperatives Act of 9 April 1873 is in force in Austria [19]. Law No 651 of 15 June 2006 establishes *ex lege* the following types of cooperatives in Denmark: commercial cooperatives; consumer cooperatives; micro-cooperatives with fewer than 10 members; agricultural cooperatives; labor cooperatives; financial - credit cooperatives and insurance cooperatives [20]. In Germany, the first law on business cooperatives [21], giving rise to legal effects on the territory of the German Empire (Deutsches Reich) came into force on 1 May 1889 and has since then been amended numerous times. Since November 16, 1999 there has been a common civil law

for cooperatives [22]. There are two legal acts in Greece governing the legal status of cooperatives. One regulates the legal status of agricultural cooperatives [23], and the other regulates civil cooperatives [24]. At the same time, provisions of other normative acts regulating various branches of the state administration, such as the Commercial Codes, the Company Laws, the Tax Laws, the Social Insurance Laws, etc., apply. A number of public relations associated with cooperative structures are regulated by acts of secondary legislation. In all cases, it is necessary to seek the optimal legal framework, which, on the one hand, establishes the necessary universal rules for the functioning of economic operators and, on the other, enables self-regulation of the structures under consideration in line with the cooperative principles listed above.

In cases where different agreements are concluded with public authorities, such a degree of public regulation should be sought which will nurture the initiative of the associate citizens or companies in the individual countries as well as in the EU member states.

2.5. Education, Training, and Information

It is necessary for a cooperative to organize and support the education and training of its members, to prepare them for being active and competent participants in its management. In this way, it also fulfills its purpose of forming such traits of the individuals that are inherent for the civil society.

Council Regulation (EC) No 1435/2003 devotes a number of its provisions to the information of members and society about the relocation of the seat (Art.7 - 3, 4, 7, Art. 11), the publication of Acts in the member states (Art.12 13), etc.

2.6. Cooperation among Cooperative members

This cooperative principle has had a long history. For the first time, the problem of cooperative cooperation was raised when the “Association of All Classes and

Nations” was founded in 1835 in London. One of its goals was to promote cooperative ideas internationally. At the English Cooperative Congress held in Plymouth in 1888 various forms of cooperative collaboration were widely discussed, At present the interaction between cooperatives addressing general issues is of particular importance. The globalization of economy, the latest global crisis, the increasing needs of society etc., require close interaction in institutional or in non-institutional form with other cooperative structures at local, regional, national, European and global level.

2.7. Concern for Community

Cooperatives are self-governing organizations. Their founders and owners are their members themselves. Through their governance bodies they select and carry out their operational management. Every effort should be made to develop the cooperative structure in order to meet the economic, social and cultural needs of their associates.

Conclusions

The principles discussed above are an essential criterion for distinguishing

cooperatives, including SCEs [25], from other legal entities such as commercial companies, non-profit legal entities, state bodies, public-state committees, etc.

From a legal viewpoint the historical genesis of the cooperative principles reveals their enrichment and evolution. They are the basis for the establishment and operation of cooperative structures. Their legal expression in the regulations of the individual countries and in the European Union plays a particularly important role in the continuous development of the cooperative movement. It is important to strike a balance between the autonomy of cooperatives and the legal framework on the national and the European area. In this respect, an accurate social orientation is provided by Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE). Creating a favorable legal climate in accordance with the cooperative principles will guarantee a smart and ascending development of the cooperative movement and its furthest active participation in the implementation of the 2030 UN Agenda for Sustainable Development.

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- [5] OJ C 128, 16.5.1983, p. 51.
- [6] OJ C 246, 14.9.1987, p. 94.
- [7] OJ C 158, 26.6.1989, p.380.
- [8] OJ C 61, 28.2.1994, p. 231.
- [9] OJ C 313, 12.10.1998, p. 234.
- [10] Cooperative - English; Συνεργατική – Greek; Kooperative – Danish; Ühistu – Estonian; Cooperativa – Italian; Cooperativa – Spanish; Kooperatīvs – Latvian; Kooperatyvas – Lithuanian; Samarbeidsvillig – Norwegian; Genossenschaft – German; Spółdzielnia – Polish; Cooperativo – Portuguese; Cooperativă – Romanian; Družstvo – Slovak; Zadruga – Slovenian; Szövetkezet – Hungarian; Osuuskunta – Finnish; Société cooperatives, coopératives – French; Coöperatieve – Dutch; Družstvo – Czech; Kooperativ – Swedish.

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