



---

**MTA Law Working Papers  
2020/25.**

**The structure of organs of  
Hungarian cooperatives  
and their regulation**

*Zoltan Vig*

---

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

**ISSN 2064-4515**

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

# The structure of organs of Hungarian cooperatives and their regulation<sup>1</sup>

Zoltan Vig

**Abstract:** The paper presents and analyses the structure of the organs of cooperatives under the new Hungarian cooperative legislation in the light of international guidelines and recommendations, and in comparison to the Austrian and Italian regulation.

**Keywords:** cooperatives, Hungary, Austria, Italy, UN Guidelines, general meeting, board of directors, supervisory board, auditor

## Introduction

The most important sources of the international cooperative law are the International Co-operative Alliance (ICA) Statement, the Guidelines aimed at creating a supportive environment for the development of cooperatives (UN Guidelines) and International Labour Organization (ILO) Recommendation no. 193. Even if these documents have no binding force, they should be taken into consideration when drafting laws, as they are the result of majority decision, or even consensus in some cases, among member states of these organizations. In this study, we also compare the Hungarian legislation with two time-tested legislations on cooperatives in Europe, the Austrian and the Italian.

The Guidelines for Cooperative Legislation (GCL) emphasizes that during the regulation of the structure of the organs of a cooperative both the principle of democracy (cooperatives are associations governed by the members) and the principle of economic efficiency (at the same time cooperatives are also enterprises) has to be taken into account.<sup>2</sup> Therefore, the GCL suggests that the general meeting of the cooperative should deal with issues related to the associative character of the cooperative, the board of directors should deal with issues pertaining to the enterprise and a professional manager should deal with issues related to everyday business of the cooperative. The GCL also suggests setting up some kind of controlling organ, *i.e.* a supervisory board.

The Hungarian regulation<sup>3</sup> is fundamentally in accordance with the above mentioned principles. According to it, the organs of the cooperative are the general meeting, the board of directors or director of operations, and the supervisory board.

---

<sup>1</sup> This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

<sup>2</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 33.

<sup>3</sup> In Hungary the main sources of cooperative legislation can be found in the Hungarian Civil Code, Book Three, Part Four (Cooperative Societies 3:325-366.§). However, it should be mentioned, that general rules of the Civil Code on legal persons are also applicable to cooperatives. On the new legislation see also: Petrik Ferenc (szerk.): Polgári Jog - Kommentár a gyakorlat számára 1-2-3. köt. 3. kiad. Budapest, 2013, HVG-ORAC, 2462 p. Sárközy Tamás: Szervezetek Státuszjoga az új Ptk-ban - társasági, egyesületi és alapítványi jog a Ptk. Harmadik Könyve alapján.1. kiad. Budapest, 2013. április 15. hvgorac Lap- és Könyvkiadó Kft. 250 p. Vékás Lajos (szerk.), Gárdos

## General Meeting

The highest organ of the cooperative is the meeting of the members or the general meeting. Before we turn to the discussion of this organ, we are going to devote few words to the membership of the cooperative. Members of a cooperative can be both natural and legal persons.<sup>4</sup> This is in line with the GCL, which suggests that both natural and legal persons should be allowed to become members of a cooperative as long as the principle of “one member one vote” is respected.<sup>5</sup> However, there are certain restrictions for legal person members: their number should not exceed twenty per cent of the total membership; the number of legal person members operating as cooperatives shall not be counted in the number of members other than natural persons. According to article 3:354 of the Hungarian Civil Code membership in a cooperative commences upon the foundation of the cooperative, or by way of application submitted upon admission. In the application for admission the applicant should declare to abide by the provisions of the statutes of the cooperative and should indicate the capital contribution agreed upon. If the application for admission specified a commitment for personal involvement, the specifics of such involvement shall be explained in detail. The provision of capital contributions is governed by the rules applicable to the foundation of cooperative, where submission of the application for registration and registration is understood as the date of admission. Prospective members seeking admission to the cooperative are not required to provide any capital contribution insofar as another member transfers his share from the cooperative’s assets, or a part thereof, upon such new member. The old Hungarian law on cooperatives explicitly provided that the statutes should regulate the organ which decides on membership applications. Unfortunately, this provision is missing from the new regulation. For example the Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society provides that the management or the administrative organ of the cooperative has to approve the application for membership.<sup>6</sup> Some argue that membership is an issue that affects all the members because of the character of the cooperative, and thus, it would be advisable that the members (general meeting) decide on this issue. However, practically it might be cumbersome and impractical to convene the general meeting. Thus, for example the board of directors could be the organ which decides on it, as it implements the business policy of the cooperative (this is suggested for example by Vlatkovic).<sup>7</sup>

The law obliges cooperatives to keep a register of their members, containing the member’s name and home address, or registered office of members that are not natural persons, the amount of the member’s capital contribution, and the date of commencement and termination of membership.<sup>8</sup> The register is accessible to the general public subject to proof of concern.

Article 3:356 enumerates the rights of members, according to which they have equal rights in the governance and control of the cooperative, irrespective of their capital contributions (this is basically the ‘one member one vote’ principle). Furthermore, the law states that the profits of the cooperative may be distributed among its members, but half of the cooperative’s profits

---

Péter (munkatárs): A Polgári Törvénykönyv magyarázatokkal. Budapest 2013, Complex Kiadó, 1086 p. Zsohár András: A szövetkezeti törvénytervezet magyarázata a Ptk. jogi személyekre vonatkozó részében (Gazdaság és Jog, 2011/9., 3-6., o.).

<sup>4</sup> Art. 3:326, Hungarian Civil Code.

<sup>5</sup> Henrý, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 25.

<sup>6</sup> Art. 14 (1), Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.

<sup>7</sup> Vlatković, M. (1999) Omladinske i studentske zadruge. Beograd: NIP, p. 41.

<sup>8</sup> Art. 3:355, Hungarian Civil Code.

should be distributed among the members in proportion to their personal involvement, and any provision of the statutes which provides for a distribution ratio in connection with personal involvement in less than half of the profits is null and void.

The Hungarian Civil Code also deals with the issue of the termination of membership in art. 3:358. Thus, membership terminates: a) upon the member's withdrawal from the cooperative; b) if the member did not provide his capital contribution (supplementary payments) within the time limit specified by the statutes or in the general meeting resolution; c) upon the member's death (dissolution); d) upon the member being excluded by court order; e) upon the cooperative being terminated by way of transformation, merger or division, or if dissolved without succession. Member who wants to withdraw from the cooperative shall notify the administrative body in writing. Membership may be terminated after three months from the date of the notice of withdrawal; any provision of the statutes providing for a time limit of over three months shall be null and void in respect of the part exceeding the three month period. Members can be also excluded from the cooperative, however, this can be done only with a court ruling based on a claim launched by the cooperative against such member, if the continued membership of the person in question would seriously jeopardize the cooperative's objective. Membership terminates upon the member's exclusion.<sup>9</sup> A procedure for the exclusion of a member may be opened upon a resolution adopted by the general meeting by at least a three-quarters majority of all members. The member affected may not vote on that issue. The action showing the grounds for exclusion shall be brought within a fifteen-day preclusive period from the date of the general meeting's resolution. The court may suspend the membership rights of the member affected upon request, before the final court ruling, if continued exercise of such membership rights would seriously harm the cooperative's interests. Such suspension shall not affect the member's right to a share of the profit. During the period of suspension of membership rights, the statutes may not be amended, an action for the exclusion of another member may not be opened, and a decision may not be taken to resolve the transformation, merger or division of the cooperative, or its dissolution without succession.

The members of the cooperative form the general meeting. The most important issues fall into the competency of the general meeting. Thus, according to the Hungarian Civil Code this organ is authorized to amend the statutes of the cooperative, to elect and remove executive officers, supervisory board members, the auditor, and to establish their remuneration. Furthermore, it can transfer a certain part of the cooperative's assets into the fellowship fund, and decide on the general principles for the appropriation of the fellowship fund, it can also approve the financial report, decide on the appropriation of taxed profits, on merger or division of the cooperative, on transformation into a business association or dissolution without succession, on bankruptcy, winding up or liquidation, or on ordering supplementary payment.<sup>10</sup>

---

<sup>9</sup> Article 3:361 of the Hungarian Civil Code provides that if membership is terminated, the member or his successor shall be entitled to the value of his capital contribution, plus the increments in the equity capital earned during the membership period in the percentage said contribution represents in the capital, with the tied up reserve deducted, if it was not appropriated to cover any losses. The above-specified share shall be disbursed within three months from the termination of membership; any provision of the statutes providing for a time limit of over three months shall be null and void in respect of the part exceeding the eight year period. Upon the termination of membership, at the member's request any asset he has provided to the cooperative for common use shall be returned to the member or to his successor if not seeking admission to join the cooperative, provided that the asset in question is still in the cooperative's possession. If the asset provided for common use is no longer in the cooperative's possession as a result of normal wear and tear, the cooperative shall not be held liable to pay any compensation. If the above-specified asset is used following the termination of membership, a fee shall be paid to the former member or to his successor if not seeking admission to join the cooperative, for the period until such asset is returned.

<sup>10</sup> According to art. 3:357 of the Hungarian Civil Code, if the statutes contains provisions to authorize the general meeting to order an obligation upon the members to provide supplementary capital contributions in order to cover

The law provides that the general meeting should be convened at least once a year, what is a mandatory provision. This provision serves the interests of the members.<sup>11</sup> According to the law, members of the cooperative have the right to recommend items for the agenda of the meeting. It is also important to mention that the Hungarian regulation explicitly supports the principle of ‘one member one vote’, that is to say, each member of the cooperative has one vote at the meeting, irrespective of his/her capital contribution (this is not the most flexible solution). Members may exercise their membership rights through representatives. This is for example also provided by the Austrian law<sup>12</sup> and the Italy legislation<sup>13, 14</sup> The Austrian law at the same time allows deviation from this principle in the agreement of foundation (by-laws).<sup>15</sup> Furthermore, regarding the number of votes, the Italian Law, as exception, provides that the by-laws may stipulate that members with legal personality may have more than one vote, however, not more than five. Interesting solution of the Italian Civil Code is that it gives the possibility to grant extra voting rights to some members who participate in certain mutual benefit ventures during the integration of these ventures or only during certain phases of these ventures.<sup>16</sup> In our opinion, the principle of „one member one vote” should be kept, as we may not forget that cooperatives have different characteristics than companies, however, it should be made more flexible. Cooperatives are in constant need of capital, and having a strict regime of ‘one member one vote’ does not encourage potential investors.

Regarding decision making at the meeting, there are certain issues for which the Hungarian law prescribes special majority: two-third vote of the members attending the meeting and half of all the members is required for the amendment of the statutes of the cooperative, or two-thirds of all members’ votes are required for the decision concerning the merger, division, transformation or dissolution. General rule is open voting, however, election (recall) of the directors and supervisory board members should be done with secret voting (ballot). Regarding decision

---

the cooperative’s losses, members may be obligated to provide additional contributions once in a year, in proportion to their capital contribution, and such payment may not exceed thirty per cent of the member’s capital contribution. Supplementary capital contributions which are not required to cover losses should be repaid to the members. Such repayment, however, may only take place after full payment of the agreed capital contribution. The provisions on non-performance of capital contribution shall apply to any failure to provide supplementary capital contributions.

<sup>11</sup> The Hungarian Civil Code states in article 3:362 that members of the cooperative together controlling at least five per cent of the voting rights may, at any time, request that the general meeting be convened, indicating the reason and the purpose thereof, or the passing of a decision out of session. If management fails to comply with such request within eight days of the date of receipt, and fails to convene the general meeting at the earliest possible date, or fails to provide for the passing of a decision without a meeting, the court of registry shall convene the general meeting at the request of the members making the proposal, or shall empower the requesting members to convene the general meeting within the prescribed deadline, or to carry out the procedure for the passing of a decision out of session. However, the law also states that expected costs should be covered by the requesting members. The general meeting shall decide in a session convened at the request of minority stakeholders or by way of a decision adopted without a meeting whether the costs incurred be borne by the cooperative or the persons convening such meeting.

<sup>12</sup> Art. 31, Austrian Law on Cooperatives.

<sup>13</sup> Art. 2538 (2), Italian Civil Code.

<sup>14</sup> To improve the efficiency of the functioning of the general meeting, the GCL suggests voting without physical presence, e.g. the introduction of the possibility to vote via internet. (Henřy, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 35) The ICC provides that the by-law may prescribe the possibility to vote by means of telecommunication. (2538 (7), ICC) This seems as a good idea, provided technical conditions and safety can be guaranteed.

<sup>15</sup> Art. 27 (2), Austrian Law on Cooperatives.

<sup>16</sup> Art. 2538 (4), Italian Civil Code.

making at the general meeting, in principle, the GCL supports a decision making where both the principle of democracy and economic efficiency is respected.<sup>17</sup>

If the general meeting fails to have a quorum, the reconvened general meeting should have a quorum for the issues of the original agenda irrespective of the number of those present, if called for a date following the original time by not less than three and not more than fifteen days.

According to the Hungarian law (and also the Austrian) events of the general meeting have to be recorded in minutes, and these minutes should be made available to any member who requests them. Such provision guarantees transparency and the rights of those members who are not able to take part on the general meeting. The minutes of the general meeting should be signed by the presiding chairman, the keeper of the minutes and the two cooperative members appointed to witness the minutes according to the Hungarian law in force.

The Hungarian Civil Code, as well as the Austrian law, also allow meeting of delegates. The Italian Law does not mention the meeting of delegates, however, it gives the possibility to have so-called separate assemblies related to special issues if the cooperative has more than 3000 members and carries on its activities in several provinces.<sup>18</sup> In our understanding these are not permanent meetings of representatives like in the case of the meeting of delegates.

Here, we would like to mention that Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with Regard to the Involvement of Employees encourages cooperatives to allow for the employees or their representative bodies to participate in the work of the general meeting of the cooperative with voting right. However, this is only encouragement and not an obligation for the cooperative and its members. Furthermore, there are two restrictions regarding this right: (a) the law of the member state where the registered office of the European Cooperative Society can be found has to permit this possibility, and (b) the employees and their representative bodies together may not control more than 15 percent of total voting rights.<sup>19</sup>

The Austrian Law on Cooperatives provides for cases when extraordinary general meeting has to be convened. According to the ALC the first reason is when it „appears necessary for the interest of the cooperative” to convene an extraordinary general meeting,<sup>20</sup> while the second is when the convenience is requested by at least ten percent of all the members in writing with the reason indicated and signed.<sup>21</sup> The old Hungarian law on cooperatives in article 20 (5) also provided for the convenience of extraordinary general meeting when a decision had to be adopted in a matter that fell within the competence of the general meeting and any delay in the decision would have endangered any vital interest of the cooperative, or it would have entailed the breach of any obligation of the cooperative conferred upon it by the law or by the by-laws, or when the convocation was requested by at least ten percent of all the members, or by the supervisory board in writing with the reason indicated. This latter provision was important for the protection of the interests of minority members, as in practice many times their interests are harmed. Unfortunately, the current regulation is silent on this issue.

---

<sup>17</sup> Henry, H. (2005) Guidelines for Cooperative Legislation. Geneva: International Labour Office, p. 39.

<sup>18</sup> Art. 2540, Italian Civil Code.

<sup>19</sup> Art. 59 (4), Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.

<sup>20</sup> Art. 29 (1), Austrian Law on Cooperatives.

<sup>21</sup> Art. 29 (2), Austrian Law on Cooperatives.

For potential cooperative members knowing the rules of liability is a very important practical issue. While in the Hungarian law it is regulated under general rules of the Civil Code on legal persons, the Austrian Law on Cooperatives provides for two types of cooperatives in this regard, those with unlimited liability and those with limited liability. Members of a cooperative with unlimited liability are jointly and severally liable with all their assets for all the obligations of the cooperative.<sup>22</sup> Such liability can not be excluded with the agreement of the parties, *i.e.* has no effect towards third parties. In the case of limited liability cooperatives members are liable only to the extent of their shares, or for a higher amount if so agreed.<sup>23</sup> The Law also provides that members are liable for three years following the termination of their membership.<sup>24</sup> Besides, the Austrian Law regulates the issue of liability for obligations undertaken prior to the registration of the cooperative irrespectively of the form of the cooperative (limited- or unlimited liability). For these obligations are jointly and severally liable those persons who have undertaken these obligations.<sup>25</sup> The Austrian Law provides for joint and several liability of the members of the board of directors if they do not act in accordance with the law or the by-laws.<sup>26</sup>

### **Board of Directors**

Another organ that has an important role in the functioning of a cooperative is the board of directors elected by the general meeting for five years. It has at least three members. The GCL emphasizes that the board, that is to say, its members must be professionals. Zsohar, Hungarian expert in the field, asserts that international tendency is to have professional non-member managers on the board.<sup>27</sup> This requirement might be added to the Hungarian law, however, it should be determined what is to be understood under “professional”, and also an issue might be that the law prescribes that only member of the cooperative can be executive officer of the cooperative, thus, it would be complicated to find professionals (economists, managers, etc.) among them for these positions.

In Austria the board of directors is, as a general rule, elected by the general meeting from the members (or their authorized representatives), however, the by-laws might stipulate that the supervisory board elects this organ.<sup>28</sup> The Austrian Law on Cooperatives provides that the board of directors can have one or more members who might be paid or not paid by the cooperative.<sup>29</sup> This is an economic solution that takes into consideration that cooperatives might function with only few members.

The Italian Law provides that the board of directors is elected by the general meeting, and that the majority of the members must be at the same time cooperative member. However, it means that less than half of the members of the board may be elected from non-members, thus, it gives the possibility to elect professionals as board members (however, with this we do not want to suggest that there can not be professionals (accountants, lawyers, etc.) among cooperative members).<sup>30</sup>

---

<sup>22</sup> Art. 53 (1), Austrian Law on Cooperatives.

<sup>23</sup> Art. 76, Austrian Law on Cooperatives.

<sup>24</sup> Art. 78 (1), Austrian Law on Cooperatives.

<sup>25</sup> Art. 8, Austrian Law on Cooperatives.

<sup>26</sup> Art. 23, Austrian Law on Cooperatives.

<sup>27</sup> Zsohár, A. (ed.) (2007) Szövetkezeti jog. Budapest: HVG-ORAC, p. 34.

<sup>28</sup> Art. 15 (1), Austrian Law on Cooperatives.

<sup>29</sup> Art. 15 (2), Austrian Law on Cooperatives.

<sup>30</sup> Art. 2542, Italian Civil Code.

The Hungarian law also lays down the procedural rules for the operation of the board. First of all, the administrative body shall exercise its rights and perform its duties as an independent body. Regarding decision making, it has a quorum if at least two-thirds of its members are present at the meeting. The board adopts its resolutions by simple majority of its members present. Any clause of the statutes providing for a lower voting ratio are null and void. The meetings of the board are convened by the chairman or a member of the board the chairman has appointed. The law provides that the board determines its own rules of procedure. It can decide all matters which are not in the competence of the general meeting or the supervisory board. The board of directors should give account concerning its activities. It should report to the general meeting on the financial situation and the business policy of the cooperative at least once every year, and at least once every three months to the supervisory board. Any clause of the statutes providing for less frequent reporting is null and void.

If the cooperative has less than fifteen members, the statutes may provide for the office of director of operations instead of the board of directors, vested with the same powers as the board of directors.

The Hungarian law enumerates the grounds for exclusion of the directors and also the reasons giving cause to conflict of interest, which are the following:

- (1) Executive officers of cooperative societies are the chairman and members of the administrative body or the director of operations.
- (2) Executive officers of cooperative societies may hold membership in that cooperative. The member of the cooperative with legal personality shall appoint a natural person to exercise management on its behalf.
- (3) Apart from the grounds for exclusion applicable to the executive officers of legal persons, the close relative or domestic partner of any executive officer or supervisory body member of the cooperative may not function as the executive officer of that cooperative.
- (4) Executive officers of cooperatives may not acquire any share - not including the shares of public limited companies - and may not hold an executive office in a cooperative or business association that is engaged in the pursuit of the same economic activity as its main activity, as the cooperative in which they hold an executive office. In the event of accepting a new executive office, within fifteen days of accepting such office the executive officer shall notify any other cooperative and business association in which he already serves as an executive officer or a supervisory board member.
- (5) With the exception of everyday dealings, an executive officer and his close relatives may not conclude any transactions falling within the scope of the main activities of the cooperative in his own name or on his own behalf.

The Hungarian law also prescribes that the executive officer shall manage the cooperative independently, based on the primacy of the cooperative's interest. The executive officer shall discharge his duties bond to the relevant legislation, the statutes and the resolutions of the general meeting. The executive officer may not be instructed by the members of the cooperative and his/her competence may not be negated by the general meeting. Following termination of the cooperative without succession, claims for damages caused by executive officers to the cooperative in that capacity may be brought by the members with membership at the time of the cooperative's removal from the registry, within a preclusive period of one year following the time of removal. Members may enforce any claim for compensation up to their rightful share from the assets distributed upon termination of the cooperative. In the event of a cooperative's dissolution without succession, creditors may bring action for damages up to their claims outstanding against the cooperative's executive officers on the grounds of non-

contractual liability, should the executive officer affected fail to take the creditors' interests into account in the event of an imminent threat to the cooperative's solvency. This provision is not applicable in the case where the cooperative is wound up without going into liquidation.

In addition to the grounds for the termination of the mandate of executive officers set out under the common provisions applicable to legal persons, the mandate of the executive officer of a cooperative shall cease to exist upon the termination of membership.

## **Supervisory Board**

According to the Hungarian regulation (art. 3:349), the supervisory board of a cooperative is comprised of three members, and any provision of the statutes which provides for a supervisory board of less than three members is null and void. Members of the supervisory board are elected for a term of five years, or it is possible to elect them for a shorter period of time if the cooperative is established for that period. Members of the supervisory board do not have to be members of the cooperative at the same time. Zsohar asserts that the international tendency is to have non-members as supervisory board members.<sup>31</sup> Regulations governing personal service contracts also apply to the members of the supervisory board.

The law provides that the supervisory board has a quorum if at least two-thirds of its members are present. Meetings of the supervisory board are convened by the chairman of the board. The supervisory board establishes its own rules of procedure. It gives account of its activities to the general meeting at least once a year. Any provision of the statutes providing for a less frequent reporting obligation is null and void.

The Austrian Law provides that the members should be elected from the cooperative members.<sup>32</sup> It also provides that the members of the supervisory board are liable for all damages resulting from omission of their obligations.<sup>33</sup> The Italian Law is very succinct regarding this organ. It requires the establishment of a supervisory board only if certain conditions from the Law are fulfilled.<sup>34</sup>

## **Auditor**

According to the Hungarian law, the auditor is responsible for carrying out the audits of accounting documents according to the relevant regulations, and to provide an independent audit report to determine as to whether the annual account of the cooperative is in conformity with legal requirements, and whether it provides a true and fair view of the cooperative's assets and liabilities, financial position, and profit or loss. The auditor of a cooperative may be an individual auditor, or an audit firm shown in the register of auditors. Where auditing services are provided by an organization, this organization is required to designate the person who will be personally responsible for carrying out the audits. A member, executive officer or supervisory board member of the cooperative and the family members of these persons may not serve as the auditor of that cooperative. An employee of the cooperative may not serve as the auditor during the period of employment and for a period of three years thereafter.

---

<sup>31</sup> Zsohár, A. (ed.) (2007) Szövetkezeti jog. Budapest: HVG-ORAC, p. 35.

<sup>32</sup> Art. 24 (1), Austrian Law on Cooperatives.

<sup>33</sup> Art. 24 (7), Austrian Law on Cooperatives.

<sup>34</sup> Art. 2543, Italian Civil Code.

The first auditor of the cooperative is designated in the statutes, after which the auditors are appointed by the general meeting.<sup>35</sup> Management shall enter into a contract with the auditor within ninety days following the date of delegation or appointment, under the terms and conditions and subject to the remuneration specified by the general meeting. If the contract is not concluded within said time limit, the general meeting selects a new auditor. The auditor is elected for a term of five years, or if the cooperative is established for a shorter period, for that period. The term of the auditor's mandate may not be less than the period beginning when the auditor is appointed by the general meeting and ending at the time of the general meeting convened to approve next year's annual account; any provision of the statutes to the contrary are null and void.

The Hungarian law also states that the auditor may not provide any service to a cooperative, and may not collaborate with management in a way that may imperil his/her ability to carry out his/her auditing duties objectively and independently. The auditor has the obligation to treat all secrets of the cooperative strictly confidential. The auditor should be invited to the general meeting when discussing the cooperative's financial report. The auditor must attend these meetings, however, if absent, the meeting will be held nonetheless. The general meeting may not adopt a decision concerning the financial report without hearing the auditor's opinion. The auditor may attend the meetings of management and - if the cooperative has a supervisory body - the meetings of the supervisory body in an advisory capacity, or must attend such meetings when so requested by the supervisory body. The supervisory body should put the items recommended by the auditor on the agenda.

According to these legal regulations, the primary aim of cooperative audit is the furtherance of the organization and work of the cooperative and thereby of the whole cooperative system. The guiding principles of the audit should be prevention (of committing mistakes), instruction (on how to avoid mistakes, etc.) and correction (of already committed mistakes). At the same time, these regulations do not stress the importance of audit as a guarantee for transparency. The GCL emphasizes that the main objective of audit should be to guarantee transparency in the functioning of the cooperative.

In Austria the issue of cooperative audit is regulated by the Law on Cooperative Audit. It is very similar to the Hungarian system, it is done by licensed auditors of cooperative federations. The audit is comprehensive and besides examining compliance with legal acts it inspects the work of the board of directors and the efficient and economic operation of the cooperative. If it is needed, the auditor is even empowered to call an extraordinary meeting of the general meeting.<sup>36</sup>

---

<sup>35</sup> Art. 3:363 of the Hungarian Civil Code states that if the general meeting has refused - or did not present for decision - a proposal that the last financial report, or any economic event which has occurred in connection with the activities of management during the last two years, or any commitment be examined by an auditor to be engaged specifically for this purpose, such examination shall be ordered at the expense of the cooperative, and the auditor shall be appointed, by the court of registry upon a request by any one member or members controlling at least five per cent of the votes submitted within a thirty-day preclusive period calculated from the date when the general meeting was held. The court of registry shall refuse the request in the event of abuse of minority rights by the members presenting the request. The cooperative's auditor may not be appointed to carry out such special audits. The costs of the audit shall be advanced and borne by the cooperative. The cooperative may charge the costs upon the member concerned if requesting the audit was manifestly unfounded.

<sup>36</sup> M. Dillinger, The Importance of Cooperative Auditing, Paper presented on the occasion of the IRU-Law Seminar in Berlin on November 25th, 2003, <[www.iru.de/publikationen\\_en/publikationen/courier/3-03/engl-3.html](http://www.iru.de/publikationen_en/publikationen/courier/3-03/engl-3.html)>.

Better transparency should be also ensured, *i.e.* the cooperative union carrying out the audit should be obliged to publish the audit report or at least a summary of the report. However, there should not be released more information as it is released in other investor-driven companies, as releasing commercially sensitive information might weaken the position of the cooperative on the market. There are even ideas, that based on these reports, some kind of rating lists of cooperatives should be compiled, that would stimulate the cooperatives to improve their operation and organization. However, because of the character of cooperatives we do not support such ideas. Yet, what would surely stimulate cooperatives and their organs, as well as cooperative unions doing audits, is to have stricter penalty provisions in the Law.

As the principles of audit are prevention, instruction and correction, cooperative education should be also involved in this process (lectures organized by cooperative unions for the members of cooperative organs on how to avoid most common mistakes, *etc.*).

It would be also worth considering establishing a fund that would provide means to smaller cooperatives to finance audits. Such funds could be financed from membership fees in cooperative unions or by the State, as it is a public interest to have well-functioning and clear cooperative system. The Guidelines also supports this idea of establishing a fund that would help financially smaller cooperatives to carry out audits.

## **Conclusions**

We can say that the current Hungarian regulation on the organs of cooperatives is fundamentally adequate. However, employee participation in the work of the general meeting based on the EU model should be facilitated. Representatives of employees should be allowed to attend the general meeting in an advisory capacity. The „one member one vote” principle should be kept. Furthermore, the Law should provide for cases when extraordinary general meeting must be convened.

Regarding the board of directors, we would suggest introducing the possibility to have non-member professionals as board members based on the Italian model.

The liability of the members of the supervisory board for omission of duties should be also expressly defined. Besides, the supervisory board should be empowered to directly convene the general meeting if it is needed in the interest of the cooperative. Having non-member professionals as supervisory board members or supporting the supervisory board to hire experts on the cost of the cooperative (*e.g.* such costs could be deducted from tax) should be also supported.

In our opinion, the main objective of the audit should be to guarantee transparency in the functioning of the cooperative, thus, audit reports (or summaries) should be published. Internal audit should be introduced (carried out by an appointed cooperative member who is not member of any cooperative organ). External audit should be carried out by a chartered auditor (or maybe cooperative unions). It is a serious financial burden for small cooperatives to carry out audit, therefore we would suggest the establishment of a fund that would provide financial support for these cooperatives. Cooperative education should be involved in the process of audit. Thus, cooperative unions should organize lectures for the members of cooperative organs on how to avoid most common mistakes in writing reports and similar issues. We would also recommend the introduction of sanctions for not complying with the law regulating audit.

**© Zoltan Vig**

**MTA Law Working Papers**

**Kiadó: MTA Társadalomtudományi Kutatóközpont**

**Székhely: 1097 Budapest, Tóth Kálmán utca 4.**

**Felelős kiadó: Boda Zsolt főigazgató**

**Felelős szerkesztő: Körtvélyesi Zsolt**

**Szerkesztőség: Hoffmann Tamás, Kecskés Gábor, Szilágyi Emese**

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

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

**ISSN 2064-4515**