Dr. András ZSOHÁR

senior assistant, Department of Agricultural Law and Environmental Protection Law

Main Features of Cooperative Law Regulation

The regulation pertaining to cooperatives drawn up after the change of political regime, then the consecutive amendments and new regulations cannot be understood without being acquainted with the economic agrarian and cooperative policy decisions, laying the grounds for the establishment and consolidation of the earlier cooperative movement. It is often said that the building of the socialist system broke the possibility of integral civil development, and on the level of society and the institution of law it destroyed the traditional institutions that reflected the national and, at the same time, European values. The establishment of the Hungarian cooperative model cannot be confused with the building of the Soviet kolkhoz movement.

The gradual withdrawal of state intervention and the emergence of the freedom of partnership between the cooperative farms occurred as a result of the cooperative law regulation.

Reforming the cooperative movement preceded the transformation of the socialist state institution system, and also appeared in the economic reform laws experimented with in the agricultural sector. (Act III of 1967 on agricultural producers' cooperatives, and Act IV of 1967 on land). The preparation of these acts went hand in hand with extensive social debate, and the international cooperative principles and the Hungarian special features were taken into account.

The guarantee-related rights ensured in the cooperative law were possible to assert in the procedures of cooperative arbitration court and court proceedings. This allowed the personal and financial obligations of the members (which initially involved labour right restrictions) to be shaped by freer internal regulations, based on the decisions of municipalities. The positive experience gained in the cooperatives was taken into account in the further development of the law on cooperatives. The regulation was driven by rather economic than ideological targets.

The extension of the well-proven rules of Act III of 1967 on agricultural cooperatives and the cooperative principles to the industrial, consumer and savings cooperative, and housing cooperative sector was an important station in the further development of the regulation of the law on cooperatives.

Act III of 1971 on cooperatives eliminated the previous unjustified sector regulations and provided a unified framework to the operation of cooperatives, and clarified that the state may only exercise judicial supervision and not an economic expedience inspection, and cannot intervene with the operation of cooperatives. It allowed the representation of interest against the state, provided guarantee-related rights, which served an example of both the act on youth

and then the act of chambers. The unified law on cooperatives contained important codification guarantees, which, prior to the change of political regime change allowed the cooperative interest representation organisations exercise the so-called right of agreement, opinion and proposal-making, and stated that no legislation should emerge with regards to the organisation and operation of cooperatives under the level of government decree.

The cooperative interest representation organisations could exercise the right of agreement against ministerial codification, and prior to the issue of legal regulations of higher level than that a right of opinion.

Even prior to the change of political regime, in 1989, the law on cooperatives allowed the distribution of 50% of the cooperative assets in the form of equity bond, and holding in the capital. The possibility of making a decision on the distribution of assets was not squeezed into a rigid form of a legal regulation, but it was assigned to the general meeting to make a decision both on the rates and the forms. This way, without any intervention by the state, cooperatives could make decisions freely in line with their own special characteristics on the percentage of the assets to be distributed in the proportion of personal or financial contribution, or time served at work.

Act I of 1992, formulated in the spirit of the change of political regime, was drawn up with the agreement of the interest representation organisations, with full consensus, as it utilised both the international cooperative principles and the achievement of the earlier Hungarian regulation. At the same time, Act II of 1992, giving effect to this act, serving short-term party-political interests, in the industrial and agricultural sector set the distribution of the total assets as its target, whose instrument was the old-new institution of cooperative business share. As opposed to the previous year 1989 regulation, the law did not ensure for the cooperative local government to make its own decision on the rates to be distributed, but made the distribution of the total assets mandatory. The fact that it allowed the distribution of assets not only to the relatives of members but also of former members (in the case of at least 5-year-long membership) and of those deceased. The distribution of assets had to be completed within half a year and the modifications made in the meantime according to political criteria set further restrictions on cooperative local governments, when the concrete criteria of the distribution of assets (the mandatory proportions to acknowledge personal and financial contribution were set as 20-40% respectively) were defined. The regulation also restricted the freedom of decision as it stipulated the re-distribution of the assets already distributed in 50%, therefore lead the decisions of local governments into a forced course.

The regulation did not allow the cooperatives to define themselves the process and deadline of execution, but defined a term of preclusion (six month) for the submission of the applications for the distribution of assets and linked the making of concrete decisions also to deadlines. This was such a solution that was disadvantageous for both the applicants and the cooperative, which incurred unnecessary costs.

The legislation openly undertook the goal to achieve that the members of the cooperatives may make decisions on the termination, or liquation of the cooperative in possession of the distributed assets, and on setting up family farms in mass through separations. The expectation of the codifier, unuttered but politically continuously stressed, was that the old so-called socialist type of cooperatives should cease to exist in mass, or transform into a company, or undertake the frames provided by the new forced regulation. All in all, the expectations were not fulfilled, as although the assets were distributed, but the majority of the members chose the existing and surviving cooperative, and, renewing the statutes, complied with the requirements of the new regulation in order to make themselves legitimate as soon as possible. The minority of members, who were mostly small pensioners or entrepreneur members with some financial muscle took advantage of the possibilities offered by the law for unilateral separation.

Unfortunately, only a minority of those separating was able to found a family farm or company, while the majority of them spent the assets withdrawn for living and consumption.

The external business share owners had a right of consultation and proposal in the general meeting of the cooperative, thus their adverse interest (only interested in dividend payment) caused an increasing tension. Not only the external business share owners demanded the business share problems to be solved and eliminated, but, paradoxically, the members also required the redemption of their own business share.

As a result of the distribution of business shares (as opposed to the earlier traditional cooperative model), the members became significantly differentiated in terms of the property they owned. While earlier there were upper limits of the share certificate a member can be subscribed for, as a result of the purchase of business shares significant assets could concentrate in the hands of a member or external party.

Therefore, right at the start such a situation evolved where the external business share owners and the pensioner members represented a higher proportion from the assets of the cooperative than the active members. Due to the security-like nature of the business shares, the business share holders, with the pre-emptive right of the cooperatives and of the members, could freely sell their business shares, or buy business shares, but may as well obtain some through inheritance. Consequently, the allocation of business shares resulted in such a forced cooperation where the majority of the business share holders was not interested in contributing to through continuation of the activities of the cooperative, but similarly to the member of share companies, in the disbursement of dividend.

The business share, as a type of non-voting share, countenanced external capital raising, while it was generated from the distribution of the cooperative assets.

The speculation with the business shares also resembled equity speculation, as the political players continuously stressed that they will oblige the cooperatives to redeem and pay for business shares, and manifested the support of the state in solving the problem of business shares owned.

The tax law regulations between 1994–98 urged the members and the cooperatives to purchase the business shares of external parties, then to use the business shares to form an undivided, so-called solidarity fund. For this, tax allowance was ensured for both the cooperatives and the both the private individuals. The rules of the purchase of business shares with preferential rate loans were worked out. In the lack of state capital and budgetary resources these incentives did not survive long. Most of the cooperatives weakened as a result of the various measures introduced. The highly capitalised cooperatives made an effort to purchase themselves the business shares from the external business shares holders, but the financially strong leading members purchased for shares themselves for speculation purposes at 10-30% nominal value, i.e. on market basis.

The process of transformation into companies urged politics and the state to approach the business organisations in a neutral way, and they did not keep changing the corporate rules parallel to the political objectives, but set the adaptation of the European requirements as its target. The continuous withdrawal of capital, and the increasingly bureaucratic nature of decisions on the use of assets, and the principle of one member-one vote, however, was not beneficial to the active leading layers accumulating business shares, as decision-making competency in the proportion of assets owned was possible only in the frames of business organisations.

Some of the external business share owners and of the political parties demanded the liquation of the cooperatives remaining from the previous system, and the allocation of their assets to the cooperatives formed by family farms. To external business share owners at the time of elections promises were made for the payment of business shares as soon as possible, to ensure voting rights and to establish unilateral membership, etc. The number of operating

cooperatives was continuously decreasing, while that of companies transformed from cooperatives was increasing. Most of the cooperative leaders and experts saw the possibility of modernisation in the forming of companies, or direct transformation into corporations as it is. Most of the cooperatives transferred their operating and utilisable assets and activities into companies and swapped the business shares of members holding business shares into the business shares or equity of limited liability companies or share companies.

Thus cleaned, the empty so-called asset utilisation form of cooperative has become ruling.

Due to the permanent lack of solution to the problem of business shares, the government had a new cooperative law adopted, subordinating it to the agrarian programme, preferring the interest of family farms. The cooperatives having operated since the period preceding the change of political regime complied in vain with Act I and II of 1992 on cooperatives, and executed the compensation and land law, amended their statutes, fulfilled the separation and demerger requirements (and due this they disintegrated instead of integrating) politics did not honour their efforts or made those legitimate. To the contrary of the actual situation, cooperative movements, playing an important role in economy, were stilled labelled as a producing type of form (kolkhoz), and politically stigmatised. The public both in the country and abroad several times protested against attacks from the part of the government.

The cooperative regulation preceding the change of political regime was in fact marked by the features of agricultural type of cooperation, but Act I of 1992 as a uniform cooperative law did not specify cooperatives as per industrial, agricultural, consumption, etc. forms. Cooperatives can be founded freely for whatever purpose without the given cooperative being discriminated by politics or the law. In spite of the unambiguous regulation after the change of political regime, ungrounded political labelling still commenced. Act CXLI of 2000 on new cooperatives, then Act CXLIV of 2000 on agricultural cooperative business shares, and at the same time, Act IV of 1994 on the land were amended and the concept and new model of the family farm was formulated there. The new law on cooperatives tailored its rules to the new family farms which did not actually exist in reality. The purpose of the new cooperative was seen only as the facilitation of the members' own business management and efficiency. The scope of activities of the cooperatives, including the foundation of business organisations, participation in those as members, were limited to requirements and needs in relation with the members' economic activities. In reality, the members did not have a real family farm or holding, and connected to the cooperatives in forming their current production activities to the ever-changing market requirements (live-stock breeding, vegetable growing, etc.) and in being active in their own farms or in the farms shared with the cooperative as agreed with the cooperatives.

The regulation included in the new cooperative law did nor reflect the Hungarian reality, but a theoretical model, the traditional European model was kept in sight. Unfortunately, politics was not satisfied with the legal regulation, but it set the forced transformation of the existing cooperatives as its target, regardless of the fact that the Constitutional Court has already declared in its decisions that intervention with the decisions of cooperatives and local governments is such an instrument of codification that can be used only once, at the time of the change of political regime and allowed only in extraordinary situations. As opposed to this, the law stipulated that the cooperatives must amend their statutes to be able to enforce their requirements as per the law on cooperatives, otherwise they would discontinue after the 31st of December 2006 or transform into a company. The law put an end to the institution of the cooperative business share and set a deadline for the withdrawal of the business share, making it obligatory to the cooperatives to transform the business shares of members into share certificates, and to pay the external business share holders. It was obvious that the act was impossible to enforce for the operating cooperatives, as those did not have the necessary capital, while the members could not be obliged to sell their business shares. But if a coopera-

tive failed to fulfil its obligation to withdraw its business shares, it had to take into account the possibility of its closing-down. The act on business shares held in agricultural cooperatives would have helped to transfer to the new cooperative model, but it applied only to such cooperatives that were involved in agricultural activities and did not cover the business shares of industrial, and consumer cooperatives. Not the state-owned assets but the assets of the cooperatives were defined to serve as coverage for the payment obligation stipulated for the cooperatives.

The interest representation organisations submitted a request for review to the Constitutional Court. Without a previous example in Hungarian codification, the Constitutional Court in its decision No. 18/B/2001 abrogated the act on agricultural cooperative business shares with a retrospective effect and the Government Decree No. 31/2001. (III. 2.) issued for its enforcement. The Constitutional Court established that the concerned cooperatives are entitled to the legal protection provided in the Constitution with regards to the cooperative property serving as the coverage for the disbursement of the business shares at nominal value. The Constitution provides protection for property as the traditional basis of autonomy of action. The payment obligation affects the cooperatives directly as the financial autonomy of the subject of economic life. According to the Constitutional Court, the law requires the regularization of cooperative property in the form of such forced transformation that is unacceptable under market circumstances, and on which the agricultural cooperatives, as the autonomous subjects of economic life, have no influence whatsoever. Also, according to the Constitutional Court, the law, in a manner contrary to the Constitution, without any justifiable reasons, discriminates against the cooperatives belonging under the effect of the new cooperative law. The Constitutional Court emphasised that the state, under the established market economy circumstances, must not use such instruments to facilitate economic change, which were unexceptionally allowed at the time of the change of the economic system, and which were made indispensable by the implementation of market economy. Within the frames of a constitutional state that has become solid, the autonomy of action the cooperatives are entitled to with respect to decisions on assets must not be left out of consideration in case of any cooperative types. The law preferred some groups of legal entities to other of the based on such criteria that are unacceptable from the aspect of the constitution. All in all, the Constitutional Court declared the law unconstitutional, as;

– violating § 13 of the Constitution it aggrieved or completely withdrew the property of agricultural cooperatives without a reason;
– discriminated against the subject of the law violating section 1.E § 70/A of the Constitution,
– the procedure of reporting requirements, the disbursement of business shares and the related activities of the state executive powers are to the contrary of the requirement of constitutional state included in section (1) § 2 of the Constitution,
– in order to ensure due process of law, the Constitutional Court annulled the government decree on execution.

Several provisions of the new cooperative law contained such rules that were disadvantageous compared to the act of 1992. Consequently, such a situation evolved that in Hungary two cooperative acts remained in effect; one for the change cooperatives founded prior to and after the change of political regime, and one for the cooperatives founded following year 2001.

The new rules, not affected by the review of the Constitutional Court, but being in effect were as follows:

– Setting the amount of the share capital as minimum HUF 3 million, approximating it to the corporate law, made the foundation of cooperatives stricter and more difficult. This was later abrogated by the Act X of 2006.
– The new cooperative law did not allow the pursuit of generating profit in the relation of

members and cooperatives, which, compared to the business organisations, caused disadvantage to the cooperatives.
– The Supervisory Board of the cooperatives was granted the entitlement of suspending the operation of the Board of Directors, which, compared to business organisations, is such an additional right which causes legal uncertainty.
– Limiting the powers of cooperative interest representation organisations, it discontinued the rights of agreement and initiation.

The decision of the Constitutional Court, serving as guidance for both the development of the law on cooperatives and the later codification, clarified important theoretic questions, moreover, the specific opinions expressed with regards to the decision further reinforced the independence and self-governance of cooperatives.

The explanation provided for Act I of 1992 still set that method of regulation as a target which approximated the cooperatives, as partnerships operating based on private property in the area of economy, to business organisations in all possible aspects.

It is an unfortunate fact that citizens, having suffered financial damages, were not given allowance, compensation or business shares from the state assets or land but from the land or property owned by cooperatives. The marketing of business shares at market value projected a later institutionalised solution of financial links such as investors' shares or transformed investors' shares. In the course of codification, gradually the differences between the cooperative specialities and companies became over-emphasised. In the earlier period a so-called incorporating approach was apparent, while the newest regulation is characterised by distancing itself from corporation. The development of national law is able to serve both tendencies, partly to maintain the well-proven particular institutions, and to exploit the experience of the development of the EU.

It is an example of the development with mutual effect that in the international forums of cooperatives a permanent issue is to adopt such cooperative corporate management, control and quality assurance that copy the effective operation of international capitalist companies. Such include, for instance, organisational structure, publicity of reports, external reports, the incompatibility and responsibility of office holders, using auditors, etc. The new forms of property relations and the application of moral incentives is an international tendency.

Economic modernisation needs approximation and does not see development as the stressing of differences. The international cooperative movement is not characterised by decentralisation, the reduction of rights for self-governance, excessive state influence on cooperatives, and while international regulation permits an increasingly flexible and more autonomous internal regulation, domestic regulation restricts administrative limitations, and the independent regulation of statutes. It is unfortunate that after the decision of the Constitutional Court the government continued to try to weaken the functioning of cooperatives with lower-level legal bases. Based on government decision, from the money of taxpayers, without the authorization of the state budget, the administration had the cooperative business shares bought up (by a limited liability company owned by the state and set up for this particular purpose) with a state guarantee, only to win over a segment of electors. In a manner unique in Europe, through the „re-nationalization of the a significant part of the cooperative assets, the state became the partial owner of agricultural cooperatives previously functioning with assets fully owned by cooperative members 15 years after the change of political regime.

The proportion of the assets held by the state was close that of the cooperative members in some cases. This regulation accelerated the process of exhaustion of the cooperative form, and the organisation of the operating assets into a corporate form.

The cooperative regulation was threatened by two danger factors, on the one hand the static and rigid interpretation of the cooperative values and notions and such assertion of these phenomena in regulation, and on the other hand the incorporating attempts, i.e. elimination of the differences between corporation and cooperative. In Hungary, in order to prevent intervention into their internal affairs, cooperatives chose the way to take refuge in the corporate form. Thus the Hungarian regulation, independently from the practical needs, supports such an ideological model, which future development according to the daily political tactics. The problems of cooperative practice, fighting the competition are not assisted adequately by none of the directions of regulations. The Hungarian regulation tradition was closer to the German-Austrian model, while today its takes after American, North European or Mediterranean regulations, whatever is in vogue. The cooperative regulation is once adjusted to the corporate market model, more adaptive to competition, while at other times to such institutions of social market economy which do not exist in reality yet, and takes the real interests of the cooperative members into account the least. The permanent urge for transformation and change, the uncertainty of the right of disposal over property, the regulation of business shares for compensation, and the purchase of the business shares by the state all deteriorated the position of cooperatives. The return of business shares, the reduction of the role of market sale-purchase, state subsidies, the loans granted, the allocation of property free of charge as a social-purpose fund, the concepts changing the organisation, the withdrawal of capital in the amount of more than HUF 100 billion, and the devaluation of the existing assets the cooperative form has become more and more uncertain.

The parties, in making preparations for the elections, made promises in turns first to the pensioner members, then the former members of the closed down and liquidated cooperatives, and eventually to the active members that the state will purchase their business shares at nominal value, without any decision of the Parliament to this effect or available funds in the budget. While the state did not even cash the compensation bonds it had issued, and still kept privatisation going on, the assets of the private owner cooperatives are restricted by using unconstitutional provisions.

The government in office, after the year 2002 change of administration, kept its previous promises made to the cooperative movements, and immediately modified the act on new cooperatives (Act CV of 2003) and, also adopting the decision of the Constitutional Court, declared that the effective regulation will be reviewed, and undertook the obligation to accept a uniform cooperative law before 31 December 2005, based on the concept to be worked out with the involvement of the interest representation organisations.

In order to provide a scientific and professional basis the so-called Cooperative College was founded. The college, set up from the representatives of science, the interest representation organisations and the state, relying on the work of experts and after extensive workshop activities, by summarising cooperative-political, cooperative-theory and legal concept parts, and analysing proposals requested to be submitted on the internet, lay the foundation of the creation of the law on cooperatives, while conducting a wide-range of social debate. It is the characteristic feature of the democratic preparatory work that the government prepared both the government concept and the concrete bill in continuous consultation with the cooperative interest representation organisations. Consequently, in the basic issues, a consensus could be reached even before the codification. Parallel to the cooperative codification, the government also amended the corporate law, and created the new corporate law. It became possible to standardise the various regulations, legislative harmonisation, and deregulation.

Unfortunately, there was no uniform platform between the cooperative interest representation organisations with regards to the issue of placing the cooperative form, as a kind of special form of incorporation, within the frames of corporate legislation.

Compared to the previous period (when there was a mutual approximation both in the corporate and the cooperative laws) in line with the European tendencies, the separate cooperative regulation attempts, segregated from the corporate form, proved to be stronger.

The cooperative interest representation organisations were confident that within the frames of the separated cooperative regulation they may fully assert the cooperative autonomy, self-governance, and the traditional solutions well proven in the members and cooperative property relations, and the property-proportionate voting forms worked out in the preparation of the European cooperative act, that is similar to the corporate solutions.

In the separated regulation, however, several solutions acknowledged in corporate legislation could not be asserted yet. Therefore, for instance, through the institutionalisation and the cogent regulation of the social cooperative and community fund, rigid rules returned into the law on cooperatives, reducing the possibility of making decision through self-governance. The entitlements of the interest representation organisations were returned by the regulation though, their legal standing became significantly uncertain by rendering a bureaucratic commenting competency to the usage of the community funds of cooperatives, and limiting the right of free merging between companies and cooperatives such rigid rules were provided whose close interpretation prevents the currently functioning cooperative interest representation organisations (as their members include companies) to be classified a cooperative interest representation organ. The effort of the interest representation organisations to solve the problem of business shares by the government in a separate law prior to the codification, preceding the further complication of business share problems in the amendment of the cooperative statutes, was not successful. The fact that the various sections of the law came into effect at various time points also caused bureaucratic problems. The new law, trying to re-regulate by combining the previous and the two simultaneously effective cooperative laws and standardising these, and also to solve the problem of business shares, put the cooperative sector into a difficult situation, as a separate special deadline had to be provided for the administration of the movement of state assets related to the termination of business shares.

Inuring in several steps forced the cooperatives permanent costly decision-preparation and consultation work, that almost lasted for a year.

This could have been avoided if the government had brought forward in time the settlement of the problems of business shares with a separate legal regulation, and at the same time with a simpler modification of the law, and through the abrogation of one of the cooperative acts simplified the regulation, or within the frames of the corporate law ensured the harmonisation of the cooperative form with the European rules. The government's codification efforts tried to assert the social democrat concepts, as a type of ideological basis, in cooperative regulation. In the explanation, and the proposal to the Parliament it was formulated that cooperatives are part of social market economy, and it differs from the state and capitalist market sector. The community fund was codified for all cooperatives as the expression of solidarity, and the special cooperative form as one of the new cooperative forms of the future.

The re-regulation of the notion of cooperative moved the cooperative form to the direction of public-purpose non-profit organisations implementing public-community targets. The preamble of the law refers to the fact that the cooperative form is highly capable of mobilising social resources, and satisfying community needs. It revives that earlier ideological approach that the cooperative is a kind of tool for the state to realise social purposes. The EU cooperative guideline and directive does not indicate that a cooperative would be founded to serve social community purposes, it talks only about the satisfaction of the needs of members. It would be a mistake, therefore, if we interpret the text of the preamble as the tool of the implementation of state purposes. In fact, the cooperative may be regarded as a peculiar form of corporation, as regarding its content the only thing that differentiates it from companies is

that the cooperative principles „codified" by the International Association of Cooperatives apply to its operation. These principles, as norms expressing a type of social responsibility, became the part of the various documents of the EN and the European Union gradually and served as a guideline and norm for national codification. According to some other interpretation, with the agreement of international treaties, these principles must be asserted as mandatory legal norms, but at least as common law in cooperative codification.

It is an apparent tendency that cooperatives wish to develop into an integral institution of social economy, seizing it from among the players of the market sector. In the process of the Hungarian regulation emphasis was laid also on the requirement that the cooperatives (the non-existent social cooperatives) should be a tool of the solution and balancing out of the problems related to employment policy, regional, rural development, and emerging in agrarian and environment protection policy.

Some of the parties in cooperation, in the hope of state subsidies, tax allowances, and credit preferences are willing to subject themselves to the stronger state guardianship, restricted self-governance, moreover, in exchange for its withdrawal from market competition, it would also limit its economic independence for the sake of safe survival.

The question of being admitted as a cooperative or classified as a cooperative more and more means the compliance with stricter rules rather than the issue of the autonomous decision by the cooperatives.

The struggle forced to the entrepreneur sector, and within that the cooperatives, to adjust to the market changes is remarkable. This compulsion up to now has pushed the cooperatives and the regulation on cooperatives into the direction of corporation. The result of that is that international experience shows that the development of the cooperative law institutions, the freely transferable investors' share certificate, the extension of unrestricted business relations between the member and the cooperative, the appearance of professional non-member managers and their excessive power, the appearance of share certificates with multiple votes, the growth of the importance of the role of the meeting of representatives, the increase of the number of non-member Supervisory Board members, the stipulation and increase of the minimum capital, the ensuring of the possibility of purchase as part of the merging of cooperatives, allowing the possibility of the allocation of reserve capital in the process of the transformation of cooperatives all point into the direction of the acknowledgement of distribution as per the invested capital, and transformation into share companies. The facts that the of one-member one-vote traditional cooperative principle flexibly shifts into the direction of multiple votes corresponding to the capital share, and that the excesses are used for profit generating investments, and that the regulations on work and on competition are balanced out show that in reality the cooperative regulation develops into the direction of profit oriented corporate regulation.

Cooperative ideologists also criticise the European Union cooperative guideline and directive, as it reflects this shift. Thus, for instance, entitling the members with various rights, the possibility of multiple votes, the institution of investing member, The possibility of the distribution of reserves, the stipulation of minimum capital, the possibility of the capitalisation of reserves all make the cooperative similar to a share company.

The Hungarian regulation, unlike the announced objectives (i.e. rigid separation from the corporate regulation) in fact contains a hybrid solution. It partly serves the interests of the functioning cooperatives, and partly contains the perspective rules aiming at the creation of social market economy.

Mixing the various elements gives a hard task to the cooperative self-governments, in particular in terms of the amendment of statutes. Act X of 2006 came into force as of 1 January 2006, and the state had to hand over the cooperative business shares it purchased to the coop-

erative having issued them before 31 March 2006, free of charge and encumbrances, on condition that it is not under bankruptcy or liquation procedure, and accepts the offer on handover free of charge. 95% of the cooperatives accepted the offer free of taxes and duties, and the acquisition of ownership took place. Those cooperatives that did not take advantage of this possibility mostly chose to transform into a corporation, still according to the previous laws remaining in effect until 30th of June 2007.

The cooperatives must eliminate the business shares before 1st of May 2007, or those transform into an investor's share certificate or transformed investor's share certificate.

The law referred the possibility into the competence of the general meeting of cooperatives to offer to the cooperative members holding business shares the transformation into of investor's share certificate in the general meeting held within 90 days from the effective date, or in case of non-member owners transformation into transformed investor's share certificate. It is an important option that the general meeting may offer to business share holders the possibility of swapping their shares with ltd business shares until the 30th of April 2007 in accordance with the law on business organisations.

Offering their shares to the cooperative community fund is also a possibility of terminating the business shares, not taken advantage of by the business share holders.

In this case, the non-member business share holder is also entitled to use the assistance financed from the community fund. The codifier therefore took into account that the active members, and the external business share holders will try to acquire ownership in the successfully operating business organisations established by the cooperative, or with the transformation of the cooperative into a company to transform their business shares into ltd shares with voting rights in the proportion of their assets held or into shares if the cooperative changed into a share company.

The law facilitated the transformation into a company by linking the decision on the transformation to the vote of two-thirds of the members present, instead of all members. Therefore, certain rules included in the law encouraged incorporation, which is only made difficult by the obligation that the cooperative business shares returned by the state must be deposited into the community fund, and the bureaucratic regulation of the creation and usage of the community fund (among others, linking the usage to the opinion of the interest representation organisations) and the obligation of offering for undividable community purposes in case of closing down or transformation in fact hinders the transformation into a company. The fact that there are significant differences between the transformed investors' share certificate of external business share holders and the share certificates held by cooperative members from the aspect of leaving the cooperative and settlement of business shares may raise serious doubts in terms of its compliance with the constitution. While the holder of investors' share certificate having a membership right is entitled to the increment from the accumulated assets, the non-member holders of transformed investors' share certificates are entitled only to disbursements at nominal value. The date stipulated in the statutes must be observed as the date of settlement, but the disbursement must not take longer than 8 years from the termination of the membership.

The endorsement of transformed investors' share certificates is restricted just the same way as the business shares, and it may be inherited, and transferred to the cooperative or cooperative member.

The rules of pre-emptive right must be defined in the statutes. It may raise an issue in the operation of the law, if the cooperative fulfilled its obligations to withdraw business shares and to amend its statutes before the 30th of June 2007, thus they may as well make a decision on the usage of the community fund theoretically for year 2007, while the legislation allows this only from year 2008. From the aspect of the independence of cooperative self-governance,

and autonomy the interpretation of the law may only be that the cooperatives, if brought forward their operation according to the new law, may use the community fund sooner.

At the same time, it causes accounting and other problems that the cooperatives already functioning before the law came into effect may dispose over the usage of the possibly previously created undividable cooperative property in line with the amendment of the statutes and may decide to deposit it into the community fund or state it separately within the tied-up reserves. It is obvious that the cooperatives are not interested in depositing the previously created undividable cooperative property into the community fund, but not interested either in making these assets dividable for the non-member holders of transformed investors' share certificates. The stipulation of the law according to which the assets above the share certificate and the nominal value of transformed investors' share certificates (which was generated prior to the amendment of the statutes) is mandatory to put into cooperative tied-up reserves. Essentially, this means the freezing of the assets and reduces the elbow-room of the cooperative.

Consequently, the most important effect of Act X of 2006 on cooperatives is the termination of the cooperative business shares, its transformation into investors' share certificates and the stipulation of the obligation of creating a community fund, which encourages incorporation until the effective date, while for the period following that makes it difficult to freely manage the assets and transformation into a company and paradoxically prefers the possibility of usage for social purposes as opposed to the earlier free financial management aiming at profit making.

Zusammenfassung

Nach mehrjähriger Vorbereitungsarbeit wurde das Gesetz X/2006 über die Genossenschaften verabschiedet.

Das Ziel des neuen Gesetzes war, unter Berücksichtigung der europäischen genossenschaftlichen Regelung die Rechtsvorschriften betreffend Genossenschaften zu regeln, zu vereinfachen und transparenter zu machen.

Die wichtigste Auswirkung des neuen Gesetzes ist die Aufhebung des Geschäftsanteiles der Genossenschaften, die Umsetzung der Geschäftsanteile in Investmentzertifikate, die Vorschrift der Gründung des sog. Genossenschaftsfonds.

Die Regelung ihrem Vorhaben nach trennt die Genossenschaftsform strikt von der Gesellschaftsform, zugleich dringt infolge der Regelung die Umgestaltung der Genossenschaft in Gesellschaft in den Vordergrund, gegenüber der Genossenschaftsform wird die Gesellschaftsform bevorzugt.