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# Statutory regulations and corporate governance standards in cooperative banks

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### ABSTRACT

Eleven years after the last financial crisis, many banks (as well as the entire financial system) are still working out their organisational backlogs and severe financial losses. Apart from the expansionary monetary policy and faulty financial innovations, the lack of proper supervision of the financial sector is considered one of the main sources of the global economic crisis. The expectations of shareholders led banks to take more courageous risks, more leverage and more speculation. Ownership supervision failed as a result, as virtually no bank was prepared for the imminent catastrophe. To prevent a similar scenario in the future, reforms in the financial sector were considered necessary, and above all the strengthening of corporate governance was considered necessary. Although the co-operative banks operating in Poland are small entities with a local character, they have also to some extent been affected by the global crisis. This has been delayed, and on a somewhat smaller scale, but has worsened the performance of many banks. Given numerous proposals for additional corporate governance regulations, in addition to the existing national laws and codes of good practice, regulations were implemented at the European level, and the national supervisor, the Polish Financial Supervision Authority, introduced additional guidelines - corporate governance rules for supervised institutions.

**Keywords:** corporate governance, organisational structure, cooperative bank, management.

## 1. Introduction

Savings and loan cooperatives are the oldest branches of cooperative activity in Poland (Potocki, 1996). In 2018, 157 years passed since the establishment of the first credit cooperatives in Poland, and the first Polish savings and credit cooperative is considered to have been established in 1861 Loan Society for Industrialists of the city of Poznan. The oldest cooperatives include the Loan Societies in Brodnica and Golub, founded in 1862. At present, cooperative banking comprises 550 cooperative banks (Associate, 2018, p.6) associated in two structures of associated banks (Bank BPS S.A. associating 351 banks, i.e. 63.81% of the total number of cooperative banks and SGB-Bank S.A. associating 199 banks, i.e. 36.18%) and three non-as-

sociated cooperative banks cooperating with Bank BPS S.A. (Bank Polskiej Spółdzielczości, 2018). The period of one and a half centuries of cooperative activity allowed developing many effective mechanisms of supervision over the activity of cooperative banks, which to a large extent protected them from the financial crisis spreading across Europe. However, many solutions were created in the distant past when the business model of a cooperative bank was different from the modern one, and the then founders of cooperative banks did not even dream of today's technical solutions. Technical progress, the pace of life, new risks and a different approach to the banking business need to be complemented by the existing corporate governance regulations.

## 2. The essence of the organisation – organisational structure

Natural understanding of the notion of organisation (from gr. organon, Latin organum - order), means a targeted social group functioning according to certain rules and principles, cooperating to achieve a specific goal (Griffin 1998). This idea accurately reflects the sense of the existence of an organisation based on cooperative law – a cooperative bank. Under Article 1 § 1 of the Act on Cooperative Law, a cooperative is a voluntary association (...) which, in the interest of its members, conducts joint economic activity (Act of 16 September 1982). The essence of the organisation is the awareness of principles, rules, missions and goals and synergy (matching and supporting the activities of others), and its immanent feature is an ordered (structured) social and technical system composed of interconnected technical and social elements (Kozuch, 2001; Kast, Rosenzweig, 1970). Kotarbinski emphasises in the organisation such cooperation of parts that contribute to the success of the whole, while Griffin (1998) characterises the organisation as a group of people who cooperate in an orderly and coordinated way to achieve a certain set of goals. In this context, within a bank, in terms of individualised principles of management, supervision and shareholder relations, we may consider the concept of corporate governance – the system through which a bank is managed and controlled (Cadbury, 1992).

According to the definition contained in Art. 2 of the Banking Law a bank is a legal person (...), acting based on permits authorising to perform banking activities, encumbering with risk the funds entrusted under any repayable title. The juxtaposition of both legal acts regulating the framework for the functioning of a cooperative bank (banking law and cooperative law) implies an entity (cooperative bank), as a voluntary association conducting joint economic activity in the interest of its members. After defining the directions and objectives, the organisation faces the problem of choosing a specific organisational structure, its individual structural elements and the arrangement of relationships between the individual elements that can be used for shaping the organisation in the form of mutually related elements (while the overriding objective remains to maintain an adequate level of security of the entrusted

funds). The specific layout of the internal elements of the organisation and their interrelationships are referred to as the organisational structure.

## 3. National regulations

General organisation of processes requires cooperation of the components of organisational elements (Zieleniewski, 1978), however, the specificity of banking activity is a strong dependence of the shape of the organisational structure on the formal and legal environment, relating directly to the form of conducting business (banking law), and indirectly shaping ownership relations in the bank (cooperative law), functioning in the legal and economic system in a given country (Act of 7 December 2000), or standardised customs commonly accepted for a given type of activity. Due to the state regulation of banking activities, the freedom to shape the organisational structure applies only to its parts and to certain organisational units of the bank. The generally binding regulations define the shape and functions of the governing bodies representing banks expressing their will as a legal person<sup>1</sup>. The central supervisor is also responsible for several decision-making and control powers (Act of 21 July 2006), which enable both exercising control over the content of the bank's statute and influencing the bank's governing bodies to make or remove relevant provisions.

The Polish financial market is subject to supervision by a national supervisor - Polish Financial Supervision Authority (KNF). The purpose of financial market supervision is, *inter alia*, to ensure the proper functioning of that market, its stability, safety and transparency, trust in the financial market, as well as to ensure the protection of the interests of financial market participants. KNF examines the compliance of banks' activities with legal regulations and may issue recommendations (banking law) concerning best practices of prudent and stable bank management. Recommendations require shaping the organisational structure, processes, and resources of the bank in a manner appropriate to the scale and complexity of its operations so as to effectively manage risks and enable effective risk management and control both at the level of a dedicated unit or risk management function, as well as at the le-

<sup>1</sup> Due to the nature of this document, it is limited to domestic legal acts, omitting, among others, regulations of the European Parliament and directives whose provisions have been implemented in the domestic legal system (e.g. the Banking Law Act, the Act on Macro-prudential Supervision of the Financial System and Crisis Management in the Financial System or the Regulation of the Minister of Development and Finance on the Risk Management System and the Internal Control System, Remuneration Policy and the Detailed Method of Assessment of Internal Capital in Banks).

vel of business units and their support. KNF's recommendations do not constitute legal regulations, however, they are an element of BION assessment (banking law) and in the process of control, it is required that banks comply with both the requirements resulting from legal regulations and supervisory recommendations issued by KNF (UKNF, 2019). The document complementing the above-mentioned legal acts and recommendations are corporate governance rules for supervised institutions (UKNF, 2014), which are a form of implementation of the obligation to take actions by the supervisory authority to ensure proper functioning of the financial market and educational and informational activities related to the functioning of the financial market.

The basic legal act applicable in cooperative banks is the cooperative law defining the governing bodies of a cooperative: general shareholders' meeting (the owner's body of the bank), supervisory board (the controlling body), bank management (the executive body) - constituting the basic elements of the bank's organisational structure and remaining outside the scope of modification of the cooperative.

Within the scope not regulated by the provisions of the Act, the following Acts shall apply to cooperative banks: Banking Law and the Act on the Functioning of Cooperative Banks. Due to the special type of activity, the Banking Law Act indicates that the bank's management board designs, implements and ensures the operation of the management system. The supervisory board of the bank supervises the introduction of the management system and assesses the adequacy and effectiveness of this system (which is included in the management system). To ensure the functioning of the internal control system, the bank is required to have an organisational structure adjusted to the size and profile of the risk incurred, which in practice results in the establishment of an appropriate organisational unit or functional separation of a position within a larger organisational unit. Other elements of the structure are shaped within the bank's organisational capabilities, and their detailed powers are usually specified in the statutes (competences are divided between the bank's board of directors and the management board) (Kudła, 2001).

The highest body of a cooperative bank is the general meeting (under Article 36 § 1 of the Act on Cooperative Law). All members – shareholders of the bank – have the right to participate in it, and thus make decisions on important matters. According to the idea of cooperative activity (expressed in Article 36 § 2 of the Act on Cooperative Law), each member has only

one vote – regardless of the number of shares held. This means that the legislator grants all members of the cooperative bank equal rights to decide on the method of managing the assets of the cooperative bank. This is the so-called principle of democratic membership control, expressed in the phrase “one member – one vote”, which makes cooperatives perceived as an important pillar of the social economy and an element of building civil society (Piechowski, 2013).

The General Meeting, as the highest authority of ownership, has the exclusive right to make the most important decisions (it adopts the directions of development of economic, social and cultural activities, examines the reports of the council, approves the annual and financial statements), in particular, it grants a vote of approval to the members of the management board and adopts resolutions on the distribution of the balance sheet surplus. While members of the management board are elected by the supervisory board (which controls and supervises the cooperative activity), and less frequently by the general meeting, the general meeting is solely responsible for approving the annual reports and financial statements and granting a vote of approval to the members of the management board. As indicated by the Supreme Court in the judgment of 26 March 2002, the resolution of the General Meeting of Shareholders on granting votes of approval to members of the management board does not have any civil law effects - it is a statement of knowledge based on recognition. It is also an instrument of supervision and control over the activity of bodies (council and board) by their owners. Moreover, this right cannot be excluded in any way or transferred to the competence of another authority. Under Polish law, the appointment of bank management board members (all of them) takes place with the consent of the KNF, which is requested by the supervisory board; only in the case of cooperative banks is simplification introduced – only the appointment of the bank management board president requires such consent.

Cooperative banks, apart from appropriate elements required by Polish law (general meeting, supervisory board, and management board), in the remaining scope, usually operating in the areas of communes or districts, shaped the structures in a functional way, distinguishing the credit department, cash and treasury department, accounting and settlements, as well as organisational and economic positions (Kudła, 2001). The cooperative law defines only the competences of the supervisory board in the scope of approving the organisa-

tional structure of the cooperative bank, while the banking law requires that the organisational structure be adjusted to the size and profile of the risk incurred by the bank. The previous regulations of the national law did not interfere with other organisational aspects. Only a form of supplementing supervisory functions was and still is the function of statutory vetting - already in 1920, the state started to withdraw from direct interference in independent and autonomous cooperatives, because it was recognised that the state would not perform these functions better than self-government and corporate cooperative supervision. A system consisting of the National Cooperative Council was created, together with the auditing unions. The purpose of vetting is to control the observance of the law, principles, and values of cooperatives and to verify whether the cooperative operates in the interest of its members.

Until the introduction of European regulations, national solutions regulated most areas of cooperative banks' corporate governance activities. The scope of the organisation and organisational structure, relations with shareholders of management bodies and the supervisory authority were regulated by the cooperative law and banking law. The areas such as e.g. promotional activities did not require separate regulations, as the essence of the establishment of cooperative banks was a bottom-up initiative to satisfy the needs of their founders, which also indirectly affected customer relations - mainly relations with bank owners.

In 2013, the 25th General Meeting of the ZBP adopted a set of principles defined by the Banking Ethics Commission of the Polish Banks Association - the Code of Banking Ethics (principles of good banking practice), which are adopted by banks on a voluntary basis, out of concern for the quality of their operations and transparency of relations with customers, shareholders and other financial market participants (Związek Banków Polskich, 2013).

#### 4. European regulations

Poland's accession to the European Union brought a certain legal duality to the Polish agenda: in the subjective (legislative) aspect, in force, apart from the Polish law system, also the European Union law system. Under the provisions of Article 288 of the Lisbon Treaty, Poland undertook to adopt regulations, directives, decisions, recommendations and opinions to exercise the Union's competences. EU directives are binding on the Member States as regards the reference to the result to be achieved, leaving national authorities free to choose the form

and means of redress. This means that directives must in principle be implemented in the legal order of the member states to talk about the legal effect they are to achieve. Such implementation was required by Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013. On the other hand, regulations are of general scope, binding in their entirety and directly applicable in all Member States, such as Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013. It should be noted that recital 5 of the preamble to the aforementioned Regulation indicates that both documents should constitute the legal framework governing the conditions for the admission of credit institutions and investment firms to operate, the framework for their supervision and the "prudential" standards applicable to them. Therefore, the Regulation should be interpreted together with the above-mentioned Directive.

Both regulations have also introduced quality requirements to the existing formal requirements of Polish law. Particular emphasis was placed on the area of professionalism and ethics of the members of the organs. The level of customer relations and confidence-building was extended beyond the bank's scope to the entire financial market, and obligations to take care of the customer and provide reliable information about the services and products offered were introduced in a way that was understandable to the customer. It also introduced obligations regarding the application of the remuneration policy (in the context of the security-development element), the system for detecting irregularities and elements for protecting the rights and development of employees (to build the value and reputation of the bank's institution). While the cooperative law left some freedom to the owners' and supervisory authorities to appoint the management board, and the provision on the powers of the authorities was added to the banking law only in 2015, recital 59 of the above-mentioned Directive (of 2013) indicates the need to assess the knowledge, qualifications, and skills necessary to ensure sound and prudent management of a given institution. The Directive introduces (recital 60) indirectly an obligation to diversify the composition of management bodies (in terms of age, gender, geographical origin, education and professional experience of members) to ensure a broad spectrum of views and experience. The importance of gender balance as a factor in ensuring adequate representation of society is being raised. The observations made on the example of selected banks in Podlaskie Voivodeship (Table 1) show that while on average women make



up 52% of all members of bank boards (their number ranges from 0% to 100% - full composition of the board), the number of women on supervisory boards is much lower, as on average it is only 13% (from 0% to 2/3 of the board).

The impact on gender parity in the current legal landscape of the Polish banking system was beyond the competence of the KNF. It was only after the EUNB issued the guidelines in 2012 (EUNB, 2012), that cooperative banks (similarly to other Polish banks) were obliged to implement by 22.05.2013 the procedures for assessing the qualifications of members of the management body and persons performing

the most important functions. It should also be noted that Article 91 of the Directive indicates additional (in addition to qualifications) requirements for the management body, such as the criterion of reputation, having sufficient time to perform functions in the institution or limiting the number of functions performed at the same time. It should also be emphasised that Article 91(8) of the Directive provides that members of the management board shall act honestly and ethically and shall maintain their independence of judgment (the paragraph also applies to the supervisory authority).

Table 1: The composition of management boards and supervisory boards of selected banks of Podlaskie Voivodeship in 2019

No.	Cooperative bank	Number of members of the Management Board	including women	Number of members of the Board	including women
1.	Spółdzielczy Bank Rozwoju	4	1	9	1
2.	HEXA Bank Spółdzielczy	3	1	11	1
3.	Podlasko-Mazurski Bank Spółdzielczy w Zabłudowie	4	1	7	1
4.	Bank Spółdzielczy w Mońkach	3	1	9	1
5.	Bank Spółdzielczy w Bielsku Podlaskim	3	1	7	2
6.	Bank Spółdzielczy w Olecku	3	0	10	1
7.	LIMES Bank Spółdzielczy	3	3	9	0
8.	Bank Spółdzielczy w Ełku	3	3	9	3
9.	Podlaski Bank Spółdzielczy w Knyszynie	3	2	8	0
10.	Bank Spółdzielczy w Narwi	4	4	5	1
	<b>Medium</b>	<b>3.3</b>	<b>1.7 (52%)</b>	<b>8.4</b>	<b>1.1 (13%)</b>

Source: own elaboration based on information from banks' websites.

The national laws defining only the most important bodies of a cooperative bank have been supplemented by European regulations and ZŁK. In § 1 of ZŁK (Corporate Governance), KNF orders to reflect its organisation in the organisational structure of the bank, and the structure itself (organigram) should be disclosed by placing it at least on the website. The disclosure of the organisational structure should also be reflected in the Bank's internal regulations. The organisational structure of the bank should be transparent and adequate to the scale and nature of the bank's operations and risk-taking. Professional subordination, tasks, responsibilities and scope of duties and responsibilities should be assigned and appropriately divided. They should cover and reflect the entire business area of the bank, including management bodies and other organisational units.

At the same time, it is required that the organisational structure should clearly define the scope of tasks and responsibilities and that there should be no overlapping duties

and responsibilities between organisational units. The Directive 2013/36/EU of the European Parliament and the Council states that the organisational structure should be part of a sound governance framework and should be characterised by clear and consistent lines of responsibility. Therefore, the correct application of corporate governance principles in organisational practice should result in a clear separation of all three decision-making levels, i.e. general meeting, supervisory board and management board, which are complementary and at the same time none of them has an advantage over the others.

A new quality not yet found in the domestic legal order is the obligation to make public information about banks' corporate governance mechanisms (the publication of an approved statement assuring the public that the mechanisms in place are appropriate and effective). Based on the analysis of statements (Table 2) of management boards of cooperative banks regarding the scope of application of corpora-

te governance rules for KNF supervised institutions (ZŁK), it can be concluded that all the banks surveyed departed from the rule specified in § 8 section 4, i.e. from applying facilitation of participation of all shareholders in the meeting of the governing body, inter alia, by ensuring the possibility of electronic acti-

ve participation in meetings of the governing body. This is a consequence of the high costs of implementing such solutions, as well as its questionable purpose since each shareholder is informed about the meetings of the body and can participate in them.

Table 1: The composition of management boards and supervisory boards of selected banks of Podlaskie Voivodeship in 2019

No.	Cooperative bank	§ 8 section 4	§ 22	Chapter 9	§ 6	§ 11	§ 16
1.	Spółdzielczy Bank Rozwoju	N	N	ND			
2.	HEXA Bank Spółdzielczy	N	N	ND	N		
3.	Podlasko-Mazurski Bank Spółdzielczy w Zabłudowie	N		ND			
4.	Bank Spółdzielczy w Mońkach	N		ND		N	
5.	Bank Spółdzielczy w Bielsku Podlaskim	N		ND		N	
6.	Bank Spółdzielczy w Olecku	-	-	-	-	-	-
7.	LIMES Bank Spółdzielczy	N		ND			
8.	Bank Spółdzielczy w Ełku	N		ND		N	
9.	Podlaski Bank Spółdzielczy w Knyszynie	N	N	ND		N	N
10.	Bank Spółdzielczy w Narwi	N	N	ND	N	N	

T – the bank applies the principle, N – the bank does not apply the principle, ND – not applicable, “-” – lack of data  
Source: own elaboration based on information from banks' websites.

Four out of ten banks surveyed made a declaration of non-compliance with the principle of independence of members of the supervisory authority (§ 22 ZŁK), justifying this with the specificity of the cooperative entity, in which members of the authorities may be elected only from among the shareholders of the bank. The management boards of all banks stated that they did not apply the provisions of Chapter 9 because they did not exercise their rights from assets acquired at the customer's risk. Two banks stated that they had not introduced rules for an anonymous way of informing the management or supervisory body about abuses (whistleblowing). Half of the surveyed banks stated that they did not apply the rules specified in § 11 ZŁK, i.e. concerning transactions with a related entity – as a rule, the predominant clients of cooperative banks are their shareholders. One of the banks does not apply the rule specified in § 16 ZŁK – concerning the conduct of meetings of authorities and documenting their provisions in the Polish language, while the obligation to use the Polish language in cooperative banks results from the provisions of § 27 of the Constitution of the Republic of Poland and the Act on the Polish language.

## 5. Conclusions

Since the introduction of cooperative law and banking law in Poland, most areas of cooperative banks' corporate governance activities have been regulated by these two basic legal acts. However, taking into account the development of the financial services sector, the aftermath of the financial crisis in 2008 and the fall in confidence in financial institutions, it became necessary to specify this area. The existing national regulations complemented the principles of corporate governance for KNF supervised institutions and the regulations of the European Parliament. In total, the regulations, although in some areas they duplicate the solutions already existing on the domestic legal grounds, are part of the general policy and practice of developing financial sector regulations, unifying requirements for financial institutions and raising standards in the area of corporate governance. However, in the case of cooperative banks, doubts arise as to whether, being different entities from commercial banks, implementing solutions (including those of the European Parliament) under pressure from the regulator, the results obtained will prove to be adequate to the specificity of the entities covered by it.

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