

# A Comparative Analysis of the Legal Regulation of Agricultural Cooperation in Ukraine and Germany: The Current State of the Law of Ukrainian Agricultural Cooperatives and Prospects of Development

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## I. Introduction – the cooperative idea for agricultural business in Germany and Ukraine

### 1. Special features of the agricultural sector

For any nation agriculture has systemic significance.<sup>1</sup> A productive agro-business sector is a matter of life and death. Especially after the horrible war Russia inflicted on Ukraine, everything possible has to be done to push the productivity in this economic field. The security of a sufficient food-supply by domestic producers is essential when the infrastructure is damaged and imports falter. Ukraine is blessed by nature with all the prerequisites to have a flourishing agro-business. Therefore, Ukraine is traditionally one of the biggest producers of agricultural goods in the world, and agriculture is a key sector of the Ukrainian economy.<sup>2</sup> To raise productivity in this sector is of vital importance for the welfare of the Ukrainian people. The need is to develop a legal framework that enables the cooperatives to make best use of these possibilities.

Because of the tremendous destructions by the war, Ukraine is in need of capital. Especially smaller cooperatives will have difficulties to raise funds to get productive again. Various reasons play a role here. First of all, agricultural businesses in

general have developed a high degree of capital-intensity over time.<sup>3</sup> For instance, in Germany agribusinesses need more capital per worker today than other industries in average or companies trading goods.<sup>4</sup> This leads to extensive economies of scale. To be able to compete, smaller businesses need to have access to capital goods – e.g. the machines – without being forced to invest in owning them. Cooperatives can receive cheap credits by using their property as a security. However, this possibility is limited in Ukraine by the fact that until 1 January 2024 Ukrainian land legislation prohibits alienation of the agricultural lands in any way in favor of legal entities. Such lands cannot be transferred to the authorized capital of the agricultural cooperatives.<sup>5</sup> Until the specified date, agricultural lands can be acquired as a property only by natural persons – citizens of Ukraine, territorial communities and the state. This affects demand for land and brings down the price. In addition, it leads to the agglomeration of property in the hands of a few persons over time forming an oligarchy. Smaller businesses have limited possibilities to pre-finance their production by selling their harvest in advance on future markets. As they do not own land in various regions, they cannot implement an internal risk-dispensing mechanism sheltering them e.g. from risks of weather.

The special demand for capital by smaller farms calls for special institutional solutions. Markets for lending e.g. machinery for agribusinesses might be feasible under normal conditions, but not when risks abound and are differently assessed by

<sup>1</sup> Zukunftsmission Landwirtschaft, Zukunft Landwirtschaft. Eine gesamtgesellschaftliche Aufgabe. Empfehlungen der Zukunftsmission Landwirtschaft, Berlin 2021, p.3. Retrieved from <https://www.bmel.de/SharedDocs/Downloads/DE/Broschueren/abschlussbericht-zukunftskommission-landwirtschaft.html>, 23 November 2022.

<sup>2</sup> Statistisches Bundesamt, Anteil der weltweiten Produktion 2020. Retrieved from [https://www.destatis.de/DE/Im-Fokus/Ukraine/Nahrung/\\_inhalt.html](https://www.destatis.de/DE/Im-Fokus/Ukraine/Nahrung/_inhalt.html), 23 November 2022; Bundeszentrale für politische Bildung, Anteil der Landwirtschaft um ukrainischen BIP in den Jahren 2001-2014 in %, Retrieved from <https://www.bpb.de/themen/europa/ukraine-analysen/227753/statistiken-die-ukrainische-landwirtschaft/>, 23 November 2022.

<sup>3</sup> U. Koester/S. von Cramon-Taubadel, Agrarpreisbildung – Theorie und Anwendung, Wiesbaden 2021, p. 136 ff.

<sup>4</sup> U. Koester/S. von Cramon-Taubadel, fn. 3, p. 138 f.

<sup>5</sup> Zemel'nyj Kodeks Ukrajinij vid 25 žovtnja 2001 No.2768-III (The Land Code of Ukraine of 25 October 2001, No. 2768-III) zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14#Text>, 23 November 2022.

creditors and farmers.<sup>6</sup> In a world of high uncertainty investments in durable and highly-specialized assets by an owner who lends the machines will not reach the desired level. If farmers invest directly in machines they can use their superior knowledge about the agricultural markets and how they will develop. Therefore, an owner-structure of the capital goods needed for farming seems to be more effective than a splitting between ownership and usage.

## 2. Cooperatives as institutional solution to the capital-intensity

This is probably the main reason why cooperatives as specialized institutions have played a significant role in the development of the modern agricultural economy.<sup>7</sup> The farmers as members of the cooperatives jointly own the capital goods and invest in accordance with their special knowledge. Specialized information and the investment decision lay in the same hands. Further advantages of cooperatives add to this picture. The cooperative merges small farms run by the family members, living and working together. It would not be as effective for each family member to have a labor-contract with a different company. Farms joining a cooperative remain independent. This helps to create a dynamic competition driven by all the ideas of these market participants. Farmer cooperatives therefore play a significant role in increasing farmers' income, ensuring food security, and maintaining supply chain stability.<sup>8</sup> Cooperative ideas match most effectively with the agricultural sector.

The facts mirror these theoretical thoughts. In a global perspective, agricultural cooperatives are an integral part of the food system, providing essential jobs, income, and market access opportunities for smallholder farmers and others businesses in agri-food supply chains. This is true especially in low- and middle-income countries where the credit markets are not well developed.<sup>9</sup>

In economies with competitive and more developed credit institutions, bigger agricultural firms and more stable market conditions, the financing of the agricultural businesses can take

place via the traditional banking sector to a higher degree. But even in those economies cooperatives still play an important role for the smaller businesses. The statistics show that agricultural cooperatives are of fundamental importance and are a serious component of the social and economic situation in Ukraine and Germany.

## 3. Agricultural cooperatives in Germany, Europe and Ukraine – history and actual situation

### a) Germany and the European Union

In 2015 the Federal Republic of Germany nominated the cooperative idea to be added to the Intangible Cultural Heritage of Humanity under UNESCO which was officially accepted in 2016.<sup>10</sup> It has been a long way to get to this point. The cooperative movement was established in Germany in the 1840s forming the early credit cooperatives. The German economist and politician Franz Hermann Schulze-Delitzsch (1808-1883) and the public figure Friedrich Wilhelm Raiffeisen (1818-1888) made great contributions to the development of cooperative theory. Friedrich Wilhelm Raiffeisen was the founder of the first agricultural credit unions that conducted commercial activities in the interests of their members. German legislation of cooperatives is one of the oldest in the world. The Genossenschaftsgesetz was adopted in 1889 only a few years after the German Empire was established. The German cooperative system became an important component of the state's economy. The idea of cooperatives as form of legal entities spread from Germany to the other European countries.

The European Commission website contains the information that there are at present 250.000 cooperatives in the European Union. These cooperatives combine altogether 163 million members and employ 5.4 million people.<sup>11</sup> The activity of the EU cooperatives is based on the principles of democracy, transparency and solidarity. They open up access for farmers to financial and logistical resources, internal and external markets, and promote the social and economic development of rural

<sup>6</sup> U. Koester/ S. von Cramon-Taubadel, fn. 3, p. 147 ff.

<sup>7</sup> U. Koester/ S. von Cramon-Taubadel, fn. 3, p. 151 for the german example.

<sup>8</sup> J. Shi/ J. Zhang/ N. Xie/ Z. Yang/ J. Luo, An Agricultural Supply Chain Coordination Model: The Case of Trinity Comprehensive Cooperation Organization in China, Sustainability, MDPI, 14|2022, p.1.

<sup>9</sup> FAO, Agricultural cooperatives, responsible sourcing and risk-based due diligence, Rome 2022, p. 1. Retrieved from <https://www.fao.org/3/cc1232en/cc1232en.pdf>, 23 November 2022.

<sup>10</sup> Cooperatives Europe, Germany. The legal frameworks analysis. International Cooperative Alliance. Retrieved from <https://coops4dev.coop/en/4deveurope/germany#legal>, 23 November 2022.

<sup>11</sup> Internal Market, Industry, Entrepreneurship and SMEs, Cooperatives. European Commission website. Retrieved from [https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/cooperatives\\_en](https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/cooperatives_en), 23 November 2022.

areas.<sup>12</sup>

In Germany there were 7.819 registered cooperative societies in the year of 2017.<sup>13</sup> In January 2020 the German Genossenschaftsregister (company register) showed 8.690 registered cooperative enterprises.<sup>14</sup> In November 2022 the Genossenschaftsregister contains 9.923 registered cooperatives.<sup>15</sup> This gives proof to the fact that the idea of cooperative businesses is still vigorously alive after 180 years. Cooperative enterprises in Germany are especially common in the sector of agriculture and food industry. The fields of activity include the supply side, for example, machinery, fertilizers, seeds, feeding stuff, energy, and the marketing of various agricultural products, in particular, oil seeds, livestock, wine, meat, cereals, fruit and vegetables.

In 2014 almost 2.400 cooperative enterprises in Germany were active in the agricultural sector and food industry.<sup>16</sup> In 2020 there were 1.766 Raiffeisen cooperatives in Germany distributed as follows: Farming (542 cooperatives, respectively 30% of the total); Others (422 cooperatives, respectively 24% of the total); Purchasing and marketing (342 cooperatives, respectively 19% of the total); Dairy (168 cooperatives, respectively 10% of the total); Wine growers (148 cooperatives, respectively 8.0% of the total); Fruit, vegetables, horticulture (82 cooperatives, respectively 4.0% of the total) and Cattle and meat (75 cooperatives, respectively 4.0% of the total).<sup>17</sup>

So, a large number of farmers and other agricultural producers are involved in agricultural cooperatives in Germany and are at the same time members of one or more cooperatives. Also, Germany has a developed system of cooperative

banks. They are able to function as normal full-service banks or as specialized banks handing out credits to agro-businesses. With its level of advanced agricultural enterprises and banks, a rich experience in effective management of cooperations has been accumulated. Despite its strong industrial sectors, Germany is one of the largest producers of agricultural products in the EU.

## b) Ukraine

From Western Europe the cooperative idea quickly came to Ukraine. For Ukraine 1866 is considered as the starting point of the organized agricultural cooperative activity when the first consumer union was created in Kharkiv. The initiators of this new creation were members of the Kharkiv community.<sup>18</sup> With the proclamation of Ukraine as an independent, democratic, social, legal state for the first time in its history, new opportunities for the existence of cooperative forms of agricultural activity opened up. Already in 1992, the Law of Ukraine «On Consumer Cooperatives» was adopted<sup>19</sup>, and in December of the following year the first agricultural consumer cooperative in the independent Ukraine was established<sup>20</sup>.

Unfortunately, it took a longer period of time until specific legislative principles for the existence and functioning of agricultural cooperatives in the agrarian sector of the economy were created. Today, according to the State Statistics, as at January 1, 2021 28.596 cooperatives are registered in Ukraine. Of these, 1.000 are agricultural production cooperatives and 1.279 cooperatives for agricultural services,<sup>21</sup> but not all of them are effective and continue to operate on a permanent basis. Some of the registered ones are «dormant agricultural cooperatives».

Cooperatives are now common in the fields of dairy, grain, fruit, vegetables, land cultivation and harvesting. Despite all of this, the actual structure of the agrarian sector in Ukraine

<sup>12</sup> O. Sakovska, Agricultural cooperation: experience of foreign countries for Ukraine, *Baltic Journal of Economic Studies*, 6|2020, p.119.

<sup>13</sup> M. Stappel, Die deutschen Genossenschaften 2017, *Entwicklungen – Meinungen – Zahlen*, (German Cooperatives in 2017, Development – Opinions – Figures), Frankfurt 2018, p.39.

<sup>14</sup> Based on data from the Unternehmensregister in January 2020.

<sup>15</sup> Based on data from the Unternehmensregister in November 2022.

<sup>16</sup> Cogeca, *Development of Agricultural Cooperatives in the EU 2014*, Brussels 2015, p.89. Retrieved from [https://www.agro-alimentarias.coop/ficheros/doc/04519.pdf\\_23](https://www.agro-alimentarias.coop/ficheros/doc/04519.pdf_23) November 2022.

<sup>17</sup> IA. Chiurciu/ IM. Vlad/ E. Soare/ E. Toma/ AR. Firăţoiu, *Aspects Regarding The Activity Of Agri-Food Cooperatives in Germany*, *Scientific Papers Series Management, Economic Engineering in Agriculture and Rural Development*, vol. 22, 2|2022, p.188.

<sup>18</sup> V. Maročko, *Ukrajins'ka seljans'ka kooperacija. Istoryko-teoretyčnyj aspekt (1861-1929)* (Ukrainian peasant cooperation. Historical and theoretical aspect (1861-1929)), Kiev 1995, p.17.

<sup>19</sup> <https://ips.ligazakon.net/document/view/t226500>.

<sup>20</sup> See <https://zakon.rada.gov.ua/laws/show/2114-12#Text>.

<sup>21</sup> Based on data from the website of the State statistics service of Ukraine in January 2021.

Retrieved from [http://www.ukrstat.gov.ua/edrpy/ukr/EDRP\\_U\\_2021/ks\\_opfg/arh\\_ks\\_opfg\\_21.htm](http://www.ukrstat.gov.ua/edrpy/ukr/EDRP_U_2021/ks_opfg/arh_ks_opfg_21.htm), 23 November 2022.

seems unbalanced.<sup>22</sup> This might be even more so after the war because many small farmers will have lost all their property. There is a certain concentration of land in few agroholdings creating an oligopoly especially in the cultivation of highly profitable monocultures of grain and oil groups. As a contrast, the production of labor-intensive fruits and vegetables, meat and dairy products is still carried out by small personal peasant farms. In the latter fields of agriculture, the lack of capital after the war may pose a problem. In such conditions it is important for the economy to create a legal framework that allows cooperatives to function at a best practice level.

To analyze to what extent the Ukrainian Law may benefit from the experiences in Germany to solve the problem of the lack of credit and loans given to smaller farms, it is necessary to compare the two bodies of law more closely.

## II. Features of the Legal Regulation of the Agricultural Cooperation in Ukraine

### 1. The new legislation on agricultural cooperation – its history and structural approach

On July 21, 2022, the Verkhovna Rada of Ukraine adopted a new edition of the Law of Ukraine «On Agricultural Cooperation».<sup>23</sup> This law was developed to the background of the positive experiences of more advanced countries with agricultural cooperatives. Its goal is to develop a special legal framework for agricultural cooperatives and to enable them to do business without hassling with insecurity of law and reducing their transaction costs.

This law builds on the most important regulatory acts in the field of agricultural cooperations: the Law of Ukraine «On Agricultural Cooperation» (July 17, 1997) and the Law of Ukraine «On Cooperation» (July 10, 2003). Under these legal acts the revival of the cooperative system in the countryside started. However, these acts were not perfect, especially they led to the unbalanced structure of the agricultural markets

mentioned above. Therefore, the need for new legislation existed.

The draft of this Law was prepared with the involvement of project experts of the Food and Agriculture Organization of the United Nations (FAO) and the European Bank for Reconstruction and Development (EBRD). This involvement of external experts shows that Ukraine is now focused on catching up with the standards of the western European states.

The new edition of the Law amends a number of legislative acts, in particular, the Civil Code of Ukraine, the Commercial Code of Ukraine, the Law of Ukraine «On Farming Enterprise», the Law of Ukraine «On Cooperation», the Law of Ukraine «On Individual Farm». However, these changes are not reaching far enough. They do not bring a full harmonization of general and special legislation of Ukraine in relation to the agricultural cooperation. This leads to some shortfalls and smaller cooperatives will still not have the access to finances by credits or state aids they need to compete efficiently with the greater agro-holdings.

Especially it is noteworthy that a key feature of the modern Ukrainian cooperative legislation is still not in accordance with e.g. the German legislation which can function as a best practice example in this field. The approach of the new legislation is still to use separate legal regulations for various types of cooperatives. As a consequence, there exists a multiplicity of laws that determine the legal status of cooperatives, in particular all of the statutes mentioned in the paragraph above.

### 2. Some shortfalls of the new legislation

As long as there is not a general codification for cooperatives like in Germany with the «Genossenschaftsgesetz» (GenG), it will be very difficult for smaller agricultural cooperatives to develop.

In addition, the scattered body of law provokes some contradictions and other shortcomings. As examples of the shortcomings and contradictions of the current cooperative legislation of Ukraine the following can be considered:

a) Inconsistencies exist in relation to the definition of the term «cooperative» in various legal acts. The term «cooperative» is used in the Law of Ukraine «On Cooperation» and in the provisions of the Economic Code of Ukraine. The Law of Ukraine «On Cooperation» establishes that a cooperative is a legal entity formed by natural persons and/or legal

<sup>22</sup> E. Kirilenko, Organizacijno-pravove zabezpečennja ta deržavna polityka u sferi rozvytku kooperaciji v Ukrajinі (Organizational and legal support and state policy in the field of cooperation development in Ukraine), Conference paper, Kyiv 2014, p.24.

<sup>23</sup> Zakon Ukrajinjy «Pro sil'skohospodars'ku kooperaciju» vid 21 ijulja 2022 No.819-IX (Law of Ukraine «On Agricultural Cooperation» of 21 July 2022 No. 819-IX). zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/819-20#Text>, 23 November 2022.

entities that voluntarily united on the basis of membership for conducting joint economic and other activity for the purpose of satisfaction of their economic, social and other requirements on the basis of self-government.<sup>24</sup> Article 94 of the Economic Code of Ukraine establishes that cooperatives as voluntary associations of natural persons for joint addressing of economic, social and other issues can be created in different industries (industrial, consumer, housing ones, etc.).<sup>25</sup> So, the specified norm of the Economic Code of Ukraine does not allow legal entities to found a cooperative. The legislator should pay attention to ensuring that the identical definition of the term «cooperative» is used in all of the laws of Ukraine.

b) The norms of the Law of Ukraine «On Cooperation» are also not consistent with the norms of the Civil and Economic Codes of Ukraine regarding the list of types of cooperatives. The Law of Ukraine «On Cooperation» establishes that according to the tasks and nature of activity, cooperatives are divided into the following types: production, service and consumer. According to the areas of activity, cooperatives can be agricultural, housing and construction, horticultural, garage, trade and purchase, transport, educational, tourist, medical, etc. The Economic Code of Ukraine mentions only production, agricultural, housing and consumer types of cooperatives. The Civil Code of Ukraine mentions only production and agricultural cooperatives.<sup>26</sup> This may be regarded as a minor point as long as by interpretation any of the mentioned types is regarded as allowed by law. But still a legal uncertainty arises. For certain types of cooperatives it may seem unclear if the norms of all the mentioned laws are applicable to them.

c) In addition, a more technical problem in regard of the registration and re-registration of agricultural cooperatives in accordance with the Law of Ukraine «On agricultural cooperation» has to be

mentioned. In accordance with part 4 of Chapter X «Final and Transitional Provisions» of the new Law of Ukraine «On Agricultural Cooperation», agricultural production cooperatives, agricultural service cooperatives and associations of agricultural service cooperatives that were created and are still registered in accordance with the old Law of Ukraine «On Agricultural Cooperation» of 1997, are subject to re-registration into agricultural cooperatives or agricultural cooperative associations within three years after the 15.08.2020. This remains true despite the fact that the new Law of Ukraine «On Agricultural Cooperation» does not contain the provisions that regulate the mechanism of re-registration of agricultural cooperatives. For instance, there are no provisions that authorize a specific body to monitor the re-registration procedure. The Classification of Organizational and Legal Forms of Management<sup>27</sup> does not include such an organizational and legal form as «agricultural cooperative». In practice, applicants receive numerous refusals from registrars to register or re-register agricultural cooperatives under the new law. Consequently, nowadays there is a discrepancy between the provisions of the Law of Ukraine «On Agricultural Cooperation» and the Classification of Organizational and Legal Forms of Management. Also, there remains an uncertainty as to who will be held responsible for non-implementing the re-registration in the given timeframe.<sup>28</sup> Therefore, the new law has limited practical effects.

### 3. The unsolved problem of financing agricultural cooperatives

Of special interest are problems in regard to the financing of agricultural cooperatives. In Ukraine, members of the small agricultural cooperatives in most cases do not have the ability to cover significant amounts of the costs, e.g. the high costs for high capital goods, with their own incomes. They need additional financial resources. Nowadays the level of the financial support of the agricultural cooperatives from the state is quite low. State aids provide financing in the following directions: (a) partial compensation of the cost of

<sup>24</sup> Zakon Ukrainy «Pro kooperaciju» vid 10 ijulja 2003 No.1087-IV (Law of Ukraine «On Cooperation» of 10 July 2003 No.1087-IV). zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/1087-15#Text>, 23 November 2022.

<sup>25</sup> Gosporarskyj Kodeks Ukrainy vid 16 sičnja 2003 No.436-IV (The Economic Code of Ukraine of 16 January 2003, No.436-IV) zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/en/436-15#Text>, 23 November 2022.

<sup>26</sup> Cyvilnyj Kodeks Ukrainy vid 16 sičnja 2003 No.435-IV (The Civil Code of Ukraine of 16 January 2003, No. 435-IV). zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>, 23 November 2022.

<sup>27</sup> Klyasyfikacija orhanizacijno-pravovuh form hospodarjuvannja - DK 002:2004 vid 28 travnja 2004 No.97 (Classification of Organizational and Legal Forms of Management - SK 002:2004 of 28 May 2004, No. 97). Retrieved from <https://zakon.help/article/kopfg---dk-0022004/>, 23 November 2022.

<sup>28</sup> O. Khrishcheva, Legal aspects of state registration and re-registration of agricultural cooperatives in Ukraine, Conference paper, Valencia 2022, p.44.

agricultural seeds of the domestic producer, purchased from individual entrepreneurs and legal entities that carry out production and/or its sale; (b) partial compensation of costs related to the provided agricultural advisory services; (c) partial compensation of the cost of purchased agricultural machinery and equipment of the domestic production. According to the Procedure for using funds that are provided in the state budget for providing support to farms and other producers of the agricultural products of August 16, 2022,<sup>29</sup> budget funds are provided for support in the following areas: (a) budget subsidy per unit of cultivated agricultural land (1 hectare) for carrying out agricultural activities; (b) a special budget grant for the maintenance of cattle (cows) of all areas of productivity. In an overall view, agricultural state aids in Ukraine are structured very differently than the state aids in the EU and do not reach the level that would allow smaller farms to compete efficiently. This will hold especially true when the state of Ukraine will have great difficulties to grant aids after all the destruction of the raging war.

However, it is not easy for smaller agricultural businesses to get private funding instead. In Ukraine, unlike in Germany, the model of an agricultural cooperation which combines agricultural and credit functions, was not implemented despite the fact that the legislation of Ukraine provides for cooperative banks as an organizational and legal form of a legal entity. The Law «On banks and bank activity»<sup>30</sup> gives certain provisions that regulate the activity of cooperative banks. Article 338 of the Economic Code of Ukraine sets forth that local and central cooperative banks can be established and defines a cooperative bank as a bank created by business entities, as well as other persons, on the principle of territoriality on the basis of voluntary membership and unification of the share contributions for joint monetary and

credit activity.<sup>31</sup>

However, in practice there do not exist any cooperative banks in Ukraine. The reason probably lies in the fact that at the same time the Law «On Credit Unions» (dated December 20, 2001)<sup>32</sup> limits the right of credit unions to deal with legal entities harshly. The law allows farms and private enterprises as members of a credit union to receive loans from their union, but does not grant credit unions the right to lend to farms and agricultural cooperatives as legal entities. Because of this limitations Ukrainian credit unions are not integrated into the system and do not provide services to play a significant role in the market as it is the case e.g. in Germany, where credit unions are one of the pillars of the nationwide banking sector.

Finally, the vast majority of peasants in need of affordable financial services, are not and will never become attractive clients for commercial banks.<sup>33</sup> Credits to them are seen as risky because of the seasonality of the products, weather uncertainty and most of all the fact that these cooperatives lack sufficient quality bail. The resulting high interest rates<sup>34</sup> lead to a lack of interest of the agricultural cooperatives in such banking. The lack of competitive interest rates for credits to smaller cooperatives is one of the main drivers of the imbalanced structure of the Ukrainian market for agricultural production.

#### 4. The Quest: Remodeling the sector of cooperative banking

A. Chayanov noted that there is every reason to consider the revival of cooperative credit as one of the most important tasks in the field of agricultural development.<sup>35</sup> For effective functioning, it is advisable for the system of cooperative banks in Ukraine to consist of three levels. O. Stojko described them in the following way: (a) the first

<sup>29</sup> Porjadoc vykorystannja koštiv, peredbačenyh u deržavnomu bjudžeti dlja nadannja pidtrymky fermerskym gospodarstvam ta inšum vyrobnykam silskogosporars'koji produkciji vid 16 serpnja 2022 No.918 (Procedure for Using Funds that are Provided in the State Budget for Providing Support to Farms and other Producers of the Agricultural Products of 16 August 2022 No.918) zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/918-2022-%D0%BF#Text>, 23 November 2022.

<sup>30</sup> Zakon Ukrajiny «Pro banky ta bankiv's'ku dijalnist'» vid 07 grudnja 2000 No. 2121-III (Law of Ukraine «On banks and bank activity» of 07 December 2000 No. 2121-III). zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/2121-14#Text>, 23 November 2022.

<sup>31</sup> aaO, fn.24.

<sup>32</sup> Zakon Ukrajiny «Pro kredytni spilky» vid 20 grudnja 2001 No.2908-III (Law of Ukraine «On Credit Unions» of 20 December 2001 No.2908-III). zakon.rada.gov.ua. Retrieved from <https://zakon.rada.gov.ua/laws/show/2908-14#Text>, 23 November 2022.

<sup>33</sup> V. Gončarenko, Kredytni spilky jak finansovi kooperatyvy: mižnarodnyj dosvid ta ukrajins'ka praktyka (Credit unions as financial cooperatives: international experience and Ukrainian practice), Kyiv 1997, 240 p.

<sup>34</sup> O. Prokopenko/ A. Tarasenko, Kredytna kooperacija fermerskyh gospodarstv jak element infrastruktornogo zabezpečennja APK regionu (Credit cooperation of farms as an element of infrastructural provision of the region's AIC), Conference paper, Cherkiv 2014, p.65.

<sup>35</sup> A. Čajanov, Kratkij kurs kooperacii (Short course of cooperation), Cooperative publishing house 1925, p.49.

level are local cooperative banks that will provide services to their members, in particular agricultural cooperatives; (b) the second level consists of regional cooperative banks which are created to ensure a more efficient functioning of the local cooperative banks by supporting them with additional services; (c) the third level, the central cooperative bank, will connect all cooperative banks into a single system giving them the advantages of a large system bank without losing independence and autonomy.<sup>36</sup>

### III. Features of the Legal Regulation of the Agricultural Cooperation in Germany

#### 1. The general legislation on cooperatives in a nutshell

The history of the cooperative movement and legislation was outlined above.<sup>37</sup> In addition, it should be mentioned that in 2006 a new edition of the GenG was adopted to incorporate the establishment of the European Cooperative Society Regulation of 2003. Via this vein the Law of the EU took a significant impact on the German cooperative legislation. German cooperative legislation is now much more harmonized with the pan-European one. This enables cooperatives to access the European single market with even greater ease and gives additional competitive advantages to the well-established German cooperatives on the economic market of the European Union.<sup>38</sup>

Germany has no special law on agricultural cooperatives. This is the first remarkable difference to the Ukraine. The «Genossenschaftsgesetz (GenG)» defines the legal framework for the activity of all cooperatives in Germany using a unified approach. Cooperatives are defined as legal entities and therefore have the same status as other legal entities and the same economic possibilities. § 1 (1) GenG establishes that cooperative is a corporation with a non-closed number of members, the purpose of which is to promote the acquisitions, the production or the selling and therewith the economy of its members or their social and cultural interests through joint

business operations.<sup>39</sup> Members can be natural persons as well as legal entities. Because the law solely requires that the cooperative serves the business operations of its members, cooperatives are allowed to serve banking and agricultural services at the same time. This is also the significant difference to Ukrainian law.

Membership in a cooperative and the legal relationship between the member and the cooperative are determined by the charter of the cooperative in accordance with § 18 GenG.<sup>40</sup> The rights and obligations of the members and their cooperative arise directly from the GenG and from the articles of association of the cooperative. The charter cannot be drafted freely, it can differ from the statutory law so far as the law allows. For example, according to § 3 of the model articles of the Association for Volksbanks and Raiffeisenbanks with a representatives' meeting (Mustersatzung der Volks- und Raiffeisenbanken mit Generalversammlung),<sup>41</sup> natural persons, partnerships and legal entities under private or public law can be members of the credit cooperatives of the Volks- and Raiffeisenbanks. The cooperative banks use this possibility to organize themselves as a pillar of the banking industry in Germany.

#### 2. Credit cooperatives and their historical development in particular

Credit cooperatives have historically established themselves as a type of cooperative whose purpose is the economic promotion and support of members by carrying out standard banking transactions such as granting loans of all kinds.<sup>42</sup> The promotion of local commercial and agricultural (small) businesses is also evident in the historical development of cooperatives and cooperative banks or credit unions. Their original goal was to strengthen the position of farmers and smaller businesses in the market by the use of capital goods, better purchase and sales prices, and also the granting of low-cost (per-

<sup>36</sup> O. Stojko, Neobhidnist' i perspektyvy vidrodzennja kooperatyvnyh bankiv v Ukraini. (The necessity and prospects of reviving the cooperative banks in Ukraine), Productivity of agro-industrial production, Economic sciences, 25|2014, p. 36.

<sup>37</sup> see above sec. I. 3. a)

<sup>38</sup>R. Schulze/M. Wiese, Die SCE mit Sitz in Deutschland und die Reform des deutschen Genossenschaftsrechts, Zeitschrift für das gesamte Genossenschaftswesen, vol. 56, 1|2006, pp. 108-128.

<sup>39</sup>Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften (Genossenschaftsgesetz (GenG)). Retrieved from <https://dejure.org/gesetze/GenG>, 23 November 2022.

<sup>40</sup>GenG, fn. 41.

<sup>41</sup>Mustersatzung der Volks- und Raiffeisenbanken mit Generalversammlung. Retrieved from [https://www.vrbanklm.de/content/dam/f1560-1/download\\_/Satzung.pdf](https://www.vrbanklm.de/content/dam/f1560-1/download_/Satzung.pdf), 23 November 2022.

<sup>42</sup> § 2 Abs. 1, 2 articles of association of the Kieler Volksbank eG (Satzung der Kieler Volksbank eG). Retrieved from [https://www.kieler-volksbank.de/content/dam/f7551-0/webbank\\_/Mitglieder/Satzung\\_2017.pdf](https://www.kieler-volksbank.de/content/dam/f7551-0/webbank_/Mitglieder/Satzung_2017.pdf), 23 November 2022.

sonal) loans.<sup>43</sup> In this way, cooperative banks provided a solution to the industry-specific problems faced by farmers at the end of the 19th century and the beginning of the 20th century in obtaining loans for the necessary procurement of inputs.<sup>44</sup>

Over the time the cooperatives realized that the benefit for their members may also lie in financing persons outside of the cooperative and earning interest etc. This opened the way for the credit cooperatives to become full service banks to the public. Nowadays they do business on one level with other commercial banks.<sup>45</sup> They are not at all limited to granting loans to agricultural (small) businesses.<sup>46</sup> Their customers include both commercial and agricultural enterprises as well as private individuals<sup>47</sup> who do not have to be members either. By lending on a regional basis, credit unions can take advantage of experience related to the regional economy.<sup>48</sup>

The cooperative banking sector even has access to the world financial markets via its federal cooperative bank. Members enjoy access to credits priced according to the market through their cooperative. Cooperative loans are neither cheaper nor pricier than loans from other banks.

This change of business status of the cooperative banks is reflected in the fact that they are subject to the German Banking Act (*Gesetz über das Kreditwesen (KWG)*) and the supervision by the banking supervisory authority (*BaFin*).<sup>49</sup> Therefore, cooperatives are e.g. obliged to prepare a yearly balance sheet and to have the annual accounting audited, § 53 *GenG*.

### 3. The current position of credit cooperatives – financial markets for cooperatives

Today, farms and agricultural cooperatives are no longer dependent on financing through loans from credit unions. The first reason may be that in Germany agricultural entities receive a sufficiently large part of grants and subsidies from the European Union. The second reason lies herein: while the

access to the capital market may still be difficult for farmers under certain circumstances despite their high equity ratio,<sup>50</sup> they have quite some options to raise private funds.

A special one is to obtain loans for machinery or other inputs from the *Landwirtschaftliche Rentenbank*. This special bank was founded by the federal government specifically for the purpose of financing smaller agricultural entities and to develop rural areas (Sec. 3 (1) of the Law on the *Landwirtschaftliche Rentenbank*). In this context, it acts as a central bank for procuring and granting loans for agriculture.<sup>51</sup> However, a look at the total lending volume for agriculture, forestry and fisheries in Germany in 2018, amounting to €50.5 billion,<sup>52</sup> shows that the *Landwirtschaftliche Rentenbank* with a lending volume of €2.2 billion accounts for only a small share.<sup>53</sup> The decreasing loyalty of agricultural businesses to cooperative banks is mirrored in the customer structure of the *Volks- und Raiffeisenbanken*.<sup>54</sup> For example, in 2017, the lending volume of cooperative banks in Baden-Württemberg for agriculture, at 2.3 billion euros, accounted for only 2.5% of the total annual lending volume.<sup>55</sup> These figures make it clear that the financing of smaller farms in Germany nowadays follows more or less the general rules of a free market economy. But the long history of cooperative and other special credits to farmers will forever be part of the national heritage of Germany. In difficult times these special institutions functioned well and secured the food supply.

### IV. Conclusion

Thus, based on the conducted comparative research, the following conclusions can be derived.

<sup>43</sup> I. Saenger, *Gesellschaftsrecht*, Munich 2020, Rn. 505; H. Hannaske, *Entstehung und Entwicklung des genossenschaftlichen Bankwesens in Schleswig-Holstein*, Hamburg 2015, p. 46, 176 ff.

<sup>44</sup> To this problem: H. Hannaske, fn. 45, p. 36 ff., p. 167 ff.

<sup>45</sup> M. Henssler/L. Strohn, *Gesellschaftsrecht*, Munich 2021, § 1 Rn. 20.

<sup>46</sup> M. Henssler/L. Strohn, fn. 47, § 1 Rn. 20.

<sup>47</sup> V. Beuthien, *Beuthien GenG*, Munich 2018, § 1 Rn. 48.

<sup>48</sup> V. Beuthien, fn. 49, § 1 Rn. 48.

<sup>49</sup> P. Pöhlmann/A. Fandrich/J. Bloehs, *GenG*, Munich 2012, § 1 Rn. 34; M. Henssler/L. Strohn, fn. 47, § 1 Rn. 20.

<sup>50</sup> U. Koester/S. von Carmon-Taubadel, *Besonderheiten landwirtschaftlicher Kreditmärkte*, Halle (Saale) 2019, p. 3.

<sup>51</sup> G. Reiner/P. Scholl, *Ellenberger/Bunte Bankenrechtshandbuch*, Munich 2022, § 94 Rn. 118.

<sup>52</sup> U. Koester/S. Carmon-Taubadel, fn. 52, p. 3.

<sup>53</sup> Statista, *Darlehen der Förderbanken für die Landwirtschaft in Deutschland von 2008 – 2021*. Retrieved from <https://de.statista.com/statistik/daten/studie/737034/umfrage/darlehen-der-foerderbanken-fuer-die-landwirtschaft/>, 23 November 2022.

<sup>54</sup> V. Beuthien, fn. 49, § 1 Rn. 48.

<sup>55</sup> Baden-Württembergischer Genossenschaftsverband e.V., *Genossenschaftsbanken starke Partner der Landwirtschaft*. Retrieved from <https://www.wir-leben-genossenschaft.de/de/Genossenschaftsbanken-starke-Partner-der-Landwirtschaft-4298.htm>, 23 November 2022.

1. The legislation of Ukraine and Germany in regard to the agricultural cooperation has some key differences.

a) While Ukrainian law still implements a system of a multiplicity of laws, Germany uses a unified legislation. This is probably one reason why the Ukrainian law has serious shortcomings and uncoordinated points that undermine the development and improvement of the competitiveness of the Ukrainian agricultural cooperatives.

b) In Germany the law gives cooperatives much better possibilities to compete efficiently. Important is that cooperatives can combine agricultural and banking services and cooperative banks are entitled to become full service banks, doing business with their members and third parties at their sole discretion.

2. The German example proves that a well drafted law for cooperatives giving heed to the mentioned principles can solve the need of smaller farmers to finance their business. This holds especially true in hard times, e.g. after a disastrous war.

3. These findings back up the following recommendations:

a) Ukraine should start a legislative process to amend the shortfalls in the law on cooperatives either by changing the various statutes or by implementing a new, unified approach. The latter alternative seems to be more straightforward and easier to implement.

b) In this process it is necessary to transform the model of cooperatives in general, but especially for agricultural and credit cooperatives, into a system that includes the mentioned principles of the German law.

The market may then decide whether a cooperative banking sector will form itself in Ukraine or not. A future quest may be to implement the EU legislation on cooperatives, but this should be of no concern today.