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FORMATION OF COOPERATIVE CAPITAL – CHALLENGES, LEGAL FRAMEWORK AND DEVELOPMENT POTENTIAL

ABSTRACT: A cooperative, as a specific form of business entity primarily focused on the joint realization of the aspirations of its members, holds a significant position in modern business flows, affirming itself as a relevant factor in the sustainable development of a social community. On a global level, cooperatives are faced with many complex challenges, among which the problem of securing adequate financial prerequisites for their functioning is especially emphasized. In that regard, the formation of cooperative capital as a basic financial resource intended for business operations, represents one of the key challenges in terms of survival and further development of the cooperative sector. Although different factors influence the availability of cooperative capital, legislative support represents a key determinant since the compliance of the legal framework with modern business tendencies and current practices within the formation of the cooperative capital area, as well as the level of its flexibility and efficiency in application, significantly determines the development potential of a cooperative. At the same time, this fact opens up space for critical consideration of existing legal solutions within the field. In this paper, we first analyze the modern business environment

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and the importance of cooperative capital formation, considering current solutions and development perspectives in this area. Subsequently, using a comparative method to examine the legal frameworks of Serbia and Croatia, the domestic legislation is critically assessed in the segment related to the formation of cooperative capital. The aim of this paper is: 1) to examine whether the existing model of cooperative capital formation within positive legislation enables a cooperative's competitive market positioning and contributes to its sustainable development, and 2) to offer solutions through *de lege ferenda* proposals for improving the legislative framework in the field of financing cooperative business operations, in accordance with contemporary economic trends.

Keywords: *cooperative, cooperative capital, comparative analysis, de lege ferenda.*

1. Introduction

A cooperative represents an autonomous association of entities joining in voluntarily with the aim of satisfying their economic, social and cultural aspirations through a jointly owned and democratically controlled enterprise. As a specific form of organizational structure, a cooperative's identity is based on clearly defined social values – self-help, self-responsibility, democracy, equality, fairness and solidarity, while its business operations are based on the application of the voluntary and open membership principle, democratic control by its members, economic participation of its members, autonomy and independence, education, training and information, inner cooperative cooperation and responsibility towards the community (International Cooperative Alliance [ICA], 1995). Special characteristics of cooperative organizing and operations are determined by the mentioned cooperative values and principles (Nikolić, 2014, p. 15).

The importance of cooperatives on a global level is emphasized by the fact that there are 2,94 million registered cooperatives worldwide, with over 1,2 billion cooperative members (Eum, 2017, p. 12). As opposed to classic business enterprises, the main purpose of the cooperative is not the realization of profit as a primary goal, but the satisfaction of economic, social and development needs of its members, where it significantly contributes to the sustainable development of local communities and society as a whole (Fernandez-Guadaño, Lopez-Millan & Sarria-Pedroza, 2020, p. 1). Also, a cooperative has a significant role in the strengthening of global economic stability, incentivizing economic growth and increasing employment, while at the same time representing a key factor in the improvement of sustainability and social responsibility (Sudarić, Lončarić & Zmaić, 2019, p. 290). However, a cooperative is also a direct participant in the market competition with other business entities, operating as a financially viable and competitive form of organization, and essentially represents an economic organization since the achievement of business success and economic gain is a necessary prerequisite for its survival (Vitez, 2018, p. 19; Dabić, 2011, p. 132). In the modern, highly competitive market environment, cooperatives are forced to compete with profit-oriented business entities whose primary motivation is the maximization of gains. Such entities have at their disposal a wide array of available and varied sources of capital, enabling them, especially within the long-term investment domain, a competitive advantage compared to others whose business model is based on cooperative values and the application of cooperative principles (Li, Jacobs & Artz, 2015). As per the above mentioned, within the modern market context, one of the most serious challenges for cooperatives is the securing of adequate financial resources, since the formation of cooperative capital as a central instrument for sustainable business operations and the implementation of development policies, represents a basic condition for their long-term market competitiveness. Although cooperatives, like other business entities, have at their disposal different additional capital raising methods, the selection of appropriate sources of financing makes it harder while risking the cooperative identity and alignment with profit oriented organizations (Nikolić, 2018, p. 73). Also, and even though the availability and stability of capital for financing of business obligations is influenced by a number of factors, undoubtedly the legal and institutional framework has a decisive input on the defining of sources of cooperative financing. In that regard, as an entity simultaneously comprising both a market and social component (Benavides & Ehrenhard, 2021, p. 973), determined by identity based cooperative principles, a cooperative finds itself in a specific position requiring a precisely shaped and functionally aligned normative institutional frame. It is precisely because of this that the theme of this paper is the consideration of modern economic flows, current perspective in terms of formation of cooperative capital, with critical analysis of relevant legal solutions in Serbia and Croatia with the implementation of comparative methodology, all with the aim of considering in what measure current laws and regulations in the Republic of Serbia enable the cooperative sector to adequately respond to current tendencies within the cooperative capital formation area. The choice of analyzed legislation in this paper is based on their joint legal succession, as well as the fact that the

Croatian cooperative system is aligned with European legal standards, which enables insight into different models of securing.

2. Complexity of current business climate and challenges to the cooperative sector

Modern global business atmosphere is marked by factors initiating a high level of instability, creating pressure on economic organizations and demanding a constant evaluation of their competitive capabilities for successful functioning in a highly competitive environment (Nikolić, 2009, p. 15). Basic qualities of a modern business system are fast technological development, the globalization process, climate change and political uncertainty, simultaneously generating new development possibilities for business entities but also representing serious challenges. Understanding these characteristics and challenges is not only important for large international companies, but also for cooperatives intending to remain competitive and sustainable in such an environment. Globalization, open markets and over the border economic dependence represent the bases of the modern business system that enables a faster flow of goods, services, capital and knowledge (Vujičić, Staletović, Stevanović & Gavrilović, 2022, p. 28). However, global financial connections are subject to risk and uncertainty due to the fact that local crisis, such as pandemics, geo-political conflicts and energy disruptions, can quickly escalate, generating significant consequences for distant economies. Also, and regardless of the benefits of globalization, many countries are faced with equal market access problems, as well as access to technologies and financial instruments, which makes the use of global economy opportunities more difficult (Yu, 2024). Technologies such as automation, digital platforms and artificial intelligence intensely and continuously change the ways of production, distribution and consumption, increasing efficiency while, at the same time, confronting business entities with ever more increasing challenges for adaptation and investment (Ayinaddis, 2025). In that regard, within the modern business environment, the development and sustainability of entities on the market, regardless of their industry, greatly depends on a high level of integration of digital technologies in their business operations (Dukić Mijatović, Uzelac & Mirković, 2022, p. 1226), which implies the need for additional investments. A specific characteristic of the modern business system is the intense climate change demanding a need for sustainable management of resources, as well as the transition of production processes in terms of use of renewable energy sources (Manera & Serrano, 2022). Key challenges of the modern business atmosphere are reflected in the fact that industrial growth and increasing demand for resources leads to a degradation of the environment (Guo, Meng, Luan & Wang, 2023), while, simultaneously, the transition towards more sustainable technologies requires significant investments. Also, high fluctuations of interest rates, currency rates, cost of energy and raw materials, can destabilize companies without sufficient immunity or diversification. Restrictions in global trade, tariffs, politicization of economic outcomes as well as different forms of sanctions, represent an uncertainty factor, greatly hindering the planning of production processes for all market actors. In that regards, business entities with insufficient capital for the implementation of new technologies and development of digital capacities are faced with a significant risk of falling behind compared to the competition. Accordingly, we can conclude that the modern global business atmosphere, marked by the mentioned characteristics, imposes to cooperatives a need for constant adaptation and strengthening, and that their capability to face challenges greatly depends on the securing of adequate capital for investment into innovation, digitalization and business sustainability, as well as the building of capacities for risk management on an unstable market. Without adequate financial resources, cooperatives risk losing their competitive position, weakening their socio-economic legitimacy. At the same time, appropriate capital reinforcement potentially enables them to become stable, long-term, sustainable participants in a global economy. In that regard, as all other business entities, cooperatives also need mainly stable capital, access to new sources of financing, flexibility in financing and efficient support, defined by appropriate legislative and institutional framework.

3. Cooperative capital formation models within the modern business context

Most developed countries economies basically rely on privately owned companies, where profit dominates as a key motivator of economical dynamics. Although such approach motivates the maximization of private benefit, it frequently results in the neglect of wider social good and collective interests (Mills, 2009, p. 1). As opposed to privately owned companies, cooperatives represent a business model focusing on the satisfaction of its members, as well as the sustainable development of a wider community. However, although the satisfaction of members and community needs is the imperative of cooperative operations, cooperatives also strive towards the realization of positive business results, continuous growth and preservation of stability and predictability of the socio-economic environment they operate in, which implies the realization of the need for adequate capital. Capital is the basic financial resource of every business entity, since it ensures stability, continuity and business sustainability. In that regard, cooperative capital has a significant role in the financing of main development activities, preservation of liquidity and long-term business operations of the cooperative. The specificity of cooperative capital is reflected in its, two-fold, economic and social dimension which requires a special normative treatment compared to the capital of companies. Namely, cooperative capital is different from the capital of classic business entities because it is directly tied to the cooperative identity, that is, the value and principle base on which the cooperative functions. As per the stated, the method of formation of cooperative capital is, in great measure, determined by basic cooperative self-help values, as well as the principle of democratic control by its members, the economic participation of members, autonomy and independence. Namely, the self-help principle implies that the cooperative members, through their own resources and joint engagement satisfy their aspirations, democratic control by the members ensures that all members participate in the decision making process per the one member – one vote principle, economic participation means that members invest capital into the cooperative and equally participate in the distribution of surplus realized through business operations, while the principle of autonomy and independence implies that cooperatives are to remain independent organization under the control of its members, regardless of their cooperation with external partners or the use of investment resources, supplied by governmental or international institutions (ICA, 2015).

According to Rouse and Von Pischke (1997), traditionally and in accordance with the cooperative identity, the cooperative capital is gathered from three basic sources: directly from members through cooperative contributions, from retained earnings, and from external sources. The most frequent method of cooperative financing comes directly from its members, where capital in form of cooperative contribution represents a form of dedication of members to the cooperative and a financial share retrieved only when leaving the cooperative. The second important source of capital is the retained earnings, and it represents a collective ownership of the cooperative used for long-term needs such as investments in technology, education and improvement of business operations. Aside from these internal sources of capital, cooperatives are in a position of using external financing sources, including cooperative and commercial banks, suppliers, government and donor agencies, where all assets can be in form of grants, short or long term loans, as well as commercial credits. Nikolić (2018), emphasizes that modern cooperatives, as per their different raising capital models, can be divided into three large groups, where the first group is comprised of traditional cooperatives where capital is formed exclusively through members contributions, as well as the surplus of income the members have decided not to mutually distribute.. The second group is made of new generation cooperatives where part of the capital is formed by member's contributions, while part can be raised from shares issued by the cooperative. The third group, the most current model present in a large number of European countries since the end of the 1980's as well as the United States since the beginning of the 21st century, are cooperatives with investors where members can become individuals who are not users of the cooperative services, but have invested capital into the cooperative enabling them to have all the rights the users have, including voting rights. These cooperatives raise capital in part from contributions of their members/users, and in part from external members, where these members only invest into the cooperative but don't use its services.

Even though member's contributions and capital from retained earnings ensure business stability and long-term development without the risk of debt, if the economic sustainability of modern cooperatives relies only on capital investments of their founders, that is members, such a model becomes hardly sustainable in the long term (Dukić Mijatović, Uzelac & Mirković, 2022, p. 1234). In that regard, it is emphasized that cooperatives need constructive, stable and controlled capital, and that it is of global importance to find mechanisms through which individual savings and citizen's assets can be transformed into cooperative, and not non-exclusively investor capital (Robb, Smith & Webb, 2010). Beginning with the fact that in a dynamic and uncertain business environment the preservation of competitive position and long-term sustainability depends on the capabilities of the business entity to align its resources with market circumstances (Gardašević, Carić, Kovačević & Egić, 2022), the conquering of modern market challenges requires creating adequate financial instruments that, without disrupting the essential elements of cooperative identity, enable individuals to efficiently invest into cooperatives. In that way, cooperatives would become a competitive and attractive alternative for investors, where capital flow would potentially be diversified and the domination of private sector in investment choices would decrease. In its essence, this process comes down to finding a model that enables citizens to place assets they do not currently need in a way that will both satisfy their needs for security as well as the capital needs of the cooperative. In that regard, and with the aim of strengthening the cooperative sector, it is necessary to offer specific suggestions to potential investors and to promote cooperative capital as a sustainable and socially responsible and long-term alternative in comparison to the traditional forms of credit and profit oriented capital (ICA, 2013).

One of the main challenges in the business operations of cooperatives with investors comes out of potential differences in the interests of members-users and members-investors. Namely, while members-users aim towards the most beneficial business operations conditions, members-investors are mainly interested in maximizing profit at the end of the business year. Such a membership structure creates a possibility for a conflict of interest but, as emphasized by Avsec (2009, p. 122), their presence does not have to necessarily lead to dysfunction. Namely, members-investors can only realize dividends if the cooperative operates successfully in collaboration with active members, which creates interdependence and obliges both membership categories to consider the interests of others. Also, taking into account that the lack of balance between external and internal capital, especially in a situation of dominance of members-investors, can lead to a formation of weak and unsustainable cooperatives (Yu & Nilsson, 2019), the implementation of an optimal balance between different types of capital of interest groups poses a central challenge for the preservation of cooperative identity and long-term sustainability of the business model of cooperatives with investors.

4. Legislation for formation of cooperative capital in Serbia and Croatia

In continuation we will show a review of law and regulations, regulating the formation of the cooperative capital sector in Serbia and Croatia.

According to cooperative laws and regulations (Law on cooperatives, 2015), depending on the defined foundation goals and estimated financial needs, cooperatives secure assets for their operations through members contributions or membership fees, in accordance with the establishment agreement and cooperative rules. The share capital is formed based on cooperative member's contributions and cannot be less than 100 dinars, while the cooperative rules determine the minimum individual contribution of the cooperative member. A member can have just one contribution in the cooperative, where contributions of the members don't have to be equal. The law states that the member's contributions can be both cash and non-cash, where the non-cash contributions are considered to be objects and rights expressed in cash value. The share capital of the cooperative can, by decision of the cooperative assembly, be increased only in a traditional manner, as follows: contributions of new members, increasing contributions of existing members or through capitalizing retained earnings, that is, assets available for such purpose. Cooperatives founded without members contributions, ensure the assets for establishing business operations through membership fees, where the fee is established through cooperative rules in an amount equal for all founders as well as those members joining the cooperative after its establishment.

According to Croatian cooperative laws and regulations (Law on cooperatives, 2011) in order to realize the business activity and to service its obligations toward third parties, a cooperative uses members contributions, assets realized through business activities and other cooperative activities, as well as assets gathered through different means. A special place in the structure of assets for the realization of business activities is occupied by the member's contribution, which can be initial or additional. The initial contribution is a cash amount each member is obliged to contribute during the establishment of the cooperative or when joining an existing cooperative. The amount is determined by decision of the cooperative assembly and is equal for all members, where the law determines the minimum amount. The additional contribution is an additional investment the member can make along with the initial contribution, and the amount is also determined by the cooperative assembly. Although the contribution is almost always introduced as cash, the Croatian cooperative legislation enables the introduction of contributions in objects and rights, the value of which is estimated through court evaluation. Aside from the members, the law states the possibility for the contribution to be introduced into the cooperative by a person who is not a member, but is interested in its operations. In those cases, mutual rights and obligations are subject to a special agreement between the cooperative and the investor, while their contributions are treated separately in bookkeeping. The rules of the cooperative can envision that a representative of an investor, elected in accordance with internal acts, can represent the views of the investor at the assembly, especially when decisions that can impact the safety and feasibility of their contributions are being made. Also, the Croatian cooperative legislation states the possibility of having the rules of the cooperative manage the possibility of having members ensure operational assets through membership fees.

Accordingly, a comparative analysis of legal frameworks of Serbia and Croatia indicates a significant difference when it comes to the inclusion of external investors into the cooperative sector. And while the Serbian legal framework still favors traditional forms of financing, with an accent on initial contributions, membership fees and profit as a mechanism for securing capital, the Croatian legal model enables additional inclusion of external investors, more precisely regulates the types of contributions and envisions an active participation of the investor in the decision making process, under certain conditions, which leads to differences in the level of openness to alternative forms of capital and institutional flexibility when it comes to the structuring of financial instruments. In that regard, we can determine that the Croatian model shows a higher adaptability to modern economic trends, while preserving cooperative identity through membership protection mechanisms and control in decision making processes.

5. Conclusion

In today's economic environment, cooperatives are facing increasing challenges in securing capital. Traditional sources of funding, such as membership contributions and retained earnings, are no longer sufficient to meet the complex demands of a competitive market and dynamic technological changes. One potential solution is the inclusion of external investors, which enables cooperatives to expand their financial capacity, provided that the cooperative identity is preserved through clearly defined normative control mechanisms.

Differences in the degree of normative openness toward this model can be observed through a comparative analysis of the legal frameworks of Serbia and Croatia. While the Serbian legislative framework maintains a traditional approach and does not recognize the institute of investor membership, the Croatian model allows for the inclusion of external investors under clearly prescribed conditions, types of contributions, and decision-making rights. This approach demonstrates greater adaptability to modern global economic trends and institutional readiness to preserve the cooperative identity through legislative innovations while also enabling cooperatives to remain competitive in a market economy.

Accordingly, it is assumed that the implementation of this model into Serbia's cooperative legislation would allow for a diversification of capital sources, increase the financial resilience of cooperatives, and strengthen their position within the economy. Starting from the premise that it is the state's responsibility to create progressive legislation to ensure the development of cooperatives (Vitez, 2010), there is a clear need to design and implement a stimulating legislative framework that will enable the cooperative sector to develop sustainably and to ensure its fair position in the market, equal to that of traditional enterprises.

In this context, current legal provisions should be reconsidered, supplemented, or amended with the following proposed solution, directed at lawmakers as a *de lege ferenda* proposal.

It should be provided that, fully respecting the cooperative identity, individuals interested in the cooperative's operations may participate in the financing of its business activities through contributions. This would allow them to support the sustainable development of the cooperative and the improvement of cooperative business activities, therefore contributing to the overall economic development of the wider community. However, it is particularly important to keep in mind that a legal framework alone does not guarantee the achievement of predetermined goals without effective and substantive implementation, which is essential for delivering the expected results (Dukić Mijatović, Ozren & Stoiljković, 2023, p. 11). Even the best cooperative law is no guarantee for establishing an effective cooperative system (Hagen, 2002, p. 48).

Therefore, alongside legislative changes, it is necessary to develop institutional support mechanisms and public policies focused on affirming cooperatives as a relevant and competitive form of economic organization in the modern economy. In this regard, promoting the importance of cooperatives and attracting and encouraging investors or other parties interested in the cooperative's operations, under the condition of fully respecting the cooperative identity, to participate in forming cooperative capital, would be essential prerequisites for the effective and comprehensive application of the proposed legal solutions.

Conflict of Interest

The author declares no conflict of interest.

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FORMIRANJE ZADRUŽNOG KAPITALA – IZAZOVI, PRAVNI OKVIR I PERSPEKTIVE RAZVOJA

APSTRAKT: Zadruga, kao specifičan organizaciono-pravni oblik privrednog subjekta, usmeren pre svega na ostvarivanje zajedničkih aspiracija svojih članova, zauzima značajnu poziciju u savremenim privrednim tokovima i afirmiše se kao relevantan činilac održivog razvoja društvene zajednice. Na globalnom nivou, zadruge se suočavaju sa brojnim i složenim izazovima, među kojima se posebno ističe problem obezbeđivanja adekvatnih finansijskih pretpostavki za njihovo funkcionisanje. U tom kontekstu, formiranje zadružnog kapitala, kao osnovnog finansijskog resursa namenjenog poslovanju, predstavlja jedan od ključnih izazova u pogledu opstanka i daljeg razvoja zadružnog sektora. Iako na dostupnost i stabilnost zadružnog kapitala utiču različiti faktori, legislativna podrška predstavlja ključnu determinantu, budući da usklađenost pravnog okvira sa savremenim privrednim tendencijama i aktuelnim praksama u oblasti formiranja zadružnog kapitala, kao i stepen njegove fleksibilnosti i efikasnosti u primeni u značajnoj meri određuju razvojne potencijale zadruga. Istovremeno, ova činjenica otvara prostor za kritičko razmatranje postojećih zakonodavnih rešenja u predmetnoj oblasti. U radu se najpre, kroz analizu savremenog privrednog ambijenta i značaja formiranja zadružnog kapitala, razmatraju aktuelna rešenja i razvojne perspektive u ovoj oblasti, dok se potom, primenom komparativne metode i upoređivanjem zakonskih okvira Srbije i Hrvatske, kritički sagledava domaća regulativa u segmentu koji se odnosi na formiranje zadružnog kapitala. Cilj istraživanja u ovom radu je: 1) da se ispita da li postojeći model formiranja zadružnog kapitala u pozitivnom zakonodavstvu omogućava konkurentno tržišno pozicioniranje zadruge i doprinosi njenom održivom razvoju, i 2) da se kroz predloge *de lege ferenda* ponude rešenja za unapređenje zakonodavnog okvira u oblasti finansiranja zadružnog poslovanja, u skladu sa savremenim ekonomskim trendovima.

Ključne reči: *zadruga, zadružni kapital, komparativna analiza, de lege ferenda.*

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