

THE COOPERATIVE BANKING

In the current financial environment

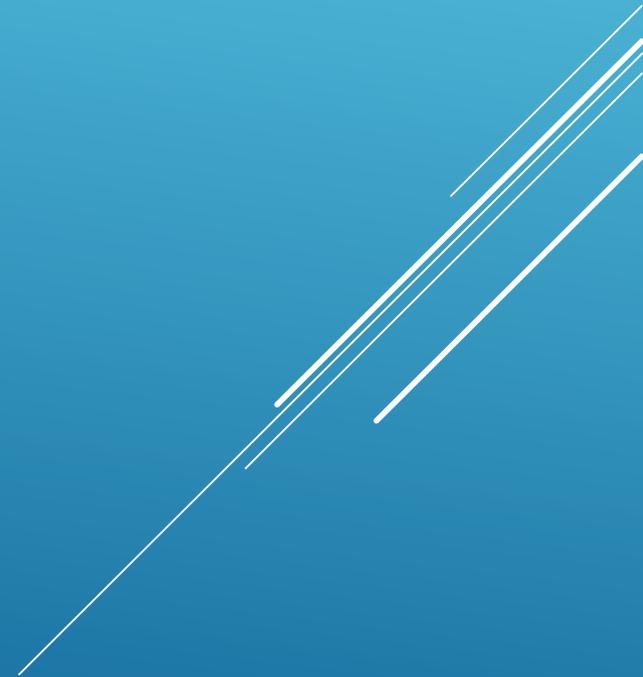
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- ▶ These different pictures – brand names show clearly the diversification and heterogeneity of the cooperative banks in the frame of the current financial sector in European countries
- ▶ A cooperative bank – according to the International Co-operative Alliance – is “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. Cooperatives are based on the values of self-help, self responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others”

- ▶ Video downloaded from the site
<https://www.co-operativebank.co.uk/>





- ▶ Despite the differences between the cooperative banks operating in different countries, despite the different models of their organization (cooperative groups especially hybrids) despite the different legal and economic approach and despite the different roots (Raiffeisen or Schuזה-Delitzsch model) the common chains remain and are the basic cooperative principles.....
- ▶ Membership and democratic governance (e.g. one head-one vote?)
- ▶ Proximity (collect savings and grant credit on a local basis and SMEs, or consumers)
- ▶ Self government but also cooperative governance according to the needs, to the shape of the bank and also to the current economic circumstances (also low risk-taking approach)
- ▶ but
- ▶ The current financial situation especially after the Great Crisis has changed the situation and is the main reason of some “dramatic” measures also different taken at European or national level, such as the Italian model, the Greek model etc.
- ▶ Studies have revealed that the cooperative banks have acted better than the commercial banks thanks to the stakeholder value structure, the lower dependence on financial markets, higher capitalization, lower risk taking (Migliorelli et al New cooperative banking in Europe p. 9)

▶ The cooperative banks should not be considered “philanthropic associations” but as institutions whose profitability and efficiency are deeply joined to local and ethical goals (Migliorelli et al, New cooperative banking in Europe p. 5)

▶ They need



▶ I. a stable economic status despite the variability of the members

▶ II. the intensive cooperation with the members-clients but at the same time large scale transactions with no members

▶ III. very well trained management focus on cooperative principles and at the same time on the efficiency

▶ IV. proximity to the real economy by providing credit to consumers and SMEs

- ▶ In Greece, the cooperative banks have been adopted for the first time by the L. 2076/1992 (Art. 5 § 1) and now they are regulated by a “strange” combination of cooperative and banking law (L. 1667/1986 and L.4261/
- ▶ Nowadays they exist only six cooperative banks <https://www.este.gr/el/meli-tis-enosis/taktika-meli>
- ▶ The market share of cooperative banks In Greece is extremely low in contrast to what is observed in the rest of Europe.
- ▶ The lowest percentage, in the whole European area, approximately 1% (data of 2018 see, Mitrakos Th., <https://www.bankofgreece.gr/enimerosi/grafeio-typoy/anazhthsh-enhmerwsewn/enhmerwseis?announcement=465145dd-daaf-4a05-859e-0b7b1ee21368>

- ▶ The cooperative banks in Greece have been left alone to face the economic and social crisis in Greece by keeping them away from the recapitalization efforts coming from the EFSF, ESM and other banking mechanisms.
- ▶ The solution of the recapitalization which has been introduced by the L. 4340/2015 (Art. 5) and L. 4261/2017 (=Banking Law, Art. 167) is one “fast track” and “in concreto” decision of the Bank of Greece, supported by the general meetings of the banks based on the increase of the capital by issuing unlimited number of cooperative shares, the increase of the independence of the managers (=executive members of board, chosen also by members with more shares) and other measures coming from the internal environment of the cooperative banks or by new stakeholders.

- ▶ According to the modifications of main on cooperative entities L. 1667/1986 in the cooperative banks the statute may provide for an unlimited number of optional shares except the mandatory one and the possibility for shareholders to vote based on the number of the shares and not according to the principal “one member-one vote” (Art. 4 § 2) .
- ▶ It is also instituted the issuance of bonds convertible into shares as well as non-voting optional shares with a dividend privilege multiple times compared to other shares (Art. 3 §§ 3 and 6).
- ▶ With other words the ratio of these legal interventions was the recapitalization by using private means and especially capital support by private investors, members of the bank or not.
- ▶ In general, we are in front of some "dangerous" interventions of the banking lawmaker in the basic cooperative law 1667/1986, which, despite the modifications, is the main law regarding the function of the cooperative banks.



- ▶ The case of Italian cooperative banks
- ▶ Judgment of the Court (First Chamber) of 16 July 2020 OC e.a. and Others v Banca d'Italia and Others, C-686/18, ECLI: EU:2020:567
- ▶ **National regulation imposing an asset threshold on people's banks(=banche popolari) established as cooperative societies and allowing the right to redeem shares by the withdrawing shareholder to be limited. (decreto legge n.3/2015 "misure urgenti per il Sistema Bancario e gli investimenti")**
- ▶ *Par. 20«on the basis of Article 28(2-ter) of Legislative Decree No 385/1993, the 9th update to Circular No 285 provides that the articles of association of a people's bank and a cooperative credit bank are to attribute to the body responsible for strategic supervision, on the basis of a proposal from the body responsible for management and after consulting the body responsible for control, the option to limit or defer, in full or in part and without any time limits, redemption of the shares and other capital instruments held by a shareholder in the case of his or her withdrawal (including following the bank's conversion), death or exclusion».*

- ▶ Some clarifications.....
- ▶ The Council of State (Consiglio di Stato) has referred 5 questions to the Court for a preliminary ruling but the Court for precise reasons, has declared most of them inadmissible, answering only to the second part of the first question and the fourth question.
- ▶ In the frame of cooperative banking law has not been given by the Court an answer to the question if the provisions of Italian law and especially these one which imposes an asset threshold (=EUR 8 billion) above which a people's bank must be covered into a company limited of shares and in this case to defer or limit for an indefinite period redemption of the shares held by the withdrawing shareholder are in accordance with the Art. 29 of Reg. No 575/2013 and other relative Regulations, and with the articles 3 and 63 et seq. TFEU, articles 107 et seq. of the same Treaty and articles 16,17 of the European Charter of Fundamental Rights of the European Union (=freedom to conduct a business and the right to property)

- ▶ As far as the questions about the breach of the fundamental rights of the Art. 16 and 17 of the Charter the Court has answered that both of the rights are not absolute and the public authorities may limit the exercise of the rights in the public interest and with respect to the principle of proportionality.
- ▶ See also the par. 90.....” *the legislation seeks to ensure that the legal form is appropriate to the size of a people’s bank as well as compliance with EU prudential rules governing banking activities. According to the referring court, that legislation is thus intended to make the legal form of people’s banks more in line with the specific dynamics of the reference market, to guarantee greater competitiveness for those banks and to promote greater transparency in their organisation, operation and functions.*
- ▶ Par. 91 *Such objectives, which are capable of ensuring good governance in the cooperative banking sector, the stability of that sector and prudent exercise of banking activities, help to prevent the default of the institutions concerned, or even a systemic risk, and, as a result, help to guarantee the stability of the banking and financial system.....”*

The Court of Justice rules:

Article 29 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 10 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 with regard to regulatory technical standards for Own Funds requirements for institutions and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State which prohibits people's banks established in that Member State from refusing the redemption of capital instruments but which allows those banks to defer, for an unlimited period, the redemption of the shares held by the withdrawing shareholder and to limit the amount to be redeemed in full or in part, provided that the limitations on redemption imposed when exercising that option do not go beyond what is necessary, in the light of the prudential situation of the banks concerned, in order to ensure that the capital instruments they issue qualify as Common Equity Tier 1 instruments, having regard, in particular, to the matters referred to in Article 10(3) of Delegated Regulation No 241/2014, which is a matter for the referring court to ascertain.

- ▶ Article 63 et seq. TFEU (-free movement of capitals) must be interpreted as not precluding legislation of a Member State that sets an asset threshold on the exercise of banking activities by people's banks established in that Member State as limited liability cooperative societies above which those banks must be converted into companies limited by shares, reduce their assets to below that threshold or be liquidated, provided that that legislation is appropriate for securing attainment of the general interest objectives pursued and does not exceed what is necessary to attain them, which is a matter for the referring court to ascertain. (=Principle of proportionality)

▶ Concluding suggestions for cooperative banks



- ▶ strengthening of economic development at the local level,
- ▶ adoption of transparency and control principles (EC REg., 575/2013),
- ▶ effective risk management,
- ▶ stricter supervision,
- ▶ utilization of new technologies,
- ▶ collaborations with other cooperative banks or with other financial entities,
- ▶ utilization of new investment programs,
- ▶ adaptation of cooperative principles to modern reality and
- ▶ last but not least a better and more humane treatment of non - performing loans



Source:
<https://www.jagranjosh.com/general-knowledge/cooperative-movement-and-cooperative-societies-in-india-1511436454-1>

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