

New Regulation on Membership and Investor Shares in Credit Unions. Comparative Interpretation of Polish Law on Credit Unions

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Abstract: This paper analyzes the 2023 amendment to the Act on Credit Unions of 9 November 2009 using dogmatic and comparative methods. First, the author considers membership of partnerships in credit unions in the context of the requirement of a common bond for membership. Second, the author analyzes the legal status of investor shares, conditions of dividend payment on their basis, as well as their termination. In conclusion, the author indicates that Polish regulation on membership of partnerships requires establishing multiple common bond credit unions and that restrictions for holders of investor shares in credit unions are similar in Poland and the UK.

1. Introduction

The amendment to the Act on Credit Unions of 9 November 2009¹ (CUA) by the Act on a pan-European Personal Pension Product of 7 July 2023² introduced changes to regulations on membership in credit unions and on credit union assets. These changes concern the field of membership in credit unions by allowing membership of general partnerships (Article 22

¹ Consolidated text: Journal of Laws 2023, item 1278, as amended.

² Journal of Laws 2023, item 1843.

paragraph 1 of the CCC³), limited liability partnerships (Article 86 paragraph 1 of the CCC) and limited partnerships (Article 102 of the CCC). Under Polish law, these kinds of partnerships have legal capacity and can acquire rights, incur obligations on their behalf and have the capacity to sue and be sued (Article 8 paragraph 1 of the CCC). The amendment also introduced a new category of shares in credit unions, i.e. the investor shares. The amendment introduces changes proposed in the literature to enable partnerships to join credit unions and to allow cooperatives to issue investor shares.⁴

The author analyzes the introduced changes using dogmatic and comparative methods. Further, the author considers the changes in the field of membership while taking into account foreign regulations on credit unions. An analysis of new regulation on investor shares is also conducted by comparing it to other European legislation on cooperatives. In addressing these issues, the author considers the European legislation of credit unions which are represented in the World Council of Credit Unions (WOCCU). Credit union legislation is present in 16 European countries.⁵ Among them, national credit union organizations from 8 European countries are members of or are affiliated with WOCCU.⁶ This includes national credit unions from Poland, Croatia, Estonia, the United Kingdom (UK), Ireland, North Macedonia, Romania and Ukraine.⁷ WOCCU is a nonstock corporation organized under Chapter 181 of the Wisconsin Statutes.⁸ WOCCU's purpose is to promote, support, represent, and serve the worldwide credit union movement and to engage in any other lawful activity for the purposes for which a corporation may be organized under Chapter 181 of the Wisconsin Statutes (article I paragraph 1.1. of Bylaws of World Council of

³ Act on Code of Commercial Companies of 15 September 2000, consolidated text: Journal of Laws 2022, item 1467, as amended.

⁴ Dominik Bierecki, "The De Lege Ferenda Propositions Regarding the Membership in the Cooperative in Poland," *Pravo i Więź*, no. 3 (2019), 38–41, 50–1.

⁵ World Council of Credit Unions Statistical Report 2022, accessed November 24, 2023, <https://www.woccu.org/about/statreport>.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Accessed November 24, 2023, <https://casetext.com/statute/wisconsin-statutes/partnerships-and-corporations-transportation-utilities-banks-savings-associations/chapter-181-non-stock-corporations>.

Credit Unions, Inc.⁹). Moreover, the author takes into account the US state and federal laws on credit unions because the US is home to the world's largest credit union movement with 136,580,000 credit union members.¹⁰ The author also considers the international guidelines issued by the World Council of Credit Unions, i.e. Model Law for Credit Unions¹¹ (MLCU).

This article's research thesis is that Polish regulation of membership of general, limited liability and limited partnerships in credit unions complies with foreign legislation. The research thesis also states that Polish law permits investor shares only in credit unions but not in other types of cooperatives. On the other hand, laws in other European countries where credit unions are regulated do not permit investor shares, except in the UK. Finally, the research thesis indicates that the changes to the CUA comply with the MLCU.

2. Common Bond (Field of Membership)

Eligibility for credit union membership depends on a person's common bond. This internationally recognized standard dates back to a model of credit cooperatives developed by Friedrich Raiffeisen in 19th-century Germany.¹² Credit unions are credit cooperatives that are shaped after Friedrich Raiffeisen's model of credit cooperatives¹³ (Article 2 of the CUA states that a credit union is a cooperative and CL applies to the extent not regulated by the CUA). Credit union legislation most often refers to a common bond as a relation between people which is based on an organizational, professional or territorial foundation. However, the foundation of a common bond is usually not limited to statute law which enables the determination of other types of common bonds in credit union bylaws (Article 10 paragraph 1 of

⁹ Accessed November 24, 2023, https://www.woccu.org/member_services/our_network/membership/join.

¹⁰ World Council of Credit Unions Statistical Report 2022, accessed November 24, 2023, <https://www.woccu.org/about/statreport>.

¹¹ "Model Law for Credit Unions," Madison, WI: World Council of Credit Unions, 2015, accessed November 28, 2023, https://www.woccu.org/documents/Model_Credit_Union_Law_2015.

¹² Johnston Birchall, *People-Centred Businesses. Co-operatives, Mutuals and Idea of Membership* (London: Palgrave Macmillan, 2011), 135–42.

¹³ Ian MacPherson, *Co-operation, Conflict and Consensus. B.C. Central and the Credit Unions Movement to 1944* (Vancouver: B.C. Central Credit Union, 1995), 13–4.

the CUA, section 1A paragraph 2 (e) of the UK Credit Unions Act 1979;¹⁴ section 17 paragraph 2 of the Irish Credit Union Act 1997¹⁵). In the USA, the relationship between people that establishes a common bond is considered a field of credit union membership (Section 109 of the Federal Credit Union Act,¹⁶ Chapter 186.02 of the Wisconsin Statutes,¹⁷ Rule 80-2-8-.01 of Georgia Compiled Rules and Regulations,¹⁸ Chapter 2 Article 11 section 451-A of Consolidated Laws of New York¹⁹).

In Poland, statute law defines that a common bond between credit union members must be of a professional or organizational nature (Article 10 paragraph 1 of the CUA). In this regard, Polish law complies with the MLCU. Nonetheless, it does not allow credit union membership based on a territorial common bond. In the USA, the territorial common bond exists next to organizational and professional common bonds in the MLCU, Credit Unions Act 1979 and state law. A territorial common bond is one of a common place of residence, work or education (section 4.10 paragraph 3 of the MLCU, section 1A paragraph 3 (c) of the Credit Unions Act 1979, Chapter 186.02 of the Wisconsin Statutes, Rule 80-2-8-.01 of Georgia Compiled Rules and Regulations, Chapter 2 Article 11 section 451-A of Consolidated Laws of New York). The Republic of Lithuania Law on Credit Unions²⁰ also enables credit union membership based on a territorial common bond, i.e. residence in the same location – township or village (Article 17 paragraph 4 p. 4 of Republic of Lithuania Law on Credit Unions). However, Lithuania's national credit union organization is not a member of nor is

¹⁴ Accessed November 26, 2023, <https://www.legislation.gov.uk/ukpga/1979/34>.

¹⁵ Accessed November 26, 2023, <https://www.irishstatutebook.ie/eli/1997/act/15/enacted/en/print#sec17>.

¹⁶ Accessed November 26, 2023, <https://www.govinfo.gov/content/pkg/COMPS-264/pdf/COMPS-264.pdf>.

¹⁷ Accessed November 26, 2023, <https://law.justia.com/codes/wisconsin/2022/chapter-186/section-186-02/>.

¹⁸ Accessed November 28, 2023, <https://www.law.cornell.edu/regulations/georgia/Ga-Comp-R--Regs-R-80-2-8-.01>.

¹⁹ Accessed November 28, 2023, <https://www.nysenate.gov/legislation/laws/BNK/451-A>.

²⁰ Accessed December 5, 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.71010?jf-wid=bkaxlykv>.

affiliated with WOCCU.²¹ It is postulated that the territorial common bond should be included in the catalogue of common bonds in the CUA.²²

Professional or organizational common bonds can exist only between natural persons (Article 10 paragraph 1 of the CUA). Statute law also gives examples of common bonds that are considered professional or organizational; however, credit union bylaws can indicate other types of such common bonds. According to Article 10 paragraph 1 p. 1 of the CUA, a professional common bond exists between workers of the same employer or those working for multiple employers. In the latter case, a person who works for multiple employers falls within more than one common bond. As such, employees can share a common bond with persons who do not work for the same employer. This is considered a meta bond between groups of people who are connected by a common bond within a group.²³ Such groups of people may take the form of legally recognized organizations. In this case, a common bond connects the members of these organizations and not the organizations as legal persons (compare with Article 10 paragraphs 1a and 2 of the CUA). Notably, Article 10 paragraph 1 p. 1 of the CUA applies not only to workers employed under an employment contract (Article 22 of the Labour Code²⁴) but also to those employed based on other types of agreements obliging them to perform work.²⁵

Moreover, under Article 10 paragraph 1 p. 1 of the CUA, credit union bylaws can recognize multiple common bonds of different groups which are not connected by a meta bond.²⁶ A common bond of a professional nature should exist in each of these groups. Therefore, employees of different employers can be members of the same credit union which is expressly provided in Article 10 paragraph 1 p. 1 of the CUA. In this regard, the CUA

²¹ World Council of Credit Unions Statistical Report 2022, accessed November 24, 2023, <https://www.woccu.org/about/statreport>.

²² Bierecki, "The De Lege Ferenda Propositions," 49–51.

²³ Adam Jedliński, *Członkostwo w spółdzielczej kasie oszczędnościowo-kredytowej* (Warsaw: LexisNexis, 2020), 74.

²⁴ Act on the Labour Code of 26 June 1974, consolidated text: Journal of Laws 2023, item 1465.

²⁵ Adam Jedliński, "Art. 6," in *Komentarz do ustawy o spółdzielczych kasach oszczędnościowo-kredytowych* (Gdańsk: Info-Trade, 1998), 31.

²⁶ Jedliński, *Członkostwo w spółdzielczej kasie oszczędnościowo-kredytowej*, 75–6.

is similar to the Federal Credit Union Act whose Section 109 states that a membership field can be described as a multiple common bond. According to Section 109 of the Federal Credit Union Act, multiple common bond credit unions enable membership of more than one group of people, each of whom has (within the group) a common bond of occupation or association. This provision was amended by Public Law 105–219 of 7 August 1998,²⁷ referred to as the Credit Union Membership Access Act. This act enabled credit union membership based on a multiple common bond following the US Supreme Court ruling of 25 February 1998 in *National Credit Union Administration v. First National Bank & Trust Co.*,²⁸ which determined that credit unions are not allowed to have multiple common bonds among their members.

A multiple common bond is also expressly allowed under the Credit Unions Act 1979. Section 1A paragraph 1 of the Credit Unions Act 1979 states that admission to credit union membership must be limited to persons who fall within one or more common bonds appropriate to a credit union. This section was introduced to the Credit Unions Act 1979 by the amendment of Article 13 of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011.²⁹ It was a part of legislative and regulatory changes related to credit unions, which were introduced between 2000 and 2014.³⁰

On the other hand, Article 10 paragraph 1 p. 2 of the CUA states that an organizational common bond exists between natural persons who are affiliated with the same social or professional organization. In this case, only one common bond is allowed. An organizational common bond must be of a legal nature.³¹ This does not mean, however, that such a common

²⁷ Accessed November 28, 2023, <https://www.congress.gov/105/plaws/publ219/PLAW-105-publ219.pdf>.

²⁸ Accessed November 28, 2023, <https://supreme.justia.com/cases/federal/us/522/479/>.

²⁹ Accessed December 4, 2023, <https://www.legislation.gov.uk/ukSI/2011/2687/contents/made>.

³⁰ Daniel Tischer, Carl Packman, and Johnna Montgomerie, *Gaining Interest: A New Deal for Sustained Credit Union Expansion in the UK* (London: University of London, Goldsmiths, 2015), 14–7.

³¹ Piotr Zakrzewski, “Art. 10,” in *Spółdzielcze kasy oszczędnościowo-kredytowe. Komentarz*, eds. Andrzej Herbet, Szymon Pawłowski, and Piotr Zakrzewski (Warsaw: C.H. Beck, 2014), 134–5.

bond exists solely due to a legal relationship between an organization (corporation) and its members. Article 10 paragraph 1 p. 2 of the CUA expressly states that an organizational common bond applies to persons belonging (affiliated) with an organization of professional or social character. According to Henry Hansmann and Reiner Kraakman, an organization (corporation) is a nexus of contracts. Yet, this nexus considers not only membership in an organization but also other types of contractual legal relationships which involve employees and consumers.³² In my opinion, any kind of contractual relationship between individuals and a social or professional organization should be recognized as a common bond under Article 10 paragraph 1 p. 2 of the CUA, unless it is a contract of employment or another type of agreement obliging them to perform work because then it would be a common bond of professional nature and would be regulated by Article 10 paragraph 1 p. 1 of the CUA.

Article 10 paragraph 1 p. 2 of the CUA also provides that if legal persons are members of an organization, their members are connected with an organizational meta common bond and are eligible to join a credit union.³³

Legal entities are eligible for credit union membership based on a common bond with natural persons. The common bond in question is one between a member of a credit union (natural person) and a legal entity. However, the legal grounds for such a common bond are different in the case of partnerships (Article 10 paragraph 1a of the CUA) and other types of legal entities (Article 10 paragraph 2 of the CUA). For general partnerships, limited liability partnerships and limited partnerships, only membership in them constitutes a common bond between a partner and a partnership. Moreover, the CUA only recognizes membership of natural persons in a partnership as a common bond which makes the partnership eligible for credit union membership (Article 10 paragraph 1a of the CUA). Indeed, this common bond is a type of organizational common bond of credit union members, both in the case of natural persons and

³² Henry Hansmann and Reiner Kraakman, “The Essential Role of Organizational Law,” *The Yale Law Journal* 100, no. 3 (2000): 391; Henry Hansmann and Reiner Kraakman, “Organizational Law as Asset Partitioning,” *European Economic Law Review*, no. 44 (2000): 809, 812, 814, 816.

³³ Jedliński, “Art. 6,” 32.

partnerships. It is not a meta bond between a group of people (credit union members) who are connected by a common bond within a group (partners of a partnership), because it is the legal entity and not its members (partners) that are relevant here.

Under Article 10 paragraph 1a of the CUA, all partners of a partnership must be credit union members for a partnership to be eligible to join as a member. Therefore, partnerships are eligible for credit union membership if the bylaws permit multiple common bonds. A partnership is not obliged to have a common bond with all credit union members but rather only with its partners. Therefore, Article 10 paragraph 1a of the CUA permits multiple common bonds of organizational nature.

On the other hand, the UK Credit Unions Act 1979 regulates the membership of persons in terms of their capacity as partners in a partnership. These persons fall within common bonds appropriate to a credit union if the partnership distinctly relates to those who qualify for credit union membership by employing them or otherwise engaging them, providing services for their employer, or if the partnership has a place of business in or other significant connection with the locality of residence or employment of credit union members, or is a member of a *bona fide* organization or is otherwise associated with other union members (section 1A paragraph 4 (a)–(d) of the Credit Unions Act 1979). In such cases, the relevant party in determining a common bond is the partner and not the partnership; this is because general and limited partnerships do not have legal capacity under UK law (section 1 paragraph 1 of Partnership Act 1890,³⁴ sections 4 and 7 of Limited Partnerships Act 1907³⁵). This applies also in the case of partners of limited liability partnerships, even though such partnerships have a separate legal capacity (legal personality) from their partners (section 1 paragraph 2 of Limited Liability Partnerships Act 2000³⁶).

Under Polish law, other legal entities that can be credit union members include non-governmental organizations which conduct public benefit activities (Article 3 paragraph 2 of the Act on Public Benefit Activities and

³⁴ Accessed December 3, 2023, <https://www.legislation.gov.uk/ukpga/Vict/53-54/39/contents>.

³⁵ Accessed December 3, 2023, <https://www.legislation.gov.uk/ukpga/Edw7/7/24/contents>.

³⁶ Accessed December 3, 2023, <https://www.legislation.gov.uk/ukpga/2000/12/section/1>.

Volunteering of 24 April 2003³⁷), cooperatives, trade unions, church and religious association organizational units with a legal personality, as well as housing communities (Article 10 paragraph 2 of the CUA). These legal entities are eligible for credit union membership if they operate among credit union members. In this case, the above act requires a specific kind of single common bond which is not only organizational. Such a common bond is established solely through the legal entity's activities with credit union members. The activities in question may apply only to members who are natural persons and not legal partnerships. Indeed, Article 10 paragraph 2 of the CUA states that activities relevant to common bonds of legal entities concern members who are eligible for credit union membership due to professional or organizational common bonds (Article 10 paragraph 1 of the CUA). Such a common bond is a single common bond and not a meta bond because it binds legal entities and not their members. It is also considered that it is not required for a legal entity to actually operate among credit union members but only to have such a possibility under legal provisions or bylaws.³⁸

The MLCU allows partnerships and other legal entities (societies, associations, credit unions, companies and governmental units) to become members of a credit union if they comply with its membership criteria (section 4.15 paragraph 2 of the MLCU). In contrast, the MLCU states that credit union membership criteria may include one or more common bonds of professional, organizational or territorial nature (section 4.10 paragraph 2 of the MLCU). Therefore, under the MLCU, partnerships and other legal entities are eligible for credit union membership if they share a common bond with other members. There is no requirement for all partners to be credit union members.

³⁷ Consolidated text: Journal of Laws 2023, item 571.

³⁸ Dominik Bierecki, *Członkostwo w spółdzielczej kasie oszczędnościowo-kredytowej* (Sopot: Wydawnictwo Spółdzielczego Instytutu Naukowego, 2013), 31–2.

3. Investor Shares

3.1. Legal Status

The amendment of the CUA by the Act on a pan-European Personal Pension Product of 7 July 2023 also introduced investor shares, a new category of credit union shares. Among cooperatives, only credit unions can issue investor shares – insofar as their bylaws provide for that (Article 16c paragraph 1 of the CUA). Other European legislation that regulates credit unions does not permit investor shares, except in the UK. The UK Co-operative and Community Benefit Societies Act 2014³⁹ allows investor shares to be held by non-user investor members.⁴⁰ Credit unions themselves are also registered under the Co-operative and Community Benefit Societies Act 2014 (section 1 paragraph 1 of the Credit Unions Act 1979). Investor shares held by non-user investor members must be distinguished from interest-bearing shares which entitle the holder to interest but not to a dividend (section 7A paragraphs 1–6 of the Credit Unions Act 1979).

Under the CUA, the characteristics of investor shares are not common to membership shares. Membership shares always arise due to membership in a cooperative. They are considered a member's debt to or claim against the cooperative, depending on whether the member fulfils their obligation to pay the share value (Article 19 paragraph 1, Article 21 and Article 26 paragraph 1 of the CL⁴¹).⁴² Shares are not securities and credit unions may not issue certificates denoting share ownership (this is explicitly forbidden in the UK under section 7 paragraph 2 of the Credit Unions Act 1979 and in Ireland under section 28 paragraph 2 of the Credit Unions Act 1997). Also, shares must be distinguished from members' contributions to

³⁹ Accessed December 4, 2023, <https://www.legislation.gov.uk/ukpga/2014/14/contents>.

⁴⁰ Ian Snaith, "United Kingdom," in *Principles of European Cooperative Law. Principles, Commentaries and National Reports* (Cambridge–Antwerp–Portland, OR: Intersentia, 2017), 639, 686–7.

⁴¹ Act on Cooperatives Law of 16th of September 1982, consolidated text: Journal of Laws 2021, item 648, as amended.

⁴² Dominik Bierecki, "Acquisition of a Share in a Cooperative. Comparative Interpretation of Polish Cooperative Law," *Transformacje Prawa Prywatnego*, no. 1 (2021): 7–8; Piotr Zakrzewski, "Udział zadeklarowany," in *System Prawa Prywatnego*, ed. Krzysztof Pietrzykowski (Warsaw: C.H. Beck, 2020), 137–8; Piotr Zakrzewski, *Majątek spółdzielni* (Warsaw: LexisNexis, 2003), 39–69.

the cooperative which may be made in cash or in kind (Article 20 paragraph 2 of the CL). The legal character of these contributions varies, depending on the type of obligation entitling the cooperative to receive it from the member.⁴³ Under Article 12 of the CUA, credit union members should make contributions in cash apart from paying the share value. While such contributions may be interest-bearing, it does not mean that members are entitled to a dividend on this basis. In the case of credit unions, only investor shares entitle holders to a portion of the balance sheet surplus (dividend) for a given financial year (Article 26 paragraph 5 of the CUA).

Under the CL, member rights arise from membership in the cooperative (Article 18 paragraph 2 p. 1–6 of the CL).⁴⁴ This includes the right to receive a portion of the cooperative's balance sheet surplus, i.e. dividend (Article 18 paragraph 2 p. 5 and Articles 76 and 77 of the CL). Nonetheless, the CUA provides that investor shares are not related to credit union membership (Article 16c paragraph 1 of the CUA). This provision differentiates the Polish investor share concept from that included in UK regulations – under the Co-operative and Community Benefit Societies Act 2014, holders of investor shares are credit union members but not users of the union's services and, therefore, have limited voting rights (paragraph 6.31 and 6.32 of Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014⁴⁵). In Poland, acquiring credit union membership is not a legal action which creates an investor share (Articles 16 paragraph 1 and Article 17 paragraph 1 of the CL). Investor shares are taken up under agreements other than a cooperative membership contract (Article 16c paragraph 2 of the CUA). All of the shareholder's rights against the cooperative derive from an investor share. The rights covering the investor shares should be determined in the credit union bylaws (Article 16c paragraph 6 pt. 1 of the CUA).

⁴³ Dominik Bierecki, "Art. 20," in *Prawo spółdzielcze. Komentarz* (Warsaw: C.H. Beck, 2024), 93–4.

⁴⁴ Dominik Bierecki, "Zasada równości praw i obowiązków członków spółdzielni. Uwagi na tle orzecznictwa Sądu Najwyższego," *Prawo i Więź*, no. 1 (2022): 267–8; Krzysztof Pietrzykowski, *Powstanie i ustanie stosunku członkostwa w spółdzielni* (Warsaw: Wydawnictwo Uniwersytetu Warszawskiego, 1990), 53–9.

⁴⁵ Accessed December 5, 2023, <https://www.fca.org.uk/publication/finalised-guidance/fg15-12.pdf>.

The investor share may entitle the holder to claim a return of the share value and payment of part of the balance sheet surplus (dividend) for the given financial year from the credit union (Article 26 paragraph 5 of the CUA). In this respect, the CUA corresponds to the Co-operative and Community Benefit Societies Act 2014 since both entitle holders of investor shares to dividends. Investor shares may also grant corporate rights to holders who are not credit union members. According to Article 16d paragraph 2 pt. 1–3 of the CUA, such corporate rights include the following (credit union bylaws may grant some or all of them):

1. Appointing representatives entitled to participate in the meetings of credit union bodies without the right to vote. This right applies only to participation in meetings of credit union bodies that members can also attend, i.e. general assemblies and meetings of member groups (Article 18 paragraph 2 pt. 1 of the CL).
2. Receiving a copy of the statute and regulations and getting acquainted with resolutions and meeting minutes of the credit union bodies, as well as lustration protocols, annual financial reports and contracts concluded by the credit union with third parties. This right does not apply to information protected under Article 9e of the CUA. Where other information is requested, the credit union can also refuse to share it on the grounds of violating the rights of third parties or a reasonable suspicion that the requesting member may use it for purposes contrary to the credit union's interests, thereby causing it significant damage (Article 16d paragraph 2 pt. 3 of the CUA and Article 18 paragraph 3 of the CL).
3. Requesting that the competent bodies of the credit union consider applications regarding its activities (compare with Article 18 paragraph 2 pt. 4 of the CL which gives similar rights to credit union members).

The nominal value of an investor share is equal to the nominal value of a member share determined at the credit union (Article 16c paragraph 3 of the CUA). An investor share may only be taken up in exchange for cash (Article 16c paragraph 4 of the CUA). The total value of investor shares taken up at the credit union may not exceed 50% of the value of the share fund as specified in the credit union's current approved financial statements (Article 16c paragraph 5 of the CUA). The credit union bylaws

should determine the maximum number of investor shares at the credit union (Article 16c paragraph 6 pt. 2 of the CUA).

Although an investor share contains a claim against the credit union, it is non-transferrable (Article 16e paragraph 1 of the CUA; compare with Article 509 paragraph 1 of the CC⁴⁶). This refers to the traditional feature of membership shares in a cooperative, which are non-transferable as well. Yet, the newest Polish legislation on cooperatives permits limited share transfer. According to the Act on Farmers' Cooperatives of 4 October 2018⁴⁷ shares can be transferred to another member in the case of membership termination or when received by a person to whom the farmers' cooperative is obliged to return them after a member's death (Article 11 paragraphs 4 and 6 of the Act on Farmers' Cooperatives of 4 October 2018).⁴⁸ Shares are also transferrable under the SCER⁴⁹ (Article 4 paragraph 11 of the SCER).⁵⁰ Further, cooperative shares are transferable under French law (if authorized by a cooperative's executive body)⁵¹ and German law.⁵² However, the issue of share transferability is addressed differently across European credit union legislation. In the UK, credit union shares other than deferred shares are not transferable (section 7 paragraph 2 of the Credit Unions Act 1979). On the other hand, shares in credit unions are transferable between members in Ireland. Restrictions in the case of the latter apply to the number of shares held by members and the mandatory approval by the credit union's board (section 29 paragraph 1 of Credit Unions Act 1997).

⁴⁶ Act on the Civil Code of 23 of April 1964, consolidated text: Journal of Laws 2023, item 1610, as amended.

⁴⁷ Journal of Laws 2018, item 2073, as amended.

⁴⁸ Dominik Bierecki, "Zbycie udziału w spółdzielni rolników," *Pieniądże i Więź*, no. 1 (2019): 86–8.

⁴⁹ Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (O.J.E.C. L207, 18 April 2003).

⁵⁰ Dominik Bierecki, *Spółdzielnia europejska w świetle prawa polskiego* (Sopot: Wydawnictwo Spółdzielczego Instytutu Naukowego, 2017), 270–80.

⁵¹ David Hiez, "France," in *International Handbook of Cooperative Law*, eds. Dante Cracogna, Antonio Fici, and Hagen Henry (Berlin–Heidelberg: Springer, 2013), 444.

⁵² Volker Beuthien, "§ 76," in *Genossenschaftsgesetz mit Unwandlungs- und Kartellrecht sowie Statut der Europäischen Genossenschaft*, eds. Volker Beuthien, Reinmar Wolff, and Martin Schöpflin (München: C.H. Beck, 2018), 854–8.

Investor shares can be taken up only by legal persons (Article 16c paragraph 2 of the CUA). Because investor shares are not related to credit union membership, their acquisition is not limited to legal persons eligible for credit union membership (Article 10 paragraph 2 of the CUA). While a literal interpretation of Article 16c paragraph 2 of the CUA indicates that only legal persons can take up investor shares, one must also take into account Article 33¹ of the CC. According to Article 33¹ of the CC, the provisions on legal persons must be applied accordingly to the entities to which the legal act grants legal capacity. Therefore, under Article 16c paragraph 2 of the CUA and 33¹ of the CC, investor share acquisition should not be limited to legal persons but should also be allowed in the case of entities with legal capacity under the relevant legal act. This includes general, professional and limited partnerships (Article 10 paragraph 1a of the CUA), housing communities (Article 10 paragraph 2 of the CUA) and more since investor shares are not related to credit union membership. As such, other kinds of entities to which the legal act grants legal capacity are thus eligible for membership in credit unions and can take up investor shares. This includes limited joint-stock partnerships (Article 125 of the CCC), limited liability companies in organization, joint-stock companies in organization and simple joint-stock companies in organization (Articles 11, 161, 300¹¹ and 323 of the CCC).

While investor shares are not related to credit union membership, members can take them up based on legal relationships other than membership. Where this is the case, however, a member's right to enter into transactions with the credit union is limited because they cannot use credits or loans granted by the credit union (Article 16d paragraph 1 of the CUA). Notably, other types of credit union financial services are still available to members who are holders of investor shares. These services include collecting funds in a savings account, making cash settlements, as well as mediations related to concluding insurance contracts and selling and redeeming investment fund participation units or fund participation titles (Article 3 paragraph 1 and 1a of the CUA).

3.2. Balance Sheet Surplus (Dividend) Payable Based on Investor Shares

The credit union bylaws may provide that part of the balance sheet surplus for a given financial year may be allocated proportionally to holders

of investor shares who have paid their full value (Article 26 paragraph 5 of the CUA). Notably, this does not undermine the not-for-profit nature of the credit union since holders of investor shares are not credit union members. Not-for-profit entities do not divide profit between their members but use all of it for statutory activities.⁵³ Nonetheless, payments on investor shares are made after the profit (balance sheet surplus) is determined. Therefore, although credit union profit is not fully allocated to further statutory activities, the payments are made to external investors who choose to take up investor shares as a form of investment in the credit union. Sharing profit between members is also accepted under the MLCU. Under these guidelines, credit unions can pay dividends to their members based on ownership and preferred shares (section 6.15 paragraph 4 and section 6.20 of the MLCU).

As already noted, investor shares in this case should be considered claims against a credit union for payment of a portion of the balance sheet surplus (dividend). The portion payable based on investor shares should be determined by credit union bylaws and cannot exceed the share of the nominal value of investor shares in the credit union's share fund (Articles 16c paragraph 6 pt. 3 and 26 paragraph 6 of the CUA). Funds acquired by the union as payment for the investor shares are accumulated in a share fund (Article 24 paragraph 2 of the CUA). Moreover, the portion of the balance sheet surplus subject to payment based on investor shares may not exceed 25% of the credit union's balance sheet surplus for a given financial year (Article 26 paragraph 9 of the CUA).

Dividend payment based on investor shares is due after a resolution of the union's general assembly on the division of the balance sheet surplus (Article 77 paragraph 1 of the CL). However, several conditions must be met before the payment is made. Article 26 paragraph 7 of the CUA states that to pay investor share claims, the credit union:

1. must not have been obliged to develop and implement a restructuring program under Article 72a of the CUA (Article 26 paragraph 7 p. 1 of the CUA),

⁵³ Bernardo Bátiz-Lazo and Mark Billings, "New Perspectives on Not-for-Profit Financial Institutions: Organizational Form, Performance and Governance," *Business History* 54, no. 3 (2012): 311.

2. must have a solvency ratio of at least 5% (Article 24 paragraph 5 of the CUA) and the payment cannot lower this ratio, and where this condition remains unfulfilled, result in its further decrease (Article 26 paragraph 7 p. 2 and 3 of the CUA).

Where the credit union is implementing a restructuring program, dividend payments based on investor shares also require the following (besides meeting the conditions set out in Article 26 paragraph 7 p. 2 and 3 of the CUA):

1. the credit union must implement the restructuring program according to the agreed-upon schedule, at least in terms of own funds, solvency ratio, financial result and asset quality (Article 26 paragraph 8 p. 1 of the CUA),
2. the restructuring program must provide for dividend payments (Article 26 paragraph 8 p. 2 of the CUA).

If the above dividend payment conditions are not met, the portion of the balance sheet surplus to be paid out based on investor shares, as set out in a resolution by the credit union's general assembly, should be transferred to the credit union's resource fund (Article 26 paragraph 10 of the CUA). Once these conditions have been met, the payment based on investor shares should be made from the resource fund (Article 26 paragraph 11 of the CUA).

In my opinion, the portion of the balance sheet surplus (dividend) can be granted based on investor shares in the form of interest on shares (Article 77 paragraph 4 of the CL). Although Article 77 paragraph 4 of the CL refers to a division of balance sheet surplus (profit) between cooperative members, it should be applied as appropriate to credit unions (Article 2 of the CUA), because credit unions do not share profit between members and division of profit in their case is only allowed based on investor shares. The credit union's dividend can be distributed as interest on investor shares in two ways: by paying the appropriate amounts to the holders of investor shares or by increasing investor share value.⁵⁴ While Article 26 paragraph 7

⁵⁴ For more on dividend distribution in the form of interest on shares, see: Krzysztof Pietrzykowski, *Prawo spółdzielcze. Komentarz do zmienionych przepisów* (Warsaw: Wydawnictwo Prawnicze, 1995), 109.

of the CUA only to the payment of a portion of the balance sheet surplus to the holders of investor shares, it should be noted that this payment can be done later, after an increase of investor share value due to interest. In this case, conditions listed in Articles 26 paragraph 7 and 8 of the CUA and provisions indicated by Article 26 paragraph 10 and 11 of the CUA apply.

3.3. Termination of Investor Shares

Cooperative laws worldwide share a rule that member shares are reimbursed at a nominal value upon membership termination.⁵⁵ Under the CUA, this rule applies to investor shares, even though their reimbursement occurs due to termination by an investor (Article 16e paragraph 2 of the CUA). After all, investor shares are not related to credit union membership (Article 16c paragraph 1 of the CUA). If credit union bylaws permit the issuing of investor shares, their provisions should also determine the method and date of returning payments made on their account (Article 16c paragraph 6 pt. 6 of the CUA). The date of return determines the maturity of a claim for investor share reimbursement. Yet, this claim cannot be due until the approval of the credit union's financial statements for the year in which the holder of the investor share applied for reimbursement (Article 16e paragraph 3 pt. 1 of the CUA).

Investor shares cannot be reimbursed if they were used to cover the credit union's loss (Article 16e paragraph 3 pt. 2 of the CUA). Under Article 16e paragraph 4 pt. 1 (a) of the CUA, investor share termination is ineffective and shares are not reimbursed if this would result in potential or actual non-compliance with the credit union's solvency ratio requirements, and where they remain unmet, a further reduction in the credit union's solvency ratio.

Investor share termination is ineffective and shares are not reimbursed also in cases where the amount of the terminated investor shares exceeds the credit union's balance sheet surplus for the year in which the holder of the investor share applied for a reimbursement (Article 16e paragraph 4 pt. 2 of the CUA).

⁵⁵ Hagen Henry, *Guidelines for Cooperative Legislation* (Geneva: International Labour Organization, 2012), 78.

The credit union must immediately inform the Financial Supervision Authority about the termination of investor shares and the request for reimbursement of payments for investor shares (Article 16e paragraph 5 of the CUA).

4. Conclusions

While credit unions are not obliged to accept partnerships as members or issue investor shares, their bylaws may introduce such possibilities. Opening up to partnerships' membership establishes a multiple common bond credit union. The bond between credit union members (who are partners) and a partnership is organizational in nature.

In European credit union legislation, only the CUA and the Co-operative and Community Benefit Societies Act 2014 permit investor shares in credit unions. In both cases – in Poland and the UK – a credit union may issue investor shares based on its bylaws. However, the CUA includes extensive statutory regulation on investor shares, which limits the discretion to shape the bylaws' provisions regarding investor shares. In the UK, a variety of factors determine whether bylaws providing for investor shares infringe on the cooperative nature of a union. This includes, but is not limited to, credit unions. These factors are as follows: restricting the voting rights of non-user investor members to prevent them from voting on a motion to convert the cooperative into a company; and ensuring that the ultimate control of the credit union remains with members other than non-user investor members at all times by preventing the non-user investor members from accumulating a share of voting rights which would exceed that held by user-members, causing the latter to lose control over the union (paragraph 6.32. of Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014). Both Polish and UK regulation of investor shares comply with the International Cooperative Alliance rule that external investors (non-members) should not have the power to influence a cooperative.⁵⁶

⁵⁶ Jean-Louis Bancel, "3rd Principle: Member Economic Participation," in *Guidance Notes to the Co-operative Principles*, eds. Akira Kurimoto et al. (Brussels: International Cooperative Alliance, 2015), 39–40.

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