JACEK SKOCZEK

# Cooperative Law of the People's Republic of China. A Study on the Legal Construction of Purposive Transactions

*Prawo spółdzielcze Chińskiej Republiki Ludowej. Studium konstrukcji obrotu celowego*

## Abstract

The subject of this study is the legal structure of the Chinese agricultural cooperative, governed by the Law on Farmer Specialized Cooperatives of 2006 as amended in 2017 and, since 2021, by the provisions of the Civil Code of the People's Republic of China concerning special legal persons. The author argues that Chinese law marks the extreme, quantitative pole of the juridification of member transactions: a member's transaction with the cooperative is simultaneously a statutory membership obligation, a criterion for the distribution of surplus subject to a statutory minimum, a measure delimiting the mutual sphere from the commercial one, and a condition of enhanced voting power. The analysis covers, in turn, the regulatory pluralism of Chinese cooperative law, its structural foundation in the household contract responsibility system, the qualification of the cooperative as a special legal person, the law of membership, the construction of purposive transactions, the rules governing the distribution of surplus, additional votes, and the mechanism of termination of membership. Confronting this statutory model with the findings of empirical research on shell cooperatives leads to the conclusion that the density of regulation of member transactions is a necessary but insufficient condition of genuine mutuality.

KEYWORDS: Chinese cooperative law, farmer specialized cooperative, purposive contract, member patronage, patronage refund, cooperative democracy, special legal person, shell cooperatives.

SŁOWA KLUCZOWE: chińskie prawo spółdzielcze, wyspecjalizowana spółdzielnia rolników, umowa celowa, obrót celowy, nadwyżka bilansowa, demokracja spółdzielcza, szczególna osoba prawna, spółdzielnie fasadowe.

JACEK SKOCZEK – PhD in law, Cooperative Research Institute in Sopot, e-mail: jacek.skoczek@sin.edu.pl.
ORCID – 0000-0001-8037-2661.

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## 1 Introductory Remarks

Polish legal scholarship devotes scant attention to Chinese cooperative law, which is in itself unsurprising, for the deficit of comparative and historical research into cooperatives was accurately diagnosed in this country years ago with respect to legal orders far closer to us culturally[1]. That omission is nonetheless, in my view, difficult to defend[2]. China is, after all, a state in which more than two million agricultural cooperatives have been registered – more than in the rest of the world combined; and, what matters more to a lawyer, the Chinese legislature has resolved a number of structural problems of the cooperative in a manner unknown to European legal orders, and has resolved them, moreover, by statute rather than by leaving them to the articles of association.

This study pursues two aims. First, to present the legal structure of the Chinese agricultural cooperative as fully as possible in a problem-based arrangement – that is, around the questions of legal personality, the membership relationship, purposive transactions, cooperative democracy, the surplus and the role of the state – rather than in the order of the successive provisions of the statute. Second, to set the Chinese solutions against constructions known to Polish and German law wherever such a comparison makes it possible to grasp the divergence of the assumptions upon which the respective institutions rest.

A word on terminology is required. By *purposive transactions* I mean the totality of the dealings conducted between a cooperative and its members in performance of the cooperative economic purpose, and by a *purposive contract* the individual juridical act forming part of those

1 Henryk Cioch, „Zasady roczdelskie i ich realizacja w praktyce" [The Rochdale Principles and Their Implementation in Practice], *Teka Komisji Prawniczej PAN Oddział w Lublinie* 2 (2009): 26.

2 The deficit concerns the Chinese direction alone; Polish cooperative-law scholarship conducts systematic research into agricultural cooperation and its legal environment – see Aneta Suchoń, „Problematyka spółdzielni funkcjonujących w obszarze wsi i rolnictwa w orzecznictwie sądów oraz Trybunału Sprawiedliwości Unii Europejskiej" [Cooperatives Operating in the Rural and Agricultural Sphere in the Case Law of the Courts and of the Court of Justice of the European Union], *Prawo i Więź*, No. 43 (2022): 140–164, https://doi.org/10.36128/priw.vi43.626; Aneta Suchoń, "The Seven Cooperative Principles and Legal Regulations for the Establishment and Operation of Cooperatives in the Agricultural and Food Sector in Poland", *Prawo i Więź*, No. 6 (2024).

dealings, that is, in particular, a contract for the delivery of agricultural produce, a contract for the provision of services or a loan agreement. I thereby employ the counterpart of the German notion of *Zweckgeschäft*, which is opposed to ancillary transactions and to transactions with non-members; its equivalents are the Italian *rapporto mutualistico* and the French *engagement d'activité*[3]. This distinction is not, in the present study, a matter of mere ordering; it is a precondition of understanding Chinese law, which – as I intend to demonstrate – has made transactions so understood the axis of the entire construction of the cooperative.

## 2 Regulatory Pluralism, or the Absence of a General Cooperative Statute

The starting point of any analysis must be an observation of a negative character: the People's Republic of China has no general cooperative statute. The only act of statutory rank governing the structure of cooperatives remains the Law on Farmer Specialized Cooperatives, adopted on 31 October 2006, in force from 1 July 2007 and thoroughly revised on 27 December 2017, the new text having entered into force on 1 July 2018[4]. Two vast segments of Chinese cooperation fall outside its scope: the supply and marketing cooperatives, organised in a structure crowned by the All China Federation of Supply and Marketing Cooperatives, and the rural credit cooperatives, which have for years been converted into rural cooperative and commercial banks. Both groups operate on the basis of

3 On the notion of *Zweckgeschäft* and its opposition to ancillary transactions (*Hilfsgeschäfte*) and transactions with non-members (*Gegengeschäfte*) see the literature on § 1 of the Genossenschaftsgesetz; as to Italian law, the construction of *rapporto mutualistico* in connection with Article 2512 et seq. of the codice civile; as to French law, Article L. 521-3 of the Code rural et de la pêche maritime and the notion of *engagement d'activité*.

4 中华人民共和国农民专业合作社法 [Law of the People's Republic of China on Farmer Specialized Cooperatives], adopted on 31 October 2006 at the 24th session of the Standing Committee of the Tenth National People's Congress, in force from 1 July 2007, revised on 27 December 2017 with effect from 1 July 2018. English translation of the original text: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2008-01/02/content_1388023.htm; revised text: http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-12/27/content_2035707.htm. The numbering of the articles shifted as a result of the revision; in the footnotes that follow I therefore cite the original and the revised wording separately.

administrative regulations and acts of supervisory authorities rather than of statute[5].

This solution is not the outcome of legislative neglect but of deliberate choice. Chinese doctrine openly professes a legislative philosophy differing from the Western one, opposing a statute of a promotional character to a statute of a regulatory character: the 2006 act was conceived primarily as an instrument for supporting the development of a new organisational form, and only secondarily as an instrument for regulating its structure. The consequence of that assumption is the deliberate retention of the provisions at a high level of generality, so as to leave room for local experimentation[6]. The Chinese legislature thus deliberately renounced the normative density which European lawmakers regard as a condition of the protection of the member.

That choice gives rise to a systemic consequence which can hardly be overstated: Chinese cooperative law is sectoral law rather than law of an entity type. It contains no general notion of the cooperative from which the features of its particular kinds might be derived; it contains instead a detailed regulation of a single kind of cooperative, which then radiates onto the remaining ones. On this point the contrast with the Polish model, in which the Cooperative Law performs the function of a general act in relation to special regulations, is complete.

## 3 The Structural Foundation: The Household Contract Responsibility System

Understanding the Chinese definition of the cooperative requires the prior reconstruction of the ownership structure of the Chinese countryside, for the statute refers to it expressly, defining the cooperative as an

5 Materials of the All China Federation of Supply and Marketing Cooperatives, http://www.chinacoop.gov.cn; on the conversion of rural credit cooperatives into cooperative and commercial banks see the OECD reports on Chinese agricultural policy.

6 论合作社的法律地位 [On the Legal Status of the Cooperative], Institute of Law of the Chinese Academy of Social Sciences, http://www.iolaw.cssn.cn; 农民专业合作社的法律制度问题 [Problems of the Legal System of Farmer Specialized Cooperatives], http://www.chinacoop.gov.cn; 《农民专业合作社法》的改进与完善建议 [Proposals for the Improvement and Refinement of the Law on Farmer Specialized Cooperatives], 农业经济问题 [Issues in Agricultural Economy], No. 5 (2018).

organisation based on the rural household contract responsibility system. Without that reference the definition remains unintelligible.

The reforms initiated at the end of the 1970s and developed in the 1980s led to the dissolution of the people's communes, yet they did not entail the privatisation of land. Agricultural land remained the property of rural collectives; households acquired instead – on the basis of contracts concluded with the collective – contractual rights to its use, increasingly strongly protected and extended in duration. That model, known as the household contract responsibility system, ultimately found statutory expression in the Rural Land Contracting Law, and the 2018 amendment of that act sanctioned the construction of the separation of three rights: the ownership of the collective, the contracting right of the household, and the transferable right of management[7].

The consequences for the structure of the cooperative are twofold, and both are fundamental. First, the membership substratum of the Chinese cooperative consists not of landowners but of holders of contractual rights – that is, of entities whose proprietary position is by nature weaker and less stable than that of the European farmer. Second, and this strikes me as the weightier observation, what the member contributes to the cooperative is often not a thing but precisely a right of an obligational character or a limited right in rem, while the purposive transaction itself – the delivery of produce obtained from contracted land – is the economic continuation of the relationship binding the household to the collective. The cooperative therefore enters not into a void but into an already dense network of legal relationships, which explains why the legislature decided to subject those dealings to so strict a regime.

## 4 The Road to the Statute. Why Only in 2006

The question of the date of the statute's enactment is ostensibly a question of history; in truth it is a question of legislative method. Agricultural cooperatives began to emerge spontaneously in China as early as

7 中华人民共和国农村土地承包法 [Rural Land Contracting Law of the People's Republic of China] of 2002, amended in 2018, introducing the construction of the separation of three rights (三权分置). See further Dongwen Yang and Zhiyou Liu, "Study on Chinese Farmer Cooperative Economy Organization and Agricultural Specialization", *Agricultural Economics – Czech* 58, No. 3 (2012): 137.

the 1980s and 1990s, in conditions of a complete absence of regulation, taking the form of assorted "farmer cooperative economy organisations" and technical associations. For nearly two decades the state observed the phenomenon, permitting in parallel regulation by the individual provinces, and only once practice had produced stable organisational patterns did it enclose them within a statutory framework[8].

That sequence – practice, local experiment, provincial regulation, and only at the end a statute – is the reverse of the European sequence, in which the legislature usually creates a legal form in the expectation that practice will fill it. It is worth noting, moreover, that the statute does not operate in China on its own: understanding it requires recourse to the annual "Document No. 1" of the Central Committee and the State Council, devoted to the problems of the countryside, agriculture and farmers, in which political objectives are formulated and subsequently translated into implementing acts and administrative practice[9]. For the European lawyer this means the necessity of taking into account, in the course of interpretation, sources that have no counterpart in our system of sources of law – and whose omission leads to a reconstruction of the structure of the cooperative wholly detached from its functioning.

## 5 Legal Personality. The Cooperative as a Special Legal Person

The most interesting question of Chinese cooperative law – and one which, to the best of my knowledge, has not been described in Polish

8 Yuanfei Hu, Zuhui Huang, George W.J. Hendrikse and Xuchu Xu, "Organization and Strategy of Farmer Specialized Cooperatives in China" (paper, International Association of Agricultural Economists Conference, 2006), https://doi.org/10.22004/ag.econ.25610; Jos Bijman and Dinghuan Hu, "The Rise of New Farmer Cooperatives in China: Evidence from Hubei Province", *Journal of Rural Cooperation* 39, No. 2 (2011); 徐旭初, 中国农民专业合作社发展研究 [Xu Xuchu, A Study on the Development of Farmer Specialized Cooperatives in China].

9 中央一号文件 [Document No. 1], the annual documents of the Central Committee of the Communist Party of China and of the State Council devoted to the problems of 三农 – the countryside, agriculture and farmers; implementing acts of the State Council (国务院). See also Hengshan Deng, Jikun Huang, Zhigang Xu and Scott Rozelle, "Policy Support and Emerging Farmer Professional Cooperatives in Rural China", *China Economic Review* 21, No. 4 (2010).

scholarship at all – is the qualification of the cooperative under the Civil Code of the People's Republic of China, adopted on 28 May 2020 and in force since 1 January 2021. That Code divided legal persons into three categories: for-profit legal persons, non-profit legal persons and – which constitutes an original solution – special legal persons. To the last category it assigned organs of public authority, rural collective economic organisations, urban and rural cooperative economic organisations, and grassroots self-governing organisations of residents[10].

The significance of this operation is, in my view, difficult to overestimate. The Chinese legislature has thereby resolved by statute a controversy which in Europe has been running for a century: whether the cooperative is a variant of the commercial company or a distinct type of legal person. The Chinese answer is unequivocal – the cooperative belongs neither among for-profit nor among non-profit legal persons; it is a creature *sui generis* whose membership of a third, autonomous category is intended to emphasise its connection with the economic order of the countryside rather than with the corporate construction of commercial law.

The solution is not, however, free from doubts, and those doubts are, I think, worth drawing out. The Code employs the notion of the cooperative economic organisation rather than that of the farmer specialized cooperative used by the 2006 statute; the relation between the two notions has not been settled by statute, and it therefore remains contentious in doctrine whether the agricultural cooperative falls under the Code provision directly or only by analogy, and further, how it is to be delimited from the rural collective economic organisation, which is separately enumerated in the Code[11].

10 中华人民共和国民法典 [Civil Code of the People's Republic of China], adopted on 28 May 2020, in force from 1 January 2021, provisions on special legal persons (特别法人). On the construction of the legal person in Chinese law see the works of 刘俊海 [Liu Junhai] on legal persons and company law.

11 任大鹏, "《农民专业合作社法》的基本理论问题反思——兼议《农民专业合作社法》的修改" [Ren Dapeng, Reflections on the Fundamental Theoretical Problems of the Law on Farmer Specialized Cooperatives, with Remarks on Its Amendment], 东岳论丛, No. 1 (2017); 苑鹏, "关于修订《农民专业合作社法》若干问题的再思考" [Yuan Peng, Further Reflections on Selected Problems of the Amendment of the Law on Farmer Specialized Cooperatives], 东岳论丛, No. 1 (2017).

A trace of the same structural bifurcation of the cooperative's position – a bifurcation into an internal, mutual sphere of dealings and an external one, known after all to Polish case law and Italian doctrine alike – was the original construction of the cooperative's proprietary rights. Under the 2006 text the statute granted it only possession, use and disposal of its assets, conspicuously omitting the taking of fruits, which doctrine explained by reference to the cooperative's non-profit character vis-à-vis its members, from whom its revenues derive and to whom those revenues return. The 2017 revision removed that asymmetry, granting the cooperative the full range of entitlements in respect of its assets – which include, and this deserves emphasis, direct budgetary subsidies from the state – and confirming the limited liability of members up to the amount of their contribution and of the share of the reserve fund attributable to them, as recorded in an individual account[12].

## 6 The Membership Relationship

The statute defines the cooperative as a mutual-aid economic organisation, formed voluntarily and managed democratically by producers of the same kind of agricultural products or by suppliers or users of services connected with that production, and based on the rural household contract responsibility system. The definition is thus doubly restrictive: as to persons, through the requirement that production be homogeneous, and structurally, through the reference to the contract responsibility system.

The law of membership is determined by five principles, expressed in a provision of a programmatic character: the agricultural membership substratum, service to members, democratic management, the return of surplus in proportion to transactions, and voluntary accession together with freedom to withdraw. The first of these merits particular attention: farmers must constitute at least eighty per cent of the members, and the participation of enterprises, public institutions and social organisations is strictly limited, while the founding threshold has been set surprisingly

12 农民专业合作社的法人地位和成员的有限责任 [The Legal Personality of the Farmer Specialized Cooperative and the Limited Liability of Its Members], http://www.zhhlaw.com.

low – at a mere five members[13][14].

Juxtaposing these two solutions reveals a tension which has proved consequential in practice. The legislature secured the agricultural character of the cooperative by a purely quantitative device – a percentage threshold – without reaching for any qualitative measure, and in particular without tying the status of member to actual participation in purposive transactions. It has therefore become admissible to establish a cooperative in which a twenty-per-cent minority of non-farming entities concentrates the whole of the capital and of actual control, while the formal requirement of an agricultural substratum is satisfied by members recruited solely in order to meet it.

That phenomenon has been described in Chinese scholarship as a "circle-layer structure", distinguishing core members, who concentrate ownership rights and actual control, from common members, reduced to the use of the cooperative's services[15]. It corresponds to the distinction introduced into the theory of cooperation by H. Hansmann – between the investor member and the user member – with the difference, however, that in Chinese conditions that division follows neither from the articles of association nor from any express decision of the legislature, but from

13 Reserving membership for farmers is not alien to Polish law – cf. Article 139 § 1 of the Cooperative Law, restricting membership of an agricultural production cooperative to farmers who are owners, autonomous possessors, lessees or usufructuaries of agricultural land; see further Suchoń, „Problematyka spółdzielni funkcjonujących w obszarze wsi i rolnictwa", 140–164.

14 "农民专业合作社的法律制度问题". On the empirical effect of patronage-proportionate refunds on cooperative performance see Linhai Zeng and Junmin Wan, "How Do Cooperative Rebates and Asset Specificity Impact Operating Performance of Farmer Cooperatives? Evidence from China", *PLOS ONE* 19 (2024).

15 于欣慧 and 任大鹏, "农民专业合作社的'圈层结构'——从单点合作到多点合作" [Yu Xinhui and Ren Dapeng, The "Circle-Layer Structure" of the Farmer Specialized Cooperative: From Single-Point to Multi-Point Cooperation], 农村经济 (2017); Qiao Liang and George W.J. Hendrikse, "Core and Common Members in the Genesis of Farmer Cooperatives in China", *Managerial and Decision Economics* 34, No. 3–5 (2013); Qiao Liang, George W.J. Hendrikse, Zuhui Huang and Xuchu Xu, "Governance Structure of Chinese Farmer Cooperatives: Evidence from Zhejiang Province", *Agribusiness* 31, No. 2 (2015).

a factual balance of power to which the statute has set no bar[16][17].

## 7 Purposive Transactions as a Statutory Membership Obligation

The essence of the Chinese model reveals itself only in three solutions which make the purposive contract the axis of the entire structure of the cooperative.

First, transacting with the cooperative in accordance with the provisions of the articles of association is a statutory obligation of the member. The obligation to participate in purposive transactions – which in the Finnish model remains entirely a matter for the articles, in the German is sometimes derived from the statutory task of supporting members, and in the Polish follows from statute only exceptionally, as in workers' cooperatives – has here been elevated to the rank of a general membership obligation binding every member of every cooperative covered by the statute[18].

Second, purposive transactions constitute the principal criterion of distribution, on which more below.

Third and finally, the statute requires the accounting separation of purposive transactions: the accounts of transactions with members are kept separately from the accounts of transactions with non-members using the cooperative's services; and further, the cooperative maintains for each member an individual account recording, among other things,

16 The tension between the member's position as user and that as provider of capital is contested in Polish law as well – see Jacek Skoczek, „Członek spółdzielczej kasy oszczędnościowo-kredytowej – konsument czy inwestor?" [A Member of a Cooperative Savings and Credit Union: Consumer or Investor?], *Głos Prawa. Przegląd Prawniczy Allerhanda*, No. 1 (2023), https://glosprawa.pl/artykul-305/czlonek-spoldzielczej-kasy-oszczednosciowo-kredytowej-konsument-czy-inwestor.

17 Henry Hansmann, *The Ownership of Enterprise* (Cambridge, MA: Belknap Press of Harvard University Press, 1996).

18 Article 18(3) of the Law on Farmer Specialized Cooperatives in its original wording (Article 23(3) in the 2017 numbering). As to the Finnish model see the osuuskuntalaki (421/2013) and the construction of the jäsensopimus; as to the German, § 1 of the Genossenschaftsgesetz and the notion of Förderauftrag.

the volume of that member's dealings with the cooperative[19].

The purposive contract is thus at once an obligation, a measure and a measuring device: a membership obligation, the measure of participation in the surplus, and the device delimiting the mutual sphere from the commercial one. I know of no legal order in which a member's transactions with the cooperative are regulated with comparable density – and it is precisely that density, rather than any structural exoticism, which makes the Chinese example worth analysing.

## 8 The Surplus and the Return to the Rochdale Principle

The surplus is distributed among the members chiefly in proportion to the volume or value of the transactions effected with the cooperative, and – this being a solution of a groundbreaking character – the aggregate amount of surplus distributed according to that criterion may not be lower than sixty per cent of the distributable surplus[20]. The Chinese legislature did not therefore confine itself to indicating a criterion, but furnished it with a statutory quantitative minimum, thereby limiting the freedom of the articles of association in a manner unknown to European legal orders.

It is worth perceiving, however, that this solution – extreme though it is in intensity – is not an exotic novelty but the juridification of one of the oldest principles of the cooperative movement[21]. Distribution of surplus in proportion to dealings with the cooperative was among the four principles recognised by the International Cooperative Congress in Paris in 1937 as mandatory criteria of the cooperative character of an organisation; the Vienna Congress of 1966 rendered that rule more flexible, permitting, alongside distribution proportionate to transactions, the allocation of surplus to the development of the cooperative or to facilities of common use; and the Manchester Declaration of 1995 absorbed it

19 Article 34 and Article 3(5) in conjunction with Article 36 of the Law on Farmer Specialized Cooperatives in its original wording.

20 "农民专业合作社的法律制度问题".

21 On the reception of the cooperative principles in the Polish legal order see Suchoń, "The Seven Cooperative Principles".

into the broader principle of members' economic participation[22]. It is telling, moreover, that the Polish legislature gave that principle normative expression as early as the Act of 29 October 1920 on Cooperatives – that is, more than a decade before its codification by the Congress[23].

The Chinese requirement that at least sixty per cent of the surplus be distributed according to a member's dealings with the cooperative turns out, in essence, to be a return – in a quantitatively tightened version furnished with a statutory minimum – to the original, mandatory form of the Rochdale principle, which European legal orders have with time relaxed. The development of cooperative law is therefore not linear; what from a European perspective looks like an avant-garde solution is sometimes the oldest stratum of the tradition, preserved where capital pressure upon the cooperative form appeared later.

In passing, in considering the genesis of the principles of the cooperative movement, it is worth noting the view of H. Cioch, according to whom the first cooperative should be regarded as being not the Rochdale consumers' cooperative of 1844 but the Agricultural Society for Self-Help in Misfortune, founded at Hrubieszów by Stanisław Staszic in 1816 – which would make the progenitor of cooperation an organisation established on Polish lands almost three decades before the English model[24].

## 9 Cooperative Democracy and Additional Votes

The solution which I regard as unique on a world scale concerns the right to vote. Alongside the basic principle of one member, one vote, the statute permits members with a larger contribution or a larger volume of transactions with the cooperative to exercise – in accordance with the articles of association – additional votes, the aggregate number of which

22 Cioch, „Zasady roczdelskie", 26–28; on the evolution of the principles of the International Cooperative Alliance see further Piotr Zakrzewski, „Zasady Międzynarodowego Związku Spółdzielczego" [The Principles of the International Cooperative Alliance], *Kwartalnik Prawa Prywatnego*, No. 1 (2005): 277 et seq.; International Cooperative Alliance, *Statement on the Cooperative Identity* (Manchester: ICA, 1995).

23 Article 57 of the Act of 29 October 1920 on Cooperatives (Journal of Laws No. 111, item 733); see Cioch, „Zasady roczdelskie", 33.

24 Cioch, „Zasady roczdelskie", 26.

may not exceed twenty per cent of the basic votes, and whose beneficiaries are subject to disclosure at every members' assembly[25][26].

The intensity of a member's use of the cooperative's services thus translates directly into that member's corporate power. The Chinese lawmaker has linked the weight of the vote not only to the size of the capital contribution but – alternatively – also to the volume of transactions, and hence to the position of user rather than investor. This is, so far as I am aware, the only case in which a legislature has made the volume of a member's transactions a direct condition of the weight of that member's vote.

A partial European analogy is furnished by § 43(3) of the German Cooperatives Act, which permits multiple votes under the articles – as a rule no more than three – solely for members who particularly support the activity of the cooperative, with reduction to a single vote in the case of resolutions requiring a qualified majority. The Polish legislature, by contrast, permits departure from the one-member-one-vote principle only in cooperatives whose members are legal persons[27][28]. The juxtaposition of

25 The disclosure requirement operates here as an instrument of control exercised by the remaining members; on the scope of a cooperative member's right to information in Polish law see Marta Stepnowska, „Prawo członka spółdzielni do informacji" [The Right of a Cooperative Member to Information], *Prawo i Więź*, No. 4 (2020).

26 Article 17 of the Law on Farmer Specialized Cooperatives in its original wording; following the 2017 revision, Article 22. The articles of association must specify the establishment, manner and scope of exercise of additional votes. The practical significance of the provision is attested by more than ninety judgments and court documents linked to it in the PKULaw database, http://www.law.pkulaw.com.

27 § 43(3) of the Genossenschaftsgesetz: multiple votes may be granted only to members who particularly support the activity of the cooperative; no member may be granted more than three votes, and in the case of resolutions for which the law requires a majority of three quarters of the votes cast or greater, as well as resolutions abolishing or restricting the provisions of the articles on multiple votes, a member has only one vote; separate and looser rules apply to cooperatives of entrepreneurs and to cooperatives whose members are exclusively or predominantly cooperatives. In Polish law, Article 36 § 2 of the Act of 16 September 1982 – Cooperative Law (consolidated text, Journal of Laws of 2021, item 648, as amended).

28 Additional votes constitute a departure from the principle of equality of the rights and obligations of members of a cooperative; on the scope and limits of that principle see Dominik Bierecki, „Zasada równości praw i obowiązków członków spółdzielni" [The Principle of Equality of the Rights and Obligations of Members of a Cooperative], *Prawo i Więź*, No. 1 (2022).

these three solutions neatly encapsulates the difference of philosophies: the German legislature ties the exception to merit towards the cooperative enterprise, the Polish to the type of entity that the member is, and the Chinese directly to the intensity of purposive transactions.

In Chinese scholarship the phenomenon is sometimes described as graduated democracy, and assessments of the construction are far from unanimous: alongside the position that additional votes constitute a rational reflection of the actual contribution made to the cooperative's activity, the view is advanced that, in the conditions of the circle-layer structure described above, the provision merely legalises the predominance of core members[29]. The soundness of the second of these positions is, I think, confirmed by the empirical findings cited below.

## 10 Termination of Membership and the Fate of Subsisting Purposive Contracts

The Chinese legislature has consistently subordinated to purposive transactions the moment of termination of membership as well. A member intending to withdraw from the cooperative files a written application three months before the end of the financial year – and members that are enterprises, public institutions or social organisations, six months – unless the articles provide otherwise, membership ceasing only at the close of that financial year[30].

This solution displays a structural similarity to Article 35 of the Polish Act on Cooperative Savings and Credit Unions, both orders tying the fate of subsisting purposive contracts to the termination of membership[31].

29 任大鹏 and 李蔚, "农民合作社梯次民主现象研究" [Ren Dapeng and Li Wei, A Study of the Phenomenon of Graduated Democracy in Farmer Cooperatives], 西北农林科技大学学报（社会科学版） (2017). 孙长坪, "论农民专业合作社法人治理结构的冲突与完善" [Sun Changping, On the Conflicts within and the Improvement of the Corporate Governance Structure of the Farmer Specialized Cooperative], 理论建设 (2011).

30 Article 25 of the Law on Farmer Specialized Cooperatives in its 2017 wording: the application to withdraw is filed with the chairman of the board of directors or with the board of directors; the membership qualification of the withdrawing member ceases upon the close of the financial year. Cf. Article 35 of the Act of 5 November 2009 on Cooperative Savings and Credit Unions (consolidated text, Journal of Laws of 2024, item 512, as amended).

31 On the termination of membership of a cooperative savings and credit union

The legislative technique is nonetheless different in each of them, indeed opposite. The Chinese legislature defers the termination of membership so that settlement of subsisting contracts may be closed within the natural accounting cycle; the Polish accelerates the maturity of claims under those contracts in reaction to the termination of membership. The first solution protects the continuity of settlements at the cost of freedom to withdraw, the second protects the cooperative at the cost of the withdrawing member's proprietary position[32]. It is therefore worth noting that a close linkage of member transactions to membership does not of itself determine anything as to the direction of protection – that depends on the technique the lawmaker employs.

## 11 Unions of Cooperatives

The 2017 revision permitted the formation of unions of cooperatives, filling a gap which had for a decade been the object of doctrinal criticism. Three or more cooperatives may form a union, which acquires legal subjectivity of its own; the construction embraces both horizontal cooperation and vertical integration within the processing chain[33].

What matters for the subject of this study is that the union reproduces – at a higher tier – the same structure: its members are cooperatives, and the transactions binding the union to its members are functionally identical with the purposive contracts of the basic tier. There arises, however, a question to which the statute gives no express answer: whether the transactional obligation and the rule of distributing surplus according to volume of dealings apply to the union.

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and its proprietary consequences in the case law of the Supreme Court see Jacek Skoczek, „Problematyka członkostwa w kasach oszczędnościowo-kredytowych w orzecznictwie Sądu Najwyższego w latach 2019–2022" [Membership of Cooperative Savings and Credit Unions in the Case Law of the Supreme Court in 2019–2022], *Prawo i Więź*, No. 43 (2022): 173–186, https://doi.org/10.36128/priw.vi43.622.

32 The question of the proportionality of solutions protecting the member of a cooperative at the cost of the cooperative's own financial stability is analysed by Jacek Skoczek, "Limits of Application of the Institution of Free Credit by a Member of the Cooperative Savings and Credit Union", *Prawo i Więź*, No. 4 (2024), https://doi.org/10.36128/PRIW.VI50.898.

33 Provisions on unions of cooperatives (联合社) introduced by the revision of 27 December 2017.

## 12 The State as Co-Creator of the Cooperative

The genesis of Chinese cooperatives is the work of enterprising farmers and of the state, rather than of the bottom-up collective action of small producers[34]. That proposition, advanced in the literature with considerable firmness, requires elaboration, for it contains the key to understanding the discrepancy between the letter of the statute and practice.

The Chinese state does not confine itself to creating a legal form and leaving it to practice, but actively stimulates its use: through direct budgetary subsidies, tax preferences, credit facilities and – which is particularly significant – through a policy of supporting so-called dragon-head enterprises, around which the "enterprise – cooperative – household" model is organised[35]. In that model the cooperative performs the function of an intermediate link between the processor and dispersed producers, the initiative for its establishment usually coming from the enterprise rather than from the farmers[36].

The legal consequence is, in my view, as follows: a cooperative whose establishment was initiated by its counterparty, and whose operation is financed from the budget, formally pursues the aim of supporting its members, but in truth organises supply for the needs of a third party. The purposive transaction then retains its juridical form but loses its function:

34 "Farmers' Assessments of Their Cooperatives in Economic, Social, and Environmental Terms: An Investigation in Fujian, China", *Frontiers in Environmental Science* 9 (2021); Tanvir Sultan and Axel Wolz, "Agricultural Cooperative Development in China and Vietnam since Decollectivization: A Multi-Stakeholder Approach", *Journal of Rural Cooperation* 40, No. 2 (2012): 1–21.

35 Public support granted to agricultural cooperatives is a widespread phenomenon in the European Union as well, though it is subject there to the State aid regime – see Aneta Suchoń and Maria Zuba-Ciszewska, „Spółdzielnie w sektorze rolno-spożywczym jako beneficjenci pomocy udzielanej w ramach formuły de minimis oraz de minimis w rolnictwie – aspekty prawne i ekonomiczne" [Cooperatives in the Agri-Food Sector as Beneficiaries of de minimis and Agricultural de minimis Aid: Legal and Economic Aspects], *Prawo i Więź*, No. 4 (2022).

36 On the "dragon-head enterprise – cooperative – household" model (公司+合作社+农户) see Jinghan Hao, *Chinese Farmers' Cooperatives and Smallholder Farmers* (Wageningen: Wageningen University, 2018); on the effect of subsidies on household incomes see Jing Zhang, Jianzhong Wu, James Simpson and Chan Lin Arthur, "Membership of Chinese Farmer Specialized Cooperatives and Direct Subsidies for Farmer Households", *Chinese Economy* 52, No. 5 (2019): 405.

it is no longer an instrument for realising the member's interest, but an instrument for realising the interest of the dragon-head enterprise.

## 13 Confrontation with Practice: The Phenomenon of Shell Cooperatives

Confronting the model so designed with practice yields sobering conclusions – and it is these that make the Chinese example particularly instructive.

Research into the assessment of cooperatives by their own members in Fujian Province expressly adopted, after J.R. Dunn, the proposition that it is the user who constitutes the focal point of a cooperative organisation, and that the statuses of user, owner and controller are concentrated in one and the same person[37]. The Chinese legislature "designed a member" in whom all three of Dunn's statuses were to be united by operation of law: the transactional obligation, the return of surplus according to volume of dealings, and additional votes earned by those dealings make of that member a model user-owner.

Reality has proved otherwise. Of the more than two million registered cooperatives, only some one fifth – on cautious estimates – carry on actual activity; many entities register solely in order to obtain public support. Chinese scholarship has described the phenomenon as "shell cooperatives", analysing both the causes of its emergence and the strategies for counteracting it[38]. Estimates of its scale are, moreover, divergent – assessments are encountered indicating eighty, ninety and even ninety-five per cent of entities as façade structures – and that divergence should, I think, be accepted as an element of the findings rather than masked by an arbitrary choice of a single value[39].

37 "Farmers' Assessments of Their Cooperatives", citing John R. Dunn, "Basic Cooperative Principles and Their Relationship to Selected Practices", *Journal of Agricultural Cooperation* 3 (1988): 84.

38 苑鹏, 曹斌 and 崔紫珺, "Shell Cooperatives: Reasons of Formation, Negative Impacts and Coping Strategies" [Yuan Peng, Cao Bin and Cui Zijun], 改革 [Reform] (2019); Wenchao Xiong, "China's Cooperative: As Unintended Consequences of Institutionalizing Processes", 社会学研究 [Sociological Studies] (2009); Jin Pan, "Specialized Farmers' Cooperatives in China: The Interpretation of the Data of Their Development", 中国农村观察 [China Rural Survey] (2011).

39 Hairong Yan and Yiyuan Chen, "Debating the Rural Cooperative Movement

Scholarly fairness nonetheless requires that note be taken of the strand critical of the very dichotomy of authenticity, which points out that opposing "genuine" cooperatives to "false" ones rests on a normative model drawn from Western experience and may obscure the actual functions which such organisations perform within local economic configurations[40]. I do not fully share that position – the criterion of actual purposive transactions strikes me as universal rather than culturally conditioned – yet I consider that it recalls something important: that the assessment of a legal institution requires first establishing what function that institution in fact performs within a given configuration.

## 14 Conclusions

From the analysis conducted I draw three conclusions.

First, Chinese law marks the extreme – quantitative – pole of the regulation of purposive transactions. No other legislature known to me has made a member's transactions with the cooperative simultaneously a membership obligation, a criterion for the distribution of surplus furnished with a statutory minimum, a device for delimiting spheres of activity, and a condition of voting power. The Chinese model may therefore serve as a point of reference in comparative research: it marks the limit of what can be achieved in this field by means of enacted law.

Second, the Chinese example demonstrates that the closeness of the linkage between member transactions and membership, and the direction of protection which that linkage serves, are independent variables. The Chinese and Polish solutions are comparable in the intensity of that linkage, yet lead to opposite effects – the first protects the continuity of settlements, the second the position of the cooperative. The mere statement that a lawmaker closely ties purposive transactions to membership therefore determines nothing as yet on the plane of protection, which I

in China, the Past and the Present", *Journal of Peasant Studies* 40, No. 6 (2013): 955–981. The figures as to the total number of registered cooperatives and the proportion of entities actually operating require updating in the light of the most recent statistical data.

40 Jing-Huey Z. Wang, Jun He and Brooke Wilmsen, "Farmers' Cooperatives in Southwest China: Beyond the Dichotomies of Failure/Success and (In)authenticity?", *Outlook on Agriculture* 53, No. 1 (2024).

regard as a pointer of significance for the assessment of Polish solutions as well.

Third and finally – and this lesson I consider the most valuable – the discrepancy between the letter of the Chinese statute and practice reveals the limits of the effectiveness of substantive law. The Chinese legislature has done everything that can be done by means of that branch: a transactional obligation, a statutory minimum for the return of surplus according to volume of dealings, accounting separation, and additional votes earned by those dealings. Since, notwithstanding all this, a substantial part of Chinese cooperatives remain façade structures in which the ordinary member is merely a recipient of services, one conclusion suggests itself: the density of the regulation of purposive transactions is a necessary but not a sufficient condition of genuine mutuality. Whether a cooperative pursues the aim of supporting its members is determined not by the normative construction itself but by whose interest is in fact realised within it – and upon that, substantive law, absent effective mechanisms of control and supervision, need have no bearing. That conclusion, formulated on material culturally and systemically remote, retains – I believe – a general validity.

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