

# Monistic System as a Model of Governance in Cooperatives Established Under National Laws in Selected Foreign Legal Systems and the Arguments for Introducing this System in the Cooperative Governed by Polish Law

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*The author presents the problem of legal admissibility and general legal status of the monistic (one-tier) system in a national-law cooperative (including especially the use of this system as a rule, option – aside or in another relationship with the dualistic model or other models of governance) in selected foreign legal systems, first and foremost European, to identify general arguments, resulting from comparative legal analysis, for the introduction of such a system in the Polish-law cooperative. The author presents the essential characteristics of the monistic system as a governance model in general and then specifies the existing scope of legal admissibility of application of the monistic system in managing organisational units in the Polish legal system. This is a necessary background for presenting general remarks and basic relationships in the area of influence of legal cultures (traditions) – Germanic or Romanic – on the application (as a rule or option) or even differently – the exclusion of the application of monism in the management of a cooperative established under national law in selected foreign legal systems, and then – in the form of longer conclusions – the most important arguments for extending the use of the monistic system (monism) in management in Polish legal system onto Polish-law cooperatives and the conclusion in this respect.*

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Key words:

monistic system, one-tier system, application of the monistic system for governance in a cooperative established under national law, foreign law on cooperatives, Polish law on cooperatives, Germanic legal culture (tradition), Romanic legal culture (tradition)

<https://doi.org/10.36128/prwi.vi44.92>

## 1. Introduction

The article presents the problem of legal admissibility and general legal status of the monistic (one-tier) system in a national-law cooperative (including especially the use of it as a rule or, optionally, along the dualistic (two-tier) model or other models of governance) in selected foreign legal systems, especially European ones, to identify arguments, resulting from comparative legal analysis, for the introduction of such a system in the cooperative established under Polish law. Contrary to the standard view, mainly resulting from a specific „legislative intuition”, it appears that foreign lawmakers are increasingly opening up to the use of the monistic model not only in commercial companies but also in cooperatives

under national law and perceive this system as a serious organisational alternative or competition in the governance of a cooperative (especially concerning the dualistic system), which can be helpful in modern legal and economic transactions, generally irrespective of the type of legal culture (tradition) that gave rise to the emergence of a given foreign legal system, and therefore generally Germanic or Romanic legal culture (tradition). Because of the preceding, the study will first present the essential characteristics of the monistic system as a governance model in general. Then it will specify the existing scope of legal admissibility of applying the monistic system in managing organisational units in the Polish legal system. These remarks are intended to form a necessary substantive background for presenting general remarks and basic relationships in the area of influence of legal cultures (traditions) – Germanic or Romanic – on the application (as a rule or option) or exclusion of the application of monism in the management of a cooperative established under national law in selected foreign legal systems (mainly European ones), and then – as longer conclusions – the most important arguments for extending the use of the monistic system (monism) in management in Polish legal system onto Polish-law cooperatives and the conclusion.

The paper uses mainly the formal-dogmatic method, complemented by the legal-comparative method.

## **2. The essential features of the one-tier system (monism) as a general governance model**

Regardless of the type of organisational unit in which a monistic governance system is applied under the law (usually companies or cooperatives), it has certain qualities that can be regarded as the most important. These are generally, first of all: 1) the statutory assignment of powers in management (running of affairs), representation and supervision over the activities of an organisational unit to one body of the organisational unit referred to as the administrating body, e.g., the Administrative Board or the Board of Directors, which differs from the statutory assignment of powers in the traditional system of two bodies – the management and supervisory body (i.e., the dualistic system); 2) the separation within such an administrative body of smaller bodies referred to as committees to deal with individual areas of the administrative body's competence, namely in particular management and supervision, while the separation of these areas may be more detailed and therefore there may be more „specialised” committees; 3) the introduction of executive directors exercising primarily signatory powers<sup>1</sup>.

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1 For more detail, see Grzegorz Kozieł, *Prosta spółka akcyjna. Komentarz do art. 300<sup>1</sup>-300<sup>34</sup> KSH* (Warszawa: C. H. Beck, 2020, 216-220, 325-328) and the literature referred to therein.

### 3. The one-tier system (monism) in the governance of organisational units in the Polish legal system

There are currently three methods of normative regulation of the monistic system in Polish law.

They refer, in chronological order of introducing the relevant legal regulation, to the following organisational units: a European company (SE) with its seat in Poland, b) a European cooperative (SCE) with its seat in Poland, c) a simple joint-stock company (SJSC).

Historically, Poland's earliest legally regulated monistic system appears as one of the governance options in a European company (SE) based in Poland. It is held in the Act on the European economic interest grouping (EEIG) and the Societas Europaea (SE), hereinafter referred to as AEEIGSE<sup>2</sup> (in the provisions of Articles 27 to 47 of the Act), which, concerning the SE, refers to the relevant EU regulation (EU) – on the Statute for a European company<sup>3</sup> (Article 27 AEEIGSE), as well as, quite broadly, especially to the provisions of the Code of Commercial Partnerships and Companies (CCPC)<sup>4</sup> on the Polish national-law joint-stock company, including the provisions on its management board (Articles 368 to 380 CCPC) or the supervisory board (Articles 38 to 392 CCPC) and members of these bodies (Article 29 (1), sentence 1, AEEIGSE<sup>5</sup>). It is a reference, which is: a) general, with the granting of priority to the provisions on the management board in case of doubts relating

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2 Ustawa z dnia 4 marca 2005 r. o europejskim zgrupowaniu interesów gospodarczych i spółce europejskiej (tekst jedn.: Dz. U. z 2022 r., poz. 259, z późn. zm.), [Act of 4 March 2005 on the European Economic Interest Grouping (EEIG) and the Societas Europaea (SE) (consolidated text: Journal of Laws of 2018, item 2036]; hereinafter referred to as AEEIGSE.

3 Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (O J L 294 of 10.11.2001), hereinafter referred to as RSE.

4 Ustawa z dnia 15 września 2000 r. – Kodeks spółek handlowych (tekst jedn.: Dz. U. z 2020 r., poz. 1526 z późn. zm.) [Act of 15 September 2000 Code of Commercial Partnerships and Companies, consolidated text Journal of Laws of 2020, item 1526, as amended], hereinafter referred to as CCPC.

5 In accordance with Article 29 § 1, sentence 1 of the AEEIGSE, unless otherwise provided for by law, the provisions of the Code of Commercial Partnerships and Companies and the separate laws on the management board and supervisory board and their members apply *mutatis mutandis* to the administrative board of the SE and its members.

to the application of provisions (Article 29 (1) sentence 2 AEEIGSE<sup>6</sup>), combined with an indication of specific non-applicable provisions of the CCPC (Article 29 (2) AEEIGSE<sup>7</sup>), b) detailed, to strictly defined and indicated provisions in this area (included, e.g., in Article 43 (2) AEEIGSE, Article 46 (1) AEEIGSE, or Article 47 AEEIGSE).

According to the moment of regulation by the Polish legislature, the next monistic system may be considered the European cooperative society (*Societas Cooperativa Europaea* SCE), with its seat in Poland. It is regulated in the Act of 22 July 2006 on European cooperative society<sup>8</sup>, which – as a very concise, modest regulation (contained in the provisions of Articles 19-25 ASCE) – refers extensively in this respect in Article 19 ASCE<sup>9</sup> to the relevant EU regulation on the Statute for a European Cooperative Society<sup>10</sup>), and also - in Article 21 (1) ASCE quite broadly, in particular to the provisions of the Act – Law on cooperatives (LoC) regarding cooperatives governed by Polish national law, including the provisions on its management board (Articles 48-55 LoC) or supervisory board (Articles 44-46a LoC) and members

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- 6 In accordance with Article 29 § 1, sentence 2 of the AEEIGSE, where doubts arise as to whether the rules on the management board or the rules on the supervisory board should apply to the administrative board or its members, the rules on the management board and its members shall apply.
- 7 Pursuant to Article 29 (2) AEEIGSE, Articles 378, 381 to 384, Article 385 § 1 to § 2, Articles 386 to 387, Article 388 § 1 and § 4, and Articles 389 to 391 CCPC shall not apply to the administrative board and its members.
- 8 Ustawa z dnia 22 lipca 2006 r. o spółdzielni europejskiej, tekst jedn.: Dz. U. z 2018 r., poz. 2043 z późn. zm. [Act of 22 July 2006 on European cooperative society, consolidated text: Journal of Laws of 2018, item 2043, as amended], hereinafter referred to as ASCE.
- 9 According to Article 19 ASCE, if the monistic system is adopted, pursuant to Article 36 RSCE, the provisions of the RSCE and Chapter 2 of the ASCE „Monistic System” shall apply. In such a situation, the administrative board is to be established for the SCE.
- 10 Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (O J L 207 of 18.08.2003, p. 1, hereinafter RSCE. RSCE, in addition to the separate extensive rules for each of the SCE’s management systems (dualistic in Articles 37 to 41 RSCE and monistic in Articles 42 to 44 RSCE), also contains common provisions concerning the SCE’s bodies in each of those systems – in Articles 45 to 51 RSCE).

of those bodies (Article 21(1) sentence 1 of the ASCE<sup>11</sup>), including, as it should be presumed, the provisions common for the supervisory board and management board contained in Chapter 4 of Section IV of the LoC (Articles 56 to 58 LoC). It is, as a rule, a general reference connected with giving precedence to the provisions on the board, where doubts arise as to which provision should be applied (Article 21(1), sentence 2 ASCE<sup>12</sup>), along with indicating specific provisions of the Law on Cooperatives which are not applicable (Article 21(2) ASCE<sup>13</sup>). A detailed reference to a specific provision from this area is contained only in Article 25, sentence 2 ASCE<sup>14</sup>. Particular attention should also be paid to the fact that to ensure democratic control over the SCE by members and to implement the 2nd Rochdale Principle (democratic management of the cooperative<sup>15</sup>), the Polish legislature, assumed in Article 21(1) to (2) ASCE that Article 45 §2 sentence 1 LoC, which provides as a rule – referring directly (strictly) to the usual cases of membership of natural persons (and not legal persons) in a cooperative governed by Polish law – the

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- 11 In accordance with Article 21 § 1, sentence 1 ASCE, unless otherwise provided by law, the provisions of the Law on Cooperatives and separate acts on the management and supervisory board of cooperatives and their members shall apply *mutatis mutandis* to the administrative board of the SCE and its members.
  - 12 In accordance with Article 21 § 1, sentence 2 of the ASCE, in the event of doubt as to whether the provisions on the management board or on the supervisory board should be applied to the administrative board or its members, the provisions on the management board and its members shall apply.
  - 13 Pursuant to Article 21 (2) ASCE, the provisions of Article 45 §§ 1, 4 and 5, Article 46 § 1 point 8, Article 48, Article 49 §§ 1, 2, 4 and 5, Article 50, Article 56 § 1 and Article 57 LoC shall not apply to the administrative board and its members.
  - 14 According to Article 25 (2) ASCE in those acts (performed between the SCE and a member of the administrative board or legal acts carried out by the SCE in the interest of a member of the administrative board – Article 25 sentence 1 ASCE), including in the acts referred to in Article 52 § 1 LoC, the SCE shall be represented by a representative appointed by the general meeting.
  - 15 See in this regard, first of all Henryk Cioch, „Zasady roczdelskie i ich realizacja w praktyce” *Teka Komisji Prawniczej – OL PAN*, Vol. II (2009): 26-35; Dominik Bierecki, *Spółdzielnia europejska w świetle prawa polskiego* (Sopot: Spółdzielczy Instytut Naukowy, 2017), 88-113.

possibility of appointing only members of this cooperative to the supervisory board of this cooperative<sup>16</sup>.

The most recent is the regulation of the monistic system as one of the variants of governance in the Polish simple joint stock company (SJSC). It is regulated in its entirety in the provisions of Articles 300<sup>52</sup> to 300<sup>61</sup> of the CCPC - i.e., in 10 general provisions on SJSC bodies and provisions of Article 300<sup>73</sup> to Article 300<sup>79</sup> CCPC (in 7 specific provisions dealing exclusively with the board of directors characteristic of the monistic system in the PSA). These 17 provisions of the CCPC contain no reference to other national regulations than the PSA provisions (and the references to other SJSC provisions are relatively few and are held, for example, in Article 300<sup>56</sup> § 6 CCPC, Article 300<sup>67</sup> § 3 CCPC, Article 300<sup>69</sup> § 3 CCPC, or in Article 300<sup>70</sup> § 3 CCPC). There are also no references to EU norms in these provisions.

Each mentioned above manner of regulation of the monistic governance system by the Polish legislature has certain characteristic features. Therefore there are certain differences between them, but significant similarities should also be noticed (elements they have in common).

The main differences are related to the „embedding” (applying, functioning) of the monistic system in the different legal forms of legal persons, i.e., a company (SE and SJSC) and the cooperative society (SCE), which in turn have a particular impact on the type (or rather sub-type) of the legal person within the category of corporate-type legal persons<sup>17</sup>. Companies are called legal persons of the mixed type with the predominance of corporate elements, i.e., legal persons of the corporate-establishment type or so-called

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- 16 Pursuant to the wording of Article 45 § 2, sentence 1 LoC, only cooperative members may be elected to the (supervisory) board of a cooperative governed by Polish law. In the light of Article 45 § 2 sentence 2 LoC, if a legal person is a member of such a cooperative, a non-member designated by the legal person may be elected to the (supervisory) board. For more see instead of many Bierecki, *Spółdzielnia*, 296-317.
- 17 See especially Roman Longchamps de Berier, *Wstęp do nauki prawa cywilnego* (Lublin: Nakład Uniwersytetu Lubelskiego, 1922), 108; Fryderyk Zoll, *Prawo cywilne w zarysie, vol. I, part 1* (Kraków: Księgarnia Powszechna, 1946), 104; Stefan Grzybowski, *Prawo cywilne. Zarys części ogólnej* (Warszawa: Państwowe Wydawnictwo Naukowe, 1985), 177; Aleksander Wolter, *Prawo cywilne. Zarys części ogólnej* (Warszawa: Państwowe Wydawnictwo Naukowe, 1986), 191; Zbigniew Radwański, *Prawo cywilne – część ogólna* (Warszawa: C. H. Beck 2003), p. 191, or a much later study, on corporate entities only, by Katarzyna Kopaczyńska-Pieczniak, *Korporacja. Elementy konstrukcji prawnej* (Warszawa: Wolters Kluwer, 2019), 27 et seq.

capital-based corporate entities (*korporacje kapitałowe*)<sup>18</sup>. In contrast, cooperatives, although this refers explicitly, especially to Polish-law cooperatives, which are the subject matter of this article, and not to SCEs (in which the monistic system appears as one of the governance options) – as legal persons of the mixed type with the predominance of establishment elements, i.e., of the establishment-corporate type<sup>19</sup>. In the case of the SCE, in addition to elements characteristic of a typical cooperative, there are elements typical of companies, and – looking from the perspective of Polish national law on partnerships and companies – especially of the Polish limited liability company (*spółka z ograniczoną odpowiedzialnością*) (e.g., share capital divided into shares), which brings them structurally closer to companies as so-called capital-based corporate entities<sup>20</sup>. The previous result in basic differences in terms of the terminology used in the different models of the monistic system. Based in Poland, SEs and SCEs are the administrative board instead of the governing body (management board) and the supervisory body (supervisory board). At the same time, the SJSC is the board of directors.

The basic similarities are related to the essence (legal and organisational nature) of the monistic system, its basic functions, advantages, and structural elements (combination of competencies in the area of management: running the affairs, management and signatory powers and supervision in the area of one body's competences, separation of so-called committees, e.g., supervisory committees, executive committees, etc., which, on a delegated basis, are involved in the preparation and/or implementation of different areas of these competences, members with another status, including, for example, executive directors, and entrusting them with the exercise of specific powers).

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18 On this issue, cf. apt comments by Andrzej Szajkowski, *Prawo spółek handlowych* (Warszawa: C. H. Beck, 2000), 73.

19 See G. Kozieł, *Przeniesienie ogółu praw i obowiązków w handlowych spółkach osobowych. Uwagi na gruncie art. 10 k.s.h.* (Warszawa: Wolters Kluwer, 2006), 21-22 and the literature referred to therein.

20 See Henryk Cioch, „Spółdzielnia europejska jako nowy rodzaj spółdzielni szczebla podstawowego” *Rejent*, No. 12 (2006): 10-12; Agnieszka Koniewicz, „Spółdzielnia Europejska – European Cooperative Society” *Przegląd Prawa Handlowego*, No. 4 (2007): 35-38; Grzegorz Kozieł, „Prawo członka spółdzielni do przeniesienia udziału. Zagadnienia wybrane”, [in:] *Prawa i obowiązki wspólników w spółce, spółdzielni europejskiej i spółce europejskiej*, ed. Antoni Witosz (Katowice: Wydawnictwo Uniwersytetu Ekonomicznego w Katowicach, 2012), 41-43.



#### 4. Germanic or Romanic legal culture (tradition) and the application or exclusion of monism in the governance of a national-law cooperative in selected foreign legal systems – general remarks and basic relationships in this field

In foreign legal systems, especially European legal ones, in most cases, the option, or the rule, of governance of a national-law cooperative under the monistic model depends on the type of legal culture that underlies the legal system of a given state (which had a decisive influence on its formation), and therefore whether the basic model for the legal system was, as it is in the law of Austria<sup>21</sup>, the Germanic legal culture (tradition) (characteristic especially for Germany<sup>22</sup> or Austria<sup>23</sup>, and partly, in this regulatory area, also for Italy<sup>24</sup>, or, as is the case of Belgian law<sup>25</sup>, the Romanic legal culture (tradition) (characteristic mainly of France<sup>26</sup>, Belgium<sup>27</sup>, United Kingdom<sup>28</sup>, Ireland<sup>29</sup>, Canada<sup>30</sup>, USA<sup>31</sup> or Australia<sup>32</sup>).

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- 21 See in particular Georg Miribung, Elisabeth Reiner, „Austria”, [in:] *International Handbook of Cooperative Law*, ed. Dante Cracogna, Antonio Fici, Hagen Henry (New York: Springer, 2013), 242-245; Georg Miribung, *The Agricultural Cooperative in the Framework of the European Cooperative Society* (Cham: Springer, 2020), 205-444.
- 22 See Hans-H. Münkner, „Germany”, [in:] *International*, 422-423; idem, „Germany”, [in:] *Principles of European Cooperative Law Principles, Commentaries and National Reports* (Cambridge-Antwerp-Portland: Intersentia, 2017), 253-346. See also in this regard Karol Dąbrowski, Tomasz Dąbrowski, „Uwagi o spółdzielczości niemieckiej w I połowie XXI wieku” *Rocznik Samorządowy*, Vol. III (2014): 26-43.
- 23 See Miribung, Reiner, „Austria”, [in:] *International*, 242-245.
- 24 See Antonio Fici, „Italy”, [in:] *International*, 491-494; idem, „Italy”, [in:] *Principles*, 347-408.
- 25 See Astrid Coates, „Belgium”, [in:] *International*, 261-263.
- 26 See David Hiez, „France”, [in:] *International*, 404-407; idem, „France”, [in:] *Principles*, 163-252.
- 27 See Coates, „Belgium”, [in:] *International*, 261-263.
- 28 See Ian Snaith, „United Kingdom”, [in:] *International*, 748-751; idem, „United Kingdom”, [in:] *Principles*, 625-718.
- 29 See Bridget Carrolle, „Ireland”, [in:] *International*, 474-475.
- 30 See Timothy Petrou, „Canada”, [in:] *International*, 305-308.
- 31 See Barbara Czachorska-Jones, Jay Gary Finkelstein, Behareh Samsami, „United States”, [in:] *International*, 771-772.
- 32 See Troy Sarina, „Australia”, [in:] *International*, 220-223.



To indicate the most characteristic examples of the method (variant) of regulation in this area, German law<sup>33</sup>, until 2005, generally did not and, as a rule, still does not provide for the application of a monistic system in the cooperative established under national law<sup>34</sup>. As an exception since 2006, as a result of the amendment to the German act on cooperatives, the German legislature introduced in small cooperatives of up to 20 members the possibility of choosing (for operation) a simplified organizational structure constituting a substitute for the monistic system, under which a one-person administrative body operates, but there is no supervisory board. This exception may only apply to a small part of cooperative legal transactions, including a handful of cooperatives established under German national law<sup>35</sup>.

In Italian law<sup>36</sup> until the 2003 reform, the basic (default) model, referring to a typical dualistic system, was the traditional system with a mandatory supervisory board bearing the characteristic name of a tripartite system. Since the 2003 reform, in addition to the previously permitted default traditional triple system, there is an option to choose a new monistic model and a new dualistic model, which must be indicated in the statute of the cooperative<sup>37</sup>.

French law<sup>38</sup>, in turn, provides for a one-tier system within the non-uniform (differentiated) legal form of the cooperative established under national law. In French law, the monistic system is the basic (default) model for cooperatives, which, like French companies, have the legal character of public cooperatives. In these cooperatives, a dualistic system may be adopted as an alternative (to the monistic system). This results from the fact that under

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33 See above all Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften (Genossenschaftsgesetz) 1889. <https://www.gesetze-im-internet.de/geng/GenG.pdf>. [accessed: 1.09.2022].

34 See Hans-H. Münkner, „Germany”, [in:] *International*, 422-423. In Austrian law (see primarily Genossenschaftsgesetz 1873. <https://www.jusline.at/gesetz/geng/gesamt>. [accessed: 1.09.2022]) following the German model, the monistic system is not provided for in the national-law cooperative – see Georg Miribung, Elisabeth Reiner, „Austria”, [in:] *International*, 242-245.

35 See Münkner, „Germany”, 422-423; Dąbrowski, Dąbrowski, „Uwagi”, 29-34.

36 See above all Civil Code (Codice Civile) 1942. <https://www.gazzettaufficiale.it/dettaglio/codici/codiceCivile>. [accessed: 1.09.2022].

37 See Antonio Fici, „Italy”, [in:] *International*, 491-494.

38 See primarily Commercial Code (Code de Commerce) 1947. [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000005634379/2020-08-22](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/2020-08-22). [accessed: 1.09.2022].

French law, as in Belgian law<sup>39</sup>, cooperatives are regarded as types of (commercial) companies, and the structural model for cooperatives under French law is the (commercial) company and commercial law (French cooperatives are legally structured as commercial companies). French private cooperatives, which differ in this respect from the aforementioned public cooperatives, have a monistic system as they are managed by their director (or directors)<sup>40</sup>.

In Irish and US law, as in French law generally, the monistic system is the basic (default, essentially the only) governance model in the cooperative established under national law<sup>41</sup>. On the other hand, the Belgian, British, Canadian, and Australian legal systems provide the possibility of choosing the monistic system as an option for the governance model in the cooperative established under national law<sup>42</sup>.

It should be noted that there are certain relationships in this area, i.e. first of all that as regards EU countries, irrespective of the option of monism under EU law in governance as part of the transnational structure of the European cooperative society (SCE): 1) in foreign legal systems of countries derived from the Germanic legal culture, the monistic system even if established for national-law commercial partnerships and companies (especially companies) or at least one of them (which is not the rule, but rather an exception – as in the case of the PSA in the Polish legal system<sup>43</sup>), it is not generally provided for in cooperatives under national law (as in Germany); 2) in foreign legal systems of countries derived from the Romanic legal culture, the monistic system, even if not established for national-law commercial partnerships and companies (especially companies) or at least one of them, is nonetheless established for national-law cooperatives or for both these companies and national-law cooperatives (which is the rule), or is even required as the statutory, basic model of governance, with the option of a derogation in favour of a dualistic model (as is the case in France, for example).

The example of the German and Italian legal systems also points to a specific „evolution” of the legislative attitude of foreign legislatures from

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39 See *Nouveau code des sociétés et des associations en Belgique*, 13.05.2019. <https://www.svp.com/article/nouveau-code-des-societes-et-des-associations-en-belgique-100010193>. [accessed: 25.11.2022]; Code des sociétés et associations du 2019, hereinafter: CSA. <https://www.nbb.be/fr/code-des-societes-et-associations>. [accessed: 25.11.2022].

40 See David Hiez, „France”, 404-407.

41 See especially Carrolle, „Ireland”, 474-475; Czachorska-Jones, Finkelstein, Samsami, „United States”, [in:] *International*, 771-772.

42 See especially Coates, „Belgium”, 261-263; Snaith, „United Kingdom”, 748-751; Petrou, „Canada”, 305-308; Sarina, „Australia”, 220-223.

43 See Kozieł, *Prosta spółka akcyjna*, 216-220, 325-328.

a rigid „adherence” to the dualistic system to the introduction of certain substitutes, elements of the monistic system in the governance of the cooperative established under national law.

### **5. Significant arguments for extending the use of the monistic (one-tier) governance system in the Polish legal system to cooperatives established under Polish law – a basis for the conclusion**

The analysis carried out in paragraphs 1 to 3 hereof leads to the following arguments in favor of introducing the Polish cooperative monistic system as an option in governance.

Firstly, the classification of the system of a given state as part of a specific legal culture, in particular Germanic, though it needs to be respected, should not be binding for the relevant legislature and prevent it from introducing the monistic system as a governance option in the national-law cooperative. Still, it is rather substantive and practical considerations related to the needs of economic transactions that should be decisive in this respect. For example, for the German or Polish legislatures, it should be more reasonable than a rigid adherence to legal culture (tradition) to face the new challenges of contemporary economic transactions related, *inter alia*, to the general need to optimise the governance process, including its costs, which may involve, for example, the application of a single-body system, under which all doubts in the areas of management and representation and supervision of these areas may be resolved within the administrative body, instead of a two-body system in which a corporate conflict may arise between the management body (e.g., the management board) and the supervisory body (e.g., the supervisory board) within a single organisational unit.

Secondly, on the other hand, the Polish legislature should also not „shy away” from adopting normative models also from the Romanian legal culture (France, the United Kingdom), in which corporate entities conducting business in terms of governance are included in one broader group, which in turn implies that the option of monism in governance, provided that it is introduced into companies, also applies to other corporate entities, including, e.g., national-law cooperatives. It is linked to the need for a certain, as much legislatively uniform as possible, perception of the methods of governance of organisational units constituting corporate entities (or even establishments) that run or do not even run economic activity. No rational and serious argument would justify the introduction of diversification in this respect between individual and organisational units. Commercial companies are the most relevant model in this area in the practice of transactions (including business transactions). The same way that a well-functioning monistic system in SE, SCE and PSA is seen in the course of economic transactions can also be imagined in a cooperative under Polish national law, but also in a mutual insurance (or mutual reinsurance) company or an association, not

to mention here in more detail a foundation, in the operation of which a certain substitute for monism in the form of a sole compulsory body, namely the board of directors, has been inscribed since the beginning of the regulation of this form of activity (primarily for social and economic purpose) in the Polish legal order in the Act on foundations of 1984<sup>44</sup>.

Thirdly, given that the Polish legislature has, in some cases, accepted the monistic model for companies (PSA), it is difficult to see from the perspective of the above arguments any obstacles that would prevent introducing it also in a cooperative governed by national law and other corporate entities such as associations, which needs to be proposed for the law as it should stand.

Fourthly, even if this way of thinking and argumentation is rejected, it cannot be overlooked that the legal form of the foundation has been successfully present in the Polish legal system for a very long time, i.e., since 1984. The rule for the Polish foundation is the appointment of only one body – the management board – to exercise all the powers, especially, according to the Act of 1984 on foundations, to manage and represent, but also to discharge the members of the management board, assess and approve the reports/statements of the foundation, etc., which has constituted a certain elementary substitute for monism in governance, with the possibility of introducing additional supervisory, auditing or supervisory-and-auditing bodies. Although the only legally determined body in the foundation bears the name of the board, it has, due to the lack of obligation (but only an option) to establish other bodies of the foundation, the characteristics of an administrative body which has not only management and supervisory powers but also all the other ones. In the case of the foundation, the introduction of bodies other than the management board (e.g., a committee of founders) is optional. To a certain extent, it refers to the general construction of the dualistic system.

## **6. Conclusion**

To sum up, the questions presented herein should be assumed based on a general overview of the possibility of applying a monistic system in a cooperative established under the national law of selected foreign, primarily European, legal systems, also from the perspective of the scope of its current application in the Polish legal system, its introduction in the Polish-law cooperative of Polish law is worth, if not quick implementation, then at least a thorough reflection (consideration) in the context of future legislation.

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44 Ustawa z dnia 6 kwietnia 1984 r. o fundacjach, tekst jedn.: Dz. U. z 2020 r., poz. 2167 z późn. zm. [Act on foundations of 6 April 1984 on foundations, consolidated text: Journal of Laws of 2020, item 2167, as amended].

One of the ways to introduce the monistic system in the legal regulation of the cooperative governed by Polish law is probably the easiest from a legislative point of view, but not necessarily from the point of view of its application in the practice of legal and economic transactions, could be adding the following to the provisions of the LoC:

- 1) The possibility of introducing a monistic management system in that cooperative based on the provisions of its statutes; and
- 2) A reference to the Polish monistic rules of the SCE contained in the Act on the SCE (ASCE) and, at the same time, a reference to the provisions of the RSCE, much more extensive in this respect, under the model provided for in the ASCE.

To this end, as part of a very concrete proposal for the amendment of the cooperative law, it may be proposed, in particular, that a new provision of Article 35 § 1 LoC be extended by the **second sentence**, resulting in the following wording:

„The bodies of the cooperative shall be:

- 1) general meeting;
- 2) supervisory board hereinafter referred to as »the board«;
- 3) management board;
- 4) in cooperatives, the general meeting is replaced by a meeting of representatives – meetings of member groups (Article 59).

The cooperative's statutes may provide for establishing a monistic system. In such a case, the administrative board shall be set up instead of the board and the management board. Articles 19 to 25 ASCE shall apply *mutatis mutandis* to the monistic system”.

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