Legislation

A NEW PARADIGM FOR COOPERATIVE SOCIETIES UNDER THE NEW BELGIAN CODE OF COMPANIES AND ASSOCIATIONS

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Abstract

The Belgian law on cooperative societies has been substantially modified following a broader reform of company law in 2019 and induces a change of paradigm: the legislator indeed took this opportunity to modify a regime of flexibility and "neutrality" in relation to the cooperative principles of the cooperative society form to limit said form to the companies wishing to follow the cooperative model and principles.

Key words: new legislation – change of paradigm – definition of the cooperative society in Belgian law

I. INTRODUCTION

1. Overview – The Belgian legislator has recently implemented a radical reform of the legislation applicable to companies and associations, under the Act of 23 March 2019 introducing the Belgian Code of companies and associations and miscellaneous provisions (hereinafter: the "Law of 23 March 2019")4 – as recently amended by an Act of 28 April 20205 (the "Law of 28 April 2020") – completed by the Royal Decree of 29 April 2019 executing the Belgian Code of companies and associations6 and the Act of 17 March 2019 adapting some tax measures to the new Belgian Code of companies and associations7.

In this context, the legislator has modified its approach to the law on cooperative societies. Since 1873, companies' laws have maintained a 'neutral' structure, malleable depending on very different cooperative purposes (*infra* §0). They had the disadvantage that numerous cooperative societies were not attracted by a cooperative spirit, but merely by the flexibility of this kind of company under Belgian law (*infra* §0). This had led the legislator to reinforce the constraints of this structure (*infra* §§0 and 0). The

[1] Partner LIME
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[4] Belgian Monitor (hereinafter: *M.B.*), 4 April 2019, pp. 33239 et seq.
[5] Act of 28 April 2020 transposing Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and including miscellaneous provisions relating to companies and associations, *M.B.*, 6 May 2020, pp. 30488 et seq.
[6] *M.B.*, 30 April 2019, pp. 42246 et seq.
[7] *M.B.*, 10 May 2019, pp. 45450 et seq.

Code of companies and associations (hereinafter the "CCA") aims to give a 'substantial' definition of the cooperative society according to its purpose (*infra* §0), while offering an alternative to 'false' cooperative societies through the limited liability company (*infra* §0) (0).

It seemed interesting to analyse this definition and establish a parallel with the European Regulation on the European cooperative society (0).

We will then examine various provisions applicable to the operation of a cooperative society for which the CCA relies on the rules applying to the new limited liability company (hereinafter "LLC") and when necessary adapts certain rules: a cooperative society now has 'equity capital' rather than share capital like public limited companies ((b), 0); the securities that it can issue are subject to a *numerus clausus* but their regime is quite flexible ((b), 0); rules of governance are generally residual ((b), 0) and the variability of shareholding (admission, resignation or exclusion) is organised as it previously was, with however more flexibility ((b), 0).

This system is completed by a mechanism of accreditation, which has become quite complex (0).

2. The legal approach of the cooperative society before the CCA – It was the Act of 18 May 1873 containing Title IX, Book 1st, of the Commercial Code relating to companies, that regulated the cooperative society for the first time in Belgian law with about twenty articles.

The first bill introduced what was, at the time, a substantial reform of corporate law, did not make any reference to cooperative societies and this corporate form was only added after parliamentary debates[8].

The legislator, facing a fairly recent phenomenon with very diverse characteristics, intended to set up a quite neutral body of rules, which did not "restrict the shareholders' freedom" and did not place "any limit [...] on the field of cooperative society"[9], while introducing certain technically essential provisions such as the ones on variability of capital, while creating moreover an extremely flexible legal regime, which had very few mandatory rules[10].

The cooperative society was defined as "a company constituted by shareholders, the number or contributions of which are variable and the shares of which are non-transferable to third parties"[11].

[8] Those debates are summarised in J. GUILLERY, *Commentaire législatif de la loi du 18 mai 1873 sur les sociétés commerciales en Belgique*, Bruxelles, Bruylant, 1878, pp. 215 et seq., regarding arguments in favour of the recognition of a distinct corporate form; C. RESTEAU, *Traité des sociétés coopératives*, Bruxelles, Larcier, 1936, p. 24 ; J. VAN RYN, *Principes de droit commercial*, t. II, Bruxelles, Bruylant, 1957, p. 53 ; J. T'KINT and M. GODIN, *Les sociétés coopératives*, Bruxelles, Larcier, 1968, p. 10.

[9] Free translation of "*qui ne "restrei[gnait] pas la liberté des associés" et n'apportait "aucune limite [...] au domaine de la société coopérative*": Report Guillery (24 March 1870), *Parliamentary Document (hereinafter: "Doc. parl.")*, House of Representatives (hereinafter: "Ch. repr."), ordinary session (hereinafter: "sess. ord.") 1869-1870, nr. 130, p. 9.

[10] Report drawn up on behalf of the commission, 24 mars 1870, J. GUILLERY, *Commentaire législatif de la loi du 18 mai 1873 sur les sociétés commerciales en Belgique*, Bruxelles, Bruylant, 1878, pp. 166-167.

[11] Free translation of "*celle qui se compose d'associés dont le nombre ou les apports sont variables et dont les parts sont incessibles à des tiers*": Article 85 of the Act of 18 May 1873. T. TILQUIN and V. SIMONART, *Traité des sociétés*, t. I, Bruxelles, Kluwer, 1996, p. 20, nr. 14.

3. The debate on 'true' or 'false' cooperatives – This neutrality, which seemed to be an advantage12, has nevertheless been much criticised since then.

Indeed, for a long time, the doctrine has been underlining that the regulation on cooperative societies so conceived has led to the fact that "the legal system constitutes […] a too large attire that businessmen are prompt to wear only wanting to take benefit from the facilities and advantages of cooperative societies offered by the legislator without having any cooperative ideal in mind"[13].

The doctrine was thus led to try and make a distinction between the notions of 'true' and 'false' cooperative[14]: 'true' cooperative societies pursued a cooperative ideal[15] while the 'false' cooperative societies were private limited companies or public liability companies 'disguised' as cooperative societies. These 'false' cooperative societies nevertheless abided by the legal provisions and constituted genuine cooperative societies in accordance with the governing law. Their variable capital and the flexibility of this social form were particularly interesting for shareholders working closely on the company's activities, especially in professional firms[16].

However, flexibility had also caused the cooperative corporate form to be misused regarding tax and social security provisions[17].

4. Rigidification of legal provisions – The debate had never really been settled: modifications of the legal regime of cooperative societies introduced over time mainly intended to tighten up their legal regime by setting up various constraints to limit the risks linked to the activities of some 'false' cooperative societies.

Thus, in 1984, the legislator stated that he wanted to "[…] rethink the cooperative society and provide for […] guarantees assuring a healthy management"[18] and implemented a new regulation offering more guarantees to third parties.

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[12] In fact, Guillery explains that the regulation proposed for cooperative societies was voluntarily large because the French legislator, by a law of 24 July 1867, willing to be too precise, completely failed to realise its goal of regulating cooperative societies, which preferred to continue using the old systems instead of integrating the new one, considered as too restrictive : Report drawn up on behalf of the commission, 24 March 1870, J. GUILLERY, *Commentaire législatif de la loi du 18 mai 1873 sur les sociétés commerciales en Belgique*, Bruxelles, Bruylant, 1878, p. 164 ; E. WAELBROECK, *Commentaire législatif et doctrinal de la loi du 18 mai 1873 contenant le titre du Code de commerce relatif aux sociétés*, Bruxelles, Bruylant-Christophe & cie, 1874, p. 382.

[13] Free translation of "*le système légal constitue […] un vêtement trop large que s'empressent d'endosser des hommes d'affaires qui, sans le moindre idéal coopératif, veulent uniquement profiter des facilités et avantages dont le législateur a entouré les sociétés cooperatives*": J. T'KINT and M. GODIN, *Les sociétés coopératives*, Bruxelles, Larcier, 1968, p. 11, nr. 27; FREDERICQ, *Traité de droit commercial belge*, t. V, 1950, p. 946; J. VAN RYN, *Principes de droit commercial*, t. II, 1st ed., p. 55, nr. 963.

[14] J. VAN RYN, *Principes de droit commercial*, t. II, 1st ed., pp. 59 and 57, nr. 966, calling companies which did not even implement a system of opened society, "disguised cooperative societies" ("*sociétés coopératives travesties*").

[15] As a consequence, when necessary, those companies requested an accreditation of the National Cooperation Council: *infra* § 0.

[16] P. VAN OMMESLAGHE, « Les sociétés coopératives, les sociétés civiles professionnelles et interprofessionnelles et les sociétés de moyens », *Les sociétés commerciales*, Bruxelles, éd. du Jeune Barreau, 1985, pp. 320 and 321; J. STEENBERGEN, « Professionele vennootschappen. Het aanwenden van vennootschappen bij de uitoefening van een vrij beroep », *T.P.R.*, 1994, pp. 219 et seq.

[17] See P. NICAISE and K. DEBOECK, *Vade mecum des nouvelles sociétés coopératives*, Bruxelles, Creadif, 1992, p. 15, for cooperative societies only motivated by the concern of avoiding the application of social law and that have led to the legislator's reaction under the Act of 20 July 1991 containing social and various provisions (*infra* § 0).

In 1991, the legislator also created two types of cooperative societies, namely the "limited liability cooperative societies" ("*sociétés coopératives à responsabilité limitée"*) and the "unlimited liability cooperative societies" ("*sociétés coopératives à responsabilité illimitée"*) [19], the limited liability cooperative societies being regulated by requirements similar to those imposed to other limited companies[20].

These reforms followed the explosion in the number of cooperative societies in Belgium due to the flexibility of their legal regime compared to the rigidity of the one applicable to limited liability companies (in particular following the large transposition in Belgian law of the second European directive on company law[21]): from 3,928 cooperative companies in 1980, Belgium went up to 39,260 companies ten years later[22].

5. Accreditation by the National Cooperation Council ("*Conseil National de la Coopération*") – The creation of a National Cooperation Council, under the terms of the Act of 20 July 1955 regarding the setting up of a National Cooperation Council23 and of the Royal Decree of 8 January 1962 setting the conditions of accreditation of cooperative societies' groups and cooperative societies24 was another way to tackle the identification of 'true' cooperative societies (*infra* 0).

[18] Free translation of "[…] *repenser la société coopérative et prévoir […] les garanties pour assurer une saine gestion":* Act of 5 December 1984 modifying the laws on commercial companies, coordinated upon 30 November 1935 (Parliamentary Documents), *Pasin*., 1984, p. 2095.
[19] Article 164 of the Act of 20 July 1991 on social and various other provisions ("*loi du 20 juillet 1991 portant des dispositions sociales et diverses*") and former Article 141, §2 of the coordinated laws on commercial companies ("*lois coordonnées sur les sociétés commerciales*"), which became Article 352 of the Companies Code.
[20] Parliamentary works on the Act of 20 July 1991 underlined that "other forms of limited liability company offer those guarantees, since they have to meet a range of specific requirements such as minimal share capital, incorporation by notarial deed, the obligation of drafting a financial plan, the founders' and directors' specific liability in case of capital increase […] [However], the current legislation (on cooperative societies) imposes none of those conditions to the cooperative society" ("*d'autres formes de société à responsabilité limitée offrent ces garanties, étant donné qu'elles doivent satisfaire à une série d'exigences spécifiques comme, par exemple, celle du capital social minimum, la création par acte authentique, l'obligation d'établir un plan financier, la responsabilité spécifique des fondateurs et des gestionnaires en cas d'augmentation de capital. […] [Or,] la législation actuelle (sur les sociétés coopératives) n'impose le respect d'aucune de ces conditions par la société coopérative*") (Act on social and other various provisions [art. 160-176], Report on behalf of Commission in charge of economic and commercial law matters by Me Merckx-Van Goey, *Doc. parl.*, Ch. repr., sess. ord. 1990-1991, nr.1695/9, 10 July 1991, p. 3) ("*Projet de loi portant des dispositions sociales et diverses [art. 160 à 176], Rapport fait au nom de la commission chargée des problèmes de droit commercial et économique par Mme Merckx-Van Goey*").
[21] Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, *OJ*, L 26, 31 January 1977, p. 1 et seq.; B. SMETS and J. P. VINCKE, *La Société Coopérative,* Bruxelles, collection I.P.C.F., Standaard, 2000, p. 10.
[22] P. NICAISE, *Le nouveau droit des sociétés coopératives – La loi du 20 juillet 1991,* Bruxelles – Louvain-la-Neuve, Bruylant-Academia, 1992, p. 5.
[23] *M.B.*, 10 August 1955, pp. 4865 et seq.
[24] *M.B.*, 19 January 1962, pp. 398 et seq.

II. CODE OF COMPANIES AND ASSOCIATIONS (2019)

6. Approach of the CCA – It was initially planned to drop, purely and simply, the cooperative society form and stipulate that any LLC could adopt a 'variable capital' as the former cooperative society and could eventually submit an accreditation request to the National Cooperation Council25.

This solution was finally abandoned as the legislator rightly decided to keep a 'true' cooperative society[26].

To this end, the legislator of the CCA also adopted a new approach for the cooperative society and implemented a change of paradigm: the intention was to reserve the form of cooperative society to entities based on the "cooperative model"[27], to introduce, in this context, a definition inspired by the Regulation on the European cooperative society (*infra* § 0)[28] and to refer, in the parliamentary preparatory works, to principles of the International Cooperative Alliance (hereinafter the "ICA")[29], even if no article of Book 6 of the CCA, containing the rules applicable to cooperative societies, expressly requires compliance with the ICA's cooperative principles (*infra* § 0).

7. Accreditation – The legislator maintains the possibility for a cooperative society to be accredited by the National Cooperation Council (CCA, art. 6:1, § 3, and 8:4)30. It is then named an "accredited cooperative society" ("*société coopérative agréée"* or *"SC agréée*") (CCA, art. 8:4).

Maintaining this specific accreditation as an accredited cooperative society seems to mean that a difference remains between the 'usual' cooperative society and the accredited cooperative society, eager to fulfil additional cooperative criteria, which is then likely to obtain an accreditation (*infra* § 0)[31].

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[25] O. CAPRASSE and M. WYCKAERT, « Limitation du nombre de sociétés : qu'en est-il des sociétés de capitaux (SA, SPRL, SCRL) ? », *La modernisation du droit des sociétés/De modernisering van het vennootschapsrecht*, Bruxelles, Larcier, 2014, p. 73, nr. 11; Report drawn up on behalf of the economic and commercial law Commission ("*Rapport fait au nom de la Commission de droit commercial et économique*"), *Doc. parl*., Ch. repr., sess. ord. 2018-2019, nr. 54-3119/011, 14 November 2018, pp. 27-28.

[26] Act introducing the Code of companies and associations, Explanatory Memorandum ("*Projet de loi introduisant le Code des sociétés et des associations, Exposé des motifs*"), *Doc. parl*., Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 11 and Report drawn up on behalf of the economic and commercial law Commission, *Doc. parl*., Ch. repr., sess. ord. 2018-2019, nr. 54-3119/011, 14 November 2018, p. 51.

[27] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl*., Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 11 ("the cooperative society recovers its initial particularity, namely running an enterprise on the grounds of the International Cooperative Alliance (ICA) cooperative model, which can also be found in Regulation nr. 1435/2003") ("*la société coopérative (SC) recouvre sa particularité initiale, à savoir mener une entreprise sur la base d'un modèle coopératif de l'International Cooperative Alliance (ICA), que l'on retrouve également dans le règlement n° 1435/2003*"), p. 14 ("dedicated to companies leading an enterprise on the grounds of the cooperative ideal as specified in ICA's principles") ("*réservée aux sociétés qui mènent une entreprise sur la base de l'idéal coopératif tel que précisé dans les principes de l'ACI*"), pp. 25, 190 and 91 and Report drawn up on behalf of the economic and commercial law Commission, *Doc. parl*., Ch. repr., sess. ord. 2018-2019, nr. 54-3119/011, 14 November 2018, pp. 11, 135 and 138; A. FRANÇOIS and F. HELLEMANS, « Shaken, not stirred? Een eerste analyse van de definities, de basisbeginselen in de structure van het nieuwe Wetboek van venootschappen en verenigingen », *Le projet de Code des sociétés et associations*, Bruxelles, Larcier, 2018, p. 43.

[28] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl*., Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 191.

[29] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl*., Ch. repr., sess. ord. 2017-1018, nr. 54-3119/001, 4 June 2018, p. 11.

[30] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 192.

[31] Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, pp. 65-67.

A cooperative society can also request its accreditation as a social enterprise ("cooperative society accredited as a social enterprise" or "CS accredited as a SE" ("*société coopérative agréée comme entreprise sociale*" or "*SC agréée comme ES*") (CCA, art. 6:1, § 3, and 8:5, § 1st), or request those two accreditations simultaneously (in that case, only its short name allows to distinguish it : "CSSE" instead of "CS accredited as SE") ("*SCES agréée*" instead of "*SC agréée comme ES*") (CCA, art. 8:5, §§ 1st and 2) (*infra* § 0 and 0).

The combination of those accreditations is not optimal (*infra* § 0).

8. LLC with 'variable equity' – In order to consolidate the new system, the legislator offers an alternative to the shareholders of more 'capitalistic' existing cooperative societies: the LLC ("*SRL*") with rights of resignation and exclusion32, meaning that "the flexibility, which nowadays makes the cooperative society attractive, can from now on be found in the LLC"33 and therefore that "the 'false cooperatives' will no longer have to adopt this form and can become LLC"[34].

Parliamentary preparatory works more specifically mention professional companies in this respect[35].

Many existing cooperative societies, when realizing that they do not meet the definition of Article 6:1 of the CCA, will need to be transformed into LLC, on a voluntary basis before 2024 or *ipso jure* on 1st January 2024[36], it being understood that the rules applicable to LLC are already applicable, from 1st January 2020, to existing cooperative societies which clearly do not meet the definition of the new cooperative society even though their articles of association[37] still mention the cooperative form.

It is however difficult to identify the extent of this movement at this stage.

9. Deletion of the unlimited liability cooperative society – The form of the unlimited liability cooperative society no longer exists.

Article 6:2 of the CCA provides that "cooperative society's shareholders are only liable for their contribution"[38]. All unlimited liability cooperative societies must therefore take another legal form.

Article 41 of the Law of 23 March 2019 states that, until its transformation into another legal form and as from 1st January 2020, the provisions of the CCA regarding partnership will be applicable to the existing unlimited liability cooperative societies. Furthermore, if no transformation has occurred, any

[32] For details on limited liability companies with resignation and removal rights: T. TILQUIN, « La démission et l'exclusion : ébauche d'une SRL à capitaux propres variables », A.-P. ANDRÉ-DUMONT and T. TILQUIN (coord.), *La société à responsabilité limitée*, Bruxelles, Larcier, 2019, pp. 245-277 ; for examples of statutory clauses, see T. TILQUIN, « Les clauses de démission et d'exclusion (SRL – SC) », *Le nouveau droit des sociétés et des associations*, Bruxelles, Larcier, 2019, pp. 319 et seq.

[33] Free translation of "*la flexibilité, qui constitue aujourd'hui l'attrait de la société coopérative, se retrouvera désormais également dans la SRL*": Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, pp. 14, 15 and 21.

[34] Free translation of "*les 'fausses coopératives' ne devront plus adopter cette forme et pourront devenir des SRL*": Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, pp. 14, 15 and 21.

[35] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, pp. 186 and 190.

[36] Art. 41 of the Law of 23 March 2019.

[37] or "*statutes*".

[38] Free translation of "*les actionnaires d'une société coopérative n'engagent que leur apport*" : CCA, art. 6:2.

unlimited liability cooperative society will be automatically transformed into a partnership on the 1st January 2024.

10. Changes in terminology – The terminology used in the new Code has undergone various modifications:

- following the deletion of the unlimited liability cooperative society form, all cooperative societies will be henceforth called "cooperative societies" or "CS"[39];
- owners of shares in a cooperative society were, under the terms of the former Companies Code, called "partners" ("*associés*"); the CCA proceeds to a major modification in this regard, naming them now "shareholders" ("*actionnaires*"); however following the adoption of the Law of 28 April 2020, amending the CCA, each cooperative society may choose any other terminology it deems fit ("*associés*", "*coopérateurs*", "*sociétaires*" or any other similar term)[40];
- 'shares' are no longer called "parts" but are called, in this respect, "shares" ("*actions"*) in the CCA, as is the case for limited companies, subject to the new possibility, for each cooperative society, to however still use the former terminology as a consequence of the amendment introduced by the Law of 28 April 2020[41].

These last modifications are explained by a will to harmonise the vocabulary used for limited liability companies (PLC, LLC and CS) ("*SA", "SRL", "SC*") and especially by the assimilation of the legal regime of the cooperative society to the LLC's[42], though it is not really appropriated.

III. DEFINITION: ARTICLE 6:1 OF THE CCA

11. Preliminary observation – The modification of the definition of the cooperative society is the main change brought by the Code of companies and associations in comparison with the existing system in Belgian law: the new definition initially proposed 43 aimed at limiting the use of the cooperative form to companies inspired by the traditional cooperative model, "driven by a cooperative ideal", while introducing elements in terms of purpose, organisation and relationship with its shareholders (CCA, art. 6:1) (*infra* 0).

The cooperative anchorage is strengthened by the obligation to express in the articles of association, the cooperative purpose and the cooperative values of the company (*infra* 0).

A. Definition

12. A new definition: Article 6:1 of the CCA – The definition of the cooperative society under the terms of Article 6:1 of the CCA includes the following components, that can helpfully be compared to the

[39] CCA, art. 1:5, § 2, and 6:1 *in fine*.
[40] Article 118 of the Law of 28 April 2020 amending article 6:2 CCA.
[41] Article 119 of the Law of 28 April 2020 amending article 6:6 CCA.
[42] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 193; X. DIEUX, « Le nouveau Code des sociétés (et des associations) : une "anonymisation" silencieuse », *R.D.C.-T.B.H.*, 2018/9, p. 937.
[43] The definition finally adopted and included in Book 6 is broader than the initial definition which did not seem to take entirely into account the various expressions of the cooperative trend in Belgium: T. TILQUIN, « La société coopérative, 'outil de disruption' », *La société coopérative : nouvelles évolutions*, Bruxelles, Larcier, 2018, p. 119; T. LOFFET and M. BERNAERTS, « Les associés de la société coopérative », *La société coopérative : nouvelles évolutions*, Bruxelles, Larcier, 2018, pp. 81 et seq.; E.-J. NAVEZ and A. NAVEZ, *Le Code des sociétés et des associations. Présentation et premiers commentaires*, Bruxelles, Larcier, 2019, p. 174.

definition specified in Article 1st of Regulation (EC) nr. 1435/2003 of the Council of 22 July 2003 on the statute for a European cooperative society44 (hereinafter the "Regulation nr. 1435/2003"):

CCA (art. 6:1, § 1st)	Regulation nr. 1435/2003 (art. 1st, § 3)
Principal purpose – "*shall have as its principal **purpose** the satisfaction of **its shareholders or third interested parties'** needs and/or the development of their economic and social activities*"[45]	Principal object – "*shall have as its principal **object** the satisfaction of its **members'** needs and/or the development of their economic and social activities*"
Double quality – "*in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the cooperative society carries out or commissions*"[46]	Double quality – "*in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions*"[47]
	Interactions between cooperative societies – "*may also have as its **object** the satisfaction of **its members' needs** by **promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives***"
Interactions with mother companies and third parties – "*may also have as **purpose** the satisfaction of **its shareholders or mother companies and their shareholders or third interest parties' needs***"[48]	
Subsidiaries – "***whether or not through** the intervention of subsidiaries*"[49]	Subsidiaries – "*an SCE may conduct its activities through a subsidiary*"

[44] *O.J.E.U.*, L 207, 18 August 2003, pp. 1-24.
[45] Free translation of "*a pour but principal la satisfaction des besoins et/ou le développement des activités économiques et/ou sociales de ses actionnaires ou bien de tiers intéressés*".
[46] Free translation of "*notamment par la conclusion d'accords avec ceux-ci en vue de la fourniture de biens ou de services ou de l'exécution de travaux dans le cadre de l'activité que la société coopérative exerce ou fait exercer*".
[47] Art. 1st, § 4 of Regulation nr. 1435/2003: "an SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise".
[48] Free translation of "*peut également avoir pour but de répondre aux besoins de ses actionnaires ou de ses sociétés mères et leurs actionnaires ou des tiers intéressés*".
[49] Free translation of "*que ce soit ou non par l'intervention de filiales*".

Stakeholding – "*to have as its object to* ***promote their economic and/or social activities by a participation in one or more other companies***"[50]	

13. Cooperative purpose – The Belgian legislator was influenced by the European legislator who underlined that "a European cooperative society […] should have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles : its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation […]" (recital nr. 10 of Regulation nr. 1435/2003).

14. Traditional activities – Historically, it should be remembered that three kinds of cooperative societies developed as from the end of the 19th century and inspired the Belgian legislator in 1873: the consumer cooperative society (mainly in England); the manufacturing or production cooperative society (mainly in France); and the credit cooperative society (mainly in Germany)51.

Companies have been developing under the cooperative form, inspired by these models, in Belgium for many years. These companies can be distinguished from others in that the members of the entity, the shareholders, are also the clients, employees or suppliers of said entity.

Cooperative societies are still developing nowadays in these traditional sectors[52], such as NewB very recently in the banking sector or many initiatives in the food sector.

15. New evolutions – However, the object of cooperative societies has evolved around new activities and new categories of shareholders, probably linked to the evolution of the predominant economic model itself, to the new relationships' digitalisation creates within the economy or to the economic operators' new concerns:

(i) numerous initiatives over the last few years have demonstrated that the status and the nature of the interest of co-operators may vary: they can be both services producers and clients, or producers and consumers; the cooperative society can be "*multisociétale*", in that it associates several stakeholders in the same project…;

[50] Free translation of "*avoir pour objet de favoriser leurs activités économiques et/ou sociales par une participation à une ou plusieurs autres sociétés*".
[51] J. VAN RYN, *Principes de droit commercial*, t. II, Bruxelles, Bruylant, 1957, pp. 54 and 55; Discussions at the House of Representatives, session of 24 November 1868, J. GUILLERY, *Commentaire législatif de la loi du 18 mai 1973 sur les sociétés commerciales en Belgique,* Bruxelles, Bruylant, 1878, p. 208.
[52] Cooperatives Europe, the European division of the International Cooperative Alliance mentions that in 2012 cooperative banks have more than 16 million members in Germany, pursuing its strong tradition of credit cooperative society : Cooperatives Europe, « Co-operatives for Europe: Moving forward together », *available on https://coopseurope.coop/sites/default/files/CoopsEurope_Brochure_HiResApril.pdf (consulted on 27 February 2020), April 2012*, p. 3.

(ii) the use of cooperative societies based on IT platforms has diversified and deals with sustainable development, applications to local communities, goods exchanges between producers and consumers, etc.[53];

(iii) existing cooperative societies often do not limit their services to their sole members;

(iv) the cooperative form is also used in investment structures. The regulated real estate investment company ("*société immobilière réglementée*" - "*SIR*") created by the Act of 22 October 2017[54] is one example enshrined in Belgian law. This company must take the form of a cooperative society and exclusively carry out an activity consisting in detaining and providing end users with real property for housing and caring for the elderly and disabled people, as well as hosting and teaching children and pupils[55], while obtaining financing only from investors[56]. In this model, the primary beneficiaries of the society's activities are therefore not its shareholders;

(v) finally, cooperative societies are more and more present in "sectors traditionally linked to the non-profit association form"[57] and "figures seem to indicate an evolution of the traditional use of cooperative societies for exclusively mutual benefit purposes towards a broader diversity, including models with more general interest"[58]. The Belgian legislator expressly targets this kind of company when requesting that the accreditation as social enterprise depends on the existence of a main purpose consisting in a "positive societal impact for human being, environment or society"[59], "in the general interest"[60], even though this accreditation can only be granted to cooperative societies (CCA, art. 8:5 – *infra* § 0).

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[53] See, for instance, in France, the report « Enjeux et perspectives de la consommation collaborative », interministériel du prospective et d'anticipation des mutations économiques ; in Dutch law: I.S. WUISMAN, « Twitter: naar een multi-stakeholder coöperatie en de commons », *De coöperatie anno 2017, Ars Notariatus*, Malines, Kluwer, 2018, pp. 87 et seq.; T. TILQUIN, « La société coopérative, 'outil de disruption' », *La société coopérative : nouvelles évolutions*, Bruxelles, Larcier, 2018, p. 119 et seq.

[54] Act of 22 October 2017 modifying the Act of 12 May 2014 related to regulated real estate investment companies, *M.B.*, 9 November 2017.

[55] Articles 76/5, 76/6 and 76/7, § 2, of the Act of 12 May 2014 related to regulated real estate investment companies.

[56] Article 76/3 of the Act of 12 May 2014 states that the regulated real estate investment company with social purpose "collects its financial resources exclusively by an offer made to persons belonging to the following categories: 1° retail investors, (a) provided that the maximum amount that can be subscribed within the offer is limited so that at the end of the offer, any co-operator who has subscribed to the offer does not own shares in the regulated real estate investment company with social purpose for a nominal value not within the limits determined by the King, by a decree taken on the advice of the FSMA, and (b) provided that the King has exercised this authorisation. When doing so, the King shall take into account the investors' interests, namely considering that the shares of the regulated real estate investment company with social purpose are not admitted to trading on a regulated market; 2° eligible investors" (free translation of "*recueille exclusivement ses moyens financiers au moyen d'une offre effectuée auprès de personnes appartenant aux catégories suivantes : 1° les investisseurs de détail, (a) pour autant que le montant maximal pouvant être souscrit dans le cadre de l'offre soit limité de manière à ce qu'à l'issue de l'offre, aucun coopérateur ayant souscrit celle-ci ne possède de parts de la société immobilière réglementée à but social pour une valeur nominale ne respectant pas les limites déterminées par le Roi, par arrêté pris sur avis de la FSMA et (b) pour autant que le Roi ait exercé cette habilitation. Dans l'exercice de cette habilitation, le Roi prend en compte les intérêts des investisseurs, considérant notamment le fait que les parts de la société immobilière réglementée à but social ne sont pas admises à la négociation sur un marché réglementé ; 2° les investisseurs éligibles*").

[57] Free translation of "*champs traditionnellement liés à la forme associative non-lucrative*": F. DUFAYS and S. MERTENS, *Belgian Cooperative Monitor*, Leuven-Bruxelles, Cera-Febecoop, 2017, available on https://cdn.nimbu.io/s/hcjwsxq/assets/1511945222786/2411_Belgian%20Cooperative%20Monitor%20def_FR.pdf (consulted on 27 January 2020), p. 8.

[58] Free translation of "*les chiffres semblent indiquer une évolution de l'usage traditionnel des coopératives à des fins exclusives d'intérêt mutuel vers une plus grande diversité, incluant également des modèles plus porteurs d'intérêt général*"": F. DUFAYS and S. MERTENS, *Belgian Cooperative Monitor*, Leuven-Bruxelles, Cera-Febecoop, 2017, available on https://cdn.nimbu.io/s/hcjwsxq/assets/1511945222786/2411_Belgian%20Cooperative%20Monitor%20def_FR.pdf (consulted on 27 January 2020), p. 15.

[59] Free translation of "*impact sociétal positif pour l'homme, l'environnement ou la société*": CCA, art. 8:5.

16. A step in the right direction – The definition of the cooperative society provided in the initial version of the text of Article 6:1 was probably too restrictive and based on a traditional vision of the cooperative society, also inspired by Regulation nr. 1435/2003.

As explained though, cooperative societies nowadays pursue multiple activities and usually involve various stakeholders in the same project. The amendments introduced during the parliamentary process have made it possible to broaden this initial vision and the object that any cooperative society can legally pursue by introducing notions such as "interested third parties", allowing the possibility to take into consideration the new models of cooperative societies oriented towards multiple stakeholders, including third parties, or towards a wider goal, such as the social economy, or "investment structures".

However, the final text remains essentially oriented towards the double quality of shareholders and towards the contractual relationship between the society and its shareholders (the idea being that the services of the society benefit first of all its shareholders) whereas it would probably have been more in line with these emerging new phenomena of cooperative societies not to focus the definition of the cooperative society on this double quality.

17. Mother companies, subsidiaries and stakeholding – The Belgian legislator has tried to take into account, at least partly, the reality of existing Belgian cooperative societies and in particular groups of cooperative societies or the so-called "second tier" cooperative societies (defined by Regulation nr. 1435/2003 as cooperative societies constituted by members which are themselves cooperative societies[61]). If the European legislator is indeed talking about the second-tier cooperative societies and promoting interactions between cooperative societies, it does not explicitly take into consideration groups of cooperative companies or the idea that a cooperative society can pursue the satisfaction of mother companies rather than only the satisfaction of its own direct shareholders, as we can see in the above mentioned chart comparing the definitions provided by Article 6:1 of the CCA and by Article 1 of the Regulation nr. 1435/2003.

A cooperative society can also, both according to Belgian law and to the Regulation nr. 1435/2003, conduct its activities through the intervention of subsidiaries. In Belgium, some credit institutions are constituted under the form of a public limited company (in principle to allow them to meet the regulatory requirements specific to their sector more easily) and provide services to users who do not directly become its shareholders but become shareholders of a cooperative society which is itself a shareholder of the public limited company. Services are then offered by a subsidiary of the cooperative society and not directly by the cooperative society itself.

Finally, the new definition of the cooperative society also enables Belgian cooperative societies to support the action of another cooperative society by becoming a shareholder: the shareholding society could hence become an "investor" or a supplier for example.

These various possibilities are similar to the ICA's principle of "cooperation between cooperative societies" without the Belgian legislator imposing them to do so.

18. Other principles from Regulation nr. 1435/2003 – The provisions of Regulation nr. 1435/2003 provide for other miscellaneous rules, in most cases subsidiary, such as the equality between partners at

[60] Free translation of "*dans l'intérêt général*": CCA, art. 8:5.
[61] Recital nr. 9 of Regulation nr. 1435/2003.

the general shareholders' meetings (art. 59.1 to 59.4) ; the distribution of a profit under the form of rebates (art. 66) ; fair net profits distributions (art. 66) ; "one man, one vote" principle (art. 59) ; indivisible reserves (art. 65.3) ; the research of limited profit and disinterested distribution of net assets (art. 75).

Most of these rules derive from the ICA's cooperative principles but were not included in the new Belgian Code. Indeed, except for the modification of the cooperative society's definition, the legislator has chosen not to impose the respect for cooperative principles to all cooperative societies to offer them more flexibility. Some of these principles can however be found in the accreditation requirements (*infra* §§ 0 et seq).

B. Materialisation of the cooperative purpose expression

19. Principle – According to a technique of transparency and information which is often used in company law, the legislator ensures that the definition is respected by providing the obligation to express in writing the cooperative purpose and the values of each entity, which reinforces the idea that the cooperative society adheres to the cooperative ideal. For this purpose, Article 6:1, § 4 of the CCA provides that "the cooperative purpose and the values of the cooperative society are described in the articles of association and, as the case may be, completed by a more detailed explanation in the internal rules or a charter"62.

This way of proceeding avoids the need to insert cooperative principles directly into the legislative text, while encouraging companies willing to adopt the cooperative society form to respect them or at least a part of them to prove its "cooperative purpose". It offers hence a great flexibility to cooperative societies.

20. Articles of association – As a consequence, the cooperative society must, in any case, state the cooperative purpose and values it defends in its articles of association.

In practice, this information may be written in the statutory provision concerning the cooperative society's object, to which the purpose would be inherent and which would be stipulated directly after the reference of the cooperative society's object, in the same provision of the articles of association; or it can also be stipulated in a distinct provision, which we usually prefer and which easily enables confirmation of compliance with Article 6:1, § 4 of the CCA. This last approach also prevents confusing the cooperative purpose with the society's object.

In this respect, the ICA principles are a source of inspiration: should the organisational reality of a cooperative society meet those principles, it would be considered as a 'true cooperative' respecting the cooperative purpose. However, one should not overstate the importance of those principles in consideration of this provision. They can in fact be subject to different approaches. For instance, they could provide that all members do not have the same voting power ("democratic member control") or that a certain number of conditions should be filled to become a shareholder of the cooperative ("voluntary and open membership"). Those different approaches are expressly authorised by other provisions of the Book 6.

Just some of those principles can also be adopted while also adopting more contemporary

[62] Free translation of "*la finalité coopérative et les valeurs de la société coopérative sont décrites dans les statuts et, le cas échéant, complétées par une explication plus détaillée dans un règlement intérieur ou une charte*": CCA, art. 6:1, § 4.

principles (*supra* § 0).

21. Internal rules and charter – The CCA allows for the articles of association to be further detailed in internal rules or a charter63 describing the cooperative purpose and the society's values, its functioning or, for example, the shareholders' rights64 in more details.

(a) Internal rules – Article 6:69, § 2 of the CCA offers the possibility for "supplementary and complementary provisions regarding shareholders' rights and the operation of the company"[65] to be included in internal rules, "including for topics for which the present Code requires a statutory provision"[66] or "affecting the shareholders or members' rights, organs' powers or the organisation and functioning of the general shareholders' meeting"[6768]. Internal rules must be approved in accordance with the quorum and majority requirements for amending the articles of association, and their existence must be authorised by the articles of association[69].

(b) Charter – The cooperative society can also establish a charter based on governance charters. This Charter can also contain the purpose and the values of the concerned cooperative society.

IV. A FEW TECHNICAL ASPECTS OF THE NEW LEGISLATION

A. Deletion of the notion of capital

22. Equity capital – As the Belgian legislator was heavily inspired by the rules applicable to the new LLC, the CCA has also abolished the legal concept of capital for cooperative societies70.

The cooperative society has hence "equity capital" ("*capitaux propres*"), constituted by contributions in cash or in kind.

The accounting rules of the Royal Decree of 29 April 2019 and tax measures of the Law of 17 March 2019 also take this change into account.

The articles of association may stipulate that part of the equity capital is not available for

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[63] Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, p. 66.
[64] CCA, art. 6:1, § 4, and 6:69, § 2.
[65] Free translation of "*dispositions supplémentaires et complémentaires concernant les droits des actionnaires et le fonctionnement de la société*".
[66] Free translation of "*y compris [dans] les matières [pour lesquelles le présent Code exige une disposition statutaire]*".
[67] Free translation of "*touchant aux droits des associés, actionnaires ou membres, aux pouvoirs des organes ou à l'organisation et au mode de fonctionnement de l'assemblée générale*".
[68] Topics which cannot be covered by the internal rules for other companies (CCA, art. 2:59, 2° and 3°); the explanatory memorandum refers for instance to "the acquisition of the shareholder's quality, the number of shares to hold, the rights and duties attached to the shares (including a non-competition clause), the formalities for convening, the way the number of votes is determined at the general meeting, the requirements for second degree voting, the calculation of the withdrawal amount, the grounds for exclusion, etc." (free translation of "*l'acquisition de la qualité d'actionnaire [le] nombre d'actions à détenir [les] droits et devoirs attachés aux actions (en ce compris une clause de non-concurrence) [les] formalités de convocation [la] manière dont le nombre de voix est déterminé à l'assemblée générale [les] prescriptions en matière de vote au second degré [le] calcul de la part de retrait [les] motifs d'exclusion, etc.*"): Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, pp. 73-74.
[69] CCA, art. 6:69, § 2, and 2:59.
[70] For a concise feedback on historical reasons of the introduction of capital and its deletion in the CCA, see, for instance, D. BRULOOT and H. CULOT, « De kapitaalloze BV – La SRL sans capital », *Le projet de Code des sociétés et associations – Het ontwerp Wetboek van vennootschappen en verenigingen*, Bruxelles, Larcier, 2018, pp. 94 et seq.

distribution[71], as was the "fixed part" of the capital of the former "limited liability cooperative society" (hereinafter: "LLCS") (there are indeed no legal obligations to create reserve funds). Prescribing for 'unavailable' equity capital enables the reconstitution of the classical LLCS structure and also the limiting of outflows (*infra* § 0) in the interest of the cooperative society.

1. Protection of assets

23. Incorporation – Regarding the process of incorporation of the company, Article 6:4 of the CCA replaces the minimum capital requirement with an obligation for the founders to ensure that the company has "equity capital which, having regards to other sources of finance, is sufficient in the light of the planned activity"72.

The amount of equity capital is not determined by law: founders are totally free to decide but they must be able to justify "the amount of initial equity capital in the light of the company's planned activity for a period of at least two years"[73] in a financial plan[74].

Other financing sources can also be considered (bank credit, bond issues, crowdfunding, etc.)[75].

The shares issued by the company must be fully and unconditionally subscribed (CCA, art. 6:6 and, during the existence of the company, art. 6:106). However, the payment of contributions can be adapted (CCA, art. 6:9). It is for example possible to provide that no contribution is to be paid up when the company is incorporated.

24. Traditional rules of assets protection – It can be generally stated that many rules previously related to the concept of capital still exist76 though they have been reformulated77.

This is the case with the obligation to subscribe in full the issued shares (CCA, art. 6:6 and 6:106), the regulation on acquisition of own shares (CCA, art. 6:7 and 6:107), the drawing up of evaluation reports on contributions in kind (CCA, art. 6:8 and 6:110), the deposit of contributions in cash on a special account (CCA, art. 6:10), the strict conditions of financial assistance (CCA, art. 6:118) or the alarm bell procedure (CCA, art. 6:119)[78]. The control of contributions in kind will certainly raise some difficulties for industry contributions, which are now authorised (CCA, art. 6:11) (*infra* § 0). However,

[71] This is in fact what the transitional law stipulates: art. 39, § 2, last indent, of the Law of 23 March 2019.
[72] Free translation of "*capitaux propres qui, compte tenu des autres sources de financement, sont suffisants à la lumière de l'activité projetée*".
[73] Free translation of "*le montant des capitaux propres de départ à la lumière de l'activité projetée de la société pendant une période d'au moins deux ans*": CCA, art. 6:5, § 1st.
[74] The content of this is expressly stipulated by art. 6:5, § 2 of the CCA.
[75] P. DE WOLF, « La SRL, une société sans capital mais dotée de règles (strictes) de protection des tiers », *La société à responsabilité limitée*, Larcier, 2019, p. 46.
[76] H. CULOT and N. TISSOT, « Le cadre juridique de la société coopérative et les perspectives d'avenir », *La société coopérative : nouvelles évolutions*, Bruxelles, Larcier, 2018, p. 40 ; D. BRULOOT and H. CULOT, « De kapitaalloze BV – La SRL sans capital », *Le projet de Code des sociétés et associations – Het ontwerp Wetboek van vennootschappen en verenigingen*, Bruxelles, Larcier, 2018, p. 97.
[77] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 13.
[78] H. CULOT and N. TISSOT, « Le cadre juridique de la société coopérative et les perspectives d'avenir », *La société coopérative : nouvelles évolutions*, Bruxelles, Larcier, 2018, p. 40. Article 2:52 of the CCA also provides for a 'permanent' control in case of serious and consistent facts likely to jeopardize the continuity of the enterprise.

the control of quasi-contributions has been removed[79].

All these rules can be found in the title relating to the incorporation of the company (title 2 of Book 6 of the CCA) or in the title relating to its assets (title 5 of Book 6 of the CCA). Although they have often been associated with the concept of capital[80], the abolition of this notion has not therefore led to the deletion of these rules.

25. Distributions and related operations – The absence of the classic reference to "capital" prompted the legislator to provide for measures to be complied with for the purpose of any "distribution" made by the company: a liquidity test and a solvency test must be carried out (CCA, art. 6:114, 6:115 and 6:116).

> **(i) Liquidity test –** The liquidity test consists, for the administrative organ, to ensure that after distribution, the company will be able, in the light of developments that can reasonably be expected, to continue to pay its debts as they become due for a period of at least twelve months as from the date of distribution (CCA, art. 6:116, indent 1).
>
> The application of this test is subject to a report drawn up by the administrative organ, which is filed with the clerk's office of the competent business court. The financial data included in the report are assessed by the statutory auditor.
>
> This system is not very practical in a company with many shareholders: it is difficult to figure out how the formalities provided for the cooperative society's distributions could be complied with at short intervals. In practice, this means that the articles of association must provide for due dates on which repayments are grouped together, which is not always ideal.
>
> **(ii) Solvency test –** The company's net assets, calculated on the basis of the last approved annual accounts or a more recent situation, may not be or become negative as a result of such a distribution or become lower than the unavailable amount fixed by the articles of association (CCA, art. 6:115).

Both tests must be applied for any distribution (profits' distribution at the annual general shareholders' meeting, distribution of interim dividends[81], distribution of directors' fees[82]) and for any refund of contributions to shareholders[83], including when they intervene upon resignation[84] or exclusion[85] of a shareholder as well as in the case of financial assistance[86].

The statutory clauses relating to profits' distribution will in principle cover these new tests.

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[79] Which constitutes a difference with the regime of public liability companies for which a control of the quasi-contributions remains stipulated: CCA, art. 7:8 to 7:10.
[80] D. BRULOOT, « Het nieuwe Nederlandse B.V.-recht: overzicht en Belgische aandachtspunten », *TRV*, 2014, p. 471.
[81] Which can now be distributed by the administrative organ as the CCA offers the possibility to provide, in the articles of association, for a delegation of powers to the administrative organ to distribute interim dividends: CCA, art. 6:114, indent 2.
[82] X. DIEUX and P. DE WOLF, « Le nouveau Code des sociétés (et des associations) : Capita Selecta », *J.T.*, 2019, p. 516.
[83] D. BRULOOT and H. CULOT, « De kapitaalloze BV – La SRL sans capital », *Le projet de Code des sociétés et associations – Het ontwerp Wetboek van vennootschappen en verenigingen*, Bruxelles, Larcier, 2018, p. 110.
[84] Article 6:120, §1, 6° of the CCA provides it expressly: "the amount to which the shareholder is entitled in case of resignation, is a distribution as referred to in Articles 6:115 and 6:116" ("*le montant auquel l'actionnaire a droit en cas de démission est une distribution telle que visée aux articles 6:115 et 6:116*").
[85] CCA, art. 6:123, § 3, referring to art. 6:120.
[86] CCA, art. 6:118.

2. Shares

26. Determination of shareholders' rights and obligations – In principle, the division of the company's capital as related to the individual part of each share in the capital played a role in determining by default the shareholders' rights and obligations87.

The disappearance of the notion of "capital" does not prevent the determination of each shareholder's rights and obligations, it will however be done on the basis of the shareholder's contributions and on the statutory and conventional provisions.

The notion of "nominal value" is also, as the one of capital, abolished. The "subscription price"[88] will now be used, namely for provisions regarding the entry and exit of shareholders (contributions made, withdrawal amounts) and for rights of certain categories (various categories of shares, now named "classes", may be created and different rights and obligations in terms of subscription price may be provided).

However, more attention will have to be paid when drafting such statutory clauses: the founders and shareholders' freedom of choice is now almost unlimited and is encouraged by a legal regime almost entirely "suppletive" (only applicable by default)[89].

27. Powers – The administrative organ has the power to issue shares unless the articles of association stipulate that the general shareholders' meeting is competent in this field (CCA, art. 6:108).

Nevertheless, this power is limited to the issue of shares of an existing share class unless the general shareholders' meeting decides otherwise, by a decision taken in accordance with the rules on amendment of the articles of association (CCA, art. 6:108).

It is necessary that the articles of association provide for the terms and conditions of a share issuance by the administrative organ and determine, where applicable, a maximum amount of shares that can be issued this way (CCA, art. 6:108, § 1st).

The administrative organ must report on this subject to the general shareholders' meeting once a year (CCA, art. 6:108)[90]. It must also update the register of shares (CCA, art. 6:108, § 2, last indent).

28. Admission – The principle of admitting only existing shareholders (should they want to acquire new shares) and third parties meeting the criteria specifically defined in the articles of association remains applicable (CCA, art. 6:105 and 6:106). The articles of association may furthermore provide for admission procedures91.

The wording of Article 6:106 of the CCA now seems to require that the articles of association provide for the possibility of refusing an applicant: otherwise, an applicant fulfilling the statutory

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[87] T. TILQUIN and V. SIMONART, *Traité des sociétés*, t.3, Bruxelles, Kluwer, 2005, pp. 135 and 136, nr. 1914 and pp. 140-143, nr. 1921-1927.
[88] Notion used in Article 6:108, last indent, of the CCA on the issue of new shares.
[89] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl.*, Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 141.
[90] This report contains a range of information mentioned in Article 6:108, §2 of the CCA, which can be modalized by the articles of incorporation.
[91] It can however not be provided that such an admission would lead to amending the articles of incorporation: CCA art. 6:106.

requirements should automatically be accepted. If the articles of association provide for such a possibility, the refusal must be motivated (CCA, art. 6:106).

B. Securities

1. Form and types of securities

29. Restrictive *numerus clausus*: shares and bonds – The *numerus clausus* of the securities that a cooperative society may issue (registered shares with voting rights92 and bonds) has been kept93.

As for cooperative societies which are regulated companies in terms of Article 3, 42°, of the Law of 25 April 2014 on the status and control of credit institutions and stock exchange companies[94], this *numerus clausus* is extended: they "may issue any other security that their legal status allows them to issue, whether dematerialised or not"[95]. The explanatory memorandum mentions "debt securities allowed by their status"[96]. A second extension has been provided by the Law of 28 April 2020 for cooperative societies subject to a "special regulatory status"[97] that can issue other securities if (i) their issuance is authorised by their regulatory status (*i.e.* by another legislation than the CCA[98]) and (ii) it is compatible with their cooperative purpose[99]. It is uncertain which cooperative societies, except for cooperative societies active in the insurance sector[100], may meet these criteria as of today but it might open possibilities in the future.

The limitation provided for in the CCA is rather unfortunate since it inhibits any creativity in the financing of unregulated cooperative societies. The explanatory memorandum of the CCA states that "a CS can assume a debt with specific characteristics (such as voting rights or an observer who may participate to meetings of the administrative organ)" but specifies that this applies "provided it does not take the form of a prohibited security"[101].

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[92] Each cooperative society must issue, at least, three registered shares with a voting right: CCA, art. 6:39.
[93] For a criticism of the existence of this *numerus clausus*: T. LOFFET and M. BERNAERTS, « Les associés de la société coopérative », », *La société coopérative : nouvelles évolutions*, Bruxelles, Larcier, 2018, p. 109; E.-J. NAVEZ and A. NAVEZ, *Le Code des sociétés et des associations. Présentation et premiers commentaires*, Bruxelles, Larcier, 2019, p. 180.
[94] *M.B.*, 7 May 2014, pp. 36794 et seq.
[95] Free translation of "*peuvent émettre tout autre titre que leur statut légal leur permet d'émettre, dématérialisé ou non*": CCA, art. 6:19.
[96] Free translation of "*titres de dette permis par leur statut*": Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, p. 69.
[97] Free translation of "*statut réglementaire special":* article 120 of the Law of 28 April 2020 amending art. 6:19 CCA.
[98] Act transposing Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and including miscellaneous provisions relating to companies and associations, justification of the amendment nr. 129 of P. Prévot et al., *Doc. Parl.*, Ch. repr., sess. ord. 2019-2020, nr. 55-0553/004, 28 January 2020, p. 143.
[99] Article 120 of the Law of 28 April 2020 amending article 6:19 CCA.
[100] These societies are directly mentioned in the parliamentary proceedings: Act transposing Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and including miscellaneous provisions relating to companies and associations, justification of the amendment nr. 129 of P. Prévot et al., *Doc. Parl.*, Ch. repr., sess. ord. 2019-2020, nr. 55-0553/004, 28 January 2020, p. 143.
[101] Free translation of "*une SC peut assumer de la dette ayant des caracteristiques spécifi ques (tel que, p.ex., des droits de votes ou un observateur qui peut participer aux réunions de l'organe d'administration), pour autant qu'lle ne prenne pas la forme d'un titre interdit*": Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, p. 69.

30. Industry contributions – A contribution in industry may be remunerated in shares (CCA, art. 6:11), whereas profit shares, which often remunerated that kind of contribution, were previously forbidden.

The possibility to make industry contributions may interest some cooperative societies but requires a very precise drafting of the related statutory provision [102].

Moreover, to date, there are significant accounting and tax uncertainties surrounding the creation of shares as consideration for an industry contribution[103].

31. Transfer – In principle, shares are freely transferable between shareholders (CCA, art. 6:52) whereas transfers to third parties are submitted to the following conditions : the proposed acquirer must belong to one of the categories referred to in the articles of association and must meet the statutory requirements to become a shareholder (CCA, art. 6:54).

As was already the case, the articles of association (or issuance conditions for bonds), or even shareholders' agreements, can modify these rules. These modifications must be drawn up carefully. Indeed, if a company wants to keep a certain room for manoeuvre, even when the proposed acquirer fulfils all the statutory requirements, it is recommended that the articles of association provide for a refusal of such transfer, the reasons for which must therefore be given (CCA, art. 6:54).

The administrative organ is by default competent for deciding on transfers of shares (CCA, art. 6:54). This competence could however be given to the general shareholders' meeting.

A transfer of shares made irregularly is not enforceable against the company and third parties[104].

2. Rights attached to shares

32. Participation in the profits or in the balance of liquidation proceeds – The articles of association should stipulate whether each share gives the right to an equal part of the profits and balance of liquidation proceeds or whether different systems are applicable as is often the case in the articles of association of existing cooperative societies105.

33. One share, one vote – The articles of association may provide for certain voting arrangements (the default rule is that each share is entitled to one vote106), it being understood that each share must have at least one voting right as issuing shares without any voting right is forbidden107.

The principle of multiple voting is however admitted[108].

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[102] Article 6:11 of the CCA, being 'suppletive' (only applicable by default), only targets the contributor's non-culpable non-performance: it is therefore recommended provide for the consequence of culpable non-performance in the articles of association. X. DIEUX and P. DE WOLF, « Le nouveau Code des sociétés (et des associations) : Capita Selecta », *J.T.,* 2019, p. 514.

[103] D. GARABEDIAN and R. THONET, « La société à responsabilité limitée (SRL) et l'impôt », *La société à responsabilité limitée,* Bruxelles, Larcier, 2019, pp. 327-328.

[104] E.-J. NAVEZ and A. NAVEZ, *Le Code des sociétés et des associations. Présentation et premiers commentaires*, Bruxelles, Larcier, 2019, p. 183.

[105] CCA, art. 6:40.

[106] CCA, art. 6:41.

[107] CCA, art. 6:19 and 6:40; D. VAN GERVEN, « De coöperatieve vennootschap, de erkende vennootschappen, de feitelijke vereniging, de VZW, de IVZW en de stichtingen », *R.D.C.-T.B.H.*, 2018/9, p. 1073.

The articles of association could also provide for a vote per member.

34. Limitation of the number of votes – Article 6:44 of the CCA states that "the articles of association may limit the number of votes that each shareholder has at meetings, as long as this limitation is imposed on any shareholder irrespective of the securities in respect of which they take part in the vote, without prejudice to any special rights attributed to a shareholder taking into account his quality"109.

This principle of equality between shareholders in case of limiting voting rights did not exist in the Belgian Code of companies for cooperative societies, nor in the first drafts or amendments of Book 6 of the Code of companies and associations. It seems to have been added to ensure consistency between the systems applicable to public limited companies, limited liability companies and cooperative societies.

While it is questionable whether it is possible to provide for a limitation on the number of votes that would apply to a class of shareholders as a whole, differentiation based on the 'quality' of the shareholder (e.g. their status, qualifications, interests, role within the company, etc.) is in any case authorised in cooperative societies[110], which in principle allows for a voting ceiling for a group of shareholders having the same quality[111].

35. Class of shares – The first indent of Article 6:46 of the CCA does not modify the existing rules regarding the classes of shares.

On the contrary, the second indent now states that rights may be attributed to shareholders based on their qualities without taking into account shares they hold and that these specific rights do not require the creation of a specific class of shares.

This implies that preferential rights could, for instance, be allocated to the cooperative's founders without the specific voting rules for modifications of share classes applying.

This also implies that these rights are attached to the person of the shareholder and are not transferable: if a founder transfers a share, the rights they were granted on the basis of their status as a founder will not be transferred to the acquirer who is not a founder[112].

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[108] Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, p. 71.

[109] Free translation of "*[l]es statuts peuvent limiter le nombre de voix dont chaque actionnaire dispose dans les assemblées, à condition que cette limitation s'impose à tout actionnaire quels que soient les titres pour lesquels il prend part au vote, sans préjudice des droits spéciaux attribués à un actionnaire, en tenant compte de sa qualité.*"

[110] The explanatory memorandum on this Article stipulates that "the text is that of Article 5:45. However, certain rights can be attributed to the quality as a shareholder, such as for instance a founder or an investor, in cooperative society. The text confirms that possibility" ("*[l]e texte est celui de l'article 5:45. Dans une SC il est toutefois admissible que certains droits soient attribués à la qualité d'un actionnaire, tel que, p.e. un fondateur ou un investisseur. Le texte confirme cette possibilité*"): Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, p. 71.

[111] For those questions regarding the applicable provisions to public liability companies, see. I. CORBISIER, « La société et ses associés », *Droit des sociétés : les lois des 7 et 13 avril 1995*, Bruxelles, Bruylant, 1995, pp. 192-196; M. WYCKAERT, « Overdrachtsbeperkingen en stemovereenkomsten », *De nieuwe Vennootschapswetten van 7 en 13 april 1995*, Kalmthout, Biblo, 1995, pp. 118-120.

[112] Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-/021, 26 February 2019, p. 71.

C. Governance

36. Administrative organ – The administration regime is very flexible.

The cooperative society is administered by one or more directors, appointed by the general meeting, whether or not acting as a college (collegial decisions), who are natural or legal persons (CCA, art. 6:58, §1st, indent 1).

The administrative organ may entrust one or more persons, each acting individually, jointly or collegially, with the company's day-to-day management as well as with the representation of the company regarding its management (CCA, art. 6:67, indent 1).

The administrative organ may also create, on the basis of mandates and delegation under ordinary law, an executive committee which will, in principle, have broader powers than those of the day-to-day management.

37. General shareholders' meeting – The provisions regarding the general shareholders' meeting fall within the classic organisation of general shareholders' meetings under Belgian law.

38. Committees – Though the Code does not stipulate anything, it is totally possible to create various advisory committees, as the case may be, emanating from the board of directors or other interested parties, such as users or investors, scientists… whose role and organisation will be defined in its articles of association or in its internal rules113.

D. Resignation and removal

39. Principles – Provisions related to shareholders' resignations and removals have not been subject to major changes. Alongside resignations, exclusions and assimilated situations such as the death or bankruptcy of a shareholder, the Belgian legislator has however also decided to earmark clauses of quality.

40. Resignation – From now on, the articles of association of a cooperative society can no longer forbid a shareholder to resign (CCA, art. 6:120, § 1st, indent 1st), except founders who cannot do so before the third financial year of the company, even if it is permitted by the articles of association (CCA, art. 6:120, § 1st, indent 2).

Except for these two new mandatory rules, the CCA offers a greater freedom to the authors of articles of association: the other rules provided for are "suppletive" (only applicable by default) and allow (i) to resign at another time except during the first six months of the financial year, (ii) to fix freely the effective date of this resignation, (iii) to fix freely the time for paying the withdrawal amount or (iv) to determine the withdrawal amount (CCA, art. 6:120, § 1st).

41. Removal – As for resignation, the articles of association cannot forbid the possibility, for a company, to exclude a shareholder (CCA, art. 6:123, § 1st).

[113] Act introducing the Code of companies and associations, justification of the amendment nr. 542 of O. Henry et al., *Doc. parl.*, Ch. repr., sess. ord. 2018-2019, nr. 54-3119/021, 26 February 2019, p. 72.

The removal decision will be taken by the general shareholders' meeting or by the administrative organ, when foreseen by the articles of association (CCA, art. 6:123, § 1st).

Such a decision shall mandatorily be based on "serious grounds" ("*justes motifs*") or on other grounds detailed in the articles of association and shall follow a strict procedure defined by the CCA (CCA, art. 6:123).

42. Death, bankruptcy and other related situations – As was already the case in the former Companies Code, death, bankruptcy, liquidation, collective debt settlement and judicial protection of a shareholder entail in principle the application of the rules provided for the resignation of a shareholder.

The articles of association can provide for specific rules in these different specific cases, derogate to the principle or define other *intuitu personae* situations.

43. Loss of quality – The so-called "quality clauses" ("*clauses de qualité*") are now expressly acknowledged by the Belgian legislator (CCA, art. 6:122).

These clauses commonly used in practice provide that the conditions a shareholder must fulfil to be admitted in the cooperative society, continue to be applied throughout their presence in the society, for otherwise the concerned shareholder will lose their 'quality' of shareholder.

These clauses must be drafted very carefully, but all cooperative societies may now foresee such clauses in their articles of association, without them risking being requalified as removal clauses[114].

44. Withdrawal amount – The withdrawal amount granted to the exiting shareholder is assimilated to a distribution. The solvency and liquidity tests should hence be applied for each exit (CCA, art. 6:120, § 1st, indent 2), which leads to heavy formalities for a company which is in principle promoting the variability of its shareholding.

45. Report to the general shareholders' meeting and update of the register – In addition to reports on each distribution, the administrative organ must draft an annual report for the general shareholders' meeting and update the shares register (CCA, art. 6:120, § 2).

It is regrettable that no specific term has not been provided for updating the register as it is an important document of the company that is supposed to reflect the composition of its shareholding at any moment. The absence of update will however not prevent the concerned shareholder's exit from becoming effective, save for any statutory provisions to the contrary.

V. ACCREDITATIONS

46. The "three" accreditations of the CCA – Book 8 of the CCA is dedicated to companies' accreditation. In addition to very specific accreditations, such as "forestry group" and "agricultural enterprise" ("*groupement forestier*" and "*entreprise agricole*") which we will not analyse, "three" other accreditations, reserved for cooperative societies, are listed: (i) the simple accreditation ("accredited CS" ("*SC agréée*") – CCA, art. 8:4), (ii) the accreditation as social enterprise ("CS accredited as SE" ("*SC*

[114] M. BERNAERTS, « La délicate rédaction des clauses d'exclusion et de perte de qualité », *R.P.S.-T.R.V.*, 2018, pp. 579 et seq.

agréée comme ES") – CCA, art. 8:5, § 1st) and (iii) the double accreditation combining the accreditations (i) and (ii) ("CSSE accredited" ("*SCES agréée*") – CCA, art. 8:5, §2) .

47. The accredited cooperative society – In the 1950's, the legislator considered that it would be beneficial to create a particular status of 'accredited' cooperative society and adopted the Act of 20 July 1955 (*supra* § 0) creating the National Cooperation Council, whose purpose was to spread the cooperative principles and preserve the cooperative ideal115. The CCA has kept this accreditation (CCA, art. 8:4).

The National Cooperation Council accredits cooperative societies, affiliated to a national group or not, whose articles of association and actual functioning comply with the provisions of Article 5 of the Act of 20 July 1955 and with the rules specified in Article 1, §1st, of the Royal Decree of 8 January 1962, namely voluntary and open membership; the main purpose of providing shareholders with an economic and social benefit; the equality or limitation of voting right in the general shareholders meeting; the setting of economic advantages; the use of a part of the resources for informing and training its members.

An accredited cooperative group or accredited cooperative society that no longer abides by those principles is dissolved or is struck off the list of accredited cooperative groups and accredited cooperative societies (art. 7 of the Royal Decree of 8 January 1962).

48. The cooperative society accredited as social enterprise – The previous Companies Code had created the status of "society with social purpose" ("*société à finalité sociale*") for companies which did not aim at enriching their shareholders and which were pursuing a "social purpose" ("*but social*")116.

A new dichotomy between companies and associations, based on the distribution of profits to shareholders, from now on prevents any company from stipulating a total lack of distribution (doing so, it would be requalified as association) and the form of "society with social purpose" has been abolished[117]. However, the legislator has created a specific accreditation as "social enterprise" ("*entreprise sociale*")[118] to respond to the expectations of the social economy sector.

The requirements which a cooperative society must meet when requesting an accreditation as social enterprise are very similar to those for the accredited cooperative society[119], except as for its principal purpose: the principal purpose of an accredited cooperative society must concern its

[115] The Cooperative National Council's mission is to "study and promote all measures specific to principles and cooperative ideal as defined by the International Cooperative Alliance (ICA)" (free translation of "*étudier et promouvoir toutes mesures propres à les principes et l'idéal coopératif tels que définis notamment par l'Alliance coopérative internationale*"). It also "submits all opinions and proposals regarding questions related to the cooperative activity to a minister, within its field of competence, to the Central Economic Council, upon request or on its own initiative by way of reports expressing the different points of view expressed among its members" (free translation of "*adresser à un ministre et, dans les matières de son ressort, au Conseil central de l'Économie, soit à leur demande, soit d'initiative et sous forme de rapports exprimant les différents points de vue exposés en son sein, tous avis ou propositions concernant des question relatives à l'activité coopérative*") (art. 1, 9° and 2° of the Act of 20 July 1955).

[116] Art. 661, first indent, 2° of the Companies Code.

[117] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl*., Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, pp. 8-9.

[118] Act introducing the Code of companies and associations, Explanatory Memorandum, *Doc. parl*., Ch. repr., sess. ord. 2017-2018, nr. 54-3119/001, 4 June 2018, p. 9. However, this accreditation can only be requested by cooperative societies whereas any form of company could previously be with a "social purpose".

[119] We talk about conditions related to voting rights, directors' remuneration, limited shares, distribution of profits and liquidation surplus, drawing up of an annual special report and accreditation request: Royal Decree of 8 January 1962 fixing the accreditation conditions for groups of cooperative societies and cooperative societies and Royal Decree of 28 June 2019 fixing the accreditation conditions as agricultural enterprise and social enterprise.

shareholders whereas the main purpose followed by a cooperative society accredited as a social enterprise must be "to generate a positive societal impact for the people, the environment or the society in the general interest."[120].

49. The double accreditation – Article 8:5, § 2, of the CCA targets the company "which is both an accredited cooperative society regarding Article 8:4 and a company accredited as a social enterprise regarding paragraph 1st"121.

The company, which would have requested and obtained those two accreditations, shall add the terms "accredited" ("*agréée*") and "social enterprise" ("*entreprise sociale*") to its name, which could create a confusion with the society accredited as social enterprise. Only its shortened name will enable third parties to make a distinction ("accredited CSSE" instead of "CS accredited as SE") ("*SCES agréée*" instead of "*SC agréée comme ES*").

This problem of vocabulary is accompanied by a discussion on the very need for a double accreditation. In fact, the main difference (and, actually, the only real one) between the accredited CS and the CS accredited as SE, is the purpose followed by the concerned company and a company cannot have as a main purpose at the same time "to provide its shareholders with an economic or social benefit to satisfy their professional and private needs"[122] and "not to provide its shareholders with an economic or social benefit to satisfying their professional and private needs"[123].

If a company having a double accreditation is forbidden to follow the second mentioned purpose[124], it seems that there is no difference between the "CS accredited as an SE" and the "accredited CSSE". The double accreditation seems therefore, at this stage at least, unnecessary. A modification of the requirements for each accreditation, or of the advantages each accreditation, could however take place in the future and change this situation.

VI. CONCLUSION

The main element of the reform of the legal regime of cooperative societies in Belgium is certainly the new definition of these societies.

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[120] Free translation of "*dans, l'intérêt général, de générer un impact sociétal positif pour l'homme, l'environnement ou pour la société*": art. 6, § 1st, 1° and 2° of the Royal Decree of 28 June 2019 fixing the accreditation conditions for agricultural enterprise and social enterprise and art. 8:5, § 1st, 1°, of the CCA.

[121] Free translation of "*qui est tant une société coopérative agréée visée à l'article 8:4 qu'une société agréée en tant qu'entreprise sociale visée au paragraphe 1er*".

[122] Free translation of "*procurer à ses actionnaires un avantage économique ou social, pour la satisfaction de leurs besoins professionnels et privés*": CCA, art. 8:4/

[123] Free translation of "*ne consiste pas à procurer à ses actionnaires un avantage économique ou social, pour la satisfaction de leurs besoins professionnels et privés*": CCA, art. 8:5, § 2.

[124] Article 1, § 8, of the Royal Decree of 8 January 1962 fixing the accreditation conditions for groups of cooperative societies and cooperative societies stipulates that the condition on the main purpose of the accredited cooperative society does not apply to the « cooperative societies with social purpose that fulfil the conditions provided for in Articles 661 to 664 of the Companies Code and other accreditation conditions in the present decree », which can be transposed to target accredited cooperative societies as social enterprises willing to have a double accreditation. See also A. FRANÇOIS and F. HELLEMANS, « Shaken, not stirred? een eerste analyse van de definities, de basisbeginselen en de structuur van het nieuwe Wetboek van vennootschappen en verenigingen », *Le projet de Code des sociétés et associations – Het ontwerp Wetboek van vennootschappen en verenigingen*, Bruxelles, Larcier, 2018, p. 33; M. D'HERDE, « Van VSO naar CV erkend als SO: geslaagde restyling, of doorgeslagen striptease ? », *R.P.S.-T.R.V.*, 2018/8, pp. 833-836.

Henceforth, the cooperative will become (anew) a form of company reserved for enterprises and projects that are, to a greater or lesser extent, driven by the cooperative ideal.

This will have to be translated in practice, in the first place, by a careful and detailed definition of the company's object, its values and its cooperative purpose, which will have to be expressed in the articles of association of any cooperative society, and, where appropriate, detailed and specified in a charter or internal rules. In concrete terms, this will lead in the months and years to come to the necessity for many "false" cooperatives to change their societal form to become, a priori, a limited liability company ("SRL").

On a more technical level, it will be necessary to be attentive to the disappearance of the notions of "share capital", "fixed and variable parts", "nominal value" of the shares, and to the legal consequences which are related to them.

For the rest, the organisation of cooperative societies is, for the remainder, not greatly affected (subject to certain adjustments in terminology or some aspects of the entry and exit clauses), but it is nonetheless burdened by certain new provisions inspired by the limited liability company ("SRL") regime (conflict of interest procedure, double test of liquidity and solvency before any distribution, etc.).