

Tomasz Dąbrowski

## LEGAL REGULATIONS OF COOPERATIVE AUDIT

### Introduction

A discussion of cooperative audit should begin with an analysis of the concept. In everyday speech, “audit” means a review, control, inspection of someone or something [Skorupka, Auderska, and Łempicka 1969, 353]. *The Dictionary of the Polish Language* gives two meanings of the term: 1) “review and control of institutions, premises, documents” and 2) verification, “in post-communist countries, if holders of high positions have not had connections with security services” [Drabik, Kubiak-Sokół, and Sobol 2009, 409]. In the words of M. Wrzołek-Romańczuk, “audit is an inspection of legality, cost efficiency and reliability of cooperative activities which is undertaken as part of cooperative structures with a statutory frequency or as requested by cooperative bodies or members” [Wrzołek-Romańczuk 2020, 334].

The institution of cooperative audit is a traditional regulation under both earlier and the prevailing Cooperative Law of 16 September 1982.<sup>1</sup> The first Polish cooperative act of 29 October 1920<sup>2</sup> employed the term “review” (Chapter 8, Articles 60-65). In the light of those provisions, a cooperative was obliged to undergo an audit every two years as a minimum. It was conducted by a competent auditor who could not be affiliated with the cooperative being audited (Article 60). The auditor prepared an audit report and supplied its copy to the cooperative audited (Article 63).

---

DR. TOMASZ DĄBROWSKI, Department of Private Law, Faculty of Law and Administration, University of Technology and Humanities in Radom; correspondence address: ul. Chrobrego 31, 26-600 Radom, Poland; e-mail: [t.dabrowski@uthrad.pl](mailto:t.dabrowski@uthrad.pl); <https://orcid.org/0000-0001-6184-140X>

<sup>1</sup> Journal of Law of 2020, item 275 as amended [hereinafter: CL].

<sup>2</sup> Journal of Law of 1950, No. 25, item 232 as amended.

By force of Article 61 of the Cooperative Act, auditors were appointed by audit unions or cooperatives authorised by the Cooperative Council to undertake audits in their member cooperatives. If a cooperative was not a member, an auditor was appointed by the National Cooperative Council. The Cooperative and Their Unions Act of 17 February 1961<sup>3</sup> introduced the concept of “the audit,” affording a statutory rank to a notion specific to cooperatives. It has remained in force until today. The audit was regulated by Division VII of Chapter V (Articles 61-64 of the Act). Article 61(1) of the Act stipulated operations of each cooperative were audited by auditors of a competent central union on an annual basis at a minimum.<sup>4</sup> At the time, an audit was to verify whether a cooperative followed cooperative principles, legal regulations, provisions of its statutes, resolutions of competent unions and of the National Cooperative Council and to review all operations of a cooperative. An auditor, pursuant to Article 62(2) of the Act, was authorised to inspect books and any other documents and to directly check asset position of a cooperative. They could also require its bodies to provide explanations and assistance. A report was drafted at the end of an audit, whose copy was supplied by the competent central union to a cooperative audited. The reports had the status of public documents.

The fact auditing of cooperatives was suspended by force of the Modifications to Organisation and Activities of Cooperatives Act of 20 January 1990<sup>5</sup> is noteworthy. This was closely related to the then liquidation of all central cooperative unions. The law envisaged reintroduction of cooperative auditing by the end of July 1991 at the latest. The deadline was not met.

Auditing is addressed by the current Cooperative Law in Title I Part I Division VIII (Articles 91-93c). The Act has been amended a number of times. In accordance with Article 91(4) of the CL *in fine*, the National Cooperative Union<sup>6</sup> is authorised to issue regulations of cooperative

---

<sup>3</sup> Journal of Laws No. 12, item 61 as amended.

<sup>4</sup> As noted by the doctrine, audited cooperatives were members of a central union and auditing a form of supervision by members [Gersdorf and Ignatowicz 1966, 183].

<sup>5</sup> Journal of Laws No. 6, item 36 as amended.

<sup>6</sup> Hereinafter: NCC.

auditing. In line with this provision, the General Assembly of the NCC passed resolution No. 10/2020 on the Procedure and Rules of Auditing of Cooperative Organisations<sup>7</sup> on 7 July 2020. It became effective as of 1 January 2021. Its appendix<sup>8</sup> governs the procedure and rules of auditing of cooperative organisations. Qualification criteria for auditors, rules of awarding qualifications and of auditor training, meanwhile, are standardised in the resolution of 19 December 2018.<sup>9</sup> Passing of the Auditor's Code of Ethics<sup>10</sup> was a major achievement of the NCC. It forms appendix 1 to the Resolution No. 10/2010.

### **1. Objectives of auditing**

Objectives of auditing are laid down in Article 91(2<sup>1</sup>) CL. They include: 1) verification if a cooperative follows the law and provisions of its statutes; 2) reviewing whether a cooperative conducts its operations in the interests of all its members; 3) inspection of cost effectiveness, rationality, and reliability of realisation of economic, social, and cultural goals by a cooperative; 4) drawing members' attention to irregularities in operations of a cooperative's statutory bodies; 5) organisational assistance with and guidelines for repairing irregularities and streamlining operations of a cooperative. The objectives are formulated in this way in para 2(1) of the Appendix.

In compliance with Article 91(1) sentence one of the CL, cooperative activities are audited for legality, cost efficiency, and reliability. It should be pointed out the legislator fails to define these notions, which can in practice

---

<sup>7</sup> Resolution No. 10/2020 of the NCC General Assembly on the Procedure and Rules of Auditing of Cooperative Organisations (07.07.2020), <https://www.KRS.org.pl/lustracja-spodzielni-2/uchwala-No.-10-2020-zo-KRS-z-dn-07-07-2020-r> [accessed: 08.04.2021] [hereinafter: Resolution No. 10/2020].

<sup>8</sup> Hereinafter: Appendix.

<sup>9</sup> Resolution No. 21/2018 of the NCC General Assembly on Qualification Criteria of Auditors, Auditor Training, Awarding and Withdrawal of Auditor Qualifications (19.12.2018), <https://the.NCC.org.pl/lustracja-spodzielni-2/nadawanie-uprawnien-lustracyjnych> [accessed: 08.04.2021] [hereinafter: Resolution No. 21/2018].

<sup>10</sup> The Auditor's Code of Ethics, adopted by force of Resolution No. 10/2010 of the General Assembly of the National Cooperative Council (01.07.2010), <https://the.KRS.org.pl/lustracja-spodzielni-2/kodeks-etyki-lustratora> [accessed: 08.04.2021].

give rise to interpretative difficulties. Since legal definitions of these terms are not available, dictionary explications must be resorted to.

Polish language dictionaries define “legal” as “conforming to prevailing law” and “having legal effect” [Skorupka, Auderska, and Łempicka 1969, 339; Drabik, Kubiak-Sokół, and Sobol 2009, 409]. The word “reliable” means “fulfilling one’s duties, honest, trustworthy, conscientious, sound” [Skorupka, Auderska, and Łempicka 1969, 729; Drabik, Kubiak-Sokół, and Sobol 2009, 884]. “Eficient” is defined “capable of good management” [Skorupka, Auderska, and Łempicka 1969, 205; Drabik, Kubiak-Sokół, and Sobol 2009, 239].

These concepts are explained in para. 2(2) of the Appendix as well. In its light, an audit is carried out in consideration of the following criteria: 1) legality – compliance of actions with prevailing legal regulations, statutes, by-laws, and resolutions of statutory cooperative bodies; 2) efficiency – reasonable and cost-efficient management of assets based on principles of economic calculation while providing benefits to cooperative members and due care for security of cooperative assets; 3) reliability – documentation of transactions in accordance with the state of affairs.

These objectives will be attained if audit findings allow for a comprehensive and objective evaluation of the business audited and formulation of conclusions to improve operations of a cooperative. It must be remembered an audit is designed not only to establish facts but also take preventative and instructional actions [Gersdorf and Ignatowicz 1985, 181]. The doctrine is correct to point out business activities of a cooperative are one of their central functions that should rely on the principle of economic account in order to provide benefits to members [Cern 2019, 321]. These activities should be examined in depth based on the above audit objectives and criteria, since this is crucial to a cooperative and its members.

## **2. Types of audit**

The Act distinguishes obligatory and facultative or voluntary audit. The obligatory audit is governed by Article 91(1) and (1<sup>1</sup>) CL. Provisions of Article 91(1) CL stipulate each cooperative is obliged to undergo an audit every three years or, if it is in liquidation, every year [Florek 2008, 30]. This provision is absolutely binding [Gonet 2010, 31].

In the light of Article 91(1<sup>1</sup>) CL, housing cooperatives in the process of constructing residential buildings and accounting for its costs, as well as cooperatives in liquidation are audited every year. The facultative audit is provided for by Article 91(2) CL. It can apply to all or part of cooperative activities as well as only issues set out in a request. A request for facultative auditing can be submitted by management board of a cooperative at any time. The management board must submit such an application, though, where required by the annual general meeting, the supervisory board or a minimum of 1/5 cooperative members. The doctrine has rightly noted the legislator has failed to specify a format in which a request for a facultative audit must be presented. No indications are contained in the Resolution No. 10/2020, either [Weber-Elżanowska 2020, 870]. A request should state the scope of facultative audit (full, partial or limited to specific required issues) [Niedbała 1994, 51].

In this connection, a *de lege ferenda* postulate is in place to have obligatory audits every year, not, like under the prevailing law, every three years. More regular auditing will help prevent abuses in cooperatives and will involve auditors in instruction, advice and assistance with day-to-day activities of cooperative organisations to a greater extent.

*De lege lata* para. 3 of the Appendix should be interpreted as the criterion of objective scope of auditing. In line with this regulation, audits are divided into full, partial, and problem-based. Full audits encompass all of the organisational, economic, and social activities, in particular, review of financial results and the overall protection of assets, prevention and countering of abuses in cooperatives [Boczar 1986, 83]. As specialist literature observes, an obligatory audit is normally full [Wrzołek-Romańczuk 2020, 335]. Partial audits involve inspections of parts of cooperative activities as requested by cooperative self-government bodies to inspectorates or the NCC. Problem-based audits, meanwhile, are designed to review an issue on a wider scale. Follow-up audits are held in practice as well, with repeat auditing by another auditor to verify audit findings questioned by cooperative self-government [Stecki 1987, 135].

### 3. Parties authorised to conduct an audit

Provisions of Article 91(3) CL introduce the principle of union audit, carried out by competent inspectorates in their cooperative members. Non-member cooperatives, on the other hand, request audits from a selected inspectorate or the NCC. The doctrine points out neither the inspectorates nor the Council have supervisory functions over cooperatives in this connection [Wrzolek-Romańczuk 2014, 40]. Para. 4(1) sentence two of the Appendix states an inspectorate may also audit non-member cooperatives if it has cooperatives as its statutory objects. A requested audit is paid, without any exceptions.

In line with Article 93a(1) CL, a minister competent for construction, planning, development and housing can demand information, data and documents concerning organisation and activities of housing cooperatives insofar as necessary to assess legality and efficiency of cooperative activities. Where a housing cooperative is suspected of violating law, on the other hand, a minister requests an inspectorate where a cooperative is a member or the NCC to undertake an audit. Such an audit is conducted at the expense of a housing cooperative audited (Article 93a(2) CL). It is instigated, as provided for by Article 93a(5) CL, by an inspectorate or the NCC within 30 days of receiving the minister's request [Stepnowska 2017, 254]. This audit may cover all or part of a housing cooperative's activities as well as specific issues.

Article 93a(4) CL stipulates the minister may request auditing of a given cooperative once a year as a maximum. This provision includes a legislative error, since it implies the minister can request an audit of any cooperative, while they are authorised to do so only in relation to housing cooperatives, only one cooperative branch, not, as implied by Article 93a(4) CL, a given cooperative. The word "given" should be removed, therefore, and the word "housing" added to the word "cooperative" in the regulation under analysis. This will make the provision more specific and consistent with Article 93a(1) and (2) and (7) CL.

Regulation of Article 93a(7) CL provides the competent minister with the ability to exercise the rights of the NCC or an inspectorate solely in relation to housing cooperatives defined in the Cooperative Law, subject

to Articles 114 and 115 CL, if these rights are not exercised by the NCC or an inspectorate.

The Regional Administrative Court in Warsaw was right to argue in its decision of 17 January 2011<sup>11</sup> contents of Article 93a(2) CL imply it refers to a special procedure under which the legislation allows a competent minister only to present non-executive requests not to a housing cooperative directly, but to auditing bodies specified in such a request, to undertake an audit of a cooperative in breach of the law. By requesting auditing authorities, therefore, the minister does not act as an administrative authority bound to issue an individual administrative act. It must be pointed out, therefore, a minister's request is not subject to Article 3(2)(4) of the Proceedings Before Administrative Courts Act of 30 August 2002.<sup>12</sup>

The Supreme Administrative Court decision of 8 May 2012<sup>13</sup> needs to be noted in this connection, according to which Article 93a(2) CL does not provide grounds for qualifying an audit request as an act specifying obligations under the law. The regulation does not afford a minister competences for an authoritative determination of duties of taking steps to remedy a breach of law. In conformity with the Constitutional Tribunal judgement of 15 July 2009,<sup>14</sup> Article 93a of the 16 September 1982 Act is contrary to Articles 78 and 146(4) of the Polish Constitution.<sup>15</sup> That decision continued to declare the Cooperative Law does not provide for a minister's executive determination of a housing cooperative's legal position. None of the minister's rights contemplated by the provision carries sanctions.

#### **4. Auditor**

By force of Article 91(4) CL, an auditor is appointed by an inspectorate where a cooperative is affiliated or the NCC (cf. the Supreme Administrative Court judgement of 2 December 2020<sup>16</sup>). Cooperatives and cooperative

---

<sup>11</sup> Ref. no. VII SA/Wa 1357/10, Legalis no. 476048.

<sup>12</sup> Journal of Laws of 2019, item 2325 as amended.

<sup>13</sup> Ref. no. I OSK 725/11, Lex no. 1336412.

<sup>14</sup> Ref. no. K 64/07, OTK-A 2009, No. 7, item 110.

<sup>15</sup> CT Judges M. Mazurkiewicz and B. Zdziennicki gave dissenting opinions to the decision.

<sup>16</sup> Ref. no. II GSK 945/20, Lex no. 3109161.

organisations can be audited by auditors qualified by the National Cooperative Council [Ołdat, Rogóż, and Świerżewska 2009, 12].

Qualification criteria of auditors, rules of auditor training, and awarding of qualifications are governed by a resolution of the NCC General Assembly (Resolution No. 21/2018). In line with its para. 2(1), an individual meeting all of the following criteria can be qualified as an auditor: 1) they have completed university education and a minimum of three years' experience with a cooperative or cooperative union or secondary education and a minimum of five years' experience with a cooperative or cooperative union (individuals without the experience must have university qualifications, following a specialist course of at least 150 hours and pass of an examination); 2) they have the capacity to enter legal transactions and enjoy full civil rights; 3) they have not been convicted for crimes against property and documents or penal fiscal crimes and offences; 4) they have taken specialist training and passed an examination; 5) their conduct warrants correct discharge of auditing functions.

Audit qualifications can be gained after a minimum of 90 hours of obligatory specialist training and passing of a professional examination. Training for auditor applicants is arranged by the NCC or inspectorates on approval of training curricula by Administrative Board of the NCC. An examination is conducted by a commission appointed by the Administrative Board as requested by a training organiser. Framework rules and procedure of examinations on the subject matter of training are laid down by the Administrative Board. This authorisation arises from para. 4(4) of the Resolution No. 21/2018.

If training is arranged by an inspectorate, membership of the examination commission is consulted with the inspectorate's administrative board. The literature correctly emphasises in practice such commissions are headed by Directors of the NCC's Audit Team. The training and examination qualifying auditors encompass three areas: 1) general cooperative issues, including legal grounds of cooperative activities, competences and operation of self-government bodies, foundations of accounting, legal and economic topics; 2) professional – techniques and methods of auditing, rules of auditing, inspections, and preparation of audit materials; 3) specialist – specific to cooperative business [Jankowski 2009, 114].



Head of an examination commission determines format of the examination (testing is most common in practice).<sup>17</sup> Auditor qualifications are awarded by the NCC's Administrative Board. The Council keeps general records of auditors [Drozd-Jaśniewicz 2007, 12]. Decisions to award and withdraw auditor qualifications under para. 5(1) of the Resolution No. 21/2018 are announced in the Cooperative Monitor. The qualifications are confirmed with a certificate and auditor's ID card, issued by the NCC.

An auditor, as explicitly implied by para. 6(3) of Resolution No. 21/2018, shall continue to improve their knowledge and professional qualifications. Participation in training organised by the NCC or an inspectorate and comprising a minimum of 15 hours per annum or 30 hours over two years is pre-requisite to active performance of the profession. An auditor must display extensive knowledge of law, economics, and administration. Aside from adequate professional qualifications, an auditor should exhibit appropriate personal characteristics that decide they warrant proper discharge of their duties [Żabski 1983a, 63].

By virtue of Article 91(4) CL, the NCC General Assembly adopted a resolution to accept the Auditor's Code of Ethics on 1 July 2010. The Code specifies the principles that provide guidelines to auditors. These are: reliability, honesty, objectivity, impartiality, independence, competences, diligence, confidentiality, and professionalism. An auditor shall keep confidential any information about a cooperative's activities acquired as part of their audit.<sup>18</sup> Exceptions to this rule are laid down in Article 91(5) sentence two of the CL. It should be kept in mind the confidentiality obligation is not limited in time. According to para. 6(1) and (2) of the Appendix, auditors cannot audit cooperatives they have been connected with for the last five years by force of contracts of mandate or of specific work, where they are members, employees or have been employed under contracts of employment for the last five years; where they are spouses or

---

<sup>17</sup> The text consists of several sections about distinct topics, that is, legal foundations of cooperative organisation and activities, activities of cooperative bodies, methods and techniques of auditing, industry specific, and cooperative economy and finances.

<sup>18</sup> Article 91(5) CL binds auditors to keep confidential any information about cooperative activities they gain in connection with their audits and to act within the law. Thus, it is addressed to auditors – as acknowledged by the Regional Administrative Court in Warsaw in its judgement of 18 May 2017, ref. no. II SA/Wa 2180/16, Lex no. 2767190.

direct relations to persons holding managerial positions in such a cooperative. As far as audits of housing cooperatives are concerned, on the other hand, Article 91(4<sup>1</sup>) CL stipulates auditors cannot be management board members, proxies, liquidators, chief accountants, legal counsels or attorneys employed by or supplying services to any housing cooperatives.<sup>19</sup> This prohibition also applies to other individuals reporting to management board members, liquidators or chief accountants.

An auditor shall make a statement of their independence from an entity audited to the party ruling an audit, in particular, declaring any circumstances preventing an audit as listed in para. 6(1) and (2) of the Appendix and Article 91(4<sup>1</sup>) CL are absent and they have taken the obligatory training arranged by the NCC or an inspectorate. Provisions of para. 6(5) of the Appendix ban an auditor from inspecting the same cooperative during three consecutive audits. An audit by an auditor in default of the conditions set out in para. 6 requires another inspection at the expense of the party ruling that audit.

The National Cooperative Council may withdraw auditor qualifications if an auditor acts against the law or fails to keep confidential any information about cooperative activities gained as part of an audit.<sup>20</sup> The Council withdraws auditor qualifications by way of a resolution passed at its own initiative or as requested by an inspectorate where a cooperative is affiliated. The NCC's resolution to withdraw auditor qualifications, as stipulated in Article 91(6) CL, is a final administrative decision in the light of the Code of Administrative Procedure of 14 June 1960.<sup>21</sup> The resolution is delivered to an auditor in writing within 14 days and announced in the Court Monitor. This duty arises from para. 6(2) of Resolution No. 21/2018. A resolution to withdraw auditor qualifications can be complained against to an administrative court.

---

<sup>19</sup> The reasons for statutory withdrawal of an auditor listed in Article 91\_(4<sup>1</sup>) CL are absolutely binding. Cf. Stefaniak 2018, 202.

<sup>20</sup> As stated by Article 91(5) CL, the confidentiality obligation does not apply in relation to authorities of an audited cooperative, the inspectorate appointing the auditor, the NCC, and justice authorities.

<sup>21</sup> Journal of Laws of 2020, item 256 as amended.

## 5. Progress of an audit

A party ruling an audit (that is, the NCC or an inspectorate) should prepare a framework subject matter of the audit, to be presented to supervisory and management boards of an audited cooperative [Wrzołek-Romańczuk 2020, 339]. Such a framework subject matter comprises: legal organisation of the cooperative, completeness and substantive correctness of the cooperative statutes and regulations, activities of cooperative bodies, organisational structure of the cooperative, employment and membership questions, investments, financial activities, verification of realisation of previous audit's follow-up conclusions, social, educational and cultural activities.

Provisions of para. 8 of the Appendix indicate an audit can be carried out by a single person or by a team. In the latter case, a party ruling an audit appoints a team manager who distributes duties among the team members and manages progress of the audit. The manager may also require the remaining team members to provide additional materials or reject materials they find insufficient.

An auditor's statutory duty under Article 92(1) CL is to notify management and supervisory boards of a cooperative of the audit. This is specified in para. 12(1) of the Appendix, according to which an auditor must promptly notify chair of the supervisory board or, in their absence, a person acting for the chair of their arrival at a cooperative in person or through the management board and inform them about the scope of the audit and arrange forms and extent of cooperation and the supervisory board's involvement in the audit. An authorisation issued to a named individual by an inspectorate or the NCC (who rule the audit) is the document authorising an auditor to carry out the audit of a given cooperative. Para. 13 of the Appendix binds auditors to provide instructions on audited subject matter to members of self-government bodies and staff of a cooperative.

Pursuant to para. 16(3) of the Appendix, auditors establish facts based on evidence, including in particular documents and material evidence, inspections, as well as written explanations and statements by cooperative self-government bodies and staff. The documents, in line with para. 16(4), are in particular: books of accounts, files, registers, records, plans, lists, computer statements and printouts, reports, journals, minutes, contracts,

invoices, correspondence, memos, and follow-up audit documents. Auditors may inspect premises and equipment in the presence of authorised individuals or commissions appointed by the management board of a cooperative being audited. Inspection reports are promptly drafted and signed by the auditor, the person present at the inspection or commission members.

The foregoing audit activities are guaranteed by legislation as well. By force of Article 92(2) CL, auditors are authorised to review books and any other documents in a cooperative they audit and to directly verify its assets, while cooperative bodies and staff shall provide explanations and any assistance as required.<sup>22</sup> Meanwhile, para. 11(1) of the Appendix stipulates auditors are also authorised to: 1) access any cooperative premises and equipment; 2) review any files and documents and make copies and extracts (documents of exceptional significance to cooperative operations can be copied in consultation with a cooperative management board); 3) check condition of a cooperative's assets and request control inventories of fixed assets; 4) request cooperative authorities to provide oral or written explanations and require similar explanations from cooperative staff concerning the subject matter of the audit.

It should be stressed members of cooperative authorities are subject to penal liability under Article 267c CL for not having their cooperative audited, failure to provide any or providing untrue explanations, prevent auditors from discharging their duties or failure to supply relevant documents or to present audit reports to cooperative staff. If audit activities discover acts meeting criteria of crimes, auditors are obliged to secure evidence of a suspected offence, draft a separate report, and notify the party who has ruled the audit (the NCC or inspectorate).

## **6. Audit report**

The principle of reliable documentation of audit results is fundamental to the audit procedure [Bierzanek 1989, 264]. An audit report is a final part of cooperative auditing that ends collection of evidence and summarises

---

<sup>22</sup> Refusal by cooperative bodies and staff to supply necessary explanations and any assistance to an auditor can be regarded as a gross and persistent violation of law, therefore, an inspectorate may resolve to begin liquidation of a cooperative as a result (Article 114(1) CL).

results in a documentary format. An audit report is thus the key official document of the audit process and the material foundation for evaluating audited activities of an organisation and for appropriate comments and conclusions [Drozd-Jaśniewicz 2008, 85].

According to Article 93(1) CL, an auditor drafts a report of audit activities and presents it to management and supervisory boards of a cooperative. The report is an official document and should be prepared in such a way as to supply evidence as it is occasionally used in court and administrative proceedings. The cooperative legislation does not govern components of an audit report. These questions are regulated by the Appendix. Its para. 1 lists the following elements of a report: 1) background information – full name of a cooperative, its address, tax and statistical numbers, National Court register number, phone and fax numbers and e-mail address, start and end dates of the audit, full name of the auditor and name of the entity ruling the audit, object of the audit and time covered by the audit; if the audit is conducted by a team, findings by the particular team members, names of management board members and proxies, since when they have held their functions, possible changes in these positions and their registration in the National Court Register, information about the audit notice to the supervisory board and possible scope of supervisory board members' involvement in the audit; 2) facts established by the audit; 3) information of accounts with contributions payable to the NCC and inspectorate the cooperative is a member of; 4) audit report of the cooperative's annual financial statement if not obligatorily audited annually as set out in Article 64(1) of the Accounting Act dated 29 September 1994,<sup>23</sup> integrated into an attachment to the audit report; 5) final information – listing of attachments, date of report execution by the management board, and confirmation of the report's receipt.

Para. 16(1) and (2) of the Appendix specify the second part of the audit report, namely, facts established by the audit. They should be understood as a report note declaring if the actual state of affairs audited conforms to principles of legality, reliability, and efficiency. Para. 16(2) stipulates in turn facts established by the audit should provide grounds for evaluating activities of a cooperative in audited respects, in particular,

---

<sup>23</sup> Journal of Laws of 2021, item 217 as amended.

specific irregularities, their causes and effects, scale and trend, and designation of those responsible for their emergence. No-one can influence facts established by an auditor and contained in a report. This means auditors cannot be instructed to incorporate any facts they have not established in their report. Any breaches auditors believe do not result from their inspection cannot be recorded [Żabski 1983b, 19]. An audit report is signed by the auditor, management board and liquidator (if a cooperative is in liquidation). These signatures should be placed under the following clause: “No objections to the statements contained in this audit report” or “Any objections to the statements contained in this audit report will be raised within 7 days after receipt of this report” (para. 20(3) of the Appendix).

Management board of a cooperative has the right to review contents of a report and raise reasonable objections to specific wording and data contained there. Such objections, as set out in para. 20(4) of the Appendix, can only be voiced prior to signing of an audit report. An auditor is additionally obliged to review these objections and, where reasonable, make appropriate modifications to a report. If, following such additional reviews, the management board continues to refuse to sign an audit report, such a report is signed by the auditor and dated as at the end of the reviews. The auditor includes in the report appropriate information about the management board’s refusal to sign and its causes.

An auditor also informs the management board of potential appeal proceedings that are instigated by submitting objections to the report to the party that has ruled the audit within seven days. Initiation of appeal proceedings suspends the audit follow-up as defined in para. 24ff of the Appendix. The party ruling the audit undertakes explanatory or verification steps within 30 days of receiving the management board’s objections to wording of the audit report and proceeds to issue a decision accepting or rejecting such objections; the decision is final [Wrzołek-Romańczuk 2020, 341].

Judicial decisions express a firm opinion drafting of a report including audit details undoubtedly requires independence and intellectual efforts on the part of its author. The rulings are clear an audit is a work and

a contract an auditor signs to conduct an audit that will result in a report including follow-up conclusions concerns performance of a specific job.<sup>24</sup>

The most common defects of audit reports include: 1) subjective judgments or suppositions or qualification of certain detected errors as crimes; 2) irregularities or abuses are not properly documented and regulations breached thereby are not identified; 3) incorrect and biased establishment of facts that produces distorted information and thus distorts results of the inspection 4) facts in the audit are based on untrue information, incomplete and fragmentary findings, material inconsistencies between findings and explanations or statements [Drozd-Jaśniewicz 2008, 86].

An auditor provides a copy of a signed report to the management and supervisory boards of the cooperative and the party ruling the audit each and, in the case specified by Article 93a(2) CL, to a minister competent for construction, housing and development. The cooperative law attaches considerable importance to allowing members of a cooperative access to information about progress and results of an audit. Therefore, a cooperative's management board is bound to provide each requesting member access to an audit report and follow-up conclusions (Article 93(2) CL).

## **7. Audit follow-up**

The audit process is followed up by an organisation that has ruled the audit, that is, the NCC or an inspectorate.

In the light of para. 22 of the Appendix, the follow-up is designed to eliminate any irregularities found, streamline activities of a cooperative, and prevent any errors or irregularities in future. Each audit must be followed up by summarising its results with a concise and synthetic evaluation of reviewed affairs and indication of guidelines and paths to improvement. To be effective, a follow-up should supply cooperative members with reasonably full information of the cooperative's economic and financial standing, quality and efficiency of management of members' assets. The crucial

---

<sup>24</sup> Cf. Supreme Administrative Court judgement of 17 February 2021, ref. no. II GSK 1237/20, Lex no. 3137732; Supreme Administrative Court judgement of 8 December 2020, ref. no. II GSK 1136/20, Lex no. 3094956; Regional Administrative Court in Warsaw judgement of 1 July 2020, ref. no. VI SA/Wa 2433/19, Lex no. 3055860.

part of a follow-up, however, is the auditor's assessment if a cooperative is a going and feasible concern in foreseeable future. These questions have not been sufficiently emphasised in audit materials so far. To be able to assess the going concern aspect, the existing schemes of auditing must be broken as they are historical and relate to the past, hence they are of use to evaluation of earlier activities, not anticipation of further developments.<sup>25</sup>

At the end of an audit, a supervisory board meeting should be held to present audit results and proposed follow-up conclusions to the entity that has ruled the audit (para. 23(1) of the Appendix). According to the provisions of para. 23(2), the supervisory board is convened by a cooperative management board requested by the auditor 30 days after the audit at the latest. Members of the cooperative management board and other invited individuals attend a supervisory board meeting where the auditor presents results of the audit. Representatives of an inspectorate ruling the audit or the NCC may take part as well. Minutes must be kept of such a meeting, as stipulated by para. 23(4) of the Appendix.<sup>26</sup> Copy of the minutes should be submitted to the party ruling the audit at its request.

In the light of Article 93(1a) CL, an inspectorate or the NCC draft follow-up conclusions on the basis of the audit report and supply them to management board of a cooperative.<sup>27</sup> This provision fails to set a date by which the conclusions must be prepared and presented to the management board. This is an error, since the relevant deadline is governed by para. 23(6) of the Appendix and is 30 days from the date the auditor submits a signed report. This is apparently too long and should be reduced to 21 days.

---

<sup>25</sup> Threats to its continued operation should be disclosed by a cooperative e.g. in notes to its financial statement and report of its operations and operations of its statutory bodies. See more Drozd-Jaśniewicz 2008, 88-89.

<sup>26</sup> In practice, supervisory board meetings where an auditor presents audit results are occasionally called an "audit follow-up conference."

<sup>27</sup> The doctrine points out this is an inconsistent solution that assumes an auditor drafts a report of audit activities while an inspectorate or the NCC prepare follow-up conclusions. An audit statement is an inspectorate's opinion whose scope and contents are determined by goals of an audit. It does not allow an inspectorate to undertake steps contemplated by Article 93(1a) CL, however. Cf. Zakrzewski 2017, 158.



A *de lege ferenda* postulate should be proposed of adding to Article 93(1a) CL a deadline of 21 days for formulation of the conclusions. The regulation should thus read as follows: “§1a. On the basis of an audit report, an inspectorate or the National Cooperative Council administering an audit shall prepare follow-up conclusions and submit the same to management board of a cooperative within 21 days.”

A cooperative management board is obliged to include information about conclusions from an audit report on the agenda of the next general meeting. It also provides information about realisation of audit follow-up conclusions to the organisation ruling the audit and the general meeting on an annual basis, as provided for by Article 93(1b) CL. It should be pointed out these regulations do not bind a cooperative to act on follow-up conclusions, merely to inform a cooperative’s supreme authority, namely, the general meeting, about realisation of the conclusions. This does not mean, however, a failure to perform on follow-up recommendations goes totally unpunished. Failure to carry out an auditor’s recommendations may constitute a breach of statutes that can ultimately result in liquidation of a cooperative by an inspectorate the cooperative is affiliated with (Article 114(1)(1) CL).

A cooperative’s supervisory board presents audit conclusions at the next general meeting (Article 93(4) CL). Owing to the audit assessment and follow-up conclusions, cooperative members are informed if their cooperative operates correctly, if cooperative assets are not wasted and how cooperative bodies discharge their duties [Kryla-Cudna 2018, 320]. The general meeting addresses conclusions from the audit follow-up report of cooperative activities and adopts appropriate resolutions (Article 38(1)(3) CL). Such resolutions should contain adequate directions for cooperative bodies whose involvement is required to order certain areas and introduce changes indicated by the general meeting in connection with audit results [Stecki 1987, 138].

Where reasonable, a cooperative may request a correction to follow-up conclusions as envisaged by para. 24(1) of the Appendix. Such a request is presented to the organisation ruling the audit by the management and supervisory boards within 14 days of receiving follow-up conclusions. A party ruling an audit undertakes explanatory or verification proceedings and

decides to modify and correct follow-up assessment or conclusions or reject a cooperative body's request as appropriate within 30 days of receiving a request.

## Conclusion

The foregoing discussion implies the cooperative audit has evolved along with the socio-economic system. It changed from a statutory inspection under earlier systems into an instructional, advisory, and inspirational project. It is undertaken in the interest and for the benefit of a cooperative organisation's members as an instrument of legal protection [Jankowski 2009, 115].

Review of cooperative operations with a view to checking efficiency, rationality, and reliability of its actions is the fundamental objective of auditing. An auditor verifies whether a cooperative observes the law and provisions of its statutes and operates properly in the interest of all its members. An auditor must inspect efficiency, rationality, and reliability in realisation of economic, social, and cultural goals of a cooperative. An audit can draw attention of a cooperative's members to irregularities in work of its bodies and can provide organisational and instructional assistance with remedying of any irregularities and improvement of cooperative activities.

Pursuant to provisions of the Cooperative Law, an audit can be obligatory or facultative. Pursuant to Article 91(1) CL *in principio*, the obligatory audit should be undertaken in every cooperative every three years as a minimum or every year if a cooperative is in liquidation. Annual obligatory auditing is desirable. More frequent audits will help prevent abuses in cooperatives and will involve auditors in instruction, advice on, and assistance with day-to-day operations of cooperative organisations to a greater extent. A *de lege ferenda* postulate is in order, therefore, to institute obligatory auditing every year, not every three years, like it is at present.

All or part of a cooperative's activities or only specific issues may be audited. Full, partial, and problem-based audits are distinguished as a result. Follow-up auditing must be mentioned as well, where another auditor undertakes another inspection of a cooperative in order to ascertain correctness of facts found by a previous audit which are questioned by cooperative bodies.

Competent inspectorates administer audits of their affiliated cooperatives. Non-member cooperatives pay for their audits by selected inspectorates or the NCC. Auditing can only be conducted by auditors. Individuals with required qualifications, character, and knowledge may become auditors. They should also pass an appropriate examination. Auditor qualifications are awarded by the NCC's Administrative Board.

An auditor drafts a report of each audit to be submitted to management and supervisory boards of a cooperative. It must be stressed audit reports have the status of official documents. As dispositioned by Article 93(1a) CL, the national inspectorate conducting an audit or the National Cooperative Council draft follow-up conclusions based on findings contained in an audit report and submit the same to the administrative and supervisory boards of a cooperative. This provision lacks a set date by which the follow-up conclusions are to be drawn up and presented to the competent cooperative authorities. A *de lege ferenda* postulate is required in this connection to add a period of 21 days for preparing such conclusions do Article 93(1a) CL. Thus, the provision should read as follows: "§1a. The national inspectorate conducting an audit or the National Cooperative Council shall draft follow-up conclusions based on findings contained in an audit report and submit the same to the administrative board of a cooperative within 21 days."

Follow-up completes the process of auditing. It is implemented by an organisation ruling an audit, i.e. an inspectorate or the NCC. This procedure is a summary of audit results which is designed to eliminate any irregularities found, improve cooperative activities, and prevent recurrence of errors and irregularities in future. The world enters a time of globalisation, an inevitable and long-term process that affects the cooperative community as well. It is a challenge to the audit apparatus in the area of both state-of-the-art techniques and methods of inspection and of instruction and advice. The key objective of auditing in future should be to provide instruction on adapting of cooperatives to new challenges and market requirements [Jankowski 2009, 118].

#### REFERENCES

- Bierzanek, Remigiusz. 1989. *Prawo spółdzielcze w zarysie*. Warszawa: PWN.
- Boczar, Kazimierz. 1986. *Spółdzielczość. Problematyka społeczna i ekonomiczna*. Warszawa: Polskie Wydawnictwo Ekonomiczne.

- Cern, Grażyna. 2019. *Mienie komunalne a działalność gospodarcza samorządu terytorialnego*. Warszawa: Wolters Kluwer Polska.
- Drabik, Lidia, Aleksandra Kubiak-Sokół, Elżbieta Sobol, et al. 2009. *Słownik języka polskiego*. 3rd edition. Warszawa: PWN.
- Drozd-Jaśniewicz, Iwona. 2007. "Nadanie uprawnień lustracyjnych i zasady szkolenia lustratorów." *Tęcza Polska* 10:11-12.
- Drozd-Jaśniewicz, Iwona. 2008. *Kompendium wiedzy dla lustratorów*. Warszawa: Krajowa Rada cooperativea.
- Florek, Edyta. 2008. "Kontrola nad działalnością spółdzielni." *Przegląd Prawa Handlowego* 5:30-34.
- Gersdorf, Mirosław, and Jerzy Ignatowicz. 1966. *Prawo spółdzielcze. Komentarz*. Warszawa: Wydawnictwo Prawnicze, Wydawnictwo Spółdzielcze.
- Gersdorf, Mirosław, and Jerzy Ignatowicz. 1985. *Prawo spółdzielcze. Komentarz*. Warszawa: Wydawnictwo Prawnicze, Wydawnictwo Spółdzielcze.
- Gonet, Wojciech. 2010. "Nadzór i kontrola w bankach spółdzielczych." *Przegląd Prawa Publicznego* 6:31-41.
- Jankowski, Jerzy. 2009. "Lustracja jako forma kontroli gospodarczej spółdzielni wykonywana przez lustratorów KRS." *Pieniądze i Więź* 12, no. 2 (43):111-19.
- Kryla-Cudna, Katarzyna. 2018. "Komentarz do artykułu 93." In *Prawo spółdzielcze i mieszkaniowe. Komentarz*, 319-21. Warszawa: Wydawnictwo C.H. Beck.
- Niedbała, Zdzisław. 1994. *Komentarz do znowelizowanego prawa spółdzielczego*. Poznań: PDW „Ławica”.
- Ołdat, Małgorzata, Zofia Rogóż, and Maria D. Świerżewska. 2009. *Vademecum lustratora spółdzielni socjalnej*. Warszawa: Ogólnopolski Związek Rewizyjny Spółdzielni Socjalnych, Krajowa Rada Spółdzielcza.
- Skorupka, Stanisław, Halina Auderska, and Zofia Łempicka, ed. 1969. *Mały słownik języka polskiego*. Warszawa: PWN.
- Stecki, Leopold. 1987. *Prawo spółdzielcze*. Warszawa: PWN.
- Stepnowska, Marta. 2017. "Zakres postępowania lustracyjnego spółdzielni." *Teka Komisji Prawniczej PAN Oddział w Lublinie* vol. X, 249-60.
- Stefaniak, Adam. 2018. *Prawo spółdzielcze. Ustawa o spółdzielniach mieszkaniowych. Komentarz*. Warszawa: Wolters Kluwer Polska.
- Weber-Elżanowska, Anne-Marie. 2020. "Lustracja spółdzielni – kilka uwag o wątpliwościach praktycznych na tle obowiązującej regulacji prawnej." *Monitor Prawniczy* 16:869-74.
- Wrzosek-Romańczuk, Małgorzata. 2014. "Model nadzoru nad spółdzielniami i ich lustracji." *Zeszyty Senackie* 22:35-45.

- Wrzolek-Romańczuk, Małgorzata. 2020. "Lustracja spółdzielni." In *System Prawa Prywatnego*. Vol. 21: *Prawo spółdzielcze*, edited by Krzysztof Pietrzykowski, 331-45. Warszawa: Wydawnictwo C.H. Beck.
- Zakrzewski, Piotr. 2017. "Lustracja spółdzielni i kontrola jakości związków rewizyjnych de lege ferenda wraz z projektem przepisów prawnych." In *Prawo spółdzielcze. Zagadnienia materialnoprawne i procesowe*, edited by Andrzej Herbet, Joanna Misztal-Konecka, and Piotr Zakrzewski, 151-66. Lublin: Wydawnictwo KUL.
- Żabski, Adam. 1983a. *Komentarz dla wszystkich do ustawy Prawo spółdzielcze*. Warszawa: Wydawnictwo Spółdzielcze.
- Żabski, Adam. 1983b. "Lustracja (próba prawnej analizy instytucji)." *Spółdzielczy Kwartalnik Naukowy* 2:11-23.

### Legal Regulations of Cooperative Audit

#### Abstract

The paper presents legal regulations of cooperative audit derived from both legislation and resolutions of the NCC. Objectives and types of audits, parties qualified to conduct audits, and required auditor competences are discussed. The article continues to describe the auditing procedure. The study contains *de lege ferenda* postulates and a discussion of related judicial decisions.

**Keywords:** audit, auditor, cooperative

### Regulacje prawne lustracji spółdzielni

#### Abstrakt

W artykule zaprezentowano regulacje prawne dotyczące lustracji spółdzielni, których źródłem są zarówno akty rangi ustawowej, jak i uchwały KRS. Omówiono cele, rodzaje i podmioty uprawnione do przeprowadzenia lustracji, a także wymogi dotyczące kompetencji lustratora. W dalszej części przedstawiono przebieg lustracji. Wywód poszerzają wnioski *de lege ferenda* oraz omówienie orzecznictwa związanego z tym tematem.

**Słowa kluczowe:** lustracja, lustrator, spółdzielnia

**Informacje o Autorze:** DR TOMASZ DĄBROWSKI, Katedra Prawa Prywatnego, Wydział Prawa i Administracji, Uniwersytet Technologiczno-Humanistyczny im. Kazimierza Pułaskiego w Radomiu; adres do korespondencji: ul. Chrobrego 31, 26-600 Radom, Polska; e-mail: t.dabrowski@uthrad.pl; <https://orcid.org/0000-0001-6184-140X>