

### **Abstract**

The Austrian cooperative law in a changing world of times –  
framework for cooperative banks since 1873

by

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Cooperative organization in Austria is essentially based on three important legal pillars. (1) The most important of these is the cooperative societies act of 1873 (Gesetz vom 9. April 1873, über Erwerbs- und Wirthschaftsgenossenschaften, RGBl. Nr. 70/1873). Earlier cooperative banks had the legal form of an association and mostly changed their legal form even in 1873 or in the following next years. The basic law was modified by important amendments e. g. in 1903, 1918, 1920, 1974, 1982, and 2006. (2) There is a number of complementary acts: the most important of these is the one that regulates cooperative auditing (Genossenschaftsrevisionsgesetz 1997, BGBl. Nr. 127/1997). This law was established in 1903 (RGBl. 1903/133) and created the traditional groupings of Austrian cooperatives with regard to the auditing associations to which they belong. (3) Besides there are special acts which regard cooperative bankruptcy proceedings, mergers and the cooperative register. Certain acts relating to other subjects (for example the law regulating social housing – Wohnungsgemeinnützigkeitsgesetz and the law regarding credit institutions – Bankwesengesetz) also contain some regulations that are specifically applicable to cooperation.

Given this fragmentation of cooperative norms a number of experts has taken the view that global reform and a unification of this legal subject should be advantageous. An important attempt in that direction was undertaken but not realized (draft 1996). However, the council regulation (EC) No 1435/2003 of 22 July 2003 on the statute for a European cooperative society (SCE) was introduced in Austria in 2006 and additionally the cooperative societies act was reformed.

In our paper we will describe the historical evolution and main content of the principal law regulating cooperatives in view of the practical necessities of cooperative life. Obviously this point of view does not correspond totally to a strictly interpretative attitude. The latter tends to establish systematic unity, whereas the quite different economic and political basis of the existing regulatory norms is obvious. The Austrian cooperative societies act is a typical product of laissez-faire-liberalism. So many of the norms of this law of 1873 were not binding and thus could be modified by cooperative statutes (by-laws). This fact has certainly contributed much to the continuing vitality and flexibility of that law. We want to try to inform about cooperative law as a kind of superstructure of cooperative reality and discuss current problem areas in particular in the light of the reform attempt.

Additionally, we would like to give some insight into the structure and recent development in both sectors of cooperative banks, Raiffeisenbanks and Volksbanks.

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(3) Plurality of co-operative law

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# Austrian Co-operative Law in a Changing World –

## The legal framework for co-operative banks since 1873

by  
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### 1. The legal foundations of co-operative organization in Austria

Co-operative organization in Austria is essentially based on three important legal pillars. The most important of these is the co-operative law of 1873 (Gesetz vom 9. April 1873, über Erwerbs- und Wirthschafts-genossenschaften, RGBl. Nr. 70/1873). This basic law was modified by important amendments in 1920, 1974 and 1982.<sup>1</sup> There are a number of complementary laws:

- The most important of these is the one that regulates co-operative auditing (Genossenschaftsrevisionsgesetz 1997, BGBl. Nr. 127/1997). This law integrated the provisions on co-operative auditing. It must be seen as a – rather timid – consequence of Konsum Austria's bankruptcy.
- Besides there are special laws which regard co-operative bankruptcy proceedings, mergers (the latter modified in 1980/1981) and the co-operative register. Certain laws relating to other subjects (for example the law regulating social housing – Wohnungsgemeinnützigkeitgesetz, the law regarding credit institutions – Bankwesengesetz and Firmenbuchgesetz) also contain certain regulations that are specifically applicable to co-operation.

Given this fragmentation of co-operative norms a number of experts has taken the view that global reform and a unification of this legal subject should be advantageous.<sup>2</sup>

These demands, however, come usually from university men: the co-operative associations have not seen them with a very positive eye. These latter have typically not been annoyed by the lack of systematic unity of the existing norms and have appeared to be convinced that any parliamentary

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<sup>1</sup> The most important documentation regarding co-operative law are probably *Keinert* (1988) und *Dellinger* (2005). See also *Kastner* (1986). The present article is mainly based on *Brazda, Schediwy* (1996).

<sup>2</sup> For example *Kastner* (1986): p. 119.

and public debate about co-operatives would be negative with regard to their interests.<sup>3</sup>

In the following we will try to describe the main content of the principal laws regulating co-operatives in view of the practical necessities of co-operative life. Obviously this point of view does not correspond totally to a strictly interpretative attitude. The latter tends to establish systematic unity, whereas the quite different economic and political basis of the existing regulatory norms are obvious. We want to try to analyze co-operative law as a kind of superstructure of co-operative reality.

## 1.1 History

To start with we can state that Austria's co-operative law is a typical product of laissez-faire-liberalism which dominated in Austria only during the short period from 1867 to 1873. The rather elitist parliament of this epoch (less than 5 per cent of the population was enfranchised) tried to contribute to the solution of the "social question" by offering the poor the possibility of economic association in order to be able to participate in a co-operative way in market competition. The fact that many of the norms of this law of 1873 were not binding and thus could be modified by co-operative statutes (by-laws) has certainly contributed much to the continuing vitality and flexibility of that law. We have to note also, that this law was rather theoretical and ideological in its orientation because the real weight of co-operatives at this time was extremely modest.

The co-operative auditing law of 1903 on the contrary has been strongly influenced by an already thriving co-operative sector and by certain pressure groups that had been formed within this sector. Instead of being extremely liberal this law acknowledged the necessity to control the existing co-operative sector via co-operative auditing associations according to the German model. This control was thought to be more efficient and thus to be preferred to state-control. In consequence of this law the internal groupings of the co-operative sectors already existing at that time (Schulze-Delitzsch-group, Raiffeisen group, workers' consumer co-operatives) became the concrete basis for three important auditing unions.

The law concerning co-operative bankruptcy (1918) and the amendment of 1920 reflect the tendency to reduce the financial responsibilities of co-operative member. They also are an expression of the formation of giant co-operatives in which the direct democracy of the convention hall was not feasible any more. Therefore direct member voting had to be replaced by a representative system of parliamentary structures. The laws of 1934 and

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<sup>3</sup> See e. g. *Fischer* (1994). In this comment a former secretary general of Austrian Raiffeisenverband made clear that in Austria the legislator runs behind co-operative practice. *Fischer* admits, that this is partially due to the extreme reluctance of co-operative representatives in view of any initiative to change the law – "especially since certain reform ideas were not qualified to raise the enthusiasm of the co-operative associations."

1936, products of an authoritarian era, have to be seen in the context of the Great Depression and its ideas to control “chaotic” competition and markets. These tendencies were very strong in the authoritarian and fascist regimes of Italy, Germany and Austria, but elements of this thinking can also be found in the initial phases of F. D. Roosevelt's New Deal. With regard to co-operatives these laws made membership with auditing associations mandatory. These associations were also made to practically decide on the formation of new co-operatives and their controlling power was reinforced. This corporatist element was quite welcome to co-operative associations after 1945, too. In fact Austria's Second Republic, started in 1945, has been seen by many political scientists as a kind of neo-corporatist state. However, the German model with its even stronger notion of “Verbandszwang”, i. e. obligatory membership in an auditing union, was not directly taken over in Austria and therefore the “liberty of non-association” that has been evoked in Germany often with regard to co-operative unions is not applicable in Austria.

The changes of the last decades can be interpreted as result of the progressive reduction of differences between co-operatives and other legal entities of commercial law: one can therefore speak of a certain banalization of the legal entity of a co-operative. The amendment of 1974 e. g. allowed explicitly the sale to non-members and the share-holding of co-operatives in firms of other legal entities: Rights that had been more or less acquired by practice but that were questioned from time to time by a rather purist jurisdiction.

Co-operative mergers were favoured, the formation of a new co-operative as a result of a merger was made possible (Genossenschaftsverschmelzungsgesetz 1980, BGBl. 1980/223). Before there had to be a receiving and thus “victorious” co-operative which continued its existence, while the other had to lose its legal existence. In this way the obstacle of members irrationalism was reduced.

Finally in the 1990s certain fiscal privileges of co-operatives have been eliminated – but also certain disadvantages with regard to other legal forms. This holds basically for the field of credit-co-operatives. The extremely deplorable collapse of Konsum-Austria (1995) has led to a new round of co-operative reform demands and resulted in Genossenschaftsrevisionsgesetz (1997). The tasks of auditing were put in more precise terms and the individual auditor's role was somewhat strengthened). In 2004 Firmenbuchgesetz merged the Austrian trade register and the register of co-operatives. An Amendment in 2006 (Genossenschaftsrechtsänderungsgesetz 2006) transformed the EU's concept of a European Co-operative into domestic Austrian law, (SCE-VO (EG) Nr. 1435/2003) – so far without any great impact.

Finally it has to be mentioned, that there have been a number of legal projects for laws directed against co-operative development, mostly during the earlier part of the century. These laws have not had any lasting success.

The first series of projects of this type was mainly directed against the consumer co-operatives. These projects dating from the beginning of the twentieth century were inspired by the organizations of small businessmen. A second wave of this type found temporary success during the period of economic crisis and of authoritarian political systems in the 1930s. Court decisions seemed to have been influenced from time to time by anti-co-operative propaganda, too, which always tended to prefer that co-operatives remain small group associations and should not concentrate their capital thus becoming more similar to other enterprises.

The transformation of co-operative registers on an EDP-base (Firmenbuchgesetz, 1991) has also evoked some anti-co-operative stirrings.

## **1.2 Some details**

Now some details about the law of 1873: This law was strongly influenced by the German co-operative pioneer Hermann Schulze-Delitzsch. He practically formulated the Prussian law on co-operatives, and Austria always tends to follow its "big brother" in the North who is regarded as "so much more efficient". However, it has to be said that some of the ideas of Schulze were modified in the *laissez-faire-sense*. Schulze and Raiffeisen e. g. were in favour of limitless financial responsibility of co-operative members with regard to co-operative debt: This was also written into the Prussian law.

Bavaria, England and France on the other hand had positive experiences with the limitation of the financial responsibilities of members and Austria followed their example. The liberal idea became in this context the idea of the future. By facilitating the formation of co-operatives the members of parliament of 1873 (mostly aristocrats and grand bourgeois) also followed some rather egoistical objectives: one of the explicit motives of this law was to protect the workers from the "erroneous teachings of communism" and hope was expressed that "their practical situation should become better without any detriment to the property of the possessing classes".<sup>4</sup>

To some extent this orientation has been validated by the organization of workers' consumer co-operatives around 1900 which were regarded as rather "petit bourgeois" by the more radical members of the labour movement. Also the rather liberal character of this law, which left much room for co-operative bylaws made for its flexibility in later decades.

In 1873 a number of provisions were introduced that are still valid whereas they were – partly again – introduced into German co-operative law in 1973.

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<sup>4</sup> See *Schediwy* (1976): p. 248.

For example the possibility to weigh voting rights according to the volume of shares (article 27/2). (The regular case, however, remained the one man one vote principle). Also the possibility to participate in the reserves (Art. 55/2 and Art. 79/2) and the possibility for partial withdrawal from co-operative membership (Art.14) was also granted.

### **1.2.1 The co-operative institutions**

The basic difference between co-operatives and other legal entities of commercial law is according to Austrian law the fact of the possibility of changing number of owners (and shares).

Co-operatives thus do not have any fixed capital. The other elements of the definition of article 1 of Austrian co-operative law have mostly lost their significance (e. g. the unity of members and clients so-called "principle of legal identity". This principle became during long period one of the weapons of co-operatives' competitors which tried to push them out of the general market into a ghetto of member-clients.) The so-called "Förderauftrag" (task of member promotion), however, also based on article 1 is still regarded as important by many. Some may hold that this is a rather vague and non-operational concept, nevertheless it has become an important topic in the German co-operative discussion and may be adopted as one of the principles of international cooperation, too.<sup>5</sup>

In order to found a co-operative it is necessary to have a written statute (Art. 3) and the acceptance of a recognized auditing association (according to the law of 1934, but there are possibilities to get a dispensation). With these two the inscription into a legal official register of co-operatives is possible.

The basic legal organs of co-operatives are Vorstand (board of directors), Aufsichtsrat (supervisory board) and Generalversammlung (general assembly). In view of the fact that these terms are identical with the terms on joint stock-companies and due to the fact that co-operative-law does not define in detail many points there is a custom to interpret these terms in analogy with the law on joint stock-companies. With regard to the Vorstand only nine articles 15 to 23 treat its function. It can consist of one single person (contrasting the German example). In reality, however, it is always a committee. Today the board of directors usually consists of professional managers (with the exception of the smaller co-operatives of the Raiffeisen group). Members' delegates have been mostly relegated to the supervisory board during the recent decades.

The Vorstand usually represents the co-operative in its relationships with the exterior world.

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<sup>5</sup> See e. g. *Grosskopf* (1990).

The legal rules regarding the supervisory board are also rather scarce. Before 1974 a co-operative was allowed to have a supervisory board if it wanted to do so (this was the rule). Since that time a supervisory board has become mandatory for co-operatives with more than 40 members (for reasons of co-determination, i. e. the representation of workers on the supervisory board).

In reality the supervisory board exists in the majority of Austrian co-operatives. Normally the supervisory board is a forum for "important" members of a co-operative (union people, political figures, managers of related companies). There has been, however, a marked tendency in recent years for politicians to leave the organs of co-operatives, especially if there was a certain danger of scandals and a prospect of economic hardship ahead. Compared to the supervisory board of joint stock-companies (which tend to have a rather formal role except when they are the forum of family-share-holders) the equivalent organ of co-operatives tends to meet more frequently and to be integrated in a bigger number of decisions. However, its capacity for independent control should not be overestimated – as can be shown by the Konsum scandal.<sup>6</sup>

The general assembly is the supreme body of a co-operative. It holds among others the right to elect and to depose the members of the supervisory board and of the board of directors. The general assembly has to vote on the yearly balance sheet, on the auditing reports and on changes in statutes (by-laws). Co-operatives with more than 1,000 members have the right to introduce a general assembly of delegates instead of a general assembly of all the members. This representative democracy was officially introduced in 1918. It had existed before, but had been challenged by certain court rulings.

### **1.2.2 Co-operative auditings**

The law of 1997 sticks to the principles of material auditing, not just formal control of orderliness and it maintains the (marginal) possibility of co-operatives to exit from auditing unions (Thus the German problem of negative freedom of association is inapplicable<sup>7</sup>. Larger Co-operatives<sup>8</sup>, have to be audited every year, the smaller ones once every two years. The auditors have to be part of a list that is established at the ministry of justice, beim As a result of the amendments of 1934 and 1936 the auditors are in general employees of the auditing associations. but some – very few – co-operatives are audited by outside CPA's or certified auditors There was one auditing association for the consumer co-operatives, (it is now de facto merged with the Schulze-Delitzsch auditing union) another one is for the

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<sup>6</sup> See *Nilsson* (1995): p. 264ff.

<sup>7</sup> The way to become a wildcat co-operative is a complicated one, though, and necessitates a court decision.

<sup>8</sup> The present limits are: 4.84 Million Euro sum of balance sheet, 9.68 Million turnover and 50 workers (Art. 221 Abs. 1 Unternehmensgesetzbuch (UGB)).

agricultural co-operatives and their banking sector, a third one for the co-operatives of the Schulze-Delitzsch tradition (peoples' banks, purchasing co-operatives for small business men, producer-co-operatives etc and the Austrian federation of limited-profit housing associations. The Raiffeisen co-operatives, however, the most numerous ones, also have regional auditing associations below their federal auditing union. This means the majority of Austrian co-operatives are members of an auditing association (auditing union), but not all of them. (The German discussion about the "liberty of non association" in a context of co-operatives is therefore inapplicable (even though some have tried to start it nevertheless.))<sup>9</sup> In the field of housing-co-operatives there is a common auditing association for co-operatives and non-co-operatives to which the statute of non-profit organisation has been granted.

Genossenschaftsrevisionsgesetz 1997 (GenRevG) somewhat strengthened the position of the auditor and improved the auditor's training which now should fulfil EU standards. He is regarded as independent with regard to his function (Art.19 Abs. 2 Z 3 GenRevG)<sup>10</sup>. Also his position with regard to the follow up process has been strengthened (Art. 6ff GenRevG). Whether these improvements will prove decisive remains to be seen. In the case of Konsum Austria the auditors saw the coming problems very early but obviously shied away from blowing the whistle too early.

In general, however, the role of the described auditing system can be regarded as a positive experience for Austria's co-operatives – especially compared to its situation before 1934, when many "wildcat co-operatives"<sup>11</sup> not belonging to any auditing associations created serious image problems for the sector.

The specific problems of credit and building co-operatives cannot be treated here for reasons of space. The relationship of Austrian co-operatives to fiscal and anti-trust legislation cannot be treated here either.

### **1.2.3 Genossenschaftsrechtsänderungsgesetz 2006<sup>12</sup>**

With the introduction of the European Co-operative (Societas Cooperativa Europaea – SCE) two new legal institutions were introduced into Austrian co-operative law: investing members and minimal capital. Both aspects have so far remained foreign to Austria's co-operative practice. The pertinent legal provisions are Art. 5a (2) No 1 and 2 GenG.

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<sup>9</sup> See *Schediwy, Weber* (1976): p. 373ff.

<sup>10</sup> In the past the auditor was a simple employee and his power with regard to a big co-operative was regarded as limited. Even an auditing association which in reality was totally dependent on one giant co-operative was probably not really free to exercise its controlling function, as has been demonstrated in the case of Konsum Austria.

<sup>11</sup> The freedom of these wildcat co-ops to choose their auditors certainly did not enhance the quality of control exercised by their auditors.

<sup>12</sup> See *Jud* (2007): p. 25.

The minimal capital requirement is supposed to help Austrian co-operatives fulfilling the requirements of the International Accounting Standards (ISA 32). Own capital is only accepted as such if it is not refundable.

### **1.3 A timid reform discussion accentuated by a collapse**

For some time there has been a – rather timid – discussion about the possible reform of the co-operative law. Two working groups have been constituted to study the possibilities of reform that has been promised in the government program of the ruling coalition in 1990, but was not put into practise before the elections of 1994.<sup>13</sup>

The powerful Raiffeisen group has made it clear, that it would be interested in legitimizing officially the system of "Verbund" (integrated federative system, "institutions created by a number of co-operatives that have to take over common tasks based on the principle of subsidiarity, in order to favour the promotion of the interests of the members of the primary co-operatives concerned").

The interest of the Raiffeisen group is mainly based on thus legitimizing certain "rules to reduce the rights of the participants in the integrating federative system in the common interest"<sup>14</sup>. Thus the top organs of the Raiffeisen group would like to muster the help of the legislator against certain centrifugal tendencies that have awoken. Raiffeisen would also be interested in clarifying the concepts of majority participation from above (central co-operatives taking a dominant share inside primary co-operatives – usually in the context of a restructuration). The solution found for the Austrian law on joint stock-companies that such shares do not confer voting rights, is not really appreciated by the Raiffeisen leadership. Rules facilitating "co-operative holding companies" in which the co-operative transfers all of its functions to subsidiaries (indirect promotion of members' interests) and the concept of additional members shares without obligation to pay a more than their nominal value in the case of bankruptcy have not been named by Raiffeisen-experts as specifically desirable. Raiffeisen seems to be in favour of a stronger role for the auditing associations but not for the individual auditor.

All this is somewhat divergent from the ministry's point of view as cited above.

### **1.4. The distance of the members**

To end this short survey, some words about the position of co-operative members in Austria. The role of members in the co-operative that was so important in the beginning of co-operative development has somewhat

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<sup>13</sup> The ruling social democratic conservative coalition was returned to power but with a much smaller majority.

<sup>14</sup> *Fischer* (1994): p. 81.

diminished in Austria, as in the whole of Europe, during the last decades. However, co-operative legislation has reflected this development, in a rather reluctant way. The introduction of the general assembly of delegates in 1918 has already been mentioned. The fact, that it became more and more difficult to arrive at a normal general meeting with a minimum quorum of 10 per cent of members participating was then confirmed by the amendment of 1974 which introduced officially the "waiting hour" (after this time it is not necessary any more to adhere to the quorum of a 10 per cent minimum of members present). The waiting hour has been reduced to a half hour for practical reasons (Art. 32).<sup>15</sup> In the smaller co-operatives of the Raiffeisen group the classical general assembly still plays a rather important role. While in many countries (France, Switzerland, Great Britain, Sweden etc.) the reduction of economic liabilities of the member to the minimum level of its share can be regarded as traditional, Austria has remained more conservative in this respect. Thus the members' liability minimally amounts to the double of his or her share (the amendment of 1920 offering the possibility of a consumer co-operative with responsibility limited to the share was open only to consumer co-operatives that would only trade with members: Therefore this possibility was not taken advantage of). Even Kastner, however, had to admit that in practical life the members' liability is more or less theoretical – In the cases of unlimited liability as in the cases of unlimited liability – and "is only written on paper".<sup>16</sup>

After the collapse of Konsum Austria became imminent there has been some talk calling for the members to put in an amount of money at least up to their full share: this, however, had to be mostly understood in view of a political threat with regard to the Austrian Federation of labour unions.

It is true that the general participation of members on the grassroots level of co-operatives (from the assemblies to elect local representatives to the general assembly) is usually less than 10 per cent (and sometimes much lower) except in very rare cases. Even this rather small percentage has been often procured only by "attractions" like little presents or a movie- and music-show. Thus we have to admit that behind a more or less intact legal facade there are grave functioning problems for co-operative democracy.

## **2. Open questions**

On January 31 1997 a public hearing on the topic of "The reform of Austrian Co-oprtive Law" was organized by the Austrian Ministry of Justice in the town of Salzburg. A little later the contents of this hearing were published by the ministry.<sup>17</sup> This interesting publication still constitutes the most up to date overview of the various positions of Austrian experts on co-operative law and it problems.

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<sup>15</sup> See *Fischer* (1994): p. 81.

<sup>16</sup> See *Kastner* (1986): p. 225.

<sup>17</sup> *Bundesministeriums für Justiz* (1997).

The minister of justice then active, *Nikolaus Michalek*, a public notary of no political affiliation stressed in his introduction the necessity of real reform and addressed explicitly the need to draw consequences from the disaster of Konsum Austria, since there were voices that started to question the usefulness and future of co-operatives in general.<sup>18</sup> The minister stressed the positive aspect of the flexibility of Austria's legal provisions for co-operatives but on the other hand took note of the fact that the Austrian co-operatives tended to lose some of their originality in the context of Austrian corporate law.<sup>19</sup> The leader of the working group inside the ministry, *Peter Zetter* then gave a short overview over the motives and aspects of the reform move. He too stressed the impact of the Konsum Austria catastrophe of 1995 but did not hide the fact that the co-operatives themselves had not seen any need for legal reform in decades.<sup>20</sup> A decision of Austria's Supreme Court (EvBl 1992/3) on the non-acceptability of some model bylaws had led to the installation of a working group inside the ministry in 1991 but had also highlighted the strong divergences of interest involved.<sup>21</sup> After a short international overview including the EU (*Zetter* characterizes the European Co-operative as "capitalist" because of its minimum capital requirement and its "investing members"<sup>22</sup>) the chairman of the working group situates the reform process in a multi year-perspective - quite realistically, as we know of today.

One of the driving forces of the discussion on the reform of co-operative law around 1997 was the blueprint for new comprehensive co-operative legislation in Austria put forward at the time by the young university scholar *Markus Dellinger* (probably stimulated and encouraged by minister *Michalek*). *Markus Dellinger* has found a good position inside the Raiffeisen sector a little later and little has been heard of his ambitious project ever since, so it must be regarded as a historical document and we need not go into the details of its presentation. The quite controversial discussions of the hearing, however, can be taken to reflect attitudes that still exist and problems yet unsolved. Therefore we should take note of them at least briefly.

The main point of divergence between the defenders of the present system and its critics seems to be "Verbund" or sector unity. Should it be seen as an instrument to stifle grass roots spontaneity, independence and democracy, as critics like *Gerhard Pleschiutschnig* and *Heinz Keinert* upheld in the hearing or as a powerful shield defending co-operative achievements?

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<sup>18</sup> Ibid p. 1.

<sup>19</sup> Ibid p. 3

<sup>20</sup> See *Zetter* (1997): p. 7

<sup>21</sup> Ibid p. 8. In the meantime Austria's Supreme Court (EvBl 1993/19, Evbl 1995/112) has established the rule that as long as these restrictions are rescindable that is as long as the co-operative can withdraw its consent such restrictions are acceptable and in line with co-operative autonomy. See *Dellinger* (2005): p. 43.

<sup>22</sup> *Zetter* (1997): p. 11.

Some quotations: *Pleschiutschnig*, an inveterate Raiffeisen-basher from the Austrian Chambers of Labor federation criticized the “elements of submission of the primary co-operatives to their affiliate central organizations inherent in the blueprints Art. 3.”<sup>23</sup>

*Heinz Krejci* a corporate law professor from Vienna took the contrary view, namely that provisions for sector unit were indispensable for creating a competitive “Total enterprise” (“Gesamtunternehmen”)<sup>24</sup>, *Heinz Keinert*, professor in Linz, on the other hand denounced the blueprint as a purely private document” (ein reiner Privatentwurf”) and “reflecting mainly the interests of the co-operative top organizations (“die Spitzenverbände, die Verbundspitzen”)<sup>25</sup>.

*Dellinger* defended his notion of Verbund with vigour (“The alternative to it would often be amalgamation”)<sup>26</sup>. He also pointed out that the blueprint did not create the problem of a co-operative that serves as a mere holding (with all commercial activities taking part in an affiliate enterprise with a different legal status) but that this phenomenon already existed in Austria, in co-operative banking as well as in other sectors, and that it should be controlled, not ignored.<sup>27</sup>

All in all the documentation of the public hearing of January 31 1997 shows a well meaning but powerless minister and his competent helper, Mr. Dellinger, who put together the impressive work of a blueprint of realistic reform that was pulverized between the millstones of status-quoism and exaggerated criticism. Thus nothing much has come of this whole debate. A small reform of Austria’s co-operative auditing law (Genossenschaftsrevisionsgesetz 1997) was the whole outcome of the debate.

Many of the above discussions seem, by the way curiously outdated at present. In the meantime it is not so much the small co-operatives that we have to worry about and that have to be protected and sometimes rescued by their federative organizations but it is the top echelon of co-operative enterprises who are at risk in their qualities as players in globalized financial markets. Our life cycle model, extensively quoted by one of the participants of the hearing, Hans *Peter Hanreich*<sup>28</sup> seems once again all too applicable. But that is another story and one to be told at a different gathering

### **3. Recent reforms in Austrian co-operative banking groups**

Raiffeisen banks and Volksbanks (people’s banks) are two autonomous credit co-operative organisations in Austria. The first foundations were the

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<sup>23</sup> See *Pleschiutschnig* (1997): p. 27.

<sup>24</sup> *Krejci* (1997): p. 39.

<sup>25</sup> *Bundesministeriums für Justiz* (1997): p. 59.

<sup>26</sup> *Ibid.* p. 74.

<sup>27</sup> *Ibid.* p. 127.

<sup>28</sup> *Ibid.* p. 106ff.

the “Gewerbliche Aushilfskassenverein” in Klagenfurt (in the province of Carinthia) (1850/51) even before the co-operative law and the Raiffeisenkasse Mühldorf (in the province of Lower Austria) (1886). Following the example of Raiffeisen, the local cooperatives founded regional Raiffeisen banks (beginning in 1894). The central co-operative bank, Raiffeisen Zentralbank Österreich AG (RZB), was founded in 1927 as Genossenschaftliche Zentralbank (GZB) and was renamed in 1989. Today the Raiffeisen banks with the RZB on top form with 9 regional and 535 local Raiffeisen banks a three stage group. The Volksbanks group consists of two stages, on top the Österreichische Volksbanken-AG (ÖVAG) and 63 local Volksbanks. The ÖVAG was founded in 1922 as central institute of the Austrian Volksbanks. The bank changed its name and legal form from a co-operative to a co-operatively structured corporation in 1974. Both, RZB and ÖVAG, hold subsidiaries concentrating on different fields of financial services, e. g. holdings for the banking operations in Central and Eastern Europe. In the financial crisis both institutes got governmental aid in 2009.

Within the Austrian banking system the market share of the co-operative banks is significantly high with about 35 per cent altogether (total assets, 2009): the Raiffeisen group with 27 per cent and about 7.5 per cent for the Volksbank group.<sup>29</sup>

### **3.1 Merger in the RZB group**

The Raiffeisen International Bank-Holding AG (RI), Vienna, is the largest and fully-consolidated subsidiary of the RZB, holding the banking subsidiaries in Central and Eastern Europe (CEE),<sup>30</sup> and its shares have been traded on the Vienna stock exchange since April 2005.

In February 2010, RZB and RI disclosed that they were considering a merger as a strategic option. This merger would bring RZB’s principal business areas – above all, its business with Austrian and international corporate customers – together with those of RI. The merged bank would be strengthened in its position as one of the leading universal banks in CEE through the combination of Raiffeisen International’s broad distribution network in the CEE region and RZB’s comprehensive product portfolio and would have broad access to capital markets to fulfil further capital needs.<sup>31</sup> As of year-end 2009, the RI-group served more than 15 million customers. The bank would remain listed on the Vienna Stock Exchange and would be active primarily in the areas of retail (in CEE), corporate and investment banking.

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<sup>29</sup> See Oesterreichische Nationalbank ([www.oenb.at](http://www.oenb.at)).

<sup>30</sup> The predecessor of RI for the purposes of company law was founded back in 1991. The name before 2003 was Raiffeisen International Beteiligungs AG. After the fall of the Berlin Wall (1989) Raiffeisen systematically expanded its presence in the countries of Central and Eastern Europe (CEE). The first banking subsidiary was founded in Hungary almost back in 1986 and started its operations 1987. Starting in 1999, the retail business with private individuals and small and medium-sized customers was added. With its network in CEE RI is one of the region's leading banking groups.

<sup>31</sup> See *Cembra Beteiligungs AG/Raiffeisen International Bank-Holding AG* (2010): p. 17.

The business associated with RZB's function as central institution of the Austrian Raiffeisen banking Group would continue to be conducted by RZB.

The shareholders at Raiffeisen International's general meeting on July 8, 2010 provided their approval for the merger of Cembra and RI by way of universal succession as at the record date of 31 December 2009. The shareholders also approved the associated share capital increase and the merger agreement.<sup>32</sup>

- The transferring company Cembra consists essentially of the corporate customer business, together with the associated shareholdings, spun off from RZB. The merged company will operate as Raiffeisen Bank International AG (RBI) as of the merger's entry in the commercial register, which is expected to take place in the fourth quarter of 2010. At their respective general meetings also on July 7, 2010 the shareholders of RZB and Cembra approved the spin-off of RZB's corporate customer business and the associated shareholdings, and their transfer to and absorption by Cembra.
- With 40.8 million new bearer shares being issued in order to perform the merger with Cembra, Raiffeisen International's share capital will be increased from € 471.7 million by € 124.6 million to € 596.3 million. In addition to the shares that Cembra has held in RI to date, these newly-issued shares will be granted to Cembra's sole shareholder, Raiffeisen International Beteiligungs GmbH, as settlement for the corporate assets of Cembra transferred to RI as part of the merger.

The merger is still subject to the financial market authorities' approval, expected to be granted in the course of the third quarter.

Once these transactions are completed, the free float of Raiffeisen Bank International, which will continue to be listed on the Vienna Stock Exchange, will be around 21.5 per cent; Raiffeisen International's free float had stood at around 27.2 per cent. RZB's indirect shareholding in Raiffeisen Bank International will amount to around 78.5 per cent. Previously, RZB's indirect shareholding in Raiffeisen International had stood at around 72.8 per cent. With a strong and permanent means of a majority share of the RBI will continue to carry the RZB supported by service areas of the RBI, as the supreme institution of the banking group consolidated central tasks in the positioning and risk control.<sup>33</sup>

Those business segments and shareholdings associated with RZB's role as the central institution of the Austrian Raiffeisen Banking Group are not impacted by these steps and will remain in their entirety in RZB that will concentrate on customers' and service needs of the regional Raiffeisen banks. RZB sharpens its profile as the central institute of the decentralized

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<sup>32</sup> See *Raiffeisen International* (2010).

<sup>33</sup> See *Cembra Beteiligungs AG/Raiffeisen International Bank-Holding AG* (2010): p. 2, 17f., 23 and the reports in *Raiffeisenzeitung* (2010), in particular No. 1, 9, 12, 16, 22, 23, each p. 1.

Raiffeisen banks in Austria and will be the interface in the liquidity reserve holdings of the affiliated institutions of the Raiffeisen group and will continue to hold the key subsidiaries of group interest, for example, Raiffeisen Capital Management (RCM), UNIQA Insurance or Raiffeisen Invest. The RBI should join the common liquidity compensation and belong to this system, too.<sup>34</sup>

### 3.2 Reorientation of the ÖVAG group

The sale of the Austrian retail banks to the Volksbanks was a measure taken to further stabilise the capital base of ÖVAG. Together with the majority shareholders, the local Volksbanks, the Regio project involving the sale of Volksbank Wien, Ärztebank and IMMO-BANK to the Volksbank local member banks was successfully completed in 2009. Volksbank Linz+Mühlviertel will be sold to the sector in the current year and merge with Volksbank Wels. In order to repay the government's participation capital as stipulated in the contract, ÖVAG has actively initiated a search for strategic partnerships.<sup>35</sup>

The ways how to integrate the sold retail banks are different:

- The ABV building society acquired at the end of 2009 the amount of 74.26 per cent of the share capital of the IMMO-BANK AG which thus forms the ABV a banking group.<sup>36</sup>
- Customers and employees of the Volksbank Wien and Ärztebank could belong to the first new owners of the co-operative holdings that have become majority owners of the sold retail banks as managing co-operative of Volksbank in Vienna and Klosterneuburg and Schulze-Delitzsch Physicians and Professionals cooperative.<sup>37</sup> The Ärztebank already advertises with this offer and expresses their concerns with employees becoming members of the bank.<sup>38</sup>

While the Raiffeisen group in the course of reorganizing concentrated on original central bank's function and access to capital market, the reorganization of Volksbank group includes a reversion to the local level with the ability to also restore a member based ownership.

## 4. Conclusions

In recent years co-operatives have increasingly shed their traditional alliances and their self-appreciation as "movements" that are specifically different compared to other commercial enterprises. The tendency has been

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<sup>34</sup> See *Blisse, Zeitlberger* (2010): p. 241f.

<sup>35</sup> See annual report with integrated corporate responsibility report 2009 of ÖVAG (p. 5f., 8, 22, 39).

<sup>36</sup> See annual reports 2009 of ABV (p. 2, 8, 20, 31), IMMO-BANK (without p.) and [www.immobank.at/immo\\_bank\\_ag/wir\\_ueber\\_uns](http://www.immobank.at/immo_bank_ag/wir_ueber_uns), on August 25, 2010.

<sup>37</sup> See Hofinger in *Karner* (2009): p. 24, Weiss (2009): p. 26.

<sup>38</sup> See [www.aerztebank.at/m101/volksbank/m093\\_18130/de/news/details/aktuelles/beteiligung.jsp?lacincl=/m093\\_18130&rahmen=true](http://www.aerztebank.at/m101/volksbank/m093_18130/de/news/details/aktuelles/beteiligung.jsp?lacincl=/m093_18130&rahmen=true), on August 25, 2010.

"towards managerial co-operatives" – and often the co-operative legal form has been left in favour of other forms of commercial law and frequent cases.

The legal basis has not changed very much during these recent decades, but the rare changes that have been put through also point into the same direction. The notable absence of public discussion concerning this universal farewell to traditional co-operative principles and values indicates that the co-operative heritage does not find too many defenders in today's Austria. The public debate concerning co-operatives, has sadly concentrated on the economic problems of certain co-operatives – not only the consumer co-operative field, but also regarding certain branches of the realm of agricultural co-operation. Often representatives of the co-operatives have been known to bring up these problems themselves in an effort to reform their sectors in the sense of an adaptation to increased competition. Without doubt the "co-operative spirit" will be reborn again in Austria, too, as it has been reborn several times during history. This usually has to do with profound social movements. At the present moment, however, the logic of competition and of capitalism seems to dominate more and more the field of institutionalized co-operation, in Austria as well as in many other countries.

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