



Dominik Bierecki*

Energy Transformation and the Social Economy: The nexus between citizen energy communities and social enterprises under Polish Law

[Transformacja energetyczna a ekonomia społeczna – związek między obywatelskimi społecznościami energetycznymi a przedsiębiorstwami społecznymi w prawie polskim]

Abstract

Under Polish law, citizen energy communities and social enterprises can be established in the legal form of a cooperative. The features of the citizen energy communities and social enterprises are similar and one can argue that they derive from the characteristics of cooperatives which are integral to the social economy. Therefore, a research question arises if a single cooperative can obtain both statuses: of a citizen energy community and a social enterprise. The article goal is to answer this research question. The research thesis states that energy transformation can be developed under the social economy and pursued by the cooperative social enterprise. Therefore, the social economy is a part of the twin transition – as part of the green transition.

The article was prepared by the dogmatic-legal method of research.

Keywords: citizen energy community, social enterprise, social economy, cooperative, EU law.

Introduction

The Directive 2019/944¹ introduced to the EU law the legal institution of a citizen energy community (article 2 item 11.)² This directive was implement-

* Dominik Bierecki – DSc, Associate Professor, Pomeranian University in Słupsk (affiliation); <https://orcid.org/0000-0001-6993-3974>; dominik.bierecki@upsl.edu.pl / dr hab. nauk prawnych, profesor uczelni, Uniwersytet Pomorski w Słupsku (afiliacja).

¹ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, OJ L 158, 14.06.2019, pp. 125–199.

² See: P. Lissoń, Czy obywatelska społeczność energetyczna to społeczność lokalna? Uwagi na tle nowych regulacji prawa unijnego i prawa polskiego, 'Prawo i Więź' 2021, 4, pp. 464–482.

ed to Polish law by the amendment of 28th of July 2023³ to the Polish Act on Energy Law⁴ (AEL). Among others, the amendment introduced regulation on citizen energy communities (CEC), including a list of entities that are eligible to obtain the status of this type of community. The list includes cooperatives (in general) and specifically housing cooperatives.

A year earlier, the Polish legislator introduced the Act of 5th of August 2022 on the Social Economy⁵ (ASE). This act list the organisations that are considered as social economy entities. The list directly includes social cooperatives, workers' cooperatives and agricultural production cooperatives. However, it also provides that social economy entities are non-government organisations and that includes cooperatives (in general) if they do not pay dividends for the members. Social economy entities are eligible to acquire the status of a social enterprise (SE).

Both of the concepts: citizen energy communities and social economy entities or social enterprises are of umbrella construct, which means that they are not limited to certain types of organisations but allow different types if given legal conditions are made. Because cooperatives are included on both lists of eligible entities, the research question arises whether a cooperative can be at the same time a citizen energy community (CEC) and a social enterprise (SE)? The article aims to answer this question. The research thesis states that energy transformation can be developed under the social economy and pursued by the cooperative social enterprise. Legal requirements for a CEC and a SE overlap and cooperatives are entities that fulfil all of them. It can be even considered that the requirements for the CEC and SE were modelled after principles that govern cooperatives. One must remember that historically and comparatively, cooperatives are integral to the social economy, regardless of their legal form or business sector in which they operate.⁶

The research thesis takes also into account the legal requirements for the CEC and SE from the perspective of internationally recognised Cooperative Principles.⁷ In this account, cooperatives which take a form of the CEC or SE became a general or public interest cooperatives. This means that they do not conduct their activity solely in the interest of their members but also for the interest of other groups or a community.

The article was prepared by the dogmatic-legal method of research. It is a result of interpretation of the Act on Energy Law (AEL) and the Act on the Social Economy (ASE) and of the Directive 2019/944.

³ Act of 28th of July 2023 on amending the Energy Law Act and certain other acts, Official Journal of Laws 2024, item 859 with changes.

⁴ Official Journal of Laws 2024, item 266 uniform text with changes.

⁵ Official Journal of Laws 2024, item 113 uniform text with changes.

⁶ C. Naett, *The Making of the Social and Solidarity Act from the Cooperative Perspective*, RECMA 2015, vol. 335, p. 11.

⁷ The Cooperative Principles according to the Statement on the Cooperative Identity of 1995, included as Appendix "A" to the Articles of Association of the International Cooperative Alliance, available at: <https://ica.coop/en/about-us/our-structure/alliance-rules-and-laws> [accessed: 11.01.2025].

Citizen Energy Communities (CEC)

According to article 2 item 11 A–C of the Directive 2019/944, the citizen energy community is characterized by features that are: 1) open and democratic character, 2) purpose other than profit, 3) and activity within the energy transformation policy. First of all, CEC must be based on voluntary and open participation and be effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises. Secondly, the primary purpose of the CEC should be provision of environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits. Thirdly, the CEC may engage in energy generation, including from renewable sources; distribution, supply, consumption, aggregation of energy; energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders.

These features of CEC are not directly applicable in EU members states due to the nature of a directive (article 288 paragraph 3 of the TFUE⁸). The transposition of the CEC legal character to Polish law was made by a definition included in article 3 item 13f A–C of AEL.⁹ According to this definition, the CEC should meet specific legal conditions in terms of legal structure and business purpose. The conditions regarding the legal structure are laid down in the article 3 item 13f A of the AEL and include the feature of voluntary and open membership (participation) and the granting of decision-making powers to members who are only natural persons, local government units, micro-entrepreneurs or small entrepreneurs within the meaning of article 7 section 1 item 1 of Act of 6th of March 2018 Entrepreneurs Law.¹⁰ For these members, the business activity in the energy sector must not constitute the subject of their basic business activity defined in accordance with the regulations issued under article 40 paragraph 2 of the Act of 29th of June 1995 on public statistics.¹¹ This restriction should preserve the CEC from being controlled by traditional energy market participants which are most often state owned commercial companies. This maintains the citizen character of the CEC and also brings their concept closely to the legal nature of a SE. The SE cannot be controlled by the state or local government or by state owned or municipal companies (article 3 section 2 of the ASE in conjunction with

⁸ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47–390.

⁹ J. Kmiec, M. Pawelczyk, Różnice między społecznościami energetycznymi a tradycyjnymi uczestnikami rynku energii, IKAR 2024, vol. 13, 3, pp. 14–16.

¹⁰ Official Journal of Laws 2024, item 236 uniform text with changes.

¹¹ Official Journal of Laws 2024, item 1799 uniform text.

article 4 item 4 of Act of 16th of February 2007 on competition and consumer protection.)¹²

In terms of the purpose of the activity, the definition of CEC by article 3 item 13f B of AEL states that the legal conditions concern: ensuring environmental, economic or social benefits for members or the local areas in which the activity of the CEC is carried out. Article 3 item 13f B of AEL provides that this should be the main purpose of the CEC. However, it must not be the only purpose of the CEC and profit can be achieved by these type of organisation. According to article 3 item 13f C of the AEL, the CEC makes profit on:

- (1) distribution, sale trade, aggregation or storage of electricity,
- (2) provision of electric vehicle charging services referred to in the Act of 11th January 2018 on Electromobility and Alternative Fuels,¹³
- (3) provision of other services on electricity markets including system services or flexibility services,
- (4) storage or sale of biogas, agricultural biogas, biomass and biomass of agricultural origin within the meaning of Art. 2 item 1, 2, 3 and 3b of the Act of 20th February 2015 on renewable energy sources.¹⁴

However, profits from these activities should be used to achieve the main purpose of the CEC (article 3 item 13f B of the AEL). Such a conclusion derives from the gradation of goals of the CEC, since the social, environmental or economic benefits for the members or the local areas are the main purpose. However, there is no prohibition of paying dividends for the CEC members or shareholders. Yet, one of the main purposes of the CEC is ensuring economic benefits for the members. Some of the legal forms eligible to acquire the status of the CEC do not pay dividends to their members. Those are housing cooperatives, housing communities and associations (article 11zi section 1 item 1–3 of the AEL). Other are meant to bring profits to their members, and those are partnerships, farmers' cooperatives, agricultural cooperatives and workers' cooperatives (article 11zi section 1 item 1, 4 and 5 of the AEL).

Social Enterprises (SE)

The concepts of the social economy and the SE are recognised worldwide. Many international organisations have provided definitions of the social economy and the social enterprise and appreciate their role in the global, domestic and regional economy. The United Nations acknowledged the social (and

¹² Official Journal of Laws 2024, item 1616 uniform text.

¹³ Official Journal of Laws 2024, item 1289 uniform text with changes.

¹⁴ Official Journal of Laws 2024, item 1361 uniform text with changes.

solidarity¹⁵) economy in two of the latest resolutions of General Assembly: the Resolution of 20th of November 2024: *Promoting the social and solidarity economy for sustainable development (A/C.2/79/L.22/Rev.1)*¹⁶ and the Resolution of 18th of April 2023, also titled: *Promoting the social and solidarity economy for sustainable development (A/77/L.60)*.¹⁷

The International Labour Organisation acknowledged and defined the social (and solidarity) economy in the Resolution concerning decent work and the social and solidarity economy of General Conference of the International Labour Organization of 10th of June 2022.¹⁸ Under this definition: *The SSE encompasses enterprises, organizations and other entities that are engaged in economic, social, and environmental activities to serve the collective and/or general interest, which are based on the principles of voluntary cooperation and mutual aid, democratic and/or participatory governance, autonomy and independence, and the primacy of people and social purpose over capital in the distribution and use of surpluses and/or profits as well as assets. SSE entities aspire to long-term viability and sustainability, and to the transition from the informal to the formal economy and operate in all sectors of the economy. They put into practice a set of values which are intrinsic to their functioning and consistent with care for people and planet, equality and fairness, interdependence, self-governance, transparency and accountability, and the attainment of decent work and livelihoods. According to national circumstances, the SSE includes cooperatives, associations, mutual societies, foundations, social enterprises, self-help groups and other entities operating in accordance with the values and principles of the SSE.*

The Organisation for Economic Co-operation and Development defined the social economy and the social enterprise in the Recommendation of the Council on the Social and Solidarity Economy and Social Innovation of 10th of June 2022.¹⁹ According to those definitions:

1. Social economy, also referred to in some countries as solidarity economy and/or social and solidarity economy, is made up of a set of organisations such as associations, cooperatives, mutual organisations, foundations, and, more recently, social enterprises. In some cases, community-based, grassroots and spontaneous initiatives are part of the social economy in addition to non-profit organisations, the latter group often being referred to as the solidarity economy. The activity of these entities is typically driv-

¹⁵ The solidarity economy is a related concept to the social economy, focused on distribution of social or merit goods which are essential to decent life and should be available to the entire population. The organisations of the solidarity economy have plural roots of market, non-market and non-monetary economies, Recent Evolutions of the Social Economy in the European Union: Study, pp. 18 and 19. <https://www.eesc.europa.eu/sites/default/files/files/qe-04-17-875-en-n.pdf> [accessed: 11.01.2025].

¹⁶ <https://acrobat.adobe.com/id/urn:aaid:sc:EU:d9c464f7-f2ff-48a3-8f6e-930de63cf104> [accessed: 11.01.2025].

¹⁷ <https://unsse.org/wp-content/uploads/2023/04/A-77-L60.pdf> [accessed: 11.01.2025].

¹⁸ <https://www.ilo.org/resource/ilc/110/resolution-concerning-decent-work-and-social-and-solidarity-economy> [accessed: 11.01.2025].

¹⁹ <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0472%20> [accessed: 11.01.2025].

en by societal objectives, values of solidarity, the primacy of people over capital and, in most cases, by democratic and participative governance.

2. A social enterprise is an entity, which trades goods and services, that fulfils a societal objective and whose main purpose is not the maximisation of profit for the owners but its reinvestment for the continued attainment of its societal goals.

Within the EU, the social economy and the SE were recognised and defined by a number of organisations and committees. The Social Economy Europe, i.e. the European-level association that represents the social economy, defines the principles and characteristics of the social economy in the *Social Economy Charter of 10th of April 2002*²⁰ (revised version approved on 25th of June 2015). Next, a definition of the social economy was presented in the 2012 report for the European Economic and Social Committee by the International Centre of Research and Information on the Public, Social and Cooperative Economy (CIRIEC): *The Social Economy in the European Union*.²¹

The European Commission described the SE in the Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *Social Business Initiative (COM/2011/0682 final of 25/10/2011)*.²²

In 2021, the European Commission (EC) included definitions of the social economy and the SE in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Building an economy that works for people: an action plan for the social economy’ (COM [2021] 778 final).²³

Also, the Council of the European Union defined social economy and SE in the Council Recommendation of 27 November 2023 on developing social economy framework conditions (C [2023] 1344).²⁴

In the EU law, the SE definitions were included in 2 regulations.

1. Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation (“EaSI”) and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion.²⁵ However, this regulation was in force until 31/12/2020.
2. Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013.²⁶

²⁰ <https://www.socialeconomy.eu.org/the-social-economy/the-social-economy-charter/> [accessed: 11.01.2025].

²¹ https://www.eesc.europa.eu/sites/default/files/resources/docs/12_368-gr3-env2.pdf [accessed: 11.01.2025].

²² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0682:FIN:en:PDF> [accessed: 11.01.2025].

²³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0778> [accessed: 11.01.2025].

²⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ%3AC_202301344 [accessed: 11.01.2025].

²⁵ OJ L 347, 20.12.2013, pp. 238–252.

²⁶ OJ L 231, 30.06.2021, pp. 21–59.

Article 2 section 1 item 13 of the Regulation (EU) 2021/1057 defines a social enterprise as an undertaking, regardless of its legal form, including social economy enterprises, or a natural person which:

(a) in accordance with its articles of association, statutes or with any other legal document that may result in liability under the rules of the Member State where a social enterprise is located, has the achievement of measurable, positive social impacts, which may include environmental impacts, as its primary social objective rather than the generation of profit for other purposes, and which provides services or goods that generate a social return or employs methods of production of goods or services that embody social objectives;

(b) uses its profits first and foremost to achieve its primary social objective, and has predefined procedures and rules that ensure that the distribution of profits does not undermine the primary social objective;

(c) is managed in an entrepreneurial, participatory, accountable and transparent manner, in particular by involving workers, customers and stakeholders on whom its business activities have an impact.

However, definition included in the Regulation (EU) 2021/1057 is only for the purposes of this legal act. Therefore, this definition is not bidding in extend beyond the Regulation (EU) 2021/1057 purpose. Moreover, it has to be stressed that the term social enterprise is used in the Regulation (EU) 2021/1057 for funding purposes.²⁷

The features that are included in all of the definitions and acknowledgments of the social economy and the SE by the listed international organisations and the EU are:

- (1) primacy of organisation's people and social purpose, which includes serving the collective or general interest, over capital in the distribution and use of surpluses;
- (2) principle of voluntary cooperation;
- (3) principles of democratic and participatory governance;
- (4) principles of autonomy and independence;
- (5) operating on market principles and using the profit generated to achieve a social goal.²⁸

The SE is considered an operator within the social economy.²⁹ It is an entity that complies with the listed characteristics. It bridges the gap between pri-

²⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Building an economy that works for people: an action plan for the social economy' (COM (2021) 778 final), 3.

²⁸ In Polish literature compare: M. Małecka-Lyszczek, A. Pacut [in:] *Ustawa o ekonomii społecznej. Komentarz*, ed. M. Małecka-Lyszczek, R. Mędrzycki, Warszawa 2023, pp. 28–36.

²⁹ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *Social Business Initiative* (COM/2011/0682 final of 25/10/2011).

vate and public sector by using business to achieve social goals.³⁰ Its legal form is not restricted to any specific type of entity. Nor is its activity limited to any specific market. It's because the social economy is determined by the purpose of the activity of its entities (social enterprises), not by the field of such an activity. Therefore, the social economy is referred to as an umbrella construct.³¹

In Polish law, the ASE, provides the purpose and the subject of the social economy, and lists the conditions for a status of a SE. According to the legal definition of the social economy, it is an economic activity, public benefit activity and other paid activity carried out for the local community in the field of social and professional reintegration, creating jobs for people at risk of social exclusion and providing social services (article 2 item 1 of the ASE). An entity can acquire the status of a SE if it fulfils the conditions regarding its activity, ownership and organisational structure. It should perform economic activity, public benefit activity or other paid activity and have a purpose of serving local development by social and professional reintegration of people at risk of social exclusion or the implementation of social services (article 3 section 1 item 1–3 and article 4 section 1 item 1–2 of the ASE). Therefore, organisations eligible to receive the status of a SE are designed to perform economic activity (cooperatives, including social and workers' and agricultural production cooperatives), public benefit activity and other paid activity (non-government organisations which have a purpose other than profit).

Moreover, an entity should be independent from the state, state owned commercial company, local government or municipal company (article 3 section 2 of the ASE). In the SE, a consultative and advisory body should be established, composed of all the employees of the social enterprise (article 7 section 1 of the ASE).

Cumulation of the Statuses of a Citizen Energy Community and a Social Enterprise

The AEL and the ASE includes cooperatives as entities eligible to acquire the status of the CEC and SE. Article 11zi section 1 item 1 of the AEL states that CEC can be a cooperative in the meaning of article 1 paragraph 1 of the Act of 16th of September 1982 – Cooperative Law³² (ACL) and a housing cooperative regulated by the Act of 15th of December 2000 on housing cooperatives.³³ In Poland the ALC 1st Chapter is a *lex generalis* for all types of cooperatives.

³⁰ P. Mahommadi, K. S. S. AlHattali, I. N. S. Alghatrifi, Rethinking the Boundaries and Definition of Social Entrepreneurship: A Critical Literature Review, 'Business Management and Strategy' 2024, vol. 15, 1, pp. 226–240.

³¹ K. Nagel, Teoretyczne i definicyjne ujęcie ekonomii społecznej, 'Studia Ekonomiczne' 2013, 129, p. 68.

³² Official Journal of Laws 2024, item 593 uniform text.

³³ Official Journal of Laws 2024, item 558 uniform text.

The regulation of *lex specialis* character on specific types of cooperatives: workers' cooperatives and agricultural production cooperatives is included in 2nd Chapter of the ACL and in a number of separate legal acts. These separate legal acts are:

1. Act of 7th of December 2000 on the functioning of cooperative banks, their associations and affiliating banks,³⁴
2. Act of 15th of December 2000 on housing cooperatives,
3. Act of 27th of April 2006 on social cooperatives,³⁵
4. Act of 22nd of July 2006 on European Cooperative Society,³⁶ which is the transposition of the Council Directive 2003/72/EC of 22nd July 2003 supplementing the Statute of an European Cooperative Society with regard to the involvement of employees,³⁷
5. Act of 5th of November 2009 on credit unions,³⁸
6. Act of 4th of October 2018 on farmers' cooperatives,³⁹
7. also the Act of 20th February 2015 on renewable energy sources contains regulation of energy cooperatives, and
8. Act of 22nd of March 1989 on craft⁴⁰ contains regulation of craft cooperatives.

Also, 2nd Chapter of the ACL contains regulation on second tier cooperatives that are: cooperatives' revision associations and cooperatives' economic associations. The regulation on another type of a second tier cooperative, i.e. farmers' cooperatives associations is also included in the Act of 4th of October 2018 on farmers' cooperatives (article 9).

As a cooperative in the meaning of article 1 paragraph 1 ACL can be considered every type of a cooperative, including those regulated by *lex specialis* laws to the ACL. The definition included in article 1 paragraph 1 of the ACL is universally applicable to every of those types of cooperatives: social cooperatives, farmers' cooperatives, housing cooperatives, credit unions, cooperative banks, energy cooperatives and craft cooperatives. It also covers agricultural production cooperatives and workers' cooperatives, regulated respectfully by articles 138 and 180, and article 181 of the ACL. Within the structure of the system of cooperative law there is a phenomenon referred to as typology of cooperatives. It is a situation when legal provisions allow a single cooperative to fulfil the features of two types of cooperatives. It happens in the case of types of: farmers' and energy cooperative; agricultural production cooperative and energy cooperative; workers' cooperative and energy cooperative.⁴¹

³⁴ Official Journal of Laws 2024, item 352 uniform text with changes.

³⁵ Official Journal of Laws 2023, item 802 uniform text with changes.

³⁶ Official Journal of Laws 2018, item 2043 uniform text with changes.

³⁷ OJ L 207, 18.08.2003, pp. 25–36.

³⁸ Official Journal of Laws 2024, item 512 uniform text with changes.

³⁹ Official Journal of Laws 2024, item 372 uniform text with changes.

⁴⁰ Official Journal of Laws 2020, item 2159 uniform text with changes.

⁴¹ Zob. D. Bierecki, *Energy Cooperatives in the System of Polish Cooperative Law*, 'Review of Institute of the Grand Duchy of Lithuania' 2021, vol. 1, pp. 7–16.

Similarly, according to the ASE, a SE status can be acquired by a social cooperative, workers' cooperative and agricultural production cooperative (article 2 item 5 A and D in conjunction with article 3 section 1 of the ASE). Moreover, a SE status can be obtained by the nongovernmental organisation and cooperatives of different types but cooperative banks are qualified (article 2 item 5 E of the ASE). The conditions are that a cooperative does not operate for the purpose of making a profit and is not a bank (article 3 section 2 of Act of 24th of April 2003 on public benefit activities and volunteering.)⁴²

Also, the CEC status can be obtained by a cooperative in the meaning of article 1 paragraph 1 ACL, a housing cooperative and a farmers' cooperative (article 11zi section 1 item 1 and 5 of the AEL).

Therefore, a single cooperative can be eligible to acquire the status of a CEC under the AEL and the status of a SE under ASE. This is the result of umbrella concepts of both the CEC and the SE. This finding is supported by the grammatic interpretation of article 11zi section 1 item 1 of the AEL and article 2 item 5 A and D, and E in conjunction with article 3 section 1 of the ASE. However, it should be considered if this finding complies with the concepts of the CEC and the SE, and the social economy.

First of all, in both cases, the grassroots and voluntary character of the organisation is stressed. In the 44 motive of the Directive 2019/944 and article 16 section 1 A–B of the Directive 2019/944 it is indicated that citizen energy communities are a category of cooperation of citizens and of voluntary character, open to all kinds of entities. However, in the case of the SE, the grassroots and voluntary character derives from the cooperative identity of the enterprise. So it is not the umbrella concept that carries these features of character but rather it results from historical and natural connection of cooperatives and the social economy.

Secondly, in cases of both CEC and SE, the organisations are controlled by the members. These members are private law entities for whom the concepts of CEC and SE are legally dedicated. Members of the CEC have to have control over these type of organisation and cannot be entities whose activity in the energy sector is the subject of their core business. This concept complies with the idea that CEC are consumer empowerment organisations (motive 43 of the Directive 2019/944). The CEC member can be a natural person, local government unit, micro-entrepreneur or small entrepreneur (however, the latter covers both natural and legal persons). As already mentioned, in the SE, a consultative and advisory body should be established, composed of all the employees of the social enterprise (article 7 section 1 of the ASE). It does not only concern employees who are SE's members, who can also be legal persons, including local governments units but all of the employed people in the

⁴² Official Journal of Laws 2024, item 1391 uniform text.

organisation.⁴³ Because SE purpose is to provide professional reintegration and social services which include combating unemployment, again it can be stated that control over the SE lies with the people for whom the organization is intended.

Thirdly, the activity of both the CEC and the SE can be meant to benefit the environment. One of the CEC objectives is to provide environmental benefits for their members or local area (article 3 item 13f B of the AEL). Similarly, the SE serves local area development by providing social services (article 4 section 1 of the ASE). Social services mean, *inter alia* environmental protection activities (article 2 section 1 item 13 of Act of 19th of July 2019 on the provision of social services by the social services centre⁴⁴ in conjunction with article 2 item 9 of the ASE). The Act of 19th of July 2019 on the provision of social services by the social services centre does not limit the ways of providing social services and only by way of example lists the legal basis for their provision (article 2 section 2). Moreover, reference in the article 2 item 1 and article 4 section 1 item 2 of the ASE that social economy and the SE is about providing social services gives a legal basis to conclude that social services can be provided by the SE in a manner other than in accordance with the Act of 19th of July 2019 on the provision of social services by the social services centre. Therefore, cumulation of statuses if the CEC and the SE by a single cooperative must result in providing social services of environmental protection by energy or biogas or biomass related services (listed in the article 3 item 13f C of the AEL). This activity shall be the economic activity that the SE is obligated to perform (article 3 section 1 item 2 of the ASE). However, one can argue that social services are provided in the nonmaterial manner directly to their beneficiaries (article 2 section 1 *in fine* of Act of 19th of July 2019 on the provision of social services by the social services centre). This restriction is applicable only to the way local governments (communes) or social services centres (municipal budget units) provides social services. This conclusion results from the grammatic interpretation of article 2 section 1 *in fine* and article 3 section 1 of Act of 19th of July 2019 on the provision of social services by the social services centre. The ASE refers to the of Act of 19th of July 2019 on the provision of social services by the social services centre only to the extent of defining social services but not to the extent of a way of providing this kind of services (article 2 item 9 of the ASE). Nonmaterial manner of providing social services would be contrary to the way in which social services are implemented by social enterprises and within the social economy. Article 2 item 2 of the ASE states that in the social economy, the activities of social economy entities (including social enterprises) for the provision of social services are carried out in the form of economic activity.

⁴³ D. Bierecki, *Cooperative Principles in the Concepts of Social Economy and Social Enterprise in Polish Law*, 'Prawo i Wiadomości' 2024, 3, pp. 84 and 85.

⁴⁴ Official Journal of Laws 2019, item 1818.

Fourthly, the cooperative which acquires statuses of both the CEC and the SE complies with the 7th Cooperative Principle. According to this principle, cooperatives work for the sustainable development of their communities. It has been explained that under this principle cooperatives activity evolved from working for sustainable development of their local communities to wider work for communities nationally, regionally and globally. The wording of the 7th Cooperative Principle was agreed in 1995 in the context of the debate over sustainable development goals held at that time in the United Nations.⁴⁵ However, under Polish legal definition of a cooperative, included in the article 1 paragraph 1 and 2 of the ACL, the purpose of a cooperative is to conduct business and social activity in the interest of its members. In the literature it is stressed that a cooperative cannot perform activities for the benefit of the community.⁴⁶ However, this view is outdated because it does not take into account the result of obtaining the status of the SE by the cooperative. As a result of this kind of status the characteristics of the cooperative change and it starts to pursue objectives for the benefit of the local community (article 4 section 1 of the ASE). According to the social services fields, the cooperative begins to pursue social and public interests (article 2 of the Act of 19th of July 2019 on the provision of social services by the social services centre). It becomes a so-called “general or public interest cooperative”. The ASE introduced the institution of “general or public interest cooperative” into Polish law.⁴⁷ According to foreign literature: French and Portuguese, such a cooperative corresponds with the Cooperative Principles.⁴⁸

Conclusion

Within the social economy there is a field of common activity for the SE and the CEC in the environmental sphere. Therefore, the social economy is a part of the twin transition, as part of the green transition.⁴⁹ The grassroots concepts of both: the SE and the CEC, their voluntary character, democratic governance, autonomy from the state and local government, and economic activity for the benefit of the local area or community are also common under

⁴⁵ D. Cracogna, *Principle 7* [in:] *Guidance Notes to the Co-operative Development*, Brussels 2015, pp. 85 and 86.

⁴⁶ P. Zakrzewski, *Legalna definicja spółdzielni* [in:] *Państwo–Konstytucja–Prawo. Księga pamiątkowa poświęcona Sędziemu Trybunału Konstytucyjnego Profesorowi Henrykowi Ciochowi*, Warszawa 2018, p. 544.

⁴⁷ D. Bierecki, *Cooperative...*, p. 86.

⁴⁸ D. Hiez, *The General Interest Cooperatives: A challenge for cooperative law*, *International Journal of Cooperative Law* 2018, vol. 1, pp. 93–110; D. Meira, *The Portuguese Social Solidarity Cooperative Versus The PECOL General Interest Cooperative*, *International Journal of Cooperative Law* 2019, vol. 2, pp. 57–71.

⁴⁹ On the twin transition see: D. Czyżewska-Miształ, J. Cabańska, *Podwójna transformacja w UE – stan obecny i wyzwania dla cyfrowej i zielonej Europy*, *Zeszyty Naukowe Polskiego Towarzystwa Ekonomicznego w Zielonej Górze* 2023, 19, pp. 108123.

the AEL and the ASE. Legally, those similarities come together in the form of a cooperative, which can simultaneously acquire statuses of the CEC and the SE. These similarities comply with the consumer owned concept of the CEC and social economy which is a sphere of activity between private and public sectors. The social economy brings together the business approach of the private sector and social goals pursued by the public sector and third sector entities. However, the difference between the SE and the third sector entities, commonly referred as non-governmental organisations (NGOs)⁵⁰ is the importance of the economic activity (business) of the organisation. The economic activity conducted by the SE is a form of pursuing the goals of the social economy. It is therefore a different model than that applicable to non-governmental organizations with the status of public benefit organisations, which can only conduct economic activity in an auxiliary manner, in order to realize statutory goals (article 20 section 1 item 2 of the Act of 24th of April 2003 on public benefit activities and volunteering).

Transformacja energetyczna a ekonomia społeczna – związek między obywatelskimi społecznościami energetycznymi a przedsiębiorstwami społecznymi w prawie polskim

Abstrakt

Na gruncie prawa polskiego obywatelskie społeczności energetyczne i przedsiębiorstwa społeczne mogą funkcjonować w formie prawnej spółdzielni. Cechy charakterystyczne obywatelskich społeczności energetycznych i przedsiębiorstw społecznych są podobne. Wynikają one z konstytutywnych cech spółdzielni, które są integralne z ekonomią społeczną. Dlatego powstaje pytanie badawcze: czy dana spółdzielnia może uzyskać jednocześnie status prawny obywatelskiej społeczności energetycznej i przedsiębiorstwa społecznego? Celem artykułu jest udzielenie odpowiedzi na tak postawione pytanie. Teza badawcza artykułu stanowi, że transformacja energetyczna może następować w ramach ekonomii społecznej i być realizowana przez spółdzielcze przedsiębiorstwa społeczne. Dlatego ekonomia społeczna jest częścią podwójnej transformacji – w ramach transformacji ekologicznej.

Artykuł został przygotowany metodą dogmatycznoprawną.

Słowa kluczowe: obywatelska społeczność energetyczna, przedsiębiorstwo społeczne, ekonomia społeczna, spółdzielnia, prawo UE.

⁵⁰ The division of activity segments into public, private (economic) and non-governmental is established in Polish and foreign literature. See: A. Breczko, A. Miruć, Swoboda zrzeszeń w kontekście społeczeństwa obywatelskiego, [w:] Trzeci sektor i ekonomia społeczna. Uwarunkowania prawne. Kierunki działań, red. J. Blicharz, L. Zacharko, Wrocław 2017, p. 15.

BIBLIOGRAPHY

Bierecki D., *Energy Cooperatives in the System of Polish Cooperative Law*, 'Review of Institute of the Grand Duchy of Lithuania' 2021, vol. 1.

Bierecki D., *Cooperative Principles in the Concepts of Social Economy and Social Enterprise in Polish Law*, 'Prawo i Więź' 2024, 3.

Cracogna D. et al., *Guidance Notes to the Co-operative Development*, Brussels 2015.

Czyżewska-Misztal D., Cabańska J., *Podwójna transformacja w UE – stan obecny i wyzwania dla cyfrowej i zielonej Europy*, 'Zeszyty Naukowe Polskiego Towarzystwa Ekonomicznego w Zielonej Górze' 2023, 19.

Hiez D., *The General Interest Cooperatives: A challenge for cooperative law*, *International Journal of Cooperative Law* 2018, vol. 1.

Kmieć J., Pawełczyk M., *Różnice między społecznościami energetycznymi a tradycyjnymi uczestnikami rynku energii*, *IKAR* 2024, vol. 13, 3.

Lissoń P., *Czy obywatelska społeczność energetyczna to społeczność lokalna? Uwagi na tle nowych regulacji prawa unijnego i prawa polskiego*, 'Prawo i Więź' 2021, 4.

Mahommadi P., AlHattali K. S. S., Alghatrifi I. N. S., *Rethinking the Boundaries and Definition of Social Entrepreneurship: A Critical Literature Review*, 'Business Management and Strategy' 2024, vol. 15, 1.

Małecka-Lyszczek M., Mędrzycki R. (ed.), *Ustawa o ekonomii społecznej. Komentarz*, Warszawa 2023.

Meira D., *The Portuguese Social Solidarity Cooperative Versus The PECOL General Interest Cooperative*, 'International Journal of Cooperative Law' 2019, vol. 2.

Naett C., *The Making of the Social and Solidarity Act from the Cooperative Perspective*, *RECMA* 2015, vol. 335.

Nagel K., *Teoretyczne i definicyjne ujęcie ekonomii społecznej*, 'Studia Ekonomiczne' 2013, 129.

Państwo–Konstytucja–Prawo. Księga pamiątkowa poświęcona Sędziemu Trybunału Konstytucyjnego Profesorowi Henrykowi Ciochowi, Warszawa 2018.

Recent Evolutions of the Social Economy in the European Union: Study, <https://www.eesc.europa.eu/sites/default/files/files/qe-04-17-875-en-n.pdf> [accessed: 11.01.2025].

Trzeci sektor i ekonomia społeczna. Uwarunkowania prawne. Kierunki działań, red. J. Blicharz, L. Zacharko, Wrocław 2017.