

NEW POSSIBILITIES OF OPERATION FOR ENTITIES OTHER THAN COMMERCIAL PARTNERSHIPS/ COMPANIES PROVIDED FOR IN THE SO-CALLED ANTI-CRISIS SHIELD

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Abstract. The article synthetically summarizes in a comparative form the main new possibilities for the operation of organisational entities other than commercial partnerships/companies in their internal relations (in the area of internal decision-making, including in particular the adoption of resolutions), mainly in the area of introducing or extending the possibilities for using means of distance communication, including electronic means of communication, which were provided for by the legislature directly in the regulations consisting of the so-called anti-crisis shield setting out specific support instruments due to the spread of the SARS-CoV-2 virus causing the COVID-19 pandemic, i.e. in the Act of 31 March 2020 (Journal of Laws item 568), as well as in the Act of 16 April 2020 (Journal of Laws item 695), as regards cooperatives operating under general rules, cooperative banks and entities managing the protection systems of those banks, investment funds and associations, as well as those arising from existing legal provisions or references introduced in these provisions, which in turn concerns mutual insurance or mutual reinsurance companies and foundations. Moreover, the article points to certain selected, general and specific doubts as to the manner and scope of regulation of these new possibilities of operation, as well as proposals to modify them, in the form of specific proposals *de lege ferenda* (for the law as it should stand), consisting of a general proposal for a broader, comprehensive and more symmetrical regulation of this matter in relation to organisational entities (including entities other than commercial partnerships/companies) according to the optimal theoretical model of its regulation.

Keywords: organisational entity, COVID-19, anti-crisis shield, means of direct distance communication, means of electronic communication

1. INTRODUCTION

1.1. Purpose and scope of the study

The article is to present in a synthetic form the new possibilities for the operation of entities other than commercial partnerships/companies¹ in internal relations (in the field of internal management, including, in particular, the adopting of resolutions) which were provided for by the legislature directly in one of the first regulations constituting the so-called anti-crisis shield,² i.e. in Article 3(1) to (3) and Article 27(5) to (7) of the Act of 31 March 2020 amending the Act on special arrangements for the prevention, countering and eradication of COVID-19, other contagious diseases and related emergencies, and certain other laws,³ and Articles 15, 16, 18 and 29 items (2), (30) and (34) of the Act of 16 April 2020 on special support instruments in relation to the spread of SARS-CoV-2⁴ (which relates to cooperatives operating under general rules, cooperative banks and entities managing the protection systems of those banks, investment funds and associations), or result from legal provisions or references contained in the above-mentioned regulations (which in turn concerns mutual insurance companies or mutual reinsurance companies and foundations), an indication of specific selected, both general and specific doubts about the manner and scope of their regulation, as well as the formulation of proposals for their modification in the form of postulates for the law as it should stand (*de lege ferenda*), with particular regard to legal solutions for cooperatives operating under general rules, mutual insurance companies or

¹ The basis for the regulation of commercial partnerships/companies in Polish law, including partnerships (general partnership, professional partnership, limited partnership, limited joint-stock partnership) and companies (simple joint stock company, limited liability company and joint-stock company) is the Act of 15 September 2000, the Code of Commercial Partnerships and Companies, Journal of Laws of 2020, item 1526 as amended [hereinafter: CCPC].

² The term “anti-crisis shield” has been used for specific solutions and a comprehensive catalogue of actions aimed at countering the negative economic and social impact of the COVID-19 pandemic caused by SARS-CoV-2, as well as for the package of laws proposed by the Polish Government, adopted by the Polish Parliament and signed by the President of the Republic of Poland in March 2020, enabling the implementation of these actions, which were to be (and are still) continuously evaluated and supplemented; see: Explanatory note to the draft Act of 16 April 2020 on special support instruments in relation to the spread of SARS-CoV-2, Sejm papers no: 330 [hereinafter: Explanatory note no. 2–330], p. 1. In this study, I use the term “anti-crisis shield” to designate the above-mentioned package of laws to the extent generally applicable to organisational entities, including in particular organisational entities other than commercial companies.

³ Journal of Laws of 2020, item 568 as amended [hereinafter: Act of 31 March 2020 amending the Act on COVID-19].

⁴ Journal of Laws of 2020, item 695 as amended [hereinafter: Act of 16 April 2020 on special support instruments in relation to SARS-CoV-2].

mutual reinsurance companies and foundations. Therefore, the author neither intends to provide a detailed commentary on each of the regulations introducing new possibilities of operation, nor to analyse and evaluate the legislative technique used in them in detail.

1.2. New possibilities of operation and their “model” spectrum of legal regulations

New possibilities of action of organisational entities (other than commercial partnerships and companies) in internal relations are, for a particular organisational unit and the manner of its operation, the following possibilities introduced or extended by the legislature: 1) participation in meetings of the entity governing bodies, as well as adoption of resolutions by means of direct communication at a distance, including means of electronic communication (especially software for holding meetings, audio and video on-line transmission, i.e. e.g. *ZOOM*, *Webex*, *Microsoft Teams*, *Google Meet*, or even a chat service, e.g. *Signal*, *Whatsapp* or *WeChat* [Omlor 2019, 6–12; Spindler 2019, 114–23; Ostrowski 2020, 34; Osajda 2020, 20–21]), 2) casting a vote in writing via another member of the body, as well as 3) adoption of resolutions by written ballot. Due to the contemporary dynamic development and growing practical application of various types of modern communication technologies, including in particular electronic communication means [Kosmin and Roberts 2020, VII–IX; Kosseff 2020, 155], this article will address primarily the new possibilities of operation related to the use of means of direct remote communication, especially electronic communication means.

The use of these means in commercial partnerships/companies was possible, but within a rather narrow subjective and objective scope (only in relation to supervisory boards and meetings in limited liability companies and joint-stock companies, and also with regard to audit committees in the case of limited liability companies) was possible before the adoption of the aforementioned legal solutions constituting the so-called anti-crisis shield as the opt-in model (it was possible provided that the articles of association provided for such a possibility), while under the provisions adopted as part of the so-called anti-crisis shield it was considerably extended and modified by adopting the opt-out model (it is possible by operation of law unless articles of association provide otherwise [Szumański 2020, 4; Ostrowski 2020, 33]), valid for a indeterminate period (and not episodically, within a specified period of time, e.g. only during the state epidemiological threat or the state of epidemic⁵). In view of the above, and also due to the fact that the spectrum of legal solutions in this

⁵ Provided for in the Act of 5 December 2008 on the prevention and control of infections and infectious diseases in humans, Journal of Laws of 2020, item 1845 as amended [hereinafter: APCI].

area in limited liability companies and joint-stock companies has been considerably expanded, despite their certain shortcomings, including in particular the lack of completeness or symmetry, and also taking into account the most complex, in the group of organisational entities, organisational and functional forms of commercial partnerships/companies (especially companies acting through their governing bodies) resulting from the provisions of law, overall regulations relating in this scope to the bodies of limited liability companies and joint-stock companies may be regarded, in their essential part, as models for the matter of the use of means of distance communication in other commercial partnerships/companies and in organisational entities other than commercial partnerships/companies. Therefore, in this study, they constitute a natural, fundamental point of reference for the presentation of this issue in relation to organisational entities other than commercial partnerships/companies, while in the case of mutual insurance companies or mutual reinsurance companies, due to the reference in the provisions on these companies to the provisions on the joint stock company, to the extent the joint stock company is concerned – they are the normative basis for regulation.

1.3. Research method

The study has used mainly the formal and dogmatic method, including all methods of interpretation, especially linguistic interpretation and systemic interpretation.

2. THE NEW POSSIBILITIES OF OPERATION PROVIDED DIRECTLY IN THE REGULATIONS MAKING UP THE SO-CALLED ANTI-CRISIS SHIELD

2.1. General remarks

New possibilities for the operation of organisational entities other than commercial partnerships/companies provided for in the rules comprising the so-called anti-crisis shield relate predominantly to the following entities:

1) in the group of organisational entities which, as a general rule, pursue business activity – to cooperatives (operating under a general rules, including to the operation of their management boards, supervisory boards, general meeting, meetings of representatives and meetings of member groups), cooperative banks and entities managing the protection systems of those banks (including to the operation of their management boards, supervisory boards, general meeting, meetings of representatives and meetings of member groups), and investment funds (including to the operation of their meetings of participants, investors' boards and investors' meetings), and

2) in the group of organisational entities which do not, as a general rule, engage in business activities – to associations (acting under general rules, including – for all governing bodies of the association: the general meeting of members, the internal auditing body and the management board).

2.2. The new possibilities of operation of cooperatives (operating under general rules)

For management boards and supervisory boards of cooperatives (operating under general rules), the new possibilities of operation include the possibility of:

a) submitting by members of these bodies to the president of the management board (in the case of the management board) or to the chairman of the supervisory board (in the case of the supervisory board), respectively, of a request to convene a meeting with the proposed agenda or adopting a specific resolution in writing or with the means of direct distance communication (Article 4(4¹) of the Act of 16 September 1982, the Law on Cooperatives)⁶,

b) convening of a meeting by members of these bodies, with its date and place specified, or ordering a vote in writing or with the means of direct distance communication – in the event where the chairman of the supervisory board or the president of the management board fails to convene the meeting or does not order voting in writing or by means of direct remote communication for a day within one week from the date of receipt of the above-mentioned request (Article 4(4²) of the Law on Cooperatives),

c) adopting a resolution by these bodies in writing or with the use of means of direct distance communication (however, in accordance with Article 4(4³) sentence 1 of the Law on Cooperatives, the resolution may be adopted if all members of the body have been properly notified of the meeting of the body or the voting in writing or with the means of direct distance communication),

d) adopting a resolution by these authorities, which will be the result of partially the votes cast at the meeting, and partially the votes cast in writing or by means of direct distance communication (Article 4(4³) sentence 2 of the Law on Cooperatives – thus in a hybrid manner – in this case, in accordance with Article 4(4⁴) of the Law on Cooperatives, when calculating the quorum, both members of bodies, who participated by voting in writing or those by using means of direct remote communication are taken into account).

Pursuant to Article 35(5) of the Law on Cooperatives, the detailed procedure for convening the meetings as well as the manner and conditions for adopting resolutions by the cooperative bodies (excluding the general meeting or meetings of representatives), including, *inter alia*, by the management

⁶ Journal of Laws of 2020, item 275 as amended [hereinafter: Law on Cooperatives].

board and the supervisory board, should be specified in the statutes of the cooperative or the regulations of these bodies provided for therein.

The legislature ordered the application *mutatis mutandis* of the above-mentioned rules relating to the management board and the supervisory board, as provided for in Article 35(4¹–5) of the Law on Cooperatives to meetings of member groups (Article 59(1) sentence 3 of the Law on Cooperatives) electing representatives to the meetings of representatives, as well as to general meetings of the cooperative which, by law, exercise the powers of supervisory boards (Article 46a, sentence 3 of the Law on Cooperatives), which – in the context of a separate and at the same time analogous regulation of this matter in the provisions relating directly to the general meeting (or the meeting of representatives), i.e. primarily in Article 36(9–12) and Article 40(3) of the Law on Cooperatives – can be treated as an expression of a certain incoherence, inconsistency and lack of a comprehensive approach to the solutions introduced.

On the other hand, in the case of the general meeting (Article 36(9–13) and Article 40(3) of the Law on Cooperatives), as well as the meeting of representatives (Article 37(5) of the of the Law on Cooperatives), the new possibilities include, notwithstanding the relevant provisions of its statutes (Article 36(12) of the Law on Cooperatives), and therefore it may be assumed that even if that statutes provide for otherwise, the possibility of the management board or the supervisory board of the cooperative to decide to adopt a specific resolution by its general meeting (or meeting of representatives): (a) in writing, (b) by means of direct distance communication (Article 36(9) of the Law on Cooperatives), c) which will be the result of votes partially cast in writing or by means of direct distance communication (Article 36(10) sentence 2 of the Law on Cooperatives), including, as may be believed, also votes cast partly in the traditional way (related to the personal presence of the members of the body at the meeting), and therefore in a mixed manner (which can be described as hybrid one).

In the provision of Article 36(11) of the Law on Cooperatives the legislature has aptly adopted a legal solution (also introduced with regard to the cooperative's management board, supervisory board and meetings of the member groups – in Article 35(4⁴) of the Law on Cooperatives, including Article 59(1) of the Law on Cooperatives) according to which the calculation of the quorum (at the general meeting or the meeting of representatives) shall take into account the members participating by casting a vote in writing or by means of direct distance communication.

At the same time, it introduced a right principle (also adopted – as mentioned above – with regard to the management board, the supervisory board and the meetings of member groups in Article 35(4³) of the Law on Cooperatives, including in conjunction with Article 59(1) of the Law on Cooperatives) that

a resolution of the general meeting (or of the meeting of representatives) may be adopted if all the members of the body have been notified of the vote in writing or by means of direct distance communication (Article 36(10) sentence 1 of the Law on Cooperatives).

Similarly, in accordance with Article 40(3) of the Law on Cooperatives, the aforementioned notifications or requests for the convening of a general meeting (or a meeting of representatives), including the adoption of resolutions in these specific procedures, may be effected by means of direct distance communication.

However, unlike in the case of governing bodies of a limited liability company, which is to be regarded as an expression of a certain inconsistency and the absence of a holistic, comprehensive and optimal approach to the legal arrangements introduced in various organisational entities, the legislature has not introduced, for the governing bodies of cooperatives, detailed legal and organisational arrangements in this area, which with regard to the regulation on those companies allow assuming that they show much greater comprehensiveness, completeness or optimality.

In particular, the legislature did not introduce as a normative principle, in relation to the bodies of cooperatives, the obligation to define, in the form of regulations, the detailed rules for participation in meetings of bodies using electronic communication means (which in the case of meetings of a limited liability company and joint-stock company, as well as the management board and supervisory board of a joint-stock company are governed by the provisions of Article 234¹(3) CCPC, Article 406⁵(3) CCPC, Article 371(3¹) of CCPC and Article 388(1¹) CCPC), or the principle that a resolution is valid when all members of the body have been notified of the content of the draft resolution and at least half of the members took part in adopting the resolution, unless the articles of association provide for stricter requirements in this respect (which in the case of supervisory boards of a limited liability company and joint-stock company, as well as audit committees in limited liability companies, the provisions of Article 222(4) CCPC, including in conjunction with Article 222(7) CCPC and the provision of Article 388(3) CCPC).

Moreover, unfortunately, the above-mentioned legal solutions relating to the general meeting (or meeting of representatives) of a cooperative provided for in Article 36(9–12) of the Law on Cooperatives apply only during a state of epidemiological threat or state of epidemic referred to in APCI and not – as in the case of new possibilities of operation provided for its other bodies, or in the case of these possibilities introduced in relation to bodies in companies, mutual insurance (or mutual reinsurance) companies or investment funds – regardless of the introduction of any of these states, and therefore for an indefinite period of time.

2.3. The new possibilities of operation of cooperative banks and entities managing the protection systems of these banks

The provision of Article 2b of the Act of 7 December 2000 on the functioning of cooperative banks, their association and the associating banks,⁷ following the model of regulation provided for governing bodies of cooperatives operating on general principles, provide for with regard to the bodies of cooperative banks and entities managing the protection systems of these banks (Article 22d item 1 point 2 and items 2–4 AFCB), i.e. the general meeting, management board, supervisory board and meetings of member groups, the possibility of: a) convening meetings with the use of means of direct distance communication, b) participating in meetings using means of direct distance communication, c) adopting resolutions in writing or using means of direct distance communication.

In this case, the legislature did not adopt any opt-out model involving a statutory reference to the introductory or repealing provisions of the entity's statutes (i.e. neither that applicable for supervisory boards and meetings of the limited liability company and joint-stock company before the introduction of the new opt-in model, nor the current opt-out model, generally adopted for the bodies of the limited liability company and joint-stock company). On the other hand, it has introduced, a presumably mandatory rule that the provisions of the statutes or regulations providing for different from the principles on the use of means of direct distance communication indicated by law (in Article 2b AFCB) and presented above do not apply and are therefore legally ineffective.

Regrettably, however, these rules are of an episodic nature, as in the case of cooperatives (operating on general principles), associations and foundations. They are applied during the period of epidemiological threat, state of epidemic, state of emergency or state of natural disaster and up to 90 days following their cancellation (Article 2b(6) AFCB).

2.4. The new possibilities of operation of investment funds

On the other hand, the provisions of the Act of 27 May 2004 on investment funds and the management of alternative investment funds⁸ (Article 87(3a) – (3d), Article 87c(3) items 4–5, Article 113(3), Article 114(2a) – (2c), Article 140(2a), Article 142(1a) – (1d) AIF), modelled on the regulations provided for meetings in a limited liability company, provide for the possibility of attending investment fund meetings of participants, investors' boards and investors' meetings (open-end investment funds, specialised open-ended investment

⁷ Journal of Laws of 2021, item 102 as amended [hereinafter: AFCB]. Apart from the regulation of AFCB and the Law on Cooperatives, the operations of cooperative banks are also based on the Act of 29 August 1997, the Banking Law, Journal of Laws of 2020, item 1896 as amended.

⁸ Journal of Laws of 2020, item 95 as amended [hereinafter: AIF].

funds, closed-end investment funds) using electronic means of communication (and not, as in the case of bodies of a cooperative or company bodies other than meetings, more broadly: the means of direct distance communication), unless the statutes of the fund in question provide otherwise (and therefore on the basis of the opt-out model also adopted in the limited liability company [Szumański 2020, 4; Ostrowski 2020, 33]).

These regulations, in reference to the rules on meetings of capital companies (including a simple joint-stock company), provide for that participation in meetings of these investment fund bodies by electronic means may be subject only to the requirements and restrictions necessary to identify their participants (members) and to ensure the security of electronic communications. It is regrettable, however, that these regulations do not, at the same time, make it compulsory, as the provisions on meetings of limited liability companies and management boards and supervisory boards of a joint-stock companies, to adopt, in the form of an internal regulation, rules for the participation of participants (members) in meetings of those bodies of investment funds with the use of means of electronic communication.

It is right, however, that, like the solutions provided for in commercial companies and mutual insurance companies (or mutual reinsurance companies), they do not apply only episodically, but for an indefinite period of time.

2.5. Doubts and comments regarding the legal regulation of new possibilities for the operation of cooperatives, cooperative banks and entities managing the protection systems of these banks, as well as investment funds

The legal solutions providing for new possibilities of action relating to the bodies of cooperatives (operating under general principles), cooperative banks and entities managing the protection systems of these banks, as well as the aforementioned investment funds may raise certain elementary doubts. These doubts are strengthened by the fact that the legislature failed to provide a convincing justification in this respect in the explanatory notes to the bills which introduced them, in particular – with regard to cooperatives – mentioning only in the Explanatory Note to the Act of 31 March 2020 amending the Act of 2 March 2020 that these changes are introduced following the model of the solutions provided for commercial partnerships/companies, specifically for the simple joint-stock company.⁹

⁹ See: Explanatory note to the draft Act of 31 March 2020 amending the Act on COVID-19, Sejm paper no. 299 [hereinafter: Explanatory note no. 1], p. 82, which generally stated: “The proposed amendments are intended to enable operation of the bodies of cooperatives, including housing cooperatives, and housing communities, whose members may be quarantined. They provide for the possibility, like commercial partnerships/companies, of voting in writing or by means of distance communication. The model was borrowed from the solutions introduced in

The basic doubt raised by the analysis of the introduced solutions boils down, as indicated above, to the question as to why the new possibilities of operation of the general meeting (or meeting of representatives) of cooperatives (acting under general principles), as well as the general meeting, management board, supervisory board and meetings of member groups of cooperative banks and entities managing systems of protection of these banks are applied only episodically, i.e. generally in the period of a state of epidemiological threat or a state of epidemic (Article 36(13) of the Law on Cooperatives and Article 2b(6) AFCB), and not – as in the case of other bodies of cooperatives, bodies of limited liability companies and a joint-stock companies (and bodies of simple joint-stock companies other than the general meeting), or the meeting of participants, investors' board and the meeting of investors of the aforementioned investment funds – regardless of the declaration of these states, i.e. to the temporally unlimited extent. In the current state of development of modern technologies, diversified means of communication, direct communication at a distance, including electronic means of communication [Kosmin and Roberts 2020, VII–IX], regardless of the existence and scope of restrictions on communication resulting from the COVID-19 pandemic caused by SARS-CoV-2, there is no justification for the temporary limitation of the application of the legal solutions, both existing and proposed, related to the operation of cooperatives and cooperative banks and entities managing systems of protection of these banks, only to the state of epidemiological threat and state of epidemic, thus it is reasonable to consider, as a proposal for the law as it should stand, abandoning the regulation providing for such a limitation.

It is intriguing why the new possibilities for cooperatives to act through a general meeting (or a meeting of representatives) do not apply, as is the case with most bodies of companies, by the operation of law itself, unless its statutes provide otherwise (the opt-out model), but are based on an order (decision) of the management board or the supervisory board, which, in the case of collegial bodies, has the form of a resolution. This entails a doubt concerning the hierarchy of internal corporate acts of cooperatives as to why that order, in the area under analysis, has the higher status than that of the statutes of a cooperative, since those improvements may be introduced by an “order” (decision) of the management board or supervisory board, irrespective of the provisions of the statutes of the cooperative (Article 36(12) of the Law on Cooperatives),

the Code of Commercial Companies and Partnerships in connection with the establishment of a new type of legal entity – a simple joint-stock company.” See more Koziel 2020, XIX–XXX-VII, 3ff. See also Explanatory note no. 2–330, p. 27 relating to the changes to the new possibilities for investment funds introduced in AIF which stated similarly, very generally: “The proposed amendment [...] aims to allow investment fund participants to participate remotely in the fund’s bodies. [...] The proposed amendments are to enable investment fund bodies to act in a situation of epidemiological threat or state of epidemic and to improve their functioning in the normal course of the investment fund business activity.”

and therefore not only where those statutes do not provide for such an possibility, but also where it states otherwise.

In this context, questionable may also be the provisions of Article 2b AFCB regarding the general meeting, the management board, the supervisory board and the meetings of the member groups of cooperative banks and the entities managing the systems for the protection of those banks, which exclude the effectiveness of those provisions of the statutes of those banks and the entities managing their protection systems which are different in the area of rules for the use of means of direct communication at a distance from those specified in those provisions and set out above.

These doubts raise the fundamental question about the reasons for not introducing for cooperatives (operating under general principles), cooperative banks and entities managing the systems for the protection of those banks, as well as investment funds, a broader, much more complete, comprehensive or, finally, optimal spectrum of regulation of this matter and, at the same time, proposing, *de lege ferenda*, the introduction of such an optimal regulatory scope for the governing bodies of cooperatives, cooperative banks and the entities managing the systems for the protection of those banks, as well as investment funds, similar to that adopted for companies (which, as regards the regulations provided for in the so-called anti-crisis shield, refers directly to the bodies of the limited liability company).

The identification and analysis of new possibilities of operation for cooperatives (operating under general rules) acting through their governing bodies, and the formulation in this regard of proposals for the law as it should stand are very important also because the rules on the bodies of those cooperatives, including the rules on new ways in which they operate, are in principle not regulated by the provisions on almost all specific types of cooperatives (i.e. labour cooperatives regulated by Article 181 et seq. of the Law on Cooperatives, credit unions,¹⁰ social cooperatives¹¹ or housing cooperatives¹²) are applicable *mutatis mutandis* to them.¹³ Unfortunately, due to the resulting lack of regulation of the matter at issue in the legislation on housing communities,¹⁴ and

¹⁰ Acting under the Act of 5 November 2009 on credit unions, Journal of Laws of 2020, item 1643 as amended.

¹¹ Acting under the Act of 27 April 2006 on social cooperatives, Journal of Laws of 2020, item 2085 as amended.

¹² Acting under the Act of 15 December 2000 on housing cooperatives, Journal of Laws of 2020, item 1465 as amended.

¹³ In connection with the regulation of Article 2b AFCB, as regards the new possibilities of operation of the organisational entities analysed herein, this does not apply, as mentioned above, to cooperative banks and entities managing the protection systems of those banks.

¹⁴ Amended by Article 7 of the Act of 31 March 2020 amending the SARS-CoV-2 regulation of Article 21(4) to (5) of the Act of 24 June 1994 on the ownership of the premises, Journal of Laws of 2020, item 1910 as amended [hereinafter: AOP], providing, within the basic scope,

due to the failure to include therein, to the extent not regulated, references to the relevant rules, in particular the rules on cooperatives or housing cooperatives, the spectrum of new possibilities of action for cooperatives, analysed and considered in this article from the perspective *de lege lata* and in the context of *de lege ferenda*, cannot be adequately applied to the ability of housing communities to operate, which is not justified and should be corrected by the legislature.

2.6. The new possibilities of operation of associations (operating under general rules)

New possibilities of operation for the governing bodies of associations operating under general rules (general meeting of members, internal auditing body and management board) include the possibility of voting, as it may be assumed due to the wording of Article 10(1a) of the Act of 7 April 1989, the Law on Associations¹⁵ – as a rule, outside of meetings of the association bodies; not – as in the case of bodies of cooperatives, or the management boards, supervisory boards, audit committees and boards of directors in individual companies – generally with the use of all means of direct distance communication, but only with the use of a specific group of them, as it may be considered, currently the fastest growing, the most accessible and, at the same time, the most frequently used, i.e. means of electronic communication, provided that the members of a given body of the association have agreed to it in a documentary form (Articles 77²–77³ of the Act of 23 April 1964, the Civil Code¹⁶).

The above-mentioned general rules for the use of electronic means of communication outside the meetings of the association's governing bodies apply unless a different regulation in this regard has been introduced in the association's statutes. This is so, because other regulations – the provisions of Article 10(1d) sentences 1 and 2 of the Law on Associations generally give priority to the provisions of its statute concerning the issue of the legal basis for the use of electronic means of communication by the association's bodies. Pursuant to Article 10(1d) sentence 1 of the Law on Associations, the use of electronic

for the possibility of use by the management boards of housing communities the new possibilities of action, discussed in this paper (i.e. voting by written ballot or using the means of direct distance communication) were subsequently, regretfully, repealed by Article 5 of the Act of 10 December 2020 on the amendment of certain acts supporting the development of housing activities, Journal of Laws of 2021, item 11.

¹⁵ Journal of Laws of 2020, item 2261 as amended [hereinafter: Law on Associations].

¹⁶ Journal of Laws of 2020, item 1740 as amended [hereinafter: CC]. According to Article 77² CC, for the documentary form of a legal act, a declaration of will in the form of a document is sufficient (i.e. in the light of Article 77³ CC, a data medium enabling the declaration of will to be read) in such a way as to make it possible to identify the person making the declaration.

means of communication in voting at and outside the meetings of the association's governing bodies may be subject to different regulations in its statute (e.g. providing for the possibility of voting using these means also at meetings of its governing bodies). On the other hand, in the light of Article 10(1d) sentence 2 of the Law on Associations, the association's statutes may limit or directly exclude the use of electronic means of communication in voting at and outside the meetings of the association's governing bodies.

The possibility of participating in a meeting of the association's governing bodies with the use of electronic means of communication must be specified in the notification of this meeting, containing a detailed description of the manner of participation and exercise of voting rights (Article 10(1b) of the Law on Associations). The use of electronic means of communication when voting at meetings of the association's authorities must ensure at least: the real-time transmission from the session, the two-way real-time communication, during which a member of the association's body may speak during the session, or exercise of the voting rights in person or through a legal representative before or during the meeting (Article 10(1c) of the Law on Associations).

It is a pity, however, that pursuant to Article (10(1e) of the Law on Associations the above solutions apply only in the case of introduction of a state of epidemiological threat or state of epidemic referred to in APCI, and not as in the case of other body than the general meeting (or meeting of representatives) of the cooperative, the bodies of limited liability companies and joint-stock companies (and, other than the general meeting, bodies of simple joint-stock companies), or the meeting of the participants, the investors' board and the investors' meeting of the aforementioned investment funds, regardless of the declaration of one of these emergency states, which seems to reflect a certain inconsistency and a lack of a complete, comprehensive and optimal approach to the legal arrangements in the different organisational entities in this area.

2.7. Doubts and comments regarding the legal regulation of new possibilities for the operation of associations

The legal solutions referred to above regarding associations give rise to similar doubts and questions like in the case of the relevant regulations of the law on cooperatives, the regulations relating to cooperative banks and the entities managing the protection systems of those banks, and the investment funds mentioned above, all the more so since, unlike in particular for the regulations of the law on cooperatives (for which the explanatory note to the bill very refers only to the general model and at the same time the direction of the

regulation) – no, even slightest, justification was presented for them in the explanatory notes for the bills introducing the so-called crisis shield.¹⁷

The fundamental doubt pointed to above, resulting from an analysis of the solutions in place, can be, as in the case of similar regulations relating to cooperatives (operating under general rules), cooperative banks and entities managing the protection systems of those banks, reduced to the question of why they are applicable only during the period of epidemiological or the state of epidemic (Article 10(1e) of the Law on Associations), i.e. episodically – which is not justified in the current state of development of modern technologies, diversified means of communication, direct distance communication, including electronic means of communication [Kosmin and Roberts 2020, VII–IX] – and not because of the introduction of these states for an indefinite period of time.

It is also intriguing why these improvements (including, as a general rule, the possibility of voting by electronic means outside the meetings of its bodies, unless otherwise provided by the statutes of the association) do not apply as in the case of bodies of cooperatives, other than the general meeting (or the meeting of representatives), bodies of companies (excluding the general meeting in a simple joint-stock company), or the meetings of participants, the investors' board and the meeting of investors of the aforementioned investment funds, by operation of law, unless otherwise provided by the statutes of the association (when e.g. it does not exclude their application in accordance with Article 10(1d) of the Law on Associations), but is based on a decision of the individual governing bodies of the association (expressed in a documentary form (Article 10(1a) of the Law on Associations).

As in the case of cooperatives (operating on a general basis), cooperative banks and entities managing the protection systems of those banks, as well as investment funds, these doubts raise a fundamental question about the justification for the failure to introduce for associations a broader, much more complete, comprehensive, full and, finally optimal spectrum of regulation of the matter, as the one adopted for capital companies (which, as regards the regulation of the so-called anti-crisis shield, relates directly to the bodies of the limited liability company) and, at the same time, to propose *de lege ferenda* the introduction of such an optimal scope of regulation for the bodies of those associations.

The identification and analysis of the new possibilities for associations to operate through their bodies, as well as the formulation of proposals *de lege ferenda* in this regard, is very important also because the provisions concerning the bodies of associations operating under general rules, including the

¹⁷ See: Explanatory note to the draft Act of 16 April 2020 on special support instruments in relation to the spread of SARS-CoV-2, Sejm papers no. 324 and 330 [hereinafter: Explanatory note no. 2].

analysed regulations concerning new ways of their operation, in principle, to the extent not regulated by the legislation on certain other organisational entities constituting social organizations operating under separate acts or international agreements to which the Republic of Poland is a party (i.e. in the provisions on chambers of crafts and guild associations,¹⁸ chambers of commerce,¹⁹ employers' associations, federations and confederations,²⁰ sports associations²¹) or religious organisations whose legal situation is governed by the laws on the relationship of the State to churches and other religious associations, operating within those churches and associations (e.g. in the provisions on organisations operating within the Catholic Church) are applicable to them *mutatis mutandis* (Article 7(2) in conjunction with Article 7(1) items 1) and 3) of the Law on Associations).

Looking from this perspective, all the more surprising and questionable is the failure to include in the provisions introducing new possibilities for associations of the option to apply them also to ordinary associations governed by Articles 40 to 43 of the Law on Associations, which are organisational entities without legal personality on which the Act confers legal capacity and therefore structurally simpler "sisters" of associations equipped with legal personality. It seems that, it should be considered, as a proposal *de lege ferenda*, introducing new possibilities for action also in ordinary associations.²²

3. THE NEW POSSIBILITIES OF OPERATION ARISING FROM LEGAL REFERENCES TO REGULATIONS INTRODUCED BY THE SO-CALLED ANTI-CRISIS SHIELD

3.1. General remarks

In view of the fact that the principle of application of the law *mutatis mutandis* was used even before the adoption of the so-called anti-crisis shield or has been directly adopted in those provisions by the legislature, the catalogue of organisational entities other than commercial companies/partnerships

¹⁸ Acting under the Act of 22 March 1989 on crafts, Journal of Laws of 2020, item 2159.

¹⁹ Acting under the Act of 30 May 1989 on chambers of commerce, Journal of Laws of 2019, item 579.

²⁰ Acting under the Act of 23 May 1991 on employers' organizations, Journal of Laws of 2019, item 1809.

²¹ Acting under the Act of 25 June 2010 on sport, Journal of Laws of 2020, item 1133.

²² That proposal is also justified, in general, in respect of commercial partnerships which have similar subjective status and which are ignored in this area by the legislature (general partnership, professional partnership, limited partnership, limited joint-stock partnership), including their shareholders, which generally goes beyond the essential scope of the considerations of this paper, covering organisational entities other than commercial companies and partnerships.

to which the new possibilities of operation analysed herein apply is broader than those mentioned in point 2 above. It includes in particular:

1) in the group of organisational entities which, as a general rule, pursue an economic activity, – mutual insurance companies or mutual reinsurance companies (including, due to applying *mutatis mutandis*, under Article 161 of the Act of 11 September 2015 on insurance and reinsurance business,²³ of the provisions of the Code of Commercial Partnerships and Companies about joint-stock company – Article 371(3¹–3³) CCPC, Article 388(1–3) CCPC and Article 406⁵ CCPC, unless otherwise provided in the articles of association of the company. – the management boards, supervisory boards and general meetings of members of these companies),

2) in the group of organisational entities which, as a general rule, are not engaged in an economic activity, foundations operating under general rules (including, due to the application *mutatis mutandis*, under Article 5(1a) and (1b) of the Act of 6 April 1984 on foundations,²⁴ of Article 10(1a) to (1e) of the Law on associations, all foundation bodies: the management board and other bodies established on the basis of the foundation statutes, for example: foundation council, foundation board, supervisory board, etc.).

3.2. The new possibilities of operation of mutual insurance (or mutual reinsurance) companies

Unless the articles of association of a mutual insurance (or mutual reinsurance) company provide otherwise (and therefore, similarly to the bodies of a limited liability company and a joint stock company, as well as in the case of the meeting of participants, investors' board and the meeting of investors of the aforementioned investment funds – on an opt-out basis [Szumański 2020, 4; Ostrowski 2020, 33]), to the extent not regulated in Chapter 5 AIRB on the operation of these companies under Article 161 AIRB, the provisions of the Code of Commercial Partnerships and Companies on the joint stock company shall apply *mutatis mutandis*, including in particular the provisions on its bodies and new possibilities of their operation analysed herein, set out in the provisions referred to as the anti-crisis shield. Due to the fact that the legislature did not introduce a separate regulation in the AIRB provisions on the issue of new possibilities of operation for mutual insurance and reinsurance companies by their governing bodies, in particular with the use of means of direct communication over distance, the scope of these possibilities is determined, pursuant to Article 161 AIRB, by the relevant provisions of the Code of Commercial Partnerships and Companies on joint stock companies, unless the articles of association of the company concerned provide otherwise.

²³ Journal of Laws of 2020, item 895 [hereinafter: AIRB].

²⁴ Journal of Laws of 2020, item 2167 [hereinafter: AF].

The new possibilities of operation for mutual insurance and reinsurance companies include, in the case of their management boards and supervisory boards, unless the statutes of the society provide otherwise (the opt-out model) the possibility of:

a) participation in a meeting of the body with the use of means of direct distance communication (Article 371(3¹) CCPC and Article 388(1¹) CCPC in conjunction with Article 161 AIRB, except that – more optimally than in the case of these bodies of cooperatives (acting under general rules), cooperative banks and entities managing systems of protection of these banks, as well as governing bodies of associations or foundations – the legislature imposed on supervisory boards of mutual insurance and reinsurance companies in connection with the application *mutatis mutandis* to their management boards and supervisory boards of the provision of Art. 406⁵(3) CCPC in conjunction with Article 161 AIRB an obligation to determine, in the form of internal regulations, the detailed rules of participation in meetings of these bodies by electronic means of communication, with the exception of requirements and limitations, which are not necessary for identification of members and ensuring security of electronic communication),

b) adoption of resolutions in writing or with the use of means of direct distance communication (Article 371(3²) CCPC and Article 388(3) CCPC in conjunction with Article 161 AIRB, but regrettably only in the case of supervisory boards and not also in the case of management boards, which should be assessed as an expression of a certain inconsistency and lack of comprehensive and optimal approach to the solutions being introduced, the legislature introduced a regulation according to which a resolution is valid if all members of the body have been notified about the content of the draft resolution and at least half of its members participated in passing it, and the articles of association may provide for stricter requirements concerning passing resolutions by this procedure),

c) participation of members of such bodies in adopting resolutions by casting their votes in writing via another member of the body (Article 371(3³) CCPC and Article 388(2) CCP in conjunction with Article 161 AIRB, regrettably however, only in the case of supervisory boards and not also in the case of management boards, which should be perceived, similarly as above, as an expression of a certain inconsistency and lack of a comprehensive, complex and optimal approach to the introduced solutions, the legislature assumed that casting votes in writing may not concern matters placed in the agenda at the meeting of the body).²⁵

²⁵ At the same time, the legislature rightly repealed Article 388(4) CCPC, in conjunction with Article 161 AIRB, which excluded specific powers to adopt resolutions and cast votes in respect of the election of the president and deputy president of the Supervisory Board, the appointment of a member of the Management Board and the dismissal and suspension of those persons. On

On the other hand, for general meetings of members of mutual insurance and reinsurance companies, the new possibilities of operation consist in the adoption, unless the articles of association of the company provide otherwise (and therefore, as in the case of management boards and supervisory boards under the so-called opt-out model) that there is an option of attending the general meeting not with the use of all the means of direct distance communication (as in the case of boards and supervisory boards) but only a specific, narrower, as it may be believed, the fastest growing, most accessible and at the same time the most widely used group of these means, i.e. electronic means of communication (Article 406⁵(1) CCPC in conjunction with Article 161 AIRB).²⁶ This participation, in accordance with Article 406⁵(2) CCPC in conjunction with Article 161 AIRB, includes, for example: a) two-way real-time communication between all persons participating in the meeting, in which they may speak in the course of discussion while staying elsewhere, and b) exercise of voting rights in person or by proxy before or during the meeting.²⁷

Participation in the general meeting of members using electronic means is decided by the convening party, i.e. first of all the management board (see Article 135–136 AIRB).

In accordance with the provisions of Article 406⁵(3) CCPC in conjunction with Article 161 AIRB, the supervisory board is obliged to lay down, in the form of internal regulations, detailed rules for participation in the general meeting using electronic means of communication. However, these regulations must not contain requirements or restrictions which are not necessary to identify the members and ensure the security of electronic communication.

Only with regard to the general meeting of members, and not with regard to the other bodies of mutual insurance and reinsurance companies (management boards and supervisory boards), which should be regarded, on the one hand, as an expression of a certain inconsistency and lack of a complete, comprehensive and optimal approach to the improvements made, but nonetheless

the other hand, the legislator aptly added to Article 388 CCPC the para. 3¹, in which it granted to the supervisory board of a joint-stock company, and at the same time (in conjunction with Article 161 AIRB) to the supervisory boards of mutual insurance/reinsurance companies the right to adopt resolutions in writing or by means of direct distance communication, including on matters for which the articles of association provides for voting by secret ballot, unless any member of the supervisory board objects to this. It is regrettable, however, that even the regulations analogous to those provided for in Article 388(3¹) CCPC, which can be seen as an example of a specific inconsistency and lack of a complete, comprehensive and optimal approach to the solutions put in place, have not been introduced by the legislature in relation to the management board and general meeting of a public limited liability company, and in conjunction with the regulation of Article 161 AIRB, also to those bodies of mutual insurance and reinsurance companies.

²⁶ Similarly Ostrowski 2020, 36; Osajda 2020, 21.

²⁷ See more Żaba 2020, 14.

still considered an appropriate solution, the legislature, in Article 506⁵(5) and (6) CCPC imposed on the company, in the case of the exercise by its member of the voting rights at the use of electronic means of communication, the obligation to: a) promptly send the member an electronic notice of receipt of the vote (Article 506⁵(5) CCPC in conjunction with Article 161 AIRB), as well as, b) to send the member or member's representative, at the request of the member submitted no later than three months after the date of the general meeting, a confirmation that his or her vote has been properly registered and counted (unless such confirmation has been given to the member or his/her representative in advance (Article 506⁵(6) CCPC in conjunction with Article 161 AIRB).

Both in the case of management boards and supervisory boards, and in the case of general meetings of members of mutual insurance and reinsurance companies, completely different than in the provisions relating to the supervisory board applicable before the introduction of the analysed solutions (Article 388 CCPC) and the general meeting of a joint-stock company (Article 406⁵ CCPC), which pursuant to Article 161 AIRB have been applied *mutatis mutandis* to mutual insurance and reinsurance companies, the above-mentioned new possibilities of operation are binding by operation of law, as a rule, unless the company's articles of association provides otherwise (which is an expression of the so-called opt-out model [Szumański 2020, 4; Ostrowski 2020, 33]). In the case of the supervisory board and the general meeting of members, one could therefore state that "the roles of rules and exceptions have been reversed" [Schmidt 2002, 1455ff]. Based on the currently applicable regulations, the principle is the possibility of taking advantage of these new options, contrary to the previous regulations, which in the case of supervisory boards and general meetings of members of mutual insurance and reinsurance companies required a clear basis in their articles of association to use them.

Contrary to the new possibilities of operation provided for the majority of organisational entities other than commercial companies and partnerships, which have been presented above (cooperatives operating under general rules, cooperative banks and entities managing the protection systems of these banks and associations), as well as foundations, mutual insurance or mutual reinsurance companies, similarly to the above-mentioned investment funds, can take advantage of these possibilities regardless of the duration of the state of epidemiological threat or state of epidemic, i.e. for an indefinite period, which should be assessed very positively.

3.3. Doubts and comments regarding the legal regulation of new possibilities for the operation of mutual insurance (or mutual reinsurance) companies

The new legal solutions adopted in the area of operation of joint-stock companies, which, in principle, pursuant to Article 161 AIRB are applicable

to mutual insurance and reinsurance companies, as well as the regulations relating to other organisational entities, other than commercial companies/partnerships, which are the subject of this article, may raise certain, as one may think significant, doubts, the more so as the legislature did not present any clarification in the Explanatory Notes to the bills introducing the so-called anti-crisis shield.²⁸

In particular, it seems that in this case there is no justification for differentiating the regulations regarding management boards and supervisory boards by not including in the regulations on management boards the provisions concerning the notification of the content of the draft resolution and the regulation of the issue of the quorum required to adopt resolutions in writing or using means of direct distance communication provided for in the provisions on supervisory boards, i.e. in Article 388(3) sentences 2 and 3 CCPC in conjunction with Article 161 AIRB, referred to the case of establishing a collective management board.

It is also interesting what prevented a regulation similar to the one rightly introduced in relation to the general meeting of shareholders in a limited liability company, which defines in Article 238(3) CCPC the specific requirements concerning the notification of the general meeting by means of electronic communication,²⁹ in relation to the general meeting, management board and supervisory board of a joint-stock company and, consequently, pursuant to Article 161 AIRB, also to mutual insurance and reinsurance companies.

Moreover, it does not seem to be justified to limit the possibility of using only electronic means of communication for the meetings of the societies (Article 406⁵(1) CCPC in conjunction with Article 161 AIRB) and not more broadly, as in the case of their management boards and supervisory boards, i.e. to all means of direct distance communication.

As in the case of cooperatives operating under general rules, cooperative banks and entities managing the systems for the protection of those banks, the investment funds, associations and foundations mentioned above, these doubts raise questions about the reasons for not introducing a broader, slightly more complete, comprehensive and optimal scope for regulating this matter in the case of regulations concerning new possibilities of operation for the joint-stock company, which form the basis for those possibilities in mutual insurance and reinsurance companies, which could dispel these doubts and, at the same time, encourage putting forward a proposal *de lege ferenda* to

²⁸ See Explanatory note no. 1 and Explanatory note no. 2.

²⁹ In Article 238(3) CCPC, the legislature, with regard to the limited liability company, adopted the principle that, where participation in the shareholders' meeting takes place with the use of electronic means of communication, the notification (of that meeting) should additionally include information on the manner of participation in the meeting, taking the floor, exercising one's voting rights and lodging an objection to the resolution(s) adopted.

introduce such an optimal scope of regulation for that kind of company and, consequently for mutual insurance and reinsurance companies.

3.4. The new possibilities of operation of foundations (acting under general rules)

Pursuant to Article 5(1a) AF, the provisions of Article 10(1a) – (1)d of the Law on Associations shall apply *mutatis mutandis* to the use of electronic means of communication for voting in the bodies of foundations (acting under general provisions of the Act on Foundations) providing for the possibility of voting not with the use, in general, of all means of direct distance communication (as in the case of governing bodies of cooperatives or management boards, supervisory boards, audit committees, or boards of directors in companies) but only using a specific group of them, namely the fastest growing, most accessible and at the same time most widely used today, i.e. with the use of electronic means of communication.

Unfortunately, pursuant to the provisions of Article 5(1b) AF, these solutions, similarly as in the case of the general meeting (or meeting of representatives) of cooperatives (operating under general rules), general meetings, management boards, supervisory boards and meetings of member groups of cooperative banks and entities managing the security systems of such banks and governing bodies of associations, are applied only in the event of introducing a state of epidemiological threat or a state of epidemic as referred to in the APCI, which, as has been argued above, is not justified nowadays, and not – as in the case of bodies of cooperatives other than the general meeting (or the meeting of representatives), governing bodies of limited liability companies and joint-stock companies, and also governing bodies of mutual insurance and reinsurance companies, or meetings of participants, investors' boards and meetings of investors of the aforementioned investment funds – irrespective of the introduction of one of these emergency states.

3.5. Doubts and comments regarding the legal regulation of new possibilities for the operation of foundations

The basic principles relating to the application of the new possibilities of operation in foundations, especially with the use of electronic communication means, the related doubts, the postulates *de lege ferenda* of modifications of the relevant regulations, and arguments for them, are therefore analogous to those adopted above in item 2.7 of this paper, concerning associations. The argument more adequate in relation to associations: about the application of these possibilities *mutatis mutandis* to certain other organisational entities (e.g. social organizations), as well as the postulate to extend them to ordinary associations, should be excluded from them.

The pointing out and analysis of new possibilities of operation for foundations (operating under general rules) by their bodies, as well as the formulation of *de lege ferenda* proposals in this respect are of great significance also due to the fact that the provisions relating to the foundation's governing bodies, including the regulations analysed herein concerning new possibilities of their operation, are in principle directly applicable, to the extent not regulated in the respective provisions on foundations operating under specific regulations (which applies in particular to the foundations: Centrum Badania Opinii Społecznej,³⁰ Fundacji Platforma Przemysłu Przyszłości,³¹ foundation – Zakład Narodowy im. Ossolińskich,³² or the foundation – Zakłady Kurnickie³³). *De lege ferenda*, it seems justified to consider the possibility of their introduction in all the foundations operating on the basis of specific regulations.

CONCLUSIONS

In general, the introduction by the legislature of new possibilities for organisational entities other than commercial partnerships and companies, which, in particular, provide for the possibility of taking decisions using means of distance communication, including electronic means of communication (especially including minority cases where it is of a temporally indefinite nature: for meetings of participants, investors' boards and investors' meetings of the above-mentioned investment funds, as well as governing bodies of mutual insurance or reinsurance companies) should be assessed very positively, all the more in view of the current epidemic constituting an important obstacle to effective communication, including by decisions taken by the bodies of those entities in a traditional way based on the personal presence of their members in one place. They can be seen as a very important step, perhaps even a "milestone," and yet it is clear that they start another very important step in the area of regulating this matter.

However, as a whole, not only in the section on the new possibilities of operation relating to cooperatives operating under general rules, cooperative banks and entities managing the protection systems of those banks, investment funds, associations and foundations, but also, as mentioned above, to the

³⁰ Operating under the Act of 20 February 1997 on the foundation, the Centre for Public Opinion Research, Journal of Laws No. 30, item 163 as amended.

³¹ Operating under the Act of 19 January 2019 on the Foundation of Industry of the Future, Journal of Laws item 229.

³² Operating under the Act of 05 January 1995 on the foundation, the Ossoliński National Institute, Journal of Laws of 2017, item 1881.

³³ Operating under the Act of 18 September 2001 on the "Zakłady Kórnickie" foundation, Journal of Laws of 2020, item 1705.

extent referring to these possibilities for the joint-stock company, which are applicable *mutatis mutandis* to mutual insurance or reinsurance companies), the above-analysed legal arrangements adopted by the legislature appear to be incoherent, lacking a specific legislative consequence and symmetry (in terms of balance, uniformity) in the regulation of the same or similar issues (for individual governing bodies), as well as a holistic (comprehensive) and optimal character.

It would appear that optimal would be the changes that broadly cover, for each governing body of entities (including other than commercial partnerships/companies), almost all the essential legal provisions on individual, different bodies of those entities (including governing bodies of commercial partnerships/companies), elements of new possibilities of action integrated into one whole, taking into account the demands arising from the doubts and questions presented herein. This optimum nature and the resulting scope of legislative changes could be considered as the basis for an optimal model to regulate the matter in organisational entities (including other ones than commercial partnerships/companies).

REFERENCES

- Kosmin, Leslie, and Catherine Roberts. 2020. *Company meetings and resolutions. Law, Practice, and Procedure*. Oxford: Oxford University Press.
- Kosseff, Jeff. 2020. *Cybersecurity law*. New York: Wiley.
- Kozieł, Grzegorz. 2020. *Prosta spółka akcyjna. Komentarz do art. 300¹-300¹³⁴ k.s.h.* Warsaw: C.H. Beck.
- Omlor, Sebastian. 2019. "Digitalization and EU Company Law: Innovation and Tradition in Tandem." *European Company Law Journal* 16(1):6–12.
- Osajda, Konrad. 2020. "Zarząd spółki kapitałowej (nowelizacja Kodeksu spółek handlowych w związku z pandemią)." *Przegląd Prawa Handlowego* 6:18–29.
- Ostrowski, Łukasz. 2020. "Nowa regulacja posiedzeń zarządów i rad nadzorczych odbywanych przy wykorzystaniu środków komunikacji elektronicznej." *Przegląd Prawa Handlowego* 5:32–38.
- Schmidt, Karsten. 2002. *Gesellschaftsrecht*. Köln–Berlin–Bonn–München: Carl Heymanns (Verlag).
- Spindler, Gerald. 2019. "Digitalization and Corporate Law – A View from Germany." *European Company and Financial Law Review* 16(1–2):114–23.
- Szumański, Andrzej. 2020. "Nowa regulacja udziału w zgromadzeniu spółki kapitałowej przy wykorzystaniu środków komunikacji elektronicznej." *Przegląd Prawa Handlowego* 5:4–14.
- Żaba, Mateusz. 2020. "Uczestnictwo i głosowanie na zgromadzeniu wspólników przy wykorzystaniu środków komunikacji na odległość." *Przegląd Ustawodawstwa Gospodarczego* 3:13–20.