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**Round Table – Table ronde – Runder Tisch**

**AGRICULTURAL COOPERATIVES – EVOLUTION, IMPORTANCE,  
PERSPECTIVES**

**COOPÉRATIVES AGRICOLES – EVOLUTION, PORTÉE,  
PERSPECTIVES**

**LANDWIRTSCHAFTLICHE GENOSSENSCHAFTEN –  
ENTWICKLUNG, BEDEUTUNG, PERSPEKTIVEN**

**National Report – Rapport national – Landesbericht**

**The Netherlands – les Pays Bas –  
die Niederlande**

## Agricultural Cooperatives – Evolution, importance, perspectives

### 1. Generalities

1a. Specify the economic location of the co-operative society in your country.

Cooperatives of importance in Holland are found in dairy, pork, poultry, vegetables and fruit, flowers and plants, sugar and potatoes.<sup>1</sup>

1b. Specify the major stages in the history of the agricultural co-operative society in your country.

As a reaction on the world agricultural crises at the end of the 19<sup>th</sup> century (1870 a.f.) farmers start to cooperate together to manage the most important problems they faced: financing/credits, purchase and sale, insurance. Farmers improved the crops through registration and by breeding new varieties, started quality control boards to improve the quality of the product. The government helped the farmers by improving the education and information: new schools for agriculture and horticulture, the start of testing stations. In Holland the first law on co-operative societies was grounded in 1876<sup>2</sup>. This law changed in 1925. The most co-operatives were founded after 1876 and the law needed modernisation to fit all new co-operatives<sup>3</sup>. The present totally new law we speak about here is of July 26<sup>th</sup> 1976<sup>4</sup>.

Through the EU agricultural policy, with the principles laid down in articles 32 – 38 (former 38 – 46) EU Treaty of Rome the EU market is protected and with a strong EU support, including minimum prices for many products the cooperatives could realise a fair growth after the 2e World War.

The last years EU policy changes and the agricultural market with her financial support system and minimum prices for basic agricultural crops will liberalise. Cooperatives expect less and less EU support for the farmers of dairy-, meat-, sugar beet or potato products and decreasing border tariffs and regulations on the imports of agriculture products from non EU countries.

### 2. Definitions – sources<sup>5</sup>

2a. Give the definition of the co-operative society which prevails in your country.

“De coöperatie is een bij notariële akte als coöperatie opgerichte vereniging. Zij moet zich blijkens de statuten ten doel stellen in bepaalde stoffelijke behoeften van haar leden te

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<sup>1</sup> Zie annex 1 with an actual overview of the most important cooperatives

<sup>2</sup> Wet tot regeling der coöperatieve vereenigingen, 17 november 1876, Stb. 227

<sup>3</sup> Wet houdende nieuwe wettelijke regeling van de Coöperatieve Vereenigingen 1925, 28 mei 1925, Stb. 204

<sup>4</sup> Boek 2 vastgesteld bij de Wet van 12 mei 1960, Stb. 205 in werking getreden na opnieuw te zijn genummerd, Stb.1976, 395. Important changes per January 1,1992, wet van 15 november 1989, Stb. 541 (invoering boeken 3,5,6)

<sup>5</sup> Basic source book for this contribution is “De coöperatie” diss. Prof. mr R.C.J. Galle 1993

voorzien krachtens overeenkomsten, anders dan van verzekering, met hen gesloten in het bedrijf dat zij te dien einde te hunnen behoeve uitoefent of doet uitoefenen.<sup>6</sup>

“The co-operative is founded as a co-operative association by notarial act. According to the bylaws they must have as their aim the provision of the determined material needs of their members according to agreements, other than insurance, concluded with them in the company the co-operative practise or will practise for the benefit of the members.”

**2b.** Are there any specific texts about the agricultural co-operative society?

Book 2 Dutch civil law gives in the first “Titel” general definitions for corporate bodies. These definitions regard also the co-operations.

“Titel 3” artt. 2:53 – 2:63 a specific chapter is dedicated to the co-operative society.

The co-operative society is a species of the genus association and also governed by the rules for the association “Titel 2” artt. 2:26 – 2:52.<sup>7</sup>

**2c.** Specify the definition of the agricultural co-operative society as well.

Art.2:3 gives the co-operative his specific legal character as a specific corporate body. In this article is appointed that associations, co-operatives, insurance companies, corporations, limited corporations and foundations are corporate bodies. The association and co-operative are distinguished. Still the first sentence of article 2:53 speaks of “co-operative association”.

**2d.** Are there any specific texts about the agriculture co-operative society, e.g. a particular statute?

Formal criteria.

An association is a corporate body with members that share a specific aim (2:26 BW). Specific forms and formulations have to be respected to act as a legal co-operative, the formal criteria have to be met. It has to be found as a co-operative by notarial act. Every association that materially does exactly the same as a co-operative but doesn't fulfil these formal criteria are not co-operatives but associations and even have the chance that the court dissolves the corporate bodies that not fulfil the legal requirements (art. 2:21 par.1,c).

Species of the genus “association”.

Being an association means for the co-operative:

- the definitions for the association also rule the governing of the co-operative
- changes of the bylaws and through that one-sidedly would change the relationship with the members of a co-operative are governed by the rules for the association
- definitions related to becoming or finishing a membership of a co-operative are governed by the association law.

**2e.** Which are the characteristics which dominate all the agriculture co-operative societies?

An association is not allowed to make profit to divide amongst her members (art. 2:26,3 BW).

This doesn't count for a co-operative society (art. 2:53a). This is an important difference with an association while the aim of a co-operative is to make profits to divide amongst her

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<sup>6</sup> art. 53 lid 1 BW,2

<sup>7</sup> with the exception of artt. 2:26 par. 3 and 2:44 par. 2 see article 2:53a BW

members. Or to be more specific a co-operative has a company only for the benefit of her members.

This is also an enormous difference with a normal (limited) corporation. To formulate this differences sharp. A co-operative is the only corporate body that could practice a company without a single employee. The interests of a co-operative member are in that way more important than the interests of the co-operative employees<sup>8</sup>. We regret that this is often forgotten in the daily practice of the co-operative management. A co-operative is an association with a company. This company services material needs of the members. The aim is that the company makes profit for the members, or is organised in a way that through this company the members make profit. Or the company is an organisation that allows the members to make profit (flower and plant, vegetable and fruit auctions).

E.g. a dairy co-operation buys for a certain kilo price milk from the farmers. The price for the milk is based on the results the company of the co-operative makes for the products she produces out of it and sells on the markets. A flower co-operative does not buy products from her members but organises markets in a way that the flower grower will receive the optimal price for his product from a buying wholesaler. The auction only creates conditions for an optimal market where growers and wholesalers make their buy-sell agreements.

The question whether a co-operative closes agreements with her members, or works according to agreements with her members, or does not close agreements at all other than the agreement between the co-operative and the grower to become a member, is less important. Important is or can become the imperative definition (art. 2:53,4) that a co-operative company business in majority should exist of business with or for the members. In this matter another important issue is that to our opinion a co-operative can not refuse an application for a membership on the only ground that the applicant does not have the same nationality as that of the corporate body. Foreign growers can be member of a Dutch co-operative if they fulfil the common conditions for a membership. This works two ways. Suppose the number of members would go down because the number of farmers in Holland goes down and more and more supply comes from growers from another country. The imperative rule that the majority of the activities of co-operative should be done for members can infringe. On the other hand more and more co-operatives feel the need for internationalizing their activities and extend them to more countries. Suppose the co-operative sticks to Dutch law she forces herself into a position to accept members with other nationalities<sup>9</sup>.

### **3. Constitution of the agriculture co-operative societies**

**3a.** Specify the social object of a co-operative society (exploitation, provisioning, marketing, services...); are the co-operative societies polyvalent?

A co-operative is an organisation that serves economic objectives for her members. And certainly agricultural co-operatives are in that way not polyvalent. They serve the economic interests of the growers by fulfilling their specifically formulated targets in the law and their bylaws. E.g. a dairy co-operative society has only one goal: To produce products out of the milk of her members that will receive the highest prices on the markets to give her members the highest kilo milk price.

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<sup>8</sup> "Heeft de coöperatieve vereniging een Januskop? Pre-advies ALV VAR, Agr. Recht, mei 1989. mr J.N. Kras MBA

<sup>9</sup> December 2004 the Danish-Swedish co-operative Arla merged with the Dutch dairy food co-operative Campina. We can not imagine they only accept Dutch (and/or Danish and/or Swedish) members

The legislation of the co-operative society allows many different types of economic activities to be performed as co-operatives. We do have credit co-operatives<sup>10</sup>, insurance co-operatives, purchase and sell co-operatives, production factories, breeding co-operatives (plant breeding, but also insemination stations), co-operative propagating and tissue culture companies, co-operative research centres.

Outside agriculture and fishery the co-operative is not very important. Although the Dutch law allow labourers to work together in a co-operative<sup>11</sup> and from other countries we also in Holland took over the ideas of users or consumers co-operatives, the importance of these co-operatives is minimal<sup>12</sup>. The only co-operative of economic importance outside the agriculture and fish in Holland is the co-operative association of owners of flat buildings.

Most farmers and growers are member of one or more co-operatives and also of a private farmer's organisation, an association of farmers. The most important farmers' organisation in Holland is the Federation of Agricultural and Horticultural Organisations LTO with ca.50.000 members. Often this farmer's organisation also acts as an employers' organisation. Further by law all farmers have to be members of a PBO. A PBO is a statutory industrial organisation<sup>13</sup>. These private and semi public organisations look after all not direct commercial questions and interests of farmers as social questions, research, raising money for generic promotion and have education and information programs..

### **3b. How is the capital of a co-operative society constituted?**

Members of a co-operative pay a yearly often not very high contribution, an annual fee, to the association.

Depending on the type of activity the most important source of income for a co-operative is the profit made on the sold products. Other co-operatives like auctions base their income as a percentage of the turnover the grower realises through the auction sales.

Most co-operatives ask their members to leave a percentage of their turnover in the co-operative as a back-loan to strengthen the financial position to outside (third) parties.

Some co-operatives ask financial participation of their members in a loan programme by handing out tradable loan-papers.

Co-operative can lend like other companies on the market. Banks supply money for investments based on the liability of the members.

Bylaws of co-operatives have rules for stepping in and stepping out the membership. These rules also can imply financial conditions for entering or ending the membership.

In all Dutch co-operative bylaws articles are formulated regarding possible exploitation losses of the company of the co-operative society. In general these definitions state that exploitation losses can be apportioned or divided pro rate amongst the members. Differences can be found regarding the maximum liability per member, the way of calculating the amount members are responsible for and the length of responsibility for ex members. Differences can be found regarding exploitations deficits or balance sheet shortness.

The law (2:54,2) forces co-operative societies not only to use the word co-operative in her name but also to choose and communicate in the name a liability form for members in case of decomposition of the co-operative. In the name of each co-operative society in

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<sup>10</sup> Banks like the Rabobank or the Frieslandbank

<sup>11</sup> Werknemers productiecoöperatie, utopie of werkelijkheid, prof. G.J. ter Woorst 1987

<sup>12</sup> De coöperatieve organisatie, coöperatie als maatschappelijk verschijnsel, van Diepenbeek diss. Tilburg 1990

<sup>13</sup> Wet op de bedrijfsorganisatie, January 27th 1950, Stb. K. 22

Holland you can find the addition WA, BA or UA<sup>14</sup>. WA stands for legal liability of the members and the deficiency will be equally divided amongst the members. BA means the liability is maximised in the bylaws. UA means in case of decomposition members are not liable for the deficits.

**3c.** Who can be a member and under which conditions? Is the Open Door principle applied?

The co-operative society has a board that decides who can be member (2:33 BW). In general every body that fulfils the basic conditions for a membership will be approved. F.i. if you grow flowers and are a registered flower grower and prove to accept the co-operative rules you can be a member. The law provides an applicant for a membership in case of a refusal by the board the right to appeal on the member council or General Assembly, BW 2,33. Most bylaws have process rules in case decisions are taken by the board a member can not accept: or he can appeal in the General Assembly or a committee is formed out of the general assembly of members to deal with these decisions.

**3d.** Is there State control of the constitution?

When a co-operative is found it needs a notarial act. Before finalizing the establishment of the co-operative the notary clerk applies for permission to the Minister of Justice who has to declare that there are no objections. The Minister controls the bylaws and the founders of the co-operative.

The association and company information, like the names of the board members and the annual financial reports, have to be filed and published annually in a public register at the Chamber of Commerce.

Bigger co-operatives have a special regime<sup>15</sup>. In case a co-operative meets certain cumulative formal standards, own capital on the balance sheet of > € 13 mio, 100 or more employees and an employees council, a.o. extra precautions a formal controlling body is obliged and the financial results have to be published in detail annually (2:63a – 63j BW).

**3e.** How is the Council Regulation (EC) No 1435/2003 applied in your country

This EU council regulation is not implemented in Holland. The draft implementation law is laid down for consideration by the Parliament under number 29309.

## **4. Organisation – organs of direction of agricultural co-operative societies**

**4a.** Short description of organs of direction. Is the rule one man – one vote applied? Are there exceptions?

Organs of an association are:

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<sup>14</sup> WA, BA, UA stands for Wettelijke Aansprakelijkheid, Beperkte Aansprakelijkheid en Uitgesloten Aansprakelijkheid. Incase the co-operative doesn't meet this legal requirement the co-operative can be decomposed by the court on request of the prosecutor or an interested third party art. 2: 21,1 sub b

<sup>15</sup> Wet van 16 Juni 1988, Stb. 305

The general assemble (2.37 to 2: 58 and 2;63f BW)

The board (2:44 BW)

A controlling board, or an official Raad van Commissarisen or a controlling committee that controls the books only (2.48,2)

The president of the association (2.13 BW)

Depending on the size of a co-operative and her bylaws:

The board of managing directors<sup>16</sup>

A daily board out (e.g. President, Vice-President and Secretary-treasurer)

A section of an association (2: 41a BW)

Most co-operatives do not have the rule one man one vote but a weighted voting right related to the size of the turnover and/or the financial liability of the member. At least every member has one vote, but with a higher interest expressed in a higher turnover the number of votes can be more than one (2:38,1). Although the law does not say anything further most co-operatives limit the maximum number of votes for a member.

The position of an executive non member director in a co-operative, in a Ltd you would speak of the managing board, is dubious. An important characteristic of the co-operative is not only the right or even obligation to make profit but the position of the employee. To my opinion the interests of the employees are the most important interest in a Ltd. But not in de co-operative society, the interests of the members are the most important interests. Where in a Foundation the most important interest, the reason d'etre, das Dasein, is the in the bylaws given aim of the foundation, the reason d'etre of a co-operative is the economic interest of the member. Many acts within the company of a co-operative are committed by a professional board working under the member co-operative society board running the company of the co-operative. And these managers can be hold liable for their behaviour. This means at least the executive non member board is an organ in a co-operative ( see note 16).

**4b.** What is the nature of control organs, in particular for the account of the co-operative society?

The control organ is obliged (2:48 BW) even so as a (registered) accountant control. The General Assembly has always the final control. And for bigger co-operatives we have the above mentioned formal control organ Raad van Commissarissen.

## **5. Functions**

**5a.** Activity of the co-operative society with its members.

Members of agricultural co-operatives can be natural bodies and corporations.

The relations of a member of a co-operative are regulated by the bylaws of the co-operative.

In case of a sale co-operative this means he/she has, through the bylaws or via a standard contract, a duty to deliver all his products exclusively to/through the co-operative. The other side of this coin is a delivery right, the co-operative has to accept and can not refuse all the products the member is delivering.

Farmers can be member of several co-operatives. In case they grow different products they can be member of a dairy co-operative a meat co-operative a sugar co-operative and

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<sup>16</sup> De directeur in de coöperatie, J.N. Kras TVVS 1988 pag.81 e.v.

a vegetable co-operative. They also can be member of a purchase co-operative, a fertiliser- or cattle feed or artificial insemination co-operative, a co-operative bank and co-operative insurance company.

All these co-operatives have rules regarding the economic relations with the co-operative: step in step out requirements, delivery duty, purchase duty, profit sharing arrangements and liability provisions.

Some co-operatives negotiate every year the delivering quantity and price with their members, f.i. potato or sugar beet co-operatives make contracts with their members.

Part of the relation can be that the co-operative makes rules regarding the way a farmer runs his farm (good farmer practice) and has to accept co-operative quality and hygienic prescriptions and control.

**5b.** Sanctions depend on where they come from. If a farmer violates EU rules or harvest quotas, aside the public sanctions the co-operative can have administrative and financial sanctions by paying less per kilo for production over going the appointed limits or annual delivery contract.

If a farmer violates the appointments or rules of the co-operative sanctions can be a warning, a penalty, a limiting of the services, suspension and exclusion of the member of the services or even his/her membership. These rights of sanctioning have careful procedures with an opportunity for appeal to a co-operative body and arbiter or the general assemble.

**5c.** What kind of activities are there between the co-operative society and third parties?

Explicitly the law forbids (2:53,4 BW) co-operatives economic trading with non members to a size that the economic relation with the members is subordinated. The trade of co-operatives with non members is important and often growing. In practice the costs for doing business as non member with a co-operative is higher than for members. Non members do not share in the profit but do not have the member liability nor other member obligations.

**5d.** What is the responsibility of the company member?

The responsibilities of the members are laid down in the bylaws (art. 2: 27,4,c BW) or follow the co-operative rules and regulations based on board decisions (artt. 2: 44 ; 2:46 BW). The bylaws of an association can only be changed by the general assemble (art. 2:42 BW).

**5e.** Withdrawal of a company member, resignation, exclusion; conditions and consequences.

Members are free to step out the association utterly one year after they inform the association of their decision (art.2:36). But for co-operative members the co-operative has the right to set conditions for stepping out members (art. 2:60 BW).

Mostly these are financial conditions, but can also be delivery or purchase duties for a certain or agreed period, not to harm those who stay in the co-operative where loans and other investments need a long pay back period or depreciation period.

Also members could want to step out in situations the exploitation is difficult. If they could step out without obligations the rest of the members could bear the extra risks.

**5f.** How are the shares transmitted?

The membership is personally (art. 2:34,1). These memberships are not transferable. Co-operatives with the capital divided in shares are seldom in the Netherlands.

The 200 local Rabobank co-operatives hold the shares of the Central Co-operative Rabobank. Shares of the Dutch co-operative of potato starch factories AVEBE are held by the members. A single co-operatives gave out non - or restricted transferable certificates of shares and/or obligations to increase the own capital. These shares hold their value and arrangements are made by the introduction to sell them back or transfer them to other members. Some co-operatives organise once or twice a year sales markets amongst the members for these certificates.

Back set loans from members to their co-operative can be ceded.

**5g.** How is the distribution of the results determined?

Art. 2:58,1 says that the co-operative has to make an annual financial report within 6 months after the financial year ended. The general assemble can give an extra term of maximum 5 months. The annual financial report has to be part of a annual report. If a registered accountant approves the figures the co-operative does not need to have a separate financial commission (art.2:58, 1 BW) but most have a committee of non board members appointed by the general assemble.

**5h.**

see 3.b.

**5i.** Specify the essential points of the tax system indicating if there are favourable specific provisions.

There are no specific favourable provisions for the co-operative societies in Holland. Their tax regime is equal to that of other corporate bodies this means they do pay VAT, corporation profit taxes and dividends on the returned profits to the members. This includes the rules for double taxation.

**5j.** Are there any difficulties with the application of competition law?

Art 37 EU (ex art.42) competition rules of the EU are applicable as far as it doesn't harm the EU agriculture policy and can put national competition rules aside (art. 37,3 EU ex art.43).

But it is accepted that the competition rules based on artt. 81, 82 EU (ex 85, 86) for agriculture co-operatives are seen in the light of the common agricultural policy ex art. 32 – 38 EU and are less restrictive for agriculture co-operatives as for other companies.

The NMA = Netherlands competition authority has in the past forbidden certain rules of co-operatives in Holland.

Are the co-operative societies making use of the labels of distribution, do they have structures of direct distribution?

Depending on the type of co-operative we do have co-operatives as of dairy products that sell their products under their own name or under white label directly to retailers.

Do co-operative societies influence the production of the company members?

This is a sensitive question where slavery in Holland disappeared in the 16e century. Officially forbidden under Napoleon and forbidden in the Dutch colonies in 1862. There are examples in the past were co-operatives gave advises to their members regarding their crop or variety choices. But it is not wise and therefore never happened on a great scale. Growers are independent entrepreneurs that have to bare full responsibilities for the results of their business activities. When a co-operative would press too hard on a growers decision he also would overtake his responsibilities. No co-operative wants that.

What place do the co-operative societies occupy in the organisations of the markets.

In the annex is given two overviews of the most important co-operatives in Holland.

But in general we estimate their market shares as follows:

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| Dairy:                                 | 90%  |
| Flowers:                               | 100% |
| Plants:                                | 60%  |
| Vegetables:                            | 60%  |
| Fruit:                                 | 60%  |
| Potato starch:                         | 100% |
| Preserves (canned food):               | 60%  |
| Sugar beets:                           | 60%  |
| Bank and insurance:                    | 30%  |
| Mushrooms:                             | 75%  |
| Fertilisers and crop protection means: | 75%  |

## 6. Dissolution

See under 3b.

## 7. Organisation

**7a.** Specify if a movement of reorganisation is in process or has taken place, in which form (unions of co-operative societies, merger, acquisition of a part in national or foreign societies).

Consolidation, shake out, scaling up, chain integration and going more direct to the consumer in our case going from factory directly to the retailer from “sprout to mouth” (“van grond tot mond”, “van zaadje tot karbonaatje”) is still actual but a motto for years in agriculture and horticulture Holland.

The number of farmers and growers goes down and where we had, ten years ago, over 120.000 farmers today we have 50.000 farmers. The size of farms and nurseries move the opposite direction. The size and turnover of the farms goes up. Although in total our surface not grows increase the individual farm in size and turnover. The results over the last years are not good. The stabilizing consumption and retail war in Holland presses the prizes of an increasing supply in a hardly growing economy. Also the changes in consumer preferences pushes the consumption of agriculture products as vegetables, fruit, dairy products, potato's and even flowers and plants. Also the dollar is weak and presses the export to dollar countries in America and Arabia. For colleges outside the EU the import is more interesting with a strong Euro. We expect a further liberalization of the agriculture market through the changing EU policy. The entering of so many new farmers in the new EU countries weakens the position of the Dutch farmer further and this will not improve the upcoming years. All labour intensive economical activities move to low wage countries and the knowledge moves with it.

Normally the rule is where you find production you also find wholesale. This means that also our trade position suffers and that's what we saw last year at the flower & plant auctions who were confronted with maturity market circumstances.

It is said that every day 10 – 12 farmers stop their farms in Holland of which the young ones emigrate to Canada, the USA, Jutland, Meckelenburg-Vorpommeren, Brandenburg and west Poland. Then we have arable farmers going to France, bulb growers moving the same way, rose growers moving to East Africa. Our minister of agriculture installed last fall a committee to find out the motives of farmers to move to other countries. Happily he knows already the outcome of this study personally by having himself a farm in France for years.

The consolidation, shake out, scaling up and chain integration movements reflect in the production and sales co-operative societies. Recently we had in last month December the merger between Campina and Arla (see note 9). We expect many mergers to follow in the dairy world of western Europe. The policy in this world is to build up a strong trade policy direct to the retail chains.

The war on positions in supermarkets just started. Further growth is expected on food ingredients. Important is the ability to pay the farmers a good price for their milk. The best product proposition is found in cheese.

Pork meat is the dog in marketing. Sovion the umbrella of Bestmeat fights with Danish Crown with respective market shares of 8 and 10% in Europe. The Achilles heel is the lack of chain cooperation amongst the pig farmers. Bestmeat, owned by the ZLTO, a Dutch farmers organisation, with chemistry factories in America, Great Britain and India took over the last years in Holland the slaughterers Hendrix and Meat Group and in Germany Moksel and Nordfleisch.

Poultry has to face production and competition from South America and Asia. Salmonella and other diseases are not fully under control. Products do not have a very good reputation under the consumers. Vegetables and fruit has to face the strong position of her buyers the supermarket chains who dictate the market prices. The NMA, Dutch competition authority forbade a merger between the Greenery (vegetables) and Fruitmasters (fruit). But the growers modernise fast and the sector looks innovative and full of optimism after a few weak years. Flowers & plants for years the fast growing horticulture branch in Holland saw the sales growth stabilise through the recession the last years.

The position is strong but more and more we see mass articles as carnations and roses grown in low wage countries and moving out of Holland. For the auctions a challenge to convince her members to allow imports on the auctions to stay an attractive purchase source and partner with a wide assortment for the European wholesalers.

Where we see chain integration in the food sector the flower and plant co-operative societies say were they are and do not move into wholesale and go directly to the retail. That has to do with the relatively weak position of supermarket sales of flowers and plants compared to the food products. On the other hand is the supermarket share growing and financially much stronger and more attractive than the companies in the traditional segment.

The Dutch sugar and potato co-operative societies are in heavy weather. Cosun (sugar co-operative) owns also Aviko (potato factory) and both face the liberalization of the EU market policy. Avebe (potato starch) faces strong competition from cheaper wheat starch. Avebe tries to strengthen her position by stepping into production facilities in China<sup>17</sup>.

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<sup>17</sup> Het Financiële Dagblad van woensdag 12 december 2004 met een interview met prof. G. van Dijk NCR / Nijenrode.

**7b.** Are there any particular legal provisions and what kind of legal difficulties arise out of these operations most frequently?

There are no specific legal provisions or difficulties. The opposite is the case. Mergers between co-operative societies are possible in different legal forms. By the introduction of the new regime for big co-operatives<sup>18</sup> also a new regime for legal mergers, coming from the EU, has been introduced (Afdeling 2 Titel 7 “fusie en splitsing” specific artt. 2:309 BW) which makes mergers easier. Also group mergers and mergers with other legal entities, corporate bodies, are possible (2:310,4 BW).

**7c.** Specify the consequences in comparison with the company members.

If, according to the regime of art. 2:311 BW, co-operatives merge they do not exist any longer. If this merge causes negative consequences in the conditions for the members they can end their membership according to art. 2:36, 3 immediately and in case of a merge a member is allowed to end his membership within a month after he is noticed of the intended merge according to art. 2:36,4.

## **8. Federation of the co-operative societies**

As stated under 7 above there is an enormous movement of takeovers, mergers and acquisitions in the agricultural and horticultural world.

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<sup>18</sup> Wet van 16 juni 1988, Stb. 305