

“The Portuguese social solidarity cooperatives *versus* the general interest cooperatives”

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Introduction

- Two questions:
- (i) Can Portuguese social solidarity cooperatives be considered general interest cooperatives in PECOL terms?
- (ii) What are the specificities of legal regime that characterize this type of cooperatives?

Definition of general interest cooperatives

- General interest cooperatives are a special type of cooperatives, whose purpose is to satisfy not the interests of the members (through transactions with them as consumers, providers or workers of the cooperative enterprise) but the general interest of the community (PECOL, Chapter 1- Section 1.1.(4)).
- They are instruments for health, social services, work integration of disadvantaged people, to organize and provide public services to a given community ('community cooperatives'), such as electricity, renewable energies, etc.

GICs versus ordinary cooperatives

Scope

Ordinary cooperatives pursue a
'mutual scope'

General interest cooperatives
perform an economic activity in
the general interest of the
community.

This different purpose find
their legal basis and
justification in a phenomenon
that has characterised several
European jurisdictions over the
past three decades: the
provision of 'social
cooperatives' as legal structures
specifically designed for
entrepreneurial activity of
social utility or
general/community interest.

GICs

This process began in 1991, with the Italian law on social cooperatives (Law no. 381/1991)

It follows Portugal with the Law no. 78/98, which regulates 'social solidarity cooperatives'

Next the Spanish Cooperatives Law (Ley de Cooperativas 27/1999) recognises 'social initiative cooperatives'

The French Cooperation Act (art. 19 *quinquies* ff.), introduced in 2001 and last modified in 2014) allows for the establishment of 'collective interest cooperatives'

In the UK, the Community Interest Company (CIC, registered under the Company Act 2004 and the CIC Regulations 2005)

In Finland, Law no. 1351/2003 on social enterprises allows (also) a cooperative to be qualified as a social enterprise

The Portuguese social solidarity cooperatives, regulated by Decree-Law No. 78/98, January 15th

Like the general interest cooperatives, social solidarity cooperatives are structured to pursue economic activity mainly in the general interest of the community.

Its *objective* is materialized in a clear mission to assist situations of social and economic vulnerability and is supported by a paradigm of social intervention.

They provide assistance to families, children, young people, seniors, disabled, unemployed and other vulnerable groups, in view of their professional integration, education, training, occupational and residential care.

They base their entire activity on the notion of solidarity,

MEMBERS

GICS

Different categories of members: non-using investing members, promoting members, voluntary members, enterprises working in the community or region as well as private and public corporations.

A heterogeneous membership group .

Membership is not a condition to obtain services and goods.

General interest cooperatives are not obligated to undertake cooperative transactions with their members as consumers, providers or workers (Pecol, Chapter 1, Section 1.4. (1)).

MEMBERS

Portuguese Social Solidarity cooperatives

Membership is a condition to obtain services and goods.

A heterogeneous membership group: two categories of members, one of which is compulsory.

The effective members are the reference members of the cooperative and are those who pretend to use the services provided by the cooperative, for their own benefit or that of their relatives, or who pretend to develop in the cooperative their professional activity.

Honorary members are those who contribute with goods or services, including social volunteering, to the development of the cooperative's object.

MEMBERS

Portuguese Social Solidarity cooperatives

A cooperative of social solidarity is
not allowed without a minimum
mutualistic scope.

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FINANCIAL STRUCTURE

Specificities of the financial structure regime

General interest cooperatives and portuguese social solidarity cooperative may not distribute cooperative surpluses to their members (Pecol, Chapter 3, Section 3.6 (6); Article 7 Decree-Law No. 78/98, January 15th.

All surpluses will revert, mandatorily, to reserves.

Residual net assets shall be distributed in accordance with the principle of disinterested distribution upon winding up (Pecol, Chapter 3, Section 3.8 (2); Article 8.º Decree-Law No. 78/98, January 15th).)

Where the cooperative in liquidation is not succeeded by a cooperative of the same branche, the application of the balance of the mandatory reserves will be allocated to another social solidarity cooperative/general interest cooperative, preferably from the same city, to be selected by a federation or confederation that represents the main activity of the cooperative.

Governance

Problems

How to reconcile the interests of the different categories of members in terms of cooperative governance? If different categories of members are admitted, how can truly participatory and democratic governance be ensured?

The 'classical' cooperative model was designed for a relatively homogeneous membership group.

All members are simultaneously owners and users of their cooperative enterprise (principle of identity of owners and users).

Clear and simple rules (e. g. one member – one vote).

Governance

Problems

A heterogeneous membership group require special rules to avoid that one category of members would dominate the others.

In general interest cooperatives employees, users, suppliers and investors may all have membership. In such cases, voting rights based simply on one member one vote across all types of member would give one or more particular groups unfair dominance in decision-making. For example, the number of user members may greatly exceed the number of employees.

Governance

Solutions

Plural voting

Voting rights based simply on one member one vote across all types of member would give one or more particular groups unfair dominance in decision-making.

Limited plural voting.

Rules securing fair representation of each group of members in the governing and controlling bodies.

Distinction between routine and business decisions, where plural voting is applied and decisions on basic matters (e.g. amendment of by-laws, merger, dissolution), where the principle 'one member – one vote' is still valid

Select limited proportions of a board to ensure equitable representation of different member interests.

Board composition in general interest cooperatives, shall take into account the composition of the cooperative membership, including, for example, by geographical constituency or category of member – PECOL, Chapter 2, Section 2.5(5)

Governance in Portuguese social solidarity cooperatives

Problems

Two categories of members: the effective members who are simultaneously owners and users of their cooperative, and honorary members who are limited to contributing goods or services to the development of the object of the cooperative.

Article 5.3 of Law no. 78/98 establishes that honorary members enjoy the right to information in the same terms as the effective members, but they can not elect or be elected to the corporate bodies, even though they may attend general meetings without the right to vote..

Participation in governance is an exclusive right of effective members, as well as participation with the right to vote at general meetings.

Strong derogation of the second ICA Principle, the democratic member control.

According to PECOL (Chapter 2, Section 2.1(1)), in General interest cooperatives, democratic governance is perhaps the main feature identifying the organisation as a cooperative.

Cooperative audit

How to measure success of this type of cooperatives?

In mutual cooperatives special instruments are required to measure success in terms of member-oriented effectiveness (promotion plan, promotion report) and special forms of audit are needed: internal and external control (financial and management audit).

In the case of general interest cooperatives or social solidarity cooperatives, additional instruments for measuring success has to be invented. e. g. social report

Cooperative audit

General interest cooperatives

Cooperative audit includes the manner in which the general interest has been pursued and the stakeholder involvement (Pecol, Chapter 4, Section 4.2. (1)).

Cooperative audit

Social solidarity cooperatives

It is the responsibility of CASES to issue certification of the legal incorporation and proper operation of cooperatives annually (article 117.1 of the PCC).

CASES issues an annual credential attesting to the legal incorporation and proper functioning of the cooperative (art. 117.1 of the PCC).

In the case of social solidarity cooperatives, this credential, in addition to confirming the cooperative nature of the incorporated entity and its legal functioning, shall also confirm the purposes of social solidarity (Article 9.1 Decree-Law No. 78/98).