International Journal of Cooperative Law

Issue VI | 2024

www.iuscooperativum.org

The International Journal of Cooperative Law (IJCL) is a peer-reviewed, open access online journal, founded by Ius Cooperativum in 2018. It is the first international journal in the field of cooperative law. It aspires to become a venue for lawyers, legal scholars and other persons interested in the topics and challenges that the discipline of cooperative law faces.

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ISSN 2799-2306

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Foreword/Editorial

This issue of the International Journal of Cooperative Law (IJCL) starts with sad news: Professor Hans-H. Münkner and Professor Alberto García Müller, two extraordinary thinkers of cooperative law, are no longer with us, physically.

As concerns the remainder of the content of this issue, we are pleased to present it at the eve of the 2nd International Year of Cooperatives (IYC) that the international community will be celebrating in 2025, only 13 years after the first one.

More than at its outset we now hold the need for and usefulness of the IJCL as an accepted given. For example, during the recent International Cooperative Alliance (ICA) Global Conference on "Cooperatives Build Prosperity for All", 25-30 November, 2024, in New Delhi, with more than 3000 participants from more than 100 countries cooperative law was omnipresent. The bi-annual United Nations Secretary-General's Report on Cooperatives in social development dedicates one out of three main chapters to cooperative law; while less elaborate on the subject, the equivalent 2023 Report link**s** cooperative law to the SDGs. These are just examples of recent international, regional and national expressions of the relevance of cooperative law. In addition, the shift of emphasis in many of these expressions toward the social and/or solidarity economy, at times including, at times excluding cooperatives, reinforces this relevance as it calls upon lawyers to justify the raison d'être of cooperative law by sharpening the distinctive features of cooperatives, especially as compared to enterprises that may obtain the status of 'social economy enterprises' or 'social and solidarity economy enterprise' under one of the rapidly multiplying respective laws. At the same time, efforts continue to push back on further "commercializing" cooperatives, especially by allowing for investments and granting non-user investors anything between full membership rights and a right to receive dividend payments from profits and/or surplus. Not the least this phenomenon is part of a revived debate on the identity of cooperatives as enshrined in the 1995 ICA Statement on the Cooperative Identity (ICA Statement), often referred to as "the cooperative principles". While an ICA expert group, the Cooperative Identity Advisory Group (CIAG) is mandated to explore whether the ICA Statement is still keeping with the times, an ever greater number of national laws on cooperatives, of the regional uniform and regional model laws on cooperatives include in whole, in part or with modifications the text of the ICA Statement or they refer to it.

New types of cooperatives have been emerging for some time now. Some of them mix private and public actors and interests and/or non-commercial and commercial approaches; some fuse the figures of producer, distributor and consumer. Examples are health and care cooperatives, social cooperatives, work insertion cooperatives, utilities cooperatives, energy cooperatives, cooperative groups. As of lately, the idea of housing cooperatives is materializing again in response to housing

crises that plague ever more in ever more places. Most of these new types are addressing basic needs, not the least because public welfare systems degenerate. This is the reason why, in addition to two articles on cooperative law in general and contributions to the usual rubrics, this Issue of the IJCL includes a special section on one of these renewed types, namely housing cooperatives in their various forms.

General Articles. In his article on "Cooperative Principles in the Harmonization of Cooperative Legislation" **Dante Cracogna** examines the Project for a Framework Law for the Cooperatives in Latin America and its attention to the cooperative principles as an example of a potential approach to regional harmonization of cooperative legislation**. Alejandro Darío Marinello and Nicolás Jacquet** ("Teaching Cooperativism in Law Degree Courses in Argentina. The Case of the Department of Law at Universidad Nacional del Sur") examine the laws on cooperative education and the regulatory background for its inclusion in the basic curricular contents of the law degree programmes in the Argentine Republic with an emphasis on the need to bridge the gap between academia and the needs of the local and regional cooperative movements.

Special Section on Cooperative Law and Housing Cooperatives. "Housing Cooperatives Statutes and the Quest for Cooperative Identity in Puerto Rico" by **Evaluz Cotto-Quijano** is a commentary on the case 'The Rolling Hills Housing Cooperative v. Doris Colón'. The case underscores the need for an adequate legal framework and for leadership training in order to ensure that housing cooperatives in Puerto Rico uphold the cooperative identity and do not adopt capitalistic practices, such as those permitted by the general eviction laws. **Deolinda Meira** takes us to Portugal. Her article, entitled "Housing and Construction Cooperatives in Portugal, State-of-the-Art and Lines of Reform", calls for a reform of the legal framework for housing cooperatives in line with the amendments to the 2015 Cooperative Code, particularly by removing restrictions on third-party operations and redefining housing transfers under the individual property regime and to adopt the adjudication model instead. **Cristina R. Grau López** ("Current Status of the Regulation of Right-of-Use Cooperative Housing in Spanish Cooperative Laws") examines Spain's emerging right-to-use housing cooperatives, where cooperatives retain ownership while granting members usage rights, emphasizing the need for a supportive legal framework to uphold their community-focused and non-speculative nature. In their article entitled "'There is no Place 'for' Home': Pressing Challenges Vis-a-Vis Legal Solutions for the Development of Cooperative Housing in Greece" **Sofia Adam, Ifigeneia Douvitsa and Dimitra Siatitsa** explore the potential of housing cooperatives in Greece. They examine whether the existing legal framework is aligned with the international cooperative principles and whether it is suitable to address the phenomenon of housing commodification by offering equitable, affordable, and democratic housing solutions through alternative legal forms. **Sergio Reyes Lavega** ("The Particularities of the Cooperative Housing System in Uruguay") outlines the public policies and legal frameworks related to the right

to decent housing in Uruguay, focusing on the constitutional provisions and the specific legal regime governing housing cooperatives in the country.

Legislation. In his report on **"**Recent Developments in US Cooperative Law" **Thomas Beckett** leads the reader through the particularities of the US-American cooperative law and its recent developments, particularly in the area of worker ownership. **Willy Tadjudje** ("The challenges of the New Cooperative Legal Framework in Madagascar") highlights the shortcomings of the previous cooperative law and the reforms by the new law. According to **S. Ramana Subramanian and R. Haritha Devi** ("Implications and Efficacy of the Indian Multi-State Cooperative Society Amendment Act 2023: a Comprehensive Analysis") the Multi-State Cooperative Society Amendment Act 2023 seeks to strengthen cooperative governance in India by introducing a Rehabilitation Fund, enhancing democratic practices, and fostering transparency. But, according to the authors, it raises concerns about equity, federalism, and financial burdens on profitable cooperatives.

Book Reviews. **Daniel Hernández Cáceres, Aingeru Ruiz, Ana Montiel Vargas and Ziwei XU** each present a book dealing with cooperative law and related themes.

Further reading. "Further Reading" is a new rubric where we inform on recent literature. This time it informs, among others, on a relatively high number of doctoral dissertations on cooperative law. We want to understand this as a sign of an increased interest of academia in the subject.

Past Events. In this rubric **Aitor Bengoetxea Alkorta** reports on the 4th International Forum on Cooperative Law held in San Sebastian/Spain at the end of 2023 and **Dominik Bierecki** reports on a conference in Warsaw in 2024 under the title of "Perspectives of Cooperative Law Development in Europe".

Upcoming Events. Under "Upcoming Events" the reader will find information on events in 2025 that deal exclusively with or include also cooperative law.

News. Here **Hagen Henrÿ** reports on the involvement of the ICA in a case pending at the International Court of Justice concerning the right to strike.

Practitioners' Corner. In the Practitioners' Corner **Piotr Pałka** ("Polish Housing Cooperatives Will be Able to Carry out Tasks as a Civic Energy Community") links the ideas of housing cooperatives and energy cooperatives arguing that civic energy communities promote local energy independence, reduce transmission losses, and lower energy costs for households, while enhancing resilience to price fluctuations and system failures. In his contribution on "Cooperation among Cooperatives: is Government Intervention an Obstacle or a Facilitator?" **Juan Enrique Santana**

Félix analyses the cooperation among credit unions in Puerto Rico, emphasizing their development, governance, challenges in branch creation, and the need for solidarity, transparency, and fairness to address conflicts with state regulations. **Cliff Mills'** paper, entitled "4th International Forum on Cooperative Law, Cooperation, Principle 6 and Net Zero", argues that shifting from competition-driven to cooperation-based enterprising, rooted in fairness and sustainability, is essential for achieving net zero. He puts emphasis on the 6th ICA Principle as a framework for scaling cooperative collaboration across businesses and institutions in general.

Interview. Again, we are honoured by an interviewee. **Andriani Mitropoulou** shares with us her thought-provoking thoughts on cooperative law.

Hoping that the readers will find also this Issue of the International Journal of Cooperative Law stimulating, we would like to invite them to help us make the Journal more reflective of all legal traditions, a goal we have set ourselves, but which we have not yet achieved.

Finally, we wish to thank all contributors – authors, proofreaders, peer-reviewers, the coordinator and the members of the Advisory Board – for the time and effort they offered to keep this unique publication alive.

Athens, Almería, Kauniainen, Luxembourg and Leicester, December 2024
Ifigeneia Douvitsa, Cynthia Giagnocavo, Hagen Henrÿ, David Hiez and Ian Snaith

In memoriam

Hans-H. Münkner

We mourn the death of Professor Hans-H. Münkner. He died in November 2023.
Since then, Ius Cooperativum, the international community of cooperative lawyers, finds itself without its most experienced steward. It suffices to read Professor Münkner's answer to the last question of the long interview that Issue I of this journal carries (see International Journal of Cooperative Law, Issue I, 2018, available at: https://iuscooperativum.org/issues/) in order to share this view. Asked in allusion to his skills as chef about the "main ingredients for the composition of a tasty cooperative meal" Prof. Münkner mentions three and details them. Greek classical philosophy-like, the answer concentrates the highest possible number of phenomena in the lowest possible number of categories. In that 'nutshell-answer' we find the essence of his many scientific books, his hundreds of scientific articles and speeches, his conclusions from dozens of consultancies of or for national, regional and international governmental and non-governmental organizations and from decades of teaching in Germany, and further afield - all of that in several languages with knowledge and experience blended. Without a navigator Professor Münkner showed us the way: 'Seek to understand. Understand cross-culturally. Act culture-specifically wherever social injustice so requires. Cooperative law is to work to this end and not as an end in itself.'
Professor Hans-H. Münkner will be remembered for his invaluable contribution to (the survival of) cooperative law. We will remember Mr. Münkner as our mentor, colleague and friend. I shall remember him in addition as a humanist.

On behalf of the editors of the International Journal of Cooperative Law and on my own behalf

Hagen H e n r ÿ

Alberto Garcia Müller

With the death of Alberto Garcia Müller on 29th February 2024, cooperative law in Latin America has lost one of its most important practitioners. It is difficult to write an obituary that does proper homage to Dr. Garcia Müller's career and his merits, as well as his notable personality.

He was born in Venezuela, where he carried out the greater part of his academic career, and where he maintained close links with the different branches of the cooperative movement. However, his nature and his vocation took him to numerous countries within the region, in each of which, over the years, he left his mark both as a teacher and as an advisor.

Dr. Garcia Müller graduated as a lawyer from the University of the Andes in Mérida, and continued his academic career in Paris, where he studied at the Cooperative College within the Paris Descartes University. On return to his country, he received a doctorate in law from the University of the Andes, where he continued to work as a professor and researcher at the Legal Research Center, of which he later became Director. Here, he dedicated long days to the study and teaching of cooperative law, a discipline that he continued to cultivate throughout his life.

While continuing his work in his homeland, he simultaneously developed productive links with universities and cooperative organizations in different countries, in which he taught, gave courses and conferences and provided advice and consulting on cooperative law and the social economy. In several cases he collaborated in the preparation of draft laws.

Dr. García Müller authored numerous important articles and books, published mainly in Venezuela and Colombia, a country with which he maintained a close relationship both in the academic field and in that of the cooperative movement. But his publications far transcended those borders and reached many other nations in Latin America and Spain, where he was widely known and cited. In recent years, his work broadened its focus on cooperatives to include the field of the social and solidarity economy.

He worked intensely as part of different international organizations. He was a founding member and Scientific Director of the Ibero-American Association of Cooperative, Mutual and Social and Solidarity Economy Law (AIDCMESS) and the founding president of the Venezuelan section of CIRIEC (the Centre for Research and Information about the Public, Social and Cooperative Economy). Additionally, he acted as an advisor to the Latin American Confederation of Cooperatives and Mutual Workers (COLACOT). He was also a member of the International Association of Cooperative Law (AIDC) and of the editorial board of the CIRIEC-Spain Legal Journal of Social and Cooperative Economy.

His *Encyclopedia of Cooperative, Mutual and Social and Solidarity Economy Law* merits a special mention. He devoted many years to the production of this monumental work, which has been updated several times, with a new update in progress at the time of his death; a digital version has always been available to readers free of charge. This work, whose 2022 edition

consisted of four volumes and almost 3,500 pages, constitutes a sort of *summa* of the subject, systematically organized with indexes to facilitate consultation. Dr. Garcia Müller's wish was that it be permanently updated to maintain its validity. Without doubt, with this work he has generously bequeathed a valuable source of information, and it would be advisable to keep it updated.

Particularly during his final years, Alberto García Müller's life was disturbed by the social, political and economic situation in his country, which caused ever-greater difficulties in his activities and living conditions. But he endured everything with great spirit and did not slow down his intense pace of work even when his illness worsened, to the extent that those close to him did not realize the seriousness of his condition. For this reason his death, at the age of 79, came as a shock.

Our friend has left us with the inspiring memory of his devotion to study and research, and his passion for teaching. And we have access to the fruit of his labors in the form of numerous works, which stimulate us to continue developing the subject that he embraced with such enthusiasm and success.

Dante Cracogna

Articles

COOPERATIVE PRINCIPLES IN THE HARMONIZATION OF COOPERATIVE LEGISLATION
(With special reference to Latin American countries)

Dante Cracogna
University of Buenos Aires

Abstract:
The term '*principles'* has different meanings in different contexts. This work considers the term in the context of the cooperative principles. The cooperative principles are understood as guidelines for actions that facilitate the realization of the cooperative values. Initially, the cooperative principles were mainly found in the bylaws of cooperatives. This was because cooperative legislation was either non-existent or did not incorporate the cooperative principles. Following the publication by the International Cooperative Alliance (ICA) of a definition of the cooperative principles, the principles were more likely to be included in cooperative legislation. This trend became stronger when the Statement on the Cooperative Identity was issued by ICA in 1995. Subsequently, cooperative legislation in many jurisdictions has addressed the cooperative principles in various ways. The adoption of the Statement on the Cooperative Identity by international organizations such as the United Nations (UNO) and the International Labor Organisation (ILO) has significantly contributed to this outcome. However, the harmonization of cooperative legislation varies, as each national cooperative legislation has their own specific regulations. Therefore, harmonization should focus on incorporating the cooperative principles, as they constitute the core of the cooperative identity. This work examines the Project for a Framework Law for the Cooperatives in Latin America and its attention to the cooperative principles as an example of a potential approach to regional harmonization of cooperative legislation.

Keywords: cooperative legislation; cooperative principles; International Cooperative Alliance; Framework Law for the Cooperatives in Latin America.

Meaning of the principles

The term '*principles'* is subject to a broad and open-ended discussion. This is true both in philosophy, which seeks a general and comprehensive definition,[1] and in individual disciplines,

[1] Ferrater Mora, José (*Diccionario de Filosofía abreviado*, Sudamericana, Buenos Aires, 1981, p. 312 y ss), refers that the term was already used before Aristotle, who provides a series of meanings in *Metaphysics*, and that the debate around this notion has persisted in western philosophical tradition.

each with their own set of principles with exclusive meanings.
In this work, and without delving into more complex discussions, two meanings of the term *principles* and their intersection are considered. The first belongs to the field of cooperatives, and the second, to the legal field. It is evident that they differ significantly. In the legal field there are 'general' *principles* of law and there are principles exclusive to each branch, such as constitutional law, civil law, commercial law and criminal law.
Consideration of these digressions is unlikely to be productive and are avoided. Instead, these conceptual and terminological differences are set aside to allow this analysis to proceed on solid, or at least uncontested grounds.[2] This approach involves accepting that in this analysis, a reference to '*principles'* refers to the cooperative principles, understood as *guidelines for action*. When these principles are observed, they enable the realization of cooperative values. Together they ensure that the cooperative is true to its nature and operates in accordance with the Statement on the Cooperative Identity.[3]

The origin of the cooperative principles

For a long time, cooperative principles were only found in the bylaws of cooperatives, since they were not incorporated in cooperative legislation. This was the case with the Rochdale Cooperative and continued for a lengthy period. Early versions of cooperative legislation provided for certain features of the cooperative model and did not expressly refer to the set of principles that would ultimately characterize cooperatives.
Throughout this period it was left to the bylaws to define the organization and operation of cooperatives pursuant to guidelines which set them apart from other forms of business organization. The Rochdale Cooperative was an important inspiration for later cooperatives who replicated the bylaws and the fundamental features of the cooperative. A prominent role was also played by those who disseminated information about the successful Rochdale experience.[4]

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[2] It is timely to mention the important study on the Principles of European Cooperative Law (PECOL) carried out by a qualified group of specialists from different countries, which addresses this topic in five chapters: definition and objectives; government; financial structure; auditing and co-operation among cooperatives(Study Group on European Cooperative Law (SGECOL), *Draft Principles of European Cooperative Law (draft PECOL)*, May 2015.
[3] The Statement on the Cooperative Identity issued by ICA Centennial Congress held in Manchester in 1995 has three parts: a) definition of a cooperative; b) cooperative values and c) cooperative principles. There, it is expressly stated: "Cooperative principles are guidelines through which cooperatives put their values into practice." This Statement contains the current formulation of cooperative principles and has been recognized by UNO in the *Guidelines aimed at creating a supportive environment for the development of cooperatives* (Annex to Resolution 56/114 of the General Assembly) and by ILO Recommendation No. 193, which includes them verbatim. The complete version of the Statement, together with the accompanying reference document, can be found in: MacPherson, Ian, *Cooperative Principles for the 21st Century,* International Cooperative Alliance, Geneva, 1995
[4] A paradigmatic case is that of *The History of the Rochdale Pioneers*, written by Georges J. Holyoake, which was widely disseminated in England and Continental Europe, thereby greatly influencing the organization of numerous

The replication of the Rochdale Cooperative by laws is the reason why it is safe to speak of the 'Rochdale principles' as true cooperative principles. It was the Rochdale principles that would provide their distinctive stamp on the cooperatives that became part of the ICA towards the end of the 19th century. However, the Rochdale principles were only present in the bylaws of cooperatives and not in cooperative legislation. In many countries there were no laws specifically regulating cooperatives. In this sense, the bylaws determined the cooperative identity, in so far as they observed these principles, even if their legal structure corresponded to other forms of organization.[5]

This situation continues to exist today in those countries whose laws do not include the cooperative principles but whose cooperatives rely on their bylaws to define their unique characteristics. This is true in most States of the United States of America as well as in other countries.[6]

The cooperative principles in the ICA

In 1937, following years of studies and consultations, the ICA made public its first statement of cooperative principles at the Paris Congress. This statement meant that lawmakers could avail themselves of a precise and specific set of principles which would serve as a guide to define the unique profile of cooperatives.[7]

These principles were based mainly on the ones established by the Rochdale Cooperative, and those reformulated at the Vienna Congress in 1966.[8] However, these principles were slowly added to many cooperative laws without mentioning where they came from. They were included only in relation to the specific rules in each law. Clearly, having a well-defined set of principles made it easier to include them in the legislation.[9]

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cooperatives. (There is an abridged version in Spanish: Holyoake, Georges J., *Historia de los Pioneros de Rochdale*, trad. B. Delom, Intercoop, Buenos Aires, with several editions).

[5] A typical example of this is the Argentine Commercial Code of 1889, which in section 380 set forth that cooperatives may be formed under any of the types of business organizations provided by such Code (corporations, general partnerships, etc). In this way, the cooperative was not a form of legal organization in its own right but a business entity characterized by the rules provided for in its bylaws.

[6] Czachorska-Jones, Barbara - Finkelstein, Jay Gary - Samsani, Bahareh, "United States", in Cracogna, Dante-Fici, Antonio-Henrÿ, Hagen (Eds.), *International Handbook of Cooperative Law*, Springer, Heidelberg, 2013. p. 759 ss. Also, it has been pointed out in an interesting article that cooperative principles are not a source of law (Santos Domínguez, Miguel Angel, "La relación de los principios cooperativos con el derecho", *Revista Jurídica de Economía Social y Cooperativa*, N°27, CIRIEC España, Valencia, 2015, p. 87 y ss).

[7] (Vienna, 1930 and London, 1934), and it was based on extensive research made on the topic of the different types of ICA- member cooperatives, on the basis of the principles applied by the Rochdale Cooperative.

[8] International Cooperative Alliance, *Twenty-third Congress Vienna 5th to 8th September 1966. Agenda and Reports*, N.V. Drukkerij Dico, Amsterdam, s/f, p. 48 . The valuable report of the Committee on Cooperative Principles, authored by W. P. Watkins, a former ICA director general for years, is useful for understanding and interpreting the principles.

[9] Cfr. Münkner, Hans-H. (*Cooperative Law and Cooperative Principles*, Friedrich-Ebert-Stiftung, Bonn, 1985) published in 1974 an enlightening study on this topic, whereby he addresses how cooperative principles are

This shift explains how cooperatives transitioned from being characterized as cooperatives at the level of bylaws to the level of national or state legislation. Cooperatives gradually became a distinct form of legal organization. The legal form continued to co-exist with those already in existence. However, they were distinguishable by their legal right to use the term "cooperative" granted by their adoption of the features prescribed by the legislation. These features were the cooperative principles, now turned into legal characteristics.

The Statement on the Cooperative Identity

There is a difference between the formulations of cooperative principles made in 1937 and those made in 1966. The difference impacted on the way the cooperative principles were adopted by cooperative legislation. The 1937 formulation used short, categorical phrases intending to convey only the core meaning of each principle. The 1966 version used longer sentences to explain the content of each principle in an educational way.[10]

This difference had an impact on the legislation adopting the principles. While it was easier to adopt simple and concise language, its intended meaning was less clear. The use of more detailed explanations made the meaning clearer and resulted in a more precise implementation of the principles.

The Statement on the Cooperative Identity approved by the 1995 ICA Congress in Manchester contributed a new formulation of the principles. In this formulation, the principles are described using both a concise title and a more detailed explanation. This approach represents a symbiosis between 1937 and 1966 formulations. It might be assumed that the third approach was superior to the earlier formulations, as it combines elements of both. However, this is not necessarily the result. In some cases, such as the third principle, the concise title "Member Economic Participation" is followed by a heterogeneous text which makes reference to several different aspects of the principle, including: the capital contributed by the members; the different types of capital; the compensation on the contributed capital; the possible allocation of surplus; the setting up of reserves, etc., all of which gives rise to ambiguity and inconsistencies. As an additional difficulty, the explanation includes vague or imprecise expressions such as ''usually'', "at least", "possibly", etc. It seems obvious that the intention was not to produce excessively rigid statements. The problem for lawmakers is that these generalized explanations make it difficult to translate the principles into legal texts.

The Statement on the Cooperative Identity adds a further complication. Not only does it contain the enumeration of cooperative principles, but unlike the earlier formulations, it adds a

reflected in the legislation, taking into account that at the time numerous countries in Africa and Asia were undergoing a legislative revision process on that matter.

[10] The report of the Committee which served as a basis for the 1966 statement expressly mentions that, in order to avoid the risk of simple and brief texts, a longer formulation was preferred so as to clearly convey the meaning of each topic (International Cooperative Alliance, *Twenty-third Congress Vienna 5th to 8th September 1966. Agenda and Reports*, N.V. Drukkerij Dico, Amsterdam, s/f, p. 57).

definition of a cooperative and describes the cooperative values. The issue is whether the definition of the cooperative and its values are relevant elements to be considered when characterizing the legal nature of cooperatives. If so, the further issue is whether these values can be translated into law. Despite these complications, it must be acknowledged that the Statement, as a whole, provides a more comprehensive explanation of the cooperative identity.[11]

The cooperative principles in the legislation

Following the publication of the Statement on the Cooperative Identity the incorporation of the cooperative principles into cooperative legislation has intensified, although different techniques are adopted by different countries. These techniques can be summarized as follows:

a) A verbatim -or almost verbatim- transcription of the principles described in the Statement, or, in some cases, the copy of the whole text, including the definition of cooperative and the values. This transcription usually appears in the first sections of the legislation, to serve as a general guideline for the interpretation of the remaining provisions of the law;

b) An incorporation of the content of the principles -rather than the text- in the different provisions of the law regulating the organization and operation of cooperatives. For example, where the principle of voluntary and open membership is assimilated into the provisions regarding the members; the principle of democratic member control into the provisions on the meeting of members; and the principle of member economic participation is embedded into provisions in the legislation dealing with capital and surplus, etc.

c) Making a general reference to the cooperative principles "as they have been formulated by the International Cooperative Alliance", or a similar expression, as a guideline for the interpretation of the provisions included in the law. The principles are referred to as an external source to orient the construction and enforcement of the law instead of being copied or transcribed. By reference to their source, the ICA, the legislation makes it clear that these are the relevant cooperative principles, to the exclusion of principles arising from a different source;[12]

d) Legislation which combines all or some of these techniques. For example, a) and b) or b) and c) above, etc.

[11] In that respect, in order to facilitate the appropriate interpretation of the principles within ever changing social and economic circumstances, instead of favoring a possible revision thereof, the International Cooperative Alliance entrusted the Principles Committee with the drafting of a document that would serve as a guide to that effect. Such a document was submitted before the General Assembly held in Antalya in 2015 under the title *Guidance Notes to the Cooperative Principles.*

[12] It should be mentioned that there exist other formulations of cooperative principles such as the ones arising from IRU for agricultural cooperatives, WOCCU for credit unions, Mondragón for worker cooperatives, etc.

Cooperative principles and the harmonization of cooperative law

There is a relation between the incorporation of the cooperative principles into cooperative legislation and the harmonization of cooperative legislation in different jurisdictions. Harmonization is a controversial issue, which gives rise to different opinions and experiences. Harmonization is different from unification. Unification is a process requiring special conditions to implement, as demonstrated by the experience of the OHADA countries.[13] The harmonization of cooperative legislation creates similar legislation in different jurisdictions based on shared rules on the key aspects of cooperatives. This process allows each country to manage other details in their legislation, provided that these details do not jeopardize the fundamental identity features of the cooperative.[14]

Harmonization should be based on the cooperative principles, as they give cooperatives their unique character. All other regulatory aspects are secondary and contingent on the principles. The process of harmonization may rely on one of the techniques described above. The technique described in b) is arguably the best approach to guarantee the realization of the principles in action. This technique is complemented by the reference to the ICA as the course of the principles as described above in c). In this way, the characterization of cooperatives in each national legislation is consistent with international harmonization.

The case of the Framework for the Cooperatives in Latin America. Conclusion

An illustration of this style of harmonization is the Framework Law for the Cooperatives in Latin America approved by ICA Americas in 2008 and later by the Latin American Parliament in 2012.[15] As explained in its presentation to Parliament, "The Framework Law is not intended to be a model to be copied by the lawmakers of the different Latin American countries. Its purpose is to provide orientation on the key guidelines of the cooperative legislation as they derive from jurisprudence, academic studies and the most recognized practice of comparative law".[16].

[13] On this topic: Hiez, David - Tadjudge, Willy, "The OHADA Cooperative Legislation", in Cracogna, Dante - Fici, Antonio - Henrÿ, Hagen (Eds.), *International Handbook of Cooperative Law*, Springer, Heidelberg, 2013, p. 89.

[14] When dealing with the harmonization of cooperative legislation, Henrÿ, Hagen highlights the need to reach an agreement on the nature of the cooperative identity and how to translate it effectively into the law ("Trends and Prospects of Cooperative Law", en Cracogna, Dante - Fici, Antonio - Henrÿ, Hagen (Eds.), *International Handbook of Cooperative Law*, Springer, Heidelberg, 2013, p. 809).

[15] On this topic: Cracogna, Dante, "El Derecho Cooperativo en Latino América y el Proyecto de Ley Marco", *Anuario de Estudios Cooperativos*, Universidad de Deusto, Bilbao, 1989, p. 129 y ss, for the original version and Cracogna, Dante, "Nueva versión de la Ley Marco para las Cooperativas de América Latina", *Revista Jurídica de Economía Social y Cooperativa*, N° 20, CIRIEC España, Valencia, 2009, p. 183 y ss. for the revised version of 2008.

[16] This is how it reads in the presentation made by ICA Americas authorities, which summarizes the rationale, the drafting process as well as the purposes of the document.(ACI Américas, *Ley Marco para las cooperativas de América Latina*, San José, 2009, p. iv).

Section 3 of the Framework Law replicates the definition of cooperative included in the Statement on the Cooperative Identity, with only one addition that is intended to clarify that cooperatives are private legal persons, as opposed to those that are governed by public law, which are part of the State.

Chapter 4 states that cooperatives must observe the principles included in the Statement of the Cooperative Identity and reproduce the title of each cooperative principle. It also provides that the principles shall have such meaning and scope as it is universally recognized. This ensures that the interpretation of the principles is pursuant to general standards and not according to particular cases which could distort their true meaning.

In subsequent chapters, each of the principles are introduced and their meaning and scope explained. For example: in section 21, voluntary and open membership (Chapter dealing with the members); in sections 25, 50 and 85, democratic member control (Chapters referring to the members and integration); in sections 34, 40, 41, 44 and 49, member economic participation (Chapter devoted to the economic regime); in section 2, autonomy and independence (Chapter of general provisions); in section 49, subsection 2, and sections 68 and 90, education, training and information (Chapters regarding the economic regime, management, dissolution and liquidation); in sections 79 to 85, cooperation among cooperatives (Chapter dealing with integration) and in sections 42 and 49, subsection 3, concern for the community (Chapter in reference to the economic regime).

In conclusion, the process of harmonizing cooperative legislation should be based on the incorporation of the content of the cooperative principles into the relevant sections in the legislation, rather than simply transcribing the actual wording of each principle in the legislation. In addition, the legislation should stipulate that the Statement of the Cooperative Identity is the relevant text for the interpretation of any legal provisions in the legislation.

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TEACHING COOPERATIVISM IN LAW DEGREE COURSES IN ARGENTINA. THE CASE OF THE DEPARTMENT OF LAW AT UNIVERSIDAD NACIONAL DEL SUR

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Abstract: This article addresses "Cooperative Law" in Law degree courses in Argentine universities. First, we describe laws on cooperative education and the regulatory background for its inclusion in the basic curricular contents of the Law degree courses programmes in the Argentine Republic. Next, we describe how, in the last few years, the Argentine university system has adopted these basic curricular contents on cooperatives and mutual associations with different formats and modalities, as a requirement, among others, to obtain the undergraduate degree in Law. Next, we provide an overview of the history and the important presence of social economy in the southwest of Buenos Aires province, specifically in the city of Bahía Blanca, home of the Universidad del Sur. After that, we address the itinerary of the case under analysis, from the programme amendment put forward by the Department of Law, its rationale and approval by the university, to the creation of an optional subject at undergraduate level. Finally, the subject "Cooperative and Mutual Law" is described along with its background, rationale, objectives and syllabus, and presented as a fine example of the articulation between the academic sphere and the local and regional cooperative movement, both to strengthen the professional competence in the field and to increase the discipline and the sector's visibility.

I. Introduction.

This article addresses Cooperative Law teaching in Law degree courses in Argentine universities. The aim of our study is to explore, survey and systematize the ways in which

Cooperative Law is included in their programmes, identifying both the legal background and how it has been implemented across the universities where the degree course is offered, as the general framework for the particular case on which we will later focus.

Our methodology includes the legal background and the analysis of current laws and regulations, a quantitative study of the subjects with contents on cooperatives and mutual associations in all the undergraduate Law degree courses in Argentina, and a qualitative study of the case of the Universidad Nacional del Sur (UNS).

In the first part of our article, we will describe cooperative education laws and regulations which set forth the inclusion of this topic in the basic curricular contents of the Law degree course programmes. After that, we will describe how, in the last few years, the Argentine university system has adopted these basic curricular contents on cooperatives and mutual associations in different formats and modalities. Next, we will provide an overview of the history and presence of the social economy in the southwest region of Buenos Aires province, where the UNS is located. Finally, we will present the case under study, from the programme amendment proposed by the Department of Law to the inclusion of the new optional subject at undergraduate level and its description, precedents, rationale, objectives and syllabus, as an example of the articulation between the academic sphere and the local and regional cooperative movement.

II. Legal Framework.

II.1. Cooperative Education and Training.

Even though cooperative education was already mentioned in the 1884 landmark Act 1,420 — which stipulated free and compulsory primary education for all the children —, it was not until Act 16,583 was passed in 1964 that teaching of cooperative principles was expressly declared as being "of great interest for the nation". The Executive Power was given the authority to issue rules in order to include theoretical and practical teaching of cooperativism in schools' programmes and syllabuses. In 1973, Cooperative Act 20,337 — still in force — assigned 5% of the annual distributable surplus to cooperative education and teaching. Later, in 1986, Act 23,427 established the legal provisions for the Fund for Cooperative Education and Promotion. In 2003, given the non-compliance in practice with Act 16,583, the National Executive Power considered it advisable to update it by Decree 1,171, which ratifies that teaching cooperative and mutual association principles is of great interest. This decree encouraged the creation of school cooperatives through the Ministry of Education and by setting up a ministerial commission with representatives of confederations of cooperatives and mutual associations. This commission would be in charge of making school cooperatives and mutual associations widely known and appreciated and of drawing up proposals of programmes and syllabuses, among other actions. In 2006, National Education Act 26,206 ratified in Section 90 the provisions of Act 16,583 and its regulations, as follows: "Section 90. The Ministry of Education, Science and Technology, through the Federal Council of Education, shall promote the inclusion of cooperatives and mutual associations' principles and values in the teaching-learning processes and in corresponding teachers' training, in accordance with the principles and values established in Act 16,583 and its regulations. Moreover, school cooperatives and

mutual associations shall be promoted"[1].

II.2. The Higher Education Act.

Act 24,521[2] establishes the legal provisions governing higher education institutions — both universities and non-university tertiary institutions — of the Argentine education system, granting the National and Provincial States the power to broaden the academic programmes offered in these institutions and regulate their activities, promoting equality of access to high-quality education.

Among these powers, Section 43 makes a special provision for degrees of regulated professions, whose practice might affect public interest posing direct risks for the population's health, safety, rights, property or education. The programs shall include basic curricular contents stated by the Ministry of Culture and Education, in accordance with the Council of Universities, in order for these degree courses to be regularly accredited by the Comisión Nacional de Evaluación and Accreditación Universitaria (CONEAU) [National Commission of University Evaluation and Accreditation].

II.3. Ministerial Resolutions.

In 2015, Resolution 3246/2015 of the National Ministry of Education[3], in accordance with the Council of Universities Plenary Agreement 140[4], included Law in the list of regulated professions on the grounds that the professional practice of law may impact the public interest, especially when it involves issues affecting individuals' property and freedom. Thus, to uphold the values protected under act 24.521, it should be regulated with minimum standards of competence. Therefore, Law joined other degree courses of this nature such as Medicine, Engineering, Chemistry, Nursing, Biology, Accountancy, Teaching, among others.

In addition, Resolution E-3401/2017 of the Ministry of Education[5] approved the basic curricular contents, the minimum lecture hours, the criteria for the intensity of practical training and the accreditation standards to obtain the degree in Law, as well as the list of reserved activities for these professionals, instructing universities to adapt their Programmes to these new standards of accreditation. Annex I of this Resolution specifies the basic curricular contents, ranging from theoretical, conceptual and practical ones, which Law degree courses shall cover in order to be accredited and also officially recognized as valid throughout the

[1] CARRIZO, Juan José, "Legislación nacional argentina sobre educación cooperativa and mutual" [Argentine national laws on cooperative and mutual education], *Publicación Nº 32, Segunda Serie, GIDECOOP, UNS*, December, 2013.

[2] Ley 24.521 de Educación Superior [Higher Education Act], Congreso de la Nación Argentina [Argentine National Congress], 10/08/1995, available at: https://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25394/texact.htm.

[3] Resolución [Resolution] 3246/2015, Ministerio de Educación de la Nación Argentina [Argentine Ministry of Education], 02/12/2015, available at: https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-3246-2015-259029/texto.

[4] Acuerdo Plenario [Plenary Agreement] No. 140, Consejo de Universidades [Council of Universities], 20/10/2015, available at: http://www.bnm.me.gov.ar/giga1/normas/APCU_140-2015.pdf.

[5] Resolución [Resolution] 3401-E/2017, Ministerio de Educación de la Nación Argentina [Argentine Ministry of Education], 08/09/2017, available at: https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-3401-2017-279435/texto.

country. In Law degree courses, "Cooperatives and Mutual Associations" is a required content, being contained within "Civil and Commercial Legal Entities" in the "Field of Private Law Area" of the "Discipline-Specific Contents"[6].

III. Cooperativism in Law Degree Courses.

III.1. Inclusion of Basic Curricular Contents and Modalities.

The Law degree course is currently offered in seventy-one Argentine universities and university institutes, twenty-nine of which are public — that is, state-funded, autonomous, and tuition free — and the remaining forty-two, private.

As mentioned above, the degree courses affecting public interest as per Section 42 of the Higher Education Act are subject to CONEAU's accreditation and approval, which entails controlling that programmes be adapted to include the basic curricular contents under Resolution E-3401/2017, such as "Cooperatives and Mutual Associations" within "Private Legal Entities".

However, universities are free to organize and distribute the required contents across the different subjects, with greater or lesser emphasis on particular contents over others, and adhering to different views on the classification of the branches of Law.

We conducted a survey of all of the above-mentioned education institutions to see how they have included the basic curricular contents on cooperatives. Then, we classified them into four categories according to the criteria used to name the subjects that include cooperative education at higher education level.

As illustrated in the following chart, 65% of the institutions include the topic of cooperatives and mutual associations in the traditional subject "Company Law", also often named "Commercial Law" or "Private Law". From our perspective, this constitutes an inaccurate interpretation since, apart from Cooperative Act 20,337 and Mutual Association Act 20,321, plenty of doctrine and case law acknowledge their legal nature as different from that of "companies". Furthermore, since the 2015 amendment of the Argentine Civil and Commercial Code, Section 148 on private legal entities includes associations and cooperatives in subsections f) and g), respectively, as sui generis legal entities, having their own identity.

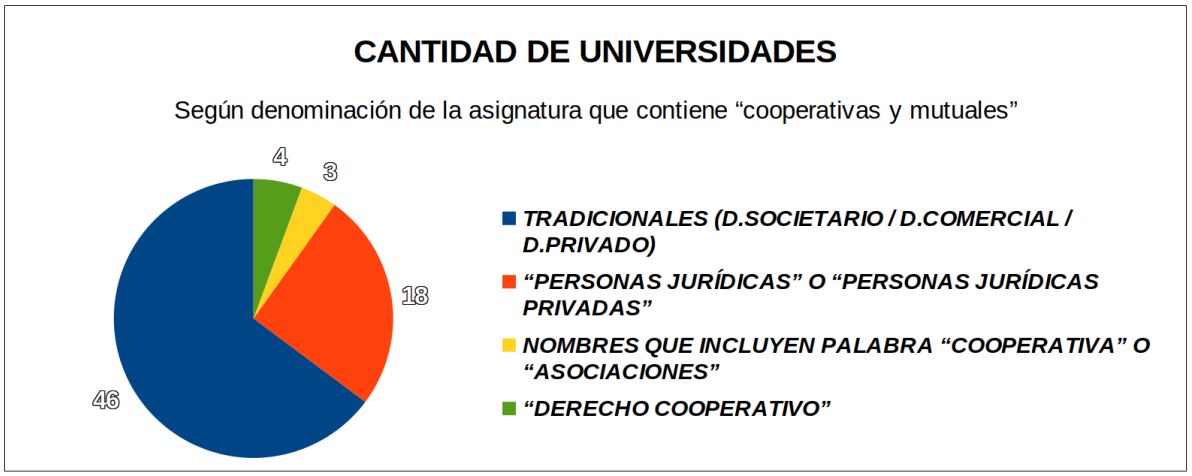
Besides, approximately one third of the Law degree courses, corresponding to eighteen higher education institutions, have included cooperative education in subjects such as "Legal Entities" or "Private Legal Entities". Although these names do not denote the special nature of social economy entities, they are accurate designations since cooperatives are a species within the genus of private legal entities.

Moreover, seven higher education institutions have depicted cooperativism in subjects' names, three of which even include the word "cooperative" and/or "association", reflecting more adequately the topic in question.

[6] Following this Resolution, the manual "Nociones Básicas sobre Cooperativas and Mutuales Orientado a la Carrera de Abogacía" [Basic Notions on Cooperatives and Mutual Associations Intended for the Law Degree Course], was co-authored with colleagues from the Universidad Nacional de La Pampa (UNLPam), coedited by UNLPam, in Santa Rosa, La Pampa province, and Intercoop Editora Cooperativa Ltda. [Intercoop Limited Cooperative Publisher] in Buenos Aires Autonomous City, in February, 2020. Available at: http://www.unlpam.edu.ar/cultura-y-extension/edunlpam/catalogo/institucionales/nociones-basicas-cooperativas-mutuales-abogacia

Finally, only four universities — namely, Universidad del Centro Educativo Latinoamericano, Universidad Nacional de Chilecito, Universidad Nacional del Centro de la Provincia de Buenos Aires and Universidad Nacional del Sur — devote a complete subject to cooperativism, acknowledging its legal and scientific autonomy with the name "Cooperative Law". In all these cases, this is an optional subject in the programme of the undergraduate degree course, which means that students attend voluntarily. However, since basic curricular contents on cooperatives and mutual associations are taught in other subjects, students who do not attend "Cooperative Law" are still provided with a basic cooperative education.
Regardless of the modality or the name that each university has chosen, we praise the step forward in considering these contents as compulsory.

Number of universities according to subjects' names	
According to subjects' names including the words "cooperatives" and "mutual associations"	
Traditional subjects ("Company Law"/"Commercial Law"/"Private Law")	46 (65%)
"Legal Entities" or "Private Legal Entities"	18 (25%)
Specifically including the words "cooperative" or "associations"	3 (4%)
"Cooperative Law"	4 (6%)
Total number of universities	**71 (100%)**



It should be noted that the data displayed in the graph correspond only to Law undergraduate degree courses (not postgraduate ones) and are based on the authors' own compilation from publicly available information on the universities' official websites as of January, 2024 (See "Sources" in the Annex).
Furthermore, for this compilation, we reviewed the article "Programas y Contenidos de las Carreras de Abogacía y Contador Público en las Universidades Nacionales" [Programmes and Contents in the Law and Accountancy Degree Courses in National Universities], written by Griselda Verbeke and Mirta Vuotto, researchers and professors at the Economic Sciences Faculty of the Universidad de Buenos Aires. This article was published in 2020 as part of a project run by Universidad Nacional de La Pampa on how to include contents on cooperatives

and mutual associations in the Accountancy and Law degree courses[7], in accordance with Resolutions E- 3400/2017 and 3401/2017 of the Ministry of Education, respectively. To that end, the authors selected 17 universities based on their regional representativeness, their age, the number of enrolled students and the concentration of cooperatives and mutual associations in their region of influence, and they examined these university's course programmes. Their conclusion coincides with the results of our survey, thus reinforcing our view about the progress of Cooperative Law towards becoming an autonomous subject.

III.2. Regulations Issued by the Universidad Nacional del Sur.

In 2018, at the request of the Department of Law, the University Higher Council of the UNS issued Resolution 807/2018 approving a new programme for the Law degree course in order to comply with the requirements for regulated professions set by the above-mentioned ministerial Resolution E-3401/2017.

The new programme was accredited and approved by CONEAU's Resolution 635/2020 for a six-year period — the maximum authorized term — and it began to be implemented as from 2020, with innovations such as the practical training and an additional requirement for students to complete 224 lecture hours of optional subjects. This latter requirement — together with that concerning education on cooperatives and mutual associations under Resolution E-3401/2017 of the Ministry of Education — led to the inclusion of "Cooperative and Mutual Associations Law" in Annex I of Resolution 807/2018 as a specific subject in the programme of the Law degree course and one of the subjects offered within the Optional Discipline-Specific Study in the Field of Private Law[8]. As stipulated in this Annex, the subject "Cooperative and Mutual Associations Law" is 32 lecture hours long, its basic curricular contents including the following topics: "Cooperatives; Cooperative Enterprise; Legal Provisions Applicable to Cooperatives".

Although in 2023 the programme of the Law degree course was amended again by Resolution 1111/2023 of the University Higher Council, this was a partial amendment, with no substantial changes to the subject "Cooperative Law".

Finally, to be precise, before Resolution 807/2018, the basic curricular contents on cooperatives and mutual associations were already included in the compulsory subject "Company Law". Therefore, the ministerial requirement could have been considered fulfilled, with no need to create a new specific subject. However, there were good reasons to do so, as we will explain in the following section.

[7] VUOTTO, Mirta and VERBEKE, Griselda. "Programas y contenidos de las carreras de abogacía and contador público in las universidades nacionales" [Programmes and contents in the Law and Accountancy degree courses in national universities], In: *Documentos del Centro de Estudios de Sociología del Trabajo, Facultad de Ciencias Económicas de la Universidad de Buenos Aires*, N° 92, April, 2020, available at: https://www.economicas.uba.ar/wp-content/uploads/2016/04/DT-92-1.pdf

[8] Resolución [Resolution] CSU-807/2018, Consejo Superior Universitario [University Higher Council], Universidad Nacional del Sur, 20/11/2018, available at: https://www.derechouns.com.ar/wp-content/uploads/2020/09/PLAN-DE-ESTUDIOS-2020.pdf.

IV. Cooperativism in the City of Bahía Blanca and its Surrounding Region.

IV. 1. Spatial Context.

The Argentine Republic is a federal state, divided into twenty-four jurisdictions that consist of twenty-three provinces and the Autonomous City of Buenos Aires. Each jurisdiction has powers reserved to themselves, not delegated to the National State, with different administrative configurations and degrees of municipal autonomy in accordance with their provincial constitutions. However, in contrast with other national political entities, the Argentine Republic is not legally divided into regions. Any reference to regional divisions within Argentina refers to economic, productive or other aspects, without governmental autonomy. The area of our case study is the southwest region of Buenos Aires province under the influence of its most important city, Bahía Blanca, a port, industrial and commercial city with a population of approximately 350,000. Bahía Blanca's region of influence is characterized by agricultural and livestock production.

Bahía Blanca offers a variety of higher education options, including two national universities, namely — UNS and Bahía Blanca's Regional Faculty of Universidad Tecnológica Nacional (FRBB UTN) —, a provincial university, branches of private universities and both state-funded and private tertiary education institutes.

It is commonly agreed that academic activities at universities are not — or should not be — arbitrarily selected but related and linked to their area of influence where their teachers, non-academic staff, students and graduates live. As we will see in the next section, cooperative studies at the UNS arise from a city and region with a strong cooperative tradition**.**

IV.2. Bahía Blanca: Provincial Capital of Cooperativism.

In October 2020, a bill submitted by legislators from across Bahía Blanca's political spectrum became law when Provincial Act 15,203 declaring Bahía Blanca the Provincial Capital of Cooperativism was unanimously passed by the Provincial Legislature.

The bill describes Bahía Blanca as a cooperative hub of national importance by virtue of its rich history of associations also including mutual associations and other social economy organizations.

Among the precedents mentioned in the bill are the proposal of "progressive agriculture" brought by the Legión Agrícola Militar Italiana [Italian Military Agricultural Legion] when they settled in Bahía Blanca in 1856; and the creation, in 1898 in the nearby city of Pigüé, of the insurance cooperative El Progreso Agrícola [Agricultural Progress], influenced by French settlers and considered the starting point for the cooperative movement in Argentina. Since the early 20th century, in the area of Bahía Blanca, a wide variety of cooperatives have been created, the most notable of which are consumer, electricity, agricultural, insurance, credit, paving and worker cooperatives. A notable example is the Cooperativa Obrera Ltda. de Consumo y Vivienda [Consumer and Housing Worker Limited Cooperative], set up in 1920, which will be described below.

The bill stated that the cooperative movement, despite its fluctuations, amounted to seventy-two active local entities at that moment according to provincial statistics, not to mention the many branches of cooperatives operating across the country. In addition, among other

precedents, legislators highlighted the importance of cooperatives in the educational sphere, such as the first Argentinian school cooperative created in 1921 in the city of Pigüé and the federation gathering primary and secondary school cooperatives of Bahía Blanca and the region.[9]

IV.3. Ente Municipal de Acción Cooperativa.

The Ente Municipal de Acción Cooperativa (EMAC) [Municipal Entity of Cooperative Action] was created by Municipal Bylaw 8509/95 with the aim of "highlighting cooperatives' role in production and in the provision of services and their contribution to creating employment in the corresponding areas of the different stages of economy".

Moreover, an Advisory Council was formed by representatives of the four cooperative federations with offices or representatives in Bahía Blanca: Asociación Intercooperativa Regional [Regional Inter-cooperative Association], Asociación de Cooperativas Argentinas [Argentine Cooperative Association], Instituto Movilizador de Fondos Cooperativos [Cooperative Fund Allocation Institute] and Federación Argentina de Cooperativas de Consumo [Argentine Federation of Consumer Cooperatives]. Together with the municipal official holding EMAC's presidency, they meet regularly to discuss several topics of interest concerning the relations between cooperatives and the Municipality. This promotion activity is motivated by Bahía Blanca Municipality's tradition of supporting and interacting with the local and regional cooperative movement. To illustrate this tradition, we can cite the fact that Bahía Blanca is one of the first municipalities, together with those of Junín and Avellaneda in Buenos Aires Province, to pass a municipal bylaw encouraging the development of cooperatives. This bylaw dates back to July 11, 1923, that is to say, three years before the first Cooperative Act was passed in Argentina (namely, Act 11,388 passed on December 20, 1926).

IV.4. Cooperative Municipality.

Since 2019, Bahía Blanca has been part of the "Cooperative Municipality Network", an initiative undertaken by Confederación de Cooperativas de la República Argentina (COOPERAR) [Cooperative Confederation of the Argentine Republic] to promote the development of local cooperatives across the country and to encourage municipal governments' commitment to uphold it. The agreement establishes a series of actions aimed at cooperative education, local and cooperative purchasing, environment and health protection, and the visibility of the sector.

IV.5. Asociación Intercooperativa Regional.

Asociación Intercooperativa Regional [Regional Inter-cooperative Association] (AIR), created on December 1, 1964, is a pioneering group of horizontal integration made up of different types of cooperatives in different fields of activities. Since its creation, the AIR has been in charge of representing cooperatives as a union in the region. At present, it comprises twenty cooperatives,

[9] CARRIZO, Juan José. "Bahía Blanca Capital Provincial del cooperativismo" [Bahía Blanca: Provincial Capital of cooperativism], *Publicación Nº 43, Segunda Serie, GIDECOOP, UNS*, September 2021.

most of them sited in Bahía Blanca and others from nearby cities such as Punta Alta, Monte Hermoso and Tornquist.
The AIR's aim is to safeguard cooperative principles and interests, study and spread cooperativism, train the members of the cooperative movement, advise associated cooperatives, promote cooperatives' economic complementation, promote economic, social and cultural advancement in the region of influence, among other actions.

IV.6. Cooperativa Obrera Ltda. de Consumo y Vivienda.

On October 31, 1920, one of the most significant entities of the Argentine cooperative movement, Cooperativa Obrera de Consumo y Vivienda, was founded in Bahía Blanca. Its creation was approved by an assembly of 173 railway workers, with the purpose of reducing the price of bread and allowing, through self-management, the distribution of common use goods and personal and household consumer goods.
Cooperativa Obrera is the largest consumer cooperative in Argentina, with 2,5 million associates benefiting from its services in 146 branches present in 72 cities and towns distributed across Buenos Aires, Río Negro, Neuquén, La Pampa, Santa Fe, Chubut and Córdoba provinces. Cooperativa Obrera has specialized in the supermarket sector. It has over 5,000 employees and direct collaborators, food manufacturing and processing centres, a quality control lab, and a spacious hall for cultural and community activities, among other facilities. It offers a wide range of staples at affordable prices as well as a variety of food, cleaning, hygiene, household products and appliances of its own brands. In addition, it distributes 80,000 issues of its own magazine, "Familia Cooperativa" [Cooperative Family], free of charge, often used as teaching material at schools. Finally, apart from its economic activity, Cooperativa Obrera develops a wide range of educational, cultural and social activities in its region of influence.

IV.7. Federación Argentina de Cooperativas de Consumo.

On July 3, 1932, twenty-six cooperatives — with 39,897 associates in total at that moment — met in Buenos Aires to give birth to the Federación Argentina de Cooperativas de Consumo Ltda. (FACC) [Argentine Federation of Consumer Cooperatives], thus bringing about the first vertical integration of Argentine urban cooperatives.
Since 2008, the FACC has been based in Bahía Blanca. At present, it comprises over one hundred consumer cooperatives and mutual associations with a consumer section, located in thirteen provinces and in the Autonomous City of Buenos Aires. It represents consumer cooperatives in organizations such as the COOPERAR and the International Cooperative Alliance (ICA), of which it became a member in 1939.
Finally, in 2016, FACC launched an Online Shopping Centre, which enables associate cooperatives to deal directly with suppliers without intermediaries, increase the capacity to negotiate according to sales volumes, reduce costs, obtain better trading conditions and, simultaneously, strengthen their integration with worker and/or production cooperatives developing direct and transparent relations.

V. Universidad Nacional del Sur and Social Economy.

V.1. Universidad Nacional del Sur.

Bahía Blanca's Universidad Nacional del Sur (UNS) was created by Decree-Law 154 on January 5, 1956. It is the seventh national university founded in Argentina, preceded by those in Córdoba (1613), Buenos Aires (1821), La Plata (1890), Tucumán (1912), Litoral (1919) in Santa Fe, and Cuyo (1939) in Mendoza. At present, it has approximately 30,000 active undergraduate students, 10% (3,179 students) of which are taking the Law degree course.

According to a recent report by the "Center for World University Rankings", a consulting organization specialized in university education, UNS is one of the top ten academic institutions in Argentina — specifically ranking eighth among 134 universities, 70 of which are state-funded and 64 of which are private. In addition, from the analysis of 20,531 universities in the world, UNS is in the top 10% of the ranking[10]. This is confirmed by the "Webometrics Ranking of World Universities", made by Cybermetrics Lab, a research group belonging to Consejo Superior de Investigaciones Científicas (CSIC) [Spanish National Research Council] in Spain. Webometrics's ranking analyses almost 12,000 universities around the world. In its first-semester edition, 2023, the UNS ranks seventh among 145 Argentine universities and eleventh among almost 3,900 in Latin America[11]. These figures clearly show that, although UNS is a small university in the academic world, located far away from Argentina's metropolis, its academic quality and social impact are outstanding.

V.2. The Department of Law.

UNS is divided into academic Departments[12], instead of the traditional division into Faculties. These Departments have smaller administrative structures, providing more flexibility and cross-disciplinary knowledge since subjects offered by a Department for its own degree courses can be included in the programmes of the degree courses offered by other Departments. UNS has seventeen academic Departments that offer over 60 undergraduate degree courses. One of them is the Department of Law, created in 1996, which includes the undergraduate Law degree course. With a history of only twenty-seven years, the academic activity at the Department of Law is intense, with approximately two thousand Law graduates to date[13].

At present, the Department of Law also offers an undergraduate degree course in Public Safety. At postgraduate level, the available courses are the Specializations in Company Law, in

[10] Dirección de Comunicación Institucional [Institutional Communication Office], Universidad Nacional del Sur, "Nuevamente la UNS entre las 10 mejores universidades argentinas" ["UNS again among the 10 top Argentine universities], 21/03/2023, available at: https://www.uns.edu.ar/noticias/2023/6607

[11] Dirección de Comunicación Institucional [Institutional Communication Office], Universidad Nacional del Sur, "Ya no es sorpresa: nuevamente la UNS entre las 10 mejores universidades argentinas y en el top 10% mundial" ["Not a surprise: UNS again among the 10 top Argentine universities and the world's top 10%]", 04/07/2023, available at: https://www.uns.edu.ar/noticias/2023/6771

[12] The University Higher University and the Department Councils, such as the Law Department Council, are the administrative bodies of the university and of each academic unit, respectively. Their structure reflects one of the characteristics of Argentine national universities, co-government, including student and professor representatives. Other national universities also include graduates and non-academic staff in these bodies.

[13] Secretaría de Relaciones Institucionales y Planeamiento y Dirección General de Sistemas de Información [Secretariat of Institutional Relations and Planning and Head Office of Information Systems], Universidad Nacional del Sur, available at: https://datos.uns.edu.ar/eportal/web/guest/datos-uns

Criminal Law, and in Family, Child and Youth Law; the Master's Degree in Law; the recently created Inter-Institutional Doctor of Philosophy degree in Law; as well as refresher courses and separate courses.

V.3. Gabinete de Investigaciones Cooperativas.

In 1965, "Gabinete Universitario de Investigación, Docencia y Extensión sobre Cooperativas y Otras Entidades de la Economía Social" (GIDECOOP) [University Research, Teaching and Outreach Office on Cooperatives and Other Social Economy Entities] was created within the UNS's Department of Administration Sciences. It was the first Department to include in the undergraduate programmes a subject on cooperatives, mutual associations and other social economy entities, which is compulsory for the Accounting degree course and optional for Business Administration one. The GIDECOOP also has a library with specialized publications, carries out research, makes publications, organises outreach courses and offers optional seminars.

One of its main sustained activities is "Jornadas Universitarias de Entidades de la Economía Social" [University Conferences on Social Economy Entities] organized together with the AIR and FACC, with nineteen nineteen consecutive editions held since 2004. During this event, topics related to the doctrine of cooperatives and other social economy entities, as well as experiences undergone by Argentine and foreign entities, are discussed, and the event hosts prominent figures and authorities.

In the last Conference meeting, in September, 2023, one of the authors of this article had the opportunity to give a lecture on Cooperative Act 20,337 on the fiftieth anniversary of its enactment, other speakers being one of the writers of the bill, Dante Cracogna, PhD, Professor Emeritus of the University de Buenos Aires, and Dr Ariel Guarco, ICA President[14].

VI. The Amendment to the Law Degree Course Programme.

As mentioned above, in 2018, the Department of Law submitted to the University Higher Council a project to amend the programme of the undergraduate Law degree course, which was finally approved on November 20, 2018 (Resolution CSU-807/2018). From the various precedents and reasons for this amendment, we will focus on those pertaining to the aim and development of our present study.

The amendment project highlighted the need to strengthen practical training closely linked with theory. The system of prerequisite subjects was reviewed and the need to include a series of optional subjects was explained, among other reasons. In addition, the need to adapt the programme to new social, economic, scientific and cultural demands was asserted.

These demands had already been pointed to in the Standards Document for the accreditation of the Law degree course issued by the Council of Law Faculty Deans in 2018 — endorsed by Consejo Nacional Inter-Universitario (CIN) [National Inter-University Council] in 2014 and later by Consejo de Universidades (CU) [Council of Universities] in 2017—. Once these

[14] AUDIOVISUALES [Head Office of Audiovisual Media] UNS, "XIX Jornada Universitaria de Entidades de la Economía Social" [University Conference on Social Economy Entities], 05/09/2023, available at: https://www.youtube.com/watch?v=5GrumGkTlMc.

standards were approved by the National Ministry of Education (Resolution 3401-E/2017), the requirement to adopt them speeded up the submission of the project — a project which, in fact, was already under discussion within the Law Department since 2013.

The project also highlighted that the programme design took into account open courses offered under the principle of academic freedom and other extracurricular activities regularly organized by the Department of Law at the suggestion of teachers and students. This is the case of the "Open Course on Cooperative Law" created in 2015.

The new programme is divided into two stages: one including the compulsory subjects and the other including elective ones. The design involves three areas of study: a general and interdisciplinary area, a discipline-specific area and an area of professional practice. In addition, for the purpose of offering a more flexible and harmonious range of contents, the design provides for a variety of optional subjects and seminars, giving students the opportunity to choose those related to an area of knowledge of their interest to acquire in-depth and innovative knowledge.

The new programme consists of a five-year degree course, including forty-six compulsory subjects and 224 hours to be completed with optional subjects, seminars and workshops of the students' choice from those offered by the Department. The programme is 3360 hours long in total.

Optional subjects, seminars and workshops are yearly approved by the Department Council, at the suggestion of the Curricular Committee. "Cooperative and Mutual Law" is included among the available subjects since the reform was implemented in 2020.

Therefore, although Cooperative Law is covered in the traditional subject "Company Law" available since 1996 — now a compulsory subject in the discipline-specific area of Private Law —, thus complying with the basic curricular contents under Resolution 807/2018, the new programme presents "Cooperative and Mutual Law" as an optional subject in the discipline-specific area of Private Law. Being optional means that students can choose this subject freely, with the only prerequisite of having passed the subject "Private Law - Overview".

The current programme is innovative and constitutes a step forward in specifically studying the unique nature of Cooperative Law and increasing the visibility of the sector. This has been possible not only because of the legal framework described in Section II above but also particularly due to the academic community's clear understanding of the need to include cooperativism on the grounds that it is deeply-rooted in the UNS's region of influence. Simultaneously, the local cooperative movement has established precedents both at the UNS in general, as we already outlined, and in the Law degree course in particular, as we will expand on in the following section.

VII. The Subject "Cooperative and Mutual Law"

VII.1. Precedents.

On June 2, 2015, by Resolution 40, the Law Department Council approved the creation of the "Open Course of Cooperative Law", adopting the objectives, syllabus and requirements proposed by Jorge Armando Vallati and Alejandro Darío Marinello, lawyers and professors of other subjects in this Department. The original proposal emphasized the need for a space of its

own to give — ad-honorem to date — subjects open to students and graduates of any related degree course, as an outreach activity and as a way of showing the potential to become an autonomous discipline, with its specific knowledge and experiences.

In addition to classes given by these pioneering professors, in the first editions, different topics of the syllabus were taught by other professors of the Accountancy and Business Administration degree courses, providing an interdisciplinary approach. Besides the presence of the Department's authorities, these first editions also featured lectures, one of them by Dante Cracogna. This precedent as well as the favourable attitude of the Department's authorities planted the seeds for inclusion of "Cooperative and Mutual Law" as a subject. After that, in 2019, at the special request of the Department of Law, "Cooperative and Mutual Law" was delivered as an extracurricular subject. Finally, when the new programme was implemented in 2020, at the onset of the COVID-19 pandemic, "Cooperative Law" started to be delivered online as an optional subject.

In 2022, adapting the contents to different audiences, equivalent courses were delivered to students serving prison sentences in two prisons (in the cities of Trenque Lauquen and Villa Floresta) and to professionals and administrative employees of Regional Bahía Blanca de la Administración Federal de Ingresos Públicos (AFIP) [Bahía Blanca's Regional Office of the Federal Administration of Public Revenue], both online from the UNS's facilities. Also in 2022, at the request of the professors of the obligatory subject "Company Law" specific classes on Cooperative Law were given.

Since 2019, university professors from related degree courses, with long professional experience in cooperatives, have generously participated in "Cooperative and Mutual Law" classes, for example auditors, trustees, and regional officials of Dirección de Registro y Fiscalización de Cooperativas de la Provincia de Buenos [Head Office of Cooperative Registration and Audit of Buenos Aires Province]. It is worth mentioning that this body — with local jurisdiction — together with Instituto Nacional de Asociativismo y Economía Social (INAES) [National Institute of Associationism and Social Economy] — the national enforcement body — are in charge of cooperatives' public control under Argentine laws.

VII.2. Description and Rationale.

Even if "Cooperative Law" is included in the Law degree course programme, at the beginning of each academic term, the proposal for the delivery of the subject must be submitted to the Department Council in order to be approved. The text of this proposal includes the subject's description and rationale, as follows.

Changes in society and economy at the beginning of the 19th century have demonstrated the increasing importance of cooperatives and mutual associations for the purposes of building a democratic society and supporting the economic and social development of the communities which they belong to. Creating social networks based on open, autonomous, democratic, non-governmental and nonprofit entities demands that graduates be capable of doing critical analyses of different forms of organization as the basis for their responsible professional practice according to the requirements in new scenarios.

According to the "Management Report for the 2021/22/23 Fiscal Years" issued by INAES[15], at present there are 22,393 active cooperatives across the Argentine provinces, mainly concentrated in the central region, with 12,718 cooperatives, that is, 57% of the total. Examining provinces separately, Buenos Aires province features 6165 entities, which represent 27.5% of the total entities and 48.5% of the central region ones. As for secondary cooperatives, there are 150 federations and confederations, with a similar distribution in relation to the total. By the third quarter of 2023, the total number of cooperative associates was 18,612,134, bearing in mind that one person may be an associate at two or more entities.

As for mutual associations, the above-mentioned report states that, at present, there are 3,903 active mutual associations distributed across Argentina. Similarly, they are heavily concentrated in the central region, with 2966 entities, that is, 75.99% of the total. Besides, in the central region there are 52 secondary mutual associations and 2 tertiary ones. Considering the total number of mutual associations, associates amount to 3,154,434 active ones; 5,848,561 adherents; and 1,341,551 participants.

In addition, it should be noted that cooperatives and mutual associations altogether account for 15% of Argentina's Gross Domestic Product, grouping approximately 27 million Argentinians. Examining individual sectors, utility cooperatives provide electricity to over 8 million homes and 70% of the rural electricity grid, as well as drinking water to 4 million homes. Around 150,000 agricultural farmers are organized in 1000 agricultural cooperatives, which represent 30% of the country's oilseed production and 17% of exports related to the primary sector. Moreover, entities related to solidarity financing amount to 11% of non-banking credit, and around 24 entities represent 21.2% of the country's insurance market. In the consumer sector, there are cooperatives and mutual associations in 197 cities, with 267 points of sale, amounting to 7.5% of the national distribution market. Regarding foreign trade, the operations of around 68 cooperatives amounted to 4.4% of 2022 national exports. Finally, these social economy entities altogether provide 400,000 direct jobs[16].

The above indicators clearly show the relevance of Argentine cooperatives and mutual associations in relation to the social, economic and territorial development. This is due not only to their tradition of over a hundred years but also to being the world's most diverse movement including multiple activities.

This has been regarded as such by CONEAU, CIN, Consejo Permanente de Decanos Permanente de Decanos de Facultades de Derecho de Universidades Nacionales [Permanent Council of Deans of the Law Faculties of the National Universities] and Consejo de Rectores de Universidades Privadas [Council of Deans of Private Universities] as well as Secretaría de Políticas Públicas [Secretariat of University Policies], whose joint work and proposals were eventually accepted by the Ministry of Education under Resolution 3401-E/2017, on September 8, 2017. Among other aspects, this resolution approved the basic curricular contents and the accreditation standards for the Law degree course, expressly stating the inclusion at undergraduate level of "Cooperatives and Mutual Associations" (Private Law Area – Civil and

[15] Instituto Nacional de Asociativismo y Economía Social [National Institute of Associationism and Social Economy], available at: www.argentina.gob.ar/inaes

[16] Somos Valor Argentino [We Are Argentine Value], available at: https://somosvalorargentino.com.ar

Commercial Legal Entities)[17].

Including these contents in the undergraduate Law degree courses implied adopting them within the framework of the new programme issued by the Department of Law, which acknowledged "Cooperative Law" as an optional subject, even if these contents had already been generously nurtured and supported since the approval of the "Open Course on Cooperative Law" in 2015.

It is also worth mentioning that Provincial Act 15,203 passed on October 29, 2020, declared Bahía Blanca "Provincial Capital of Cooperativism", based on the long history of cooperative tradition of the city and the southwest region of the province. Within this framework, Municipal Bylaw 20,284, provided for the annual celebration of the International Day of Cooperatives by Bahía Blanca's Municipality together with the cooperative movement. With the creation and the continuous work of the EMAC and having joined the Cooperative Municipality Network, Bahía Blanca's Municipality took part in the nationwide initiative encouraged by the COOPEAR.

All the above-mentioned reasons explain, from different angles, the reasons why Cooperative and Mutual Law deserves to be addressed at the undergraduate academic level, so that students can acquire specific knowledge and the sector's experiences in order to be professionally competent when they start their professional practice.

Creating, organizing and running cooperatives and mutual associations requires a specific background knowledge in a significantly changing market and society, where modes of social interaction adopted by this type of associations are renewed, thus needing the services of legal professionals. This is particularly relevant when we consider graduates' places of origin and profiles and the regional areas where they will practice law.

VII.3. Objectives.

The following students' objectives have been defined in the proposal for the subject:

1) To gain knowledge of the characteristics and special nature of cooperatives and mutual associations and their legal framework and of resources to facilitate graduates' professional performance and enable them to be competent in a new field of practice.

2) To acquire mastery of technical aspects of these entities and their administrative, institutional and legal management and, thus, be adequately trained to advise them not only in their daily activities but also in those initiatives and developments requiring the entities' bodies and the legal professional to participate. For example, negotiations and drafting of agreements, or different forms of association with other legal entities.

3) To understand the philosophical and economic principles of the cooperative and mutual association movement, which imply respect for freedom of association, dignity of persons, the social function of the enterprise, the provision of services with institutional non-profit purposes, environmental sustainability and protection, and reciprocal exchanges based on personal effort and mutual help, among other particular features. To recognize cooperatives as enterprises of a different nature, which express the potential of autonomy and self-management.

[17] Anexo I "Contenidos Curriculares Básicos" [Annex I "Basic Curricular Contents"] Resolución [Resolution] 3401-E/2017 3401-E/2017, Ministerio de Educación de la Nación Argentina [Argentine National Ministry of Education], 08/09/2017, available at: https://www.coneau.gob.ar/archivos/resoluciones/anexo-res3401.pdf

4) To identify and distinguish cooperatives, mutual associations and other social economy entities and compare their nature and function with that of commercial companies and other legal entities. This is particularly relevant to be able to explain their differences and provide the correct framework in litigations, both as counsels and as court officials. It is also relevant to provide adequate professional advice to companies as well as to the civil service.
5) To analyse the possibilities of development for cooperatives and mutual associations under the legal system, and study the provincial and national regulatory tax treatment due to the special nature of mutual associations' services and the cooperative act.
6) To interpret the particular characteristics of the sector and the variety of fields of activities in which mutual associations and cooperatives operate, the different levels of decision-making and participation in order to provide them with legal resources to strengthen ties with their territory of influence and the economic and social development of the communities which they belong to, through partnerships and strategic associations with the different levels of the State.

VII.4. Proposed Teaching Methodology.

The proposal includes hybrid theoretical classes to present the topics of each unit of the syllabus units, with a variety of supporting resources such as videos, PowerPoint Presentations, specialized literature, comparison charts, among others, uploaded to the university's online platform together with the basic bibliography. Raising questions on the contents and continuous exchanges with students, trying to avoid the lecturer style, are encouraged.
Theoretical classes are supplemented with practical assignments, articulated with each content, according to the proposed syllabus. These may include asynchronous activities, such as attending virtual conferences by legal experts and national and international authorities in the field, followed by report writing. The same applies to conferences, forums and academic or sector-related activities already available from social media or requiring face-to-face attendance.
Practical activities also include presenting well-informed opinions on articles on topical issues related to the subject's contents, written reports interpreting documents and presentations made by experts.
The addressed theoretical contents are also supplemented by other practical activities such as the analysis of case law and events related to rulings that interpret the nature of the cooperative act, tax and constitutional issues related to cooperatives and mutual associations.
Finally, the legal approach is also enriched by the participation of professors of other degree courses, providing an interdisciplinary approach, as is the case in professional practice and the world of work.

VII.5. Offering the Subject to Other Interested Students, Passing Requirements and Lecture Hours.

Taking into account the subject's background and the potential demand from students of other undergraduate degree courses, at UNS or other universities, and, similarly, from graduates of related degree courses, the proposal to give them the possibility to enrol in the 2024 edition was formally put forward. The only requirement set in the proposal was that they be undergraduate

students or graduates. These students shall take the subject with the same syllabus and modality, except that they shall not be part of the Department of Law, but only attendees. This will enable reaching a larger audience, assisting them through currently available platforms and digital media.

For students from the Department of Law or other UNS Departments who want to pass the subject without taking a final exam, requirements include a pass mark of (seven) in the partial test, a minimum class attendance of 75%, and practical assignments and activities to be satisfactorily completed.

For students who do not fulfil the above-mentioned conditions, standard passing requirements include a minimum class attendance of 60% and passing a partial exam in accordance with the Department of Law's regulations; after that, students shall take an oral final exam. Assignment completion shall be taken into account for a comprehensive evaluation.

In the case of students who do not belong to the UNS, those who need a passing certificate shall meet the requirements for standard passing mentioned in the previous paragraph; the pass mark shall be only "Passed". Those students who only need an attendance certificate shall meet the minimum class attendance percentage mentioned in the previous paragraph.

The subject shall be 32 lecture hours long during one term. This includes 2-hour theoretical classes, the partial exam and completion of practical assignments and/or attendance to related virtual activities.

VII.6. Syllabus.

The syllabus includes the following units:

1.- The Cooperative and Mutual Association Movement.

Origins. Evolution. Current state of affairs. Universal values and principles and current standing. Influence on the social and economic development of communities.

2.- Cooperative and Mutual Law.

National legal framework. Cooperatives and mutual associations in the context of private legal entities. Argentine Civil and Commercial Code. Acts 20,337 and 20,321.

3.- Mutual Associations and Cooperative Enterprise.

Concept. Types. Differences from other non-profit entities and commercial enterprises. Efficacy and efficiency. Cooperatives and mutual associations, and their relation with the market and the State.

4.- Mutual Associations' Services and the Cooperative Act.

Definitions according to law and doctrine. Characteristics. The cooperative act: difference from other legal acts. Impact on tax and fiscal treatment.

5.- Incorporation and Associates.

Procedure. Articles of Association. Internal Rules. Cooperative associates and mutual association members. Categories. Rights and obligations. Admission and termination of membership.

6.- Assets and Economic Structure.

Member shares, contributions, property and other resources of mutual associations. Cooperative social capital, results, distributable surplus. Returns and reserves.

7.- Governing Bodies.

Assembly. Management and audit bodies: Board of Management, Statutory Auditor and Audit. Functioning. Public Audit: INAES.

8.- Dissolution and Liquidation.

Dissolution and liquidation in mutual associations and cooperatives. Procedure. Enforcement authority. Allocation of the remaining assets. Transformation. Prohibition.

9.- Social Purpose of Cooperatives and Mutual Associations. Main Examples.

Saving and credit, health, and insurance mutual associations. Worker, consumer, agricultural, and utility cooperatives, among other examples. Enterprises in crisis and the alternative to recover them through the cooperative form. Case law.

10.- Integration in Cooperatives and Mutual Associations.

Special features. Horizontal and vertical integration. Regional, national and international integration. International Cooperative Alliance. Association with legal entities of a different nature.

11.- Treatment under Provincial Constitutions.

Recognition of cooperatives and mutual associations in provincial constitutions. Promotion and tax treatment at local level.

12.- International Cooperative Public Law.

ACI's Statement on the Cooperative Identity, the UN's guidelines and ILO's Recommendation 193. UN's new statements.

VIII. Conclusions

Nurtured by the local cooperative movement, and supported by other colleagues with similar dedication to promote the teaching of cooperativism in the Law degree course programme, it was possible to create not only a specific subject but also an academic space of reference in the sphere of Law for the city and region's legal actors.

Our study attests to the achievements resulting from a rich exchange between the social economy sector and the academic sphere. The former has contributed activism and its influence on attempting to give visibility to cooperatives and their values and principles. The latter has contributed by adequately understanding the importance of cooperatives and their tradition in the city and the region and identifying the need to strengthen lawyers' professional competence in the field. All of this shall contribute to responding to a still not fully satisfied demand for learning about Cooperative Law, as shown by graduates both in the judicial and public spheres and in private practice.

From our perspective, it can be stated that the teaching of cooperativism would never be possible if cooperative presence were weak, that is, if cooperativism and, in general, social economy did not carry significant weight in the provision of services and the local development. It would not succeed, either, if it originated from a well-intended decision based on academic freedom but without real-life grounds, not considering the spatial context or the strong cooperative movement in the area.

As presented throughout the article, past and present regulatory conditions and circumstances have favoured the inclusion of Cooperative Law in the Law degree course programme.

However, achieving the proposed aims shall only be possible if the academic activity can be sustained over time, with renewed efforts and dedication, as the strong cooperative movement has practiced and preached since its early beginnings.

Special section on cooperative law and housing cooperatives

HOUSING COOPERATIVES' STATUTES AND THE QUEST FOR COOPERATIVE IDENTITY IN PUERTO RICO

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Abstract
A legal framework that accurately reflects the identity of housing cooperatives is crucial to address the issue of inadequate housing in financially struggling countries like Puerto Rico. However, the Puerto Rico Supreme Court decision in *Rolling Hills Housing Cooperative v. Doris Colón* highlights the need for further action. In this case, the court examines whether a housing cooperative may resort to general eviction law to vacate a user-member who was in arrears in her monthly fees. The court states that housing cooperative by-laws shall not subvert the statutorily established process to vacate user-members. A housing cooperative that resorts to general eviction law operates like a capitalistic for-profit leasehold, contradicting its cooperative identity to the detriment of its user-members. Thus, *Rolling Hills Housing Cooperative v. Doris Colón* is a call to action to train housing cooperative leaders to uphold their cooperatives' identity in their operations.

Introduction
Puerto Rico has experienced a more than decade-long recession worsened by the devastating impact of Hurricane Maria in 2017 and the COVID-19 pandemic.[1] These events have intensified a long-standing housing crisis, dramatically increasing eviction cases in Puerto Rico

[1] GAO, Hurricane Recovery Can Take Years—But For Puerto Rico, 5 Years Show Its Unique Challenges (November 14, 2022) *available at https://www.gao.gov/blog/hurricane-recovery-can-take-years-puerto-rico-5-years-show-its-unique-challenges*; Marxuach S.M., The Threefold Challenge to the Puerto Rican Economy, Center for a New Economy (September 2021) *available at https://grupocne.org/wp-content/uploads/2021/09/2021.09.15-The-Threefold-Challenge-to-the-Puerto-Rican-Economy.pdf;* Hernández-Padilla J.A. & Méndez-Piñero M.I., Economic Impact of the COVID-19 Pandemic in Puerto Rico, Proceedings of the 9th Annual World Conference of the Society for Industrial and Systems Engineering, (September 2020) *available at https://ieworldconference.org/content/SISE2020/Papers/Hernandez-Padilla.pdf*; Caraballo-Cueto J. & Lara J., From Deindustrialization to Unsustainable Debt: The Case of Puerto Rico, pages 5-6 (October 2016) *available at* https://www.researchgate.net/publication/309736965_From_deindustrialization_to_unsustainable_debt_The_Case_of_Puerto_Rico

state courts.[2] Housing cooperatives have the potential to offer an attractive and affordable alternative for Puerto Ricans who are facing this acute housing crisis.[3]

Since 1940, there have been housing cooperatives in Puerto Rico.[4] Currently, only 13 housing cooperatives are operating. They are located in the capital city (San Juan) metropolitan area and a southern town (Ponce) of Puerto Rico's main island.[5]

Although the absence of an appropriate legal framework could become an obstacle to effectively implementing the social benefits that a housing cooperative may render, that is not the case in Puerto Rico. The organizational law of Puerto Rico housing cooperatives was enacted in 2004.[6]

However, the main obstacle to achieving the benefits of a housing cooperative may not be the absence of an appropriate legal framework but the lack of an adequate understanding of its cooperative identity and how it should determine the housing cooperative's operation.[7] The implementation of the cooperative identity needs a legal framework that supports it. Indeed, Antonio Fici has affirmed that "[s]tipulating the cooperative identity and preserving their distinguishing features should … be considered the primary objective of cooperative law".[8] Furthermore, Fici states that the legal dimension of cooperative identity enables courts to affirm cooperatives' distinct identity relative to other business enterprises.[9] And precisely that is what the Puerto Rico Supreme Court did in *Rolling Hills Housing Cooperative* [hereinafter Housing Cooperative] v. Doris Colón [hereinafter Mrs. Colón] affirming that Puerto Rico's cooperative

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[2] See, Pineda-Dattari L., Evictions Due To Non-payment Increase In Puerto Rico: Totaling 970 So Far This Year *available at* https://www.noticel.com/economia/top-stories/20220713/desahucios-por-impago-aumentan-en-puerto-rico-son-970-en-lo-que-va-de-ano/ (Spanish text).

[3] *Cf.*, Suarez D., Rodriguez-Velazquez V. & Sosa-Pascual O., A Nightmare for Puerto Ricans to Find a Home, While Others Accumulate Properties (December 19, 2022) *available at* https://periodismoinvestigativo.com/2022/12/a-nightmare-for-puerto-ricans-to-find-a-home-while-others-accumulate-properties/#

[4] Rolling Hills Housing Cooperative v. Doris Colón, AC-2018-0096, 2020 TSPR 04, page 12, *available at* https://dts.poderjudicial.pr/ts/2020/2020tspr04.pdf (Spanish text). See also, https://camarapr.org/presentaciones/vivienda/5-Vivienda_Torres.pdf, slides 22-23 (Spanish text).

[5] Rosado-Leon C., Housing Cooperatives in Puerto Rico, slide 4, VI Cooperative Summit of the Americas (October 2022) *available at* https://aciamericas.coop/wp-content/uploads/2023/08/PRESENTACION-CARMEN-ROSADO-LEON-PUERTO-RICO.pdf (Spanish text).

[6] See *infra* note 16.

[7] The challenge of implementing the cooperative identity through cooperative governance has already been identified. "Efforts to translate the Statement's [on the Cooperative Identity (ICA, 1995)] values-based, humanistic organizational philosophy into a coherent system of governance, however, have proven challenging for even the most committed of cooperators. This difficulty lies in no small part with the role played by organizational theory, as a bridge between abstract co-op philosophy and its operationalization through cooperative governance practice." Emphasis added. McMahon C., Miner K., Novkovic, S., Walking the Talk: Cooperative Identity and Humanistic Governance, 107 Review of International Cooperation 22, 24 (2023).

[8] Fici A., An Introduction to Cooperative Law in International Handbook of Cooperative Law 18 (Cracogna D., Fici A. & Henrÿ H., eds. 2013).

[9] *Cf.*, "[I]t is more arduous to defend an identity that does not correspond to an identity defined by law. It is worth recalling again the use of the SCE Regulation by the EU Court of Justice to recognize the cooperative's distinct identity relative to other business organisations". Fici, A., Cooperative Identity and the Law 4-5 (February 14, 2012). Euricse Working Paper No. 23/12 *available at* SSRN: https://ssrn.com/abstract=2005014 or http://dx.doi.org/10.2139/ssrn.2005014.

law must be construed and implemented to uphold the cooperative identity of housing cooperatives.[10]

The Case

Administrative & Judicial Proceedings at Trial and Appellate Courts

In 2016, after 21 years as a housing cooperative user-member, Mrs. Colón accrued debt from the monthly payments she agreed to make to contribute to the Housing Cooperative's operating costs. These payments also granted her the right to reside in an apartment and utilize the Cooperative's facilities. The Housing Cooperative manager summoned Mrs. Colón to a hearing. Mrs. Colón did not attend, and the Housing Cooperative issued a resolution terminating her status as a housing cooperative user-member and granting her a 30-day period to vacate her apartment.[11]

Two days after the resolution was issued, the Housing Cooperative sent Mrs. Colón a letter informing her of the resolution and scheduling a meeting to discuss her situation. The meeting resulted in the Housing Cooperative granting Mrs. Colón a payment plan. This agreement was formalized in a letter in which the Housing Cooperative acknowledged Mrs. Colón's health issues and stated that she was no longer required to vacate her apartment.[12]

After several months, Mrs. Colón again missed payments, and the Housing Cooperative filed a civil complaint against her under the Puerto Rico's Eviction Act [hereinafter Eviction Act], petitioning Puerto Rico Trial Court to issue an order to evict Mrs. Colón from her apartment.[13]

Puerto Rico operates under a three-tier court system. The Trial Court has general jurisdiction and handles cases within Puerto Rico's territorial limits. The Court of Appeals serves as the appellate forum for decisions made by the Trial Court. The Supreme Court is the highest-ranking court in Puerto Rico and is responsible for interpreting the Constitution and Puerto Rico laws.[14]

Mrs. Colón appeared at the Trial Court hearing without legal representation. The Trial Court conducted a summary eviction procedure, provided by the Eviction Act, and issued an eviction and money collection judgment against Mrs. Colón.[15]

This judicial decision forced Mrs. Colón to hire an attorney. Afterward, her legal representation filed a motion at the Trial Court arguing that both the Housing Cooperative administrative

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[10] Rolling Hills Housing Cooperative v. Doris Colón, AC-2018-0096, 2020 TSPR 04, available at https://dts.poderjudicial.pr/ts/2020/2020tspr04.pdf (Spanish text).

[11] *Id*., at page 2.

[12] *Id*., at pages 2-4.

[13] Puerto Rico Eviction Act, Act 2011-86, 32 LPRA §§ 2821-2838 (LPRA: Laws of Puerto Rico Annotated). See also, Eviction at https://poderjudicial.pr/eng/community-education/legal-topics/civil-cases/eviction/

[14] See, https://poderjudicial.pr/documentos/Educo/Goverment-and-Court-System.pdf

Puerto Rico is an unincorporated territory of the United States, which means that most, but not all, US statutes and regulations, as well as the US Constitution, apply in Puerto Rico. Laws enacted by the Puerto Rico Legislative Assembly must comply with US law and may not contradict it. Similarly, rules and regulations must align with Puerto Rico statutes and may not contradict them.

[15] Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 4.

procedure against her and the judicial proceeding should have been conducted under the provisions of the special statute that governs housing cooperatives, the General Law of Cooperative Societies of Puerto Rico of 2004 [hereinafter Cooperative Societies Act] instead of the Evictions Act.[16] The Trial Court denied the motion.[17]

To appeal the decision, Mrs. Colón asked the Trial Court to exempt her from the Eviction Act jurisdictional requirement to post an appeal bond.[18] Again, the Trial Court ruled against Mrs. Colón and ordered her to post a $5,016.00 appeal bond.[19]

Mrs. Colón appealed the Trial Court decision to the Court of Appeals, arguing again that both the Housing Cooperative administrative procedure and the Trial Court ruling were invalid because they should have complied with the specific provisions of the Cooperative Societies Act that govern housing cooperatives in Puerto Rico.[20] On the other hand, the Housing Cooperative argued that after Mrs. Colón was deprived of her user-membership status in the administrative procedure, the agreed-upon payment plan constituted an ordinary lease contract. Therefore, Mrs. Colón became a tenant without the benefits of a housing cooperative user-member status. As a tenant, her eviction process should be governed by the Eviction Act, not the Cooperative Societies Act.[21]

The Court of Appeals ruled in favor of the Housing Cooperative, affirming the Trial Court decision that the Eviction Act applied to Mrs. Colón's case.[22] The Court of Appeals dismissed Mrs. Colón's appeal based on its lack of jurisdiction due to Mrs. Colón failure to post the Eviction Act's required appeal bond. Puerto Rico Supreme Court caselaw has established that the Eviction Act's appeal bond is a jurisdictional requirement. Thus, failure to post it deprives the Court of Appeals of jurisdiction over the case, and it shall dismiss the case as happened in Mrs. Colón's case.[23]

Finally, Mrs. Colón filed a *certiorari* petition at the Puerto Rico Supreme Court asking the Court of Appeals decision to be overruled because her eviction procedure should have been conducted under the provisions of the Cooperative Societies Act. On the other hand, the Housing Cooperative reiterated its arguments for applying the Eviction Act to Mrs. Colón's case.[24]

[16] Act No. 239 of September 1, 2004, Chapter 35, Articles 35.0-35.10; 5 LPRA §§ 4580-4589a. Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at pages 4-5.
[17] Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 5.
[18] See *infra* note 39.
[19] Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 6.
[20] *Id.*
[21] *Id.*, at pages 6-7.
[22] *Id*., at page 7.
[23] Rolling Hills Housing Cooperative v. Doris Colón, KLAN201800862 (September 13, 2018).
[24] Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 7.

The Case

Puerto Rico Supreme Court Decision

In its decision, the Puerto Rico Supreme Court [hereinafter PRSC] addresses two issues. (1) Which law applies to the eviction of a housing cooperative user-member: the Eviction Act (a statute that applies to eviction procedures in general) or the Cooperative Societies Act (a special law that governs housing cooperatives)?[25] (2) Was the administrative procedure used to terminate Mrs. Colón's housing cooperative user-member status correct?[26]

First Issue

Which law applies to the eviction of a housing cooperative user-member: the Eviction Act or the Cooperative Societies Act?

On the first issue, the PRSC ruled that the eviction of a housing cooperative user-member must be conducted under the provisions of the Cooperative Societies Act, the special statute that governs housing cooperatives.[27] The Cooperative Societies Act provides the legal framework for "the organization, operation, and regulation of cooperatives."[28] Its legislative intent is to "help, stimulate, develop, promote, and support the cooperative movement."[29] Under the statute, the primary purpose of housing cooperatives is "to provide adequate housing for families of limited and moderate resources, ensure a quiet and safe community environment, educate members and residents in the principles of self-management, responsibility, and social coexistence,…."[30] Furthermore, it was enacted to "provide for the protection and development of this type of housing".[31]

Cooperatives organized under this statute "shall be governed by its provisions and by cooperative law in general. Otherwise, they shall be governed by applicable laws inasmuch as they are compatible with their nature".[32] The statute expressly states that its provisions shall be construed considering the protection of the special social nature of this type of community housing and cooperative law, and no other guidelines shall be applied whose effect is contrary to this (sic.). For example, provisions regarding what constitutes improper conduct shall not be construed pursuant to the strictest standards of criminal law. [33]

The Cooperative Societies Act provides protections against the eviction of housing cooperative user-members that are not available under the Eviction Act to tenants who do not reside in housing cooperatives. Article 35.7 of the Cooperative Societies Act enumerates some of those protections.

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[25] *Id.*, at pages 18-22.
[26] *Id*., at pages 22-25.
[27] Act No. 239 of September 1, 2004, 5 LPRA § 4387 (LPRA: Laws of Puerto Rico Annotated)
[28] 5 LPRA § 4381
[29] 5 LPRA § 4382
[30] 5 LPRA § 4580
[31] *Id.*
[32] 5 LPRA § 4384
[33] 5 LPRA § 4588

- First, it stops enforcement procedures of an eviction order for 40 days to allow the housing cooperative user-member to find a new housing arrangement.[34] Outside the housing cooperative setting, an eviction order may be enforced as soon as the judgment against the tenant is final.[35]
- Second, the Cooperative Societies Act states that a Trial Court shall notify the Puerto Rico Department of the Family and the Department of Housing of eviction orders to mobilize governmental resources to reduce the risk of homelessness.[36] In contrast, the Eviction Act imposes a similar requirement, but only in cases where a judicial finding of economic insolvency has been made.[37]
- Third, the Cooperative Societies Act does not require payment of an appeal bond.[38] To the contrary, the Eviction Act requires the payment of an appeal bond.[39]

Therefore, the Cooperative Societies Act provides a special eviction procedure for housing cooperative user-members. Consequently, there was no legal basis for the Housing Cooperative nor the Trial Court and the Court of Appeals to apply the Eviction Act to Mrs. Colón's case. They flagrantly disregarded Puerto Rico Cooperative Law. Furthermore, their actions undermined the public interest in strengthening housing cooperatives and protecting low-income and vulnerable people who constitute housing cooperative user-members, just as Mrs. Colón was.

Second Issue

Was the administrative procedure used to terminate Mrs. Colón's housing cooperative user-member status correct?

The second issue addressed by the PRSC examines whether the Housing Cooperative followed the correct procedure to deprive Mrs. Colón of her user-member status.

The Cooperative Societies Act states that non-payment or late payment of monthly fees constitutes a proper cause to impose sanctions or even terminate the user-member status of a

[34] "Any eviction order issued by the court shall specify a term of forty (40) days from the date the notice of said order is issued for the eviction to take place." 5 LPRA § 4587

[35] "The judgment which upholds the unlawful detainer shall order the eviction of the defendant from the date said judgment becomes final and binding. Said order of eviction shall be issued by the Office of the Clerk of the Court at the request of the party on the date such judgment becomes final and binding." 32 LPRA § 2836

[36] "The court order shall be accompanied by a certified copy of the decision of the Board and must be notified to the Secretary of the Department of the Family and the Secretary of the Department of Housing." 5 LPRA § 4587

[37] "In those cases in which the court has established the financial insolvency of the family being evicted, a copy of the final and binding judgment shall be served immediately to the Secretaries of the Departments of the Family and Housing, so that said agencies may continue to provide their services to the family concerned." Emphasis added. 32 LPRA § 2836.

[38] *Cf.*, 5 LPRA § 4580 ("Any party who is adversely affected by the judgment issued by the Court of First Instance may request a review of said ruling through [a] writ of certiorari within thirty (30) days after the decision of the Court of First Instance is filed. This term shall be jurisdictional in nature.")

[39] "The defendant shall not be granted the appeal procedure if he/she does not post a bond in the amount fixed by the court, to answer for damages that may be caused to the plaintiff and the costs of the appeal; the defendant may, when the eviction is based on non-payment of the sums agreed to, at his/her choice, post said bond or deposit the amount of the debt with the Clerk's office until the date of sentencing." 32 LPRA § 2832

housing cooperative user-member. Article 35.5 of the Cooperative Societies Act enumerates a list of potential sanctions and states that the housing cooperative may adopt additional sanctions in its Bylaws.

Article 35.5.: When a member fails to fulfill his/her payment obligations to the cooperative or incurs improper conduct, as defined in § 4584 of this title, the Board of Directors may make the following decisions, after a summons and hearing:

(a) ….

(b) ….

(c) impose upon the member fair penalties in proportion to the conduct incurred, including conditions or probationary terms, in addition to those that are allowed pursuant to the bylaws;

(d) ….

(e) separate the member depriving him/her of his/her rights as such and granting him/her a term of thirty (30) days to vacate the unit….

All determinations of the Board shall be made within thirty (30) days following the date of the hearing and the member shall be notified at his/her last known address, personally or by certified mail, in a term which shall not exceed ten (10) days from the date on which the decision is made.[40]

In this case, the Housing Cooperative Bylaws expressly authorized offering a payment plan to a user-member delinquent on the payment of monthly fees.

(iii) Accept payment for the current month and offer a payment plan for the debt balance, subject to a trial period for the same term as the plan. When the member demonstrates that she/he failed (sic.) due to reasons beyond her/his control, her/his good faith, and her/his intention not to breach the payment plan, the Board of Directors may determine that the member violated the conditions of the trial period and may proceed to deprive her/him of the member status without further notice or hearing. If the payment plan is fulfilled, the Board of Directors will proceed to dismiss the case.[41]

Under this provision, the Housing Cooperative granted Mrs. Colón a payment plan. However, the same Bylaw provision states that user-members who fail to fulfill their obligations under the payment plan may be deprived of their user-membership status. Thus, the Housing Cooperative's argument that Mrs. Colón was effectively deprived of her user-member status before the payment plan was agreed violates the clear text of its own Bylaws.[42]

According to its Bylaws, when the Housing Cooperative granted Mrs. Colón a payment plan, it reversed its previous decision to terminate her user-member status.[43] By granting Mrs. Colón a remedy exclusively available to Housing Cooperative user-members, the Housing Cooperative acknowledged that Mrs. Colón remained a *bona fide* Housing Cooperative user-

[40] Emphasis added. 5 LPRA § 4585

[41] Emphasis added. Rolling Hills Cooperative Bylaws Article XVI, Section 2, (June 22, 2008) *quoted at* Rolling Hills Housing Cooperative v. Doris Colón, supra note 10 at pages 14-15.

[42] *Supra* note 21.

[43] Rolling Hills Housing Cooperative v. Doris Colón, supra note 10 at page 24.

member. Thus, contrary to the Housing Cooperative's argument, the payment plan could not constitute an ordinary lease contract. Under the payment plan, Mrs. Colón retained her housing cooperative user-member status, and therefore, she was entitled to the procedures and protections of the Cooperative Societies Act.[44]

The Cooperative Societies Act provides the process to expel a housing cooperative user-member. Thus, it cannot be modified by housing cooperative bylaws. Under Article 35.6 of the Act, the Housing Cooperative was required to comply with the following procedure to deprive Mrs. Colón of her user-member status.

In the case of housing cooperatives, when the Board of Directors determines that a member is delinquent in complying with the periodic monetary contributions contracted with the cooperative, or has incurred conduct which is improper or unacceptable as defined in § 4584 of this title, it may separate said member and deprive him/her of the rights and benefits in the cooperative, pursuant to the procedure established hereinbelow:

(a) The Board shall grant the member, with prior opportunity to be heard at a hearing held before it, after being notified at least ten (10) days before the hearing. Said notice shall be delivered personally or by certified mail to the last known address of the member.

(b) Said notice shall include the date, time and place of the hearing, a statement providing the legal authority to hold the hearing, and a brief statement of the allegations against the member.

(c) The hearing shall be carried out simply and informally, without the need to comply strictly with the evidentiary procedures of the administrative, adjudicative [,] and judicial systems.

(d) The member may be represented or advised by an attorney.

(e) If the member fails to appear at the hearing and does not justify said (sic.) absence, the Board may proceed to separate the member by completely depriving him/her of every right he/she may have as such and granting him/her thirty (30) days to vacate the unit.[45]

Therefore, after Mrs. Colón failed to comply with her obligations under the payment plan, the Housing Cooperative was required to follow the above-quoted procedure. Instead, the Housing Cooperative flagrantly disregarded the clear text of the Cooperative Societies Act, depriving Mrs. Colón of her statutory rights as a housing cooperative user-member.

The PRSC clarified that a housing cooperative bylaw might not nullify user-members' statutory rights.[46] However, as Article 35.5(c) of the Act expressly allows, housing cooperative bylaws may enlarge user-members' rights.[47] But limiting user-members' statutory rights through the housing cooperative bylaw is not permitted. By prohibiting this action, the PRSC underscored that housing cooperative leadership and administrators must not mimic the operation of capitalistic for-profit landlords. On the contrary, housing cooperatives must be operated to uphold their cooperative identity by fulfilling the Cooperative Societies Act's legislative intent

[44] Rolling Hills Housing Cooperative v. Doris Colón, supra note 10 at pages 24-25.
[45] Emphasis added. 5 LPRA §4586
[46] Under Puerto Rico's hierarchy of laws, rules, and regulations adopted to implement a statute shall not contradict the statute's provisions.
[47] *Supra* note 40.

"to provide adequate housing for families of limited and moderate resources, ensure a quiet and safe community environment, educate members and residents in the principles of self-management, responsibility, and social coexistence…."[48]

Conclusion

Rolling Hills Housing Cooperative v. Doris Colón shows that having an adequate legal framework is not the end of the story. A comprehensive cooperative law may become futile if those responsible for implementing it (i.e. cooperative leadership, government officials, and judges) lack an understanding of cooperative identity.

Ironically, Mrs. Colón's case shows how an adequate housing cooperative legal framework was implemented to frustrate its objectives. Managing a housing cooperative as a capitalistic commercial business annihilates its cooperative identity and may, perversely, become a means to injure the people the statute aims to protect. Indeed, Mrs. Colón caused severe damage by being forced to litigate for four years to vindicate her housing cooperative user-member status. Thus, achieving the virtuous objectives of housing cooperatives requires much more than enacting a statute. There is a need for an intense and continuing educational effort to train both housing cooperative leaders and judges in their responsibility to uphold housing cooperatives' identity in their bylaws and operations.

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[48] *Supra* note 30.

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HOUSING AND CONSTRUCTION COOPERATIVES IN PORTUGAL. STATE-OF-THE-ART AND LINES OF REFORM

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Abstract: In Portugal, housing and construction cooperatives are governed by the provisions of Decree-Law no. 502/99 of 19 November and, in the absence of such provisions, by the provisions of the Cooperative Code, which was extensively modernised in 2015. The sectoral legislation on housing and construction cooperatives needs to be reformed, taking into account the innovations introduced in the revision of the Cooperative Code. In this future revision of the sector's legislation, two fundamental aspects must be taken into account. With regard to operations with third parties, the obligation to consider such operations as complementary should be eliminated. Of particular note is the need to review the classification of the act of transferring housing under the individual property regime, changing the solution provided for in current legislation, which qualifies this act as a purchase and sale. The adjudication regime is the most appropriate solution for this act of transfer.

Keywords: right to housing, cooperative law, housing and construction cooperatives, individual ownership, collective ownership.

1. Introduction

The right to housing is a constitutionally enshrined fundamental right with an unquestionable personal and community dimension. This right is the foundation from which citizens build the conditions that allow them to access other rights such as education, health and employment. In this sense, Article 65 of the Constitution of the Portuguese Republic enshrines the fundamental principle that everyone has the right, for themselves and their family, to housing of an adequate size, in conditions of hygiene and comfort, that preserves personal intimacy and family privacy, and it is the State's responsibility to promote and enact all the political measures that allow this constitutional right to become a reality. These policies and measures include encouraging and supporting "initiatives by local communities and populations aimed at solving their housing problems and fostering the creation of housing cooperatives and self-building."[1]

Guaranteeing access to safe, decent and affordable housing is also part of the Sustainable Development Goals (SDGs) set by the United Nations' 2030 Agenda. To fulfill the SDGs, the role and performance of cities is essential. Currently, half of humanity lives in cities, and by 2030, this percentage is expected to reach 60 per cent. Although it cuts across all the SDGs, the 2030 Agenda sets a specific goal for urban development — "Goal 11 – Sustainable cities and communities" — which aims to make cities more inclusive, safe, resilient and sustainable,

[1] See ANA AFONSO, "A proteção do direito à habitação na Carta Social Europeia e no direito português", *Lex Social - Revista Jurídica de Derechos Sociales*, Monográfico 1, 2017, pp. 334-336.

which means ensuring everyone has access to decent housing.[2]

The International Cooperative Alliance (ICA) has made it a strategic priority to involve cooperatives around the world in helping to achieve the United Nations 2030 Sustainable Goals.[3] The ICA believes that its various sectoral organisations can contribute to achieving the SDGs, highlighting the role that housing cooperatives can play in reducing poverty and inequality and, therefore, in achieving many SDGs.[4]

In 2015, the National Housing Strategy (ENH) has been approved in Portugal, with the aim of bringing the national regulatory framework closer to public policies in the field of housing, as well as building appropriate responses to the financial, economic and social changes that pose increased difficulties in guaranteeing access to decent and affordable housing. In 2018, Decree-Law 37/2018 of 4 June was approved, establishing the *1st Right - Support Program for Access to Housing*, which recognises the central role of housing and rehabilitation in improving people's quality of life, in revitalising and making cities more competitive, and in social and territorial cohesion.

The legislation produced under this new generation of housing policies recognises the central role that housing and construction cooperatives can play in promoting this fundamental right, as they are based on a collective and non-speculative ownership model, promoting inclusive and sustainable communities.

Housing cooperatives provide access to affordable housing. In addition, they play an important role in promoting a housing stock in which the owners participate and determine how it is developed through democratic, participatory management that is open to the community. Housing cooperatives have been involved in important sustainable construction, urban regeneration and social rental management projects. In addition to housing, housing cooperatives are responsible for designing, producing and managing a diverse network of social facilities and services to support families, such as childcare centres, kindergartens, social centres, home support centres, retirement homes, sports facilities and cultural and leisure facilities.[5] Moreover, housing cooperatives have recently been called upon to respond to new projects aimed at addressing a new generation of social realities and needs, such as housing problems for young people, relocated students, young couples or adults, vulnerable groups such

[2] Available at https://www.un.org/sustainabledevelopment/sustainable-development-goals/.

[3] See ICA, "BluePrint for a Cooperative Decade", 2013, available at https://www.ica.coop/sites/default/files/media_items/ICA%20Blueprint%20-%20Final%20version%20issued%207%20Feb%2013.pdf.

[4] On the contribution of cooperatives to meeting the SDGs, see ADORACIÓN MOZAS MORAL, Contribución de las cooperativas agrarias al cumplimiento de los objetivos de desarrollo sostenible. especial referencia al sector oleícola, CIRIEC-España, Centro Internacional de Investigación e Información sobre la Economía Pública, Social y Cooperativa, 2019, *passim*.

[5] See IVO BALMER/JEAN-DAVID GERBER, "Why are housing cooperatives successful? Insights from Swiss affordable housing policy", *Housing Studies*, no. *33*(3),2018, pp. 361-385, https://doi.org/10.1080/02673037.2017.1344958; GUERRA, PAULA; MATOS, FÁTIMA; MARQUES, TERESA & SANTOS, MÓNICA: "As cooperativas e as modalidades contemporâneas de direito à cidade", *Cooperativismo e Economía Social*, no. 35, 2013.

as the elderly and disabled.[6] These challenges and opportunities include collaborative housing or cohousing, which is booming in Europe, with housing cooperatives considered to be one of the legal forms that best fits the specificities of these initiatives.[7]

All the above are attributed to the ability of cooperatives to combine a strong social dimension with an economic dimension, which is reflected in the satisfaction of their members' interests. As early as 1935, George Fauquet, in his work "The Cooperative Sector. An Essay on the Place of Man in Cooperative Institutions and their Place in the Economy", highlighted this dual aspect of the cooperative, stating that "a social and an economic element must be distinguished in the cooperative institution since it is: 1. an association of people who recognise, on the one hand, the similarity of certain needs and, on the other hand, the possibility of satisfying them better through a common enterprise than individually; 2. and a common enterprise whose particular objective responds precisely to the needs to be satisfied."[8]

In this context, this study aims to reflect on the legal regime of housing and construction cooperatives in Portugal, considering the novelties brought about in 2015 by the changes to the Portuguese Cooperative Code. Defining a legal regime adapted to the Cooperative Code is now necessary. It is also important to provide the legal framework for housing and construction cooperatives with mechanisms that respond to the current concerns and challenges surrounding their activity.

2. Regulatory framework of housing and construction cooperatives

The Portuguese Cooperative Code (PCC)[9] Article 4(1)(h) mentions the branch of housing and construction cooperatives. The legal framework for housing and construction cooperatives is set out in a separate law, Decree-Law no. 509/99 of 19 November (RJCHC). As for the legal regime that applies to them, Article 1 of this law states that housing and construction cooperatives (of the first degree and their higher degree organisations) are governed by "the provisions of this law" and, where it does not apply, "the provisions of the Cooperative Code". Therefore, in the areas not covered by the regulations contained in Decree-Law no. 509/99 of 19 November, the more general rules of the Cooperative Code will apply directly.

There is, therefore, no systematic autonomy of Decree-Law no. 509/99 of 19 November from the Cooperative Code, admitting a plurality of source laws for regulating housing and construction cooperatives. This means that, in terms of the legal regime, housing and

[6] See EDUARD CABRÉ/ARNAU ANDRÉS, "La Borda: a case study on the implementation of cooperative housing in Catalonia", *International Journal of Housing Policy*, no. 18(3), 2018, pp. 412-432. https://doi.org/10.1080/19491247.2017.1331591.

[7] See DARINKA CZISCHKE, "Collaborative housing and housing providers: towards an analytical framework of multi-stakeholder collaboration in housing co-production", *International Journal of Housing Policy*, no. 18(1), 2018, pp. 55-81. https://doi.org/10.1080/19491247.2017.1331593; SARA LOUREDO CASADO "Las cooperativas de viviendas en régimen de cesión de uso como cauce jurídico para los nuevos modelos habitacionales", *CIRIEC. Revista Jurídica de Economía Social y Cooperativa*, no. 37, 2020, pp. 167-206.

[8] GEORGE FAUQUET, *O setor cooperativo. Ensaio sobre o lugar do homem nas instituições cooperativas e destas na economia* (translated by F. Pinto), Livros Horizonte, Lisboa, 1980, p. 26.

[9] Law no. 119/2015, of 31 August, as amended by Law no. 66/2017, of 9 August.

construction cooperatives have benefited from the reform of cooperative legislation that has taken place in recent years. A new Cooperative Code was approved in Portugal in 2015 (Law no. 119/2015, of 31 August). The process of reforming the Cooperative Code resulted from a requirement contained in the Basic Law on the Social Economy (Law 30/2013, of 8 May). Article 13 of this law, relating to "legislative development", required the approval of "legislative acts that implement the reform of the social economy sector" in the light of the provisions of this law and, in particular, the "guiding principles" set out in Article 5 of the Social Economy Framework Law.[10]

The 2015 reform of the Portuguese Cooperative Code introduced changes to important issues in the legal system of cooperatives. In terms of membership, investor members are now permitted. It also enshrined the possibility of plural voting (for cooperators and investor members) in first-degree cooperatives. The minimum legal number of cooperators required to set up a 1st-degree cooperative was reduced to three. In terms of administration and management, three alternative models for the administration and supervision of the cooperative were established. In terms of the economic regime, the minimum share capital was reduced, the liability regime for cooperators was clarified, and new solutions were adopted for cooperative reserves. Although the variability of share capital continues to be recognised as an essential feature of cooperative identity, in order to mitigate its effects and give greater stability to the cooperative share capital, the list of statutory limits on the exercise of the right to reimbursement was extended.[11]

Since 2015, the urgently needed revision of cooperative sector legislation has been awaited in order to bring it into line with the changes introduced in the Cooperative Code, as well as to respond to the main problems and challenges facing the various branches of the cooperative sector, by creating appropriate legal frameworks.[12]

As we know, the regulatory framework can favour or inhibit entrepreneurship and innovation in cooperatives. It is, therefore, essential for the affirmation and development of the housing and construction cooperative sector that the legal requirements that preserve the cooperative identity are maintained and that those that prove to be disproportionate or useless are amended.[13]

3. Concept, object and purpose of the housing and construction cooperative.

Cooperatives are defined by the PCC as "autonomous legal persons, freely constituted, with variable capital and composition, which, through the cooperation and mutual help of their

[10] See DEOLINDA MEIRA, "A Lei de Bases da Economia Social Portuguesa: do projeto ao texto final", *CIRIEC-España, revista jurídica de economía social y cooperativa*, no. 24, 2013, pp. 21-52.

[11] See DEOLINDA MEIRA & MARIA ELISABETE RAMOS, "A Reforma do Código Cooperativo em Portugal", *Cooperativismo e Economia Social*, no. 38, 2016, pp. 77-108

[12] See DEOLINDA MEIRA, "Uma análise crítica do projeto de alteração do regime jurídico dos ramos do setor cooperativo em Portugal*", CIRIEC-España, Revista Jurídica de Economía Social y Cooperativa*, nº 44, 2023, pp. 259-285. DOI: https://doi.org/10.7203/CIRIEC-JUR.44.27638

[13] See DEOLINDA MEIRA/MARIA ELISABETE RAMOS, *Governação e regime económico das cooperativas. Estado da arte e linhas de reforma*. Porto: Vida Económica, 2014, passim.

members, in compliance with cooperative principles, aim, on a non-profit basis, to satisfy their economic, social or cultural needs and aspirations" (Article 2, n.1, PCC).

This definition means that cooperatives must operate according to the "cooperative principles" set out in Article 3 of the PCC, which reproduces the cooperative principles in the exact wording provided by the International Cooperative Alliance (ICA) in 1995 at its Manchester Congress. There are seven principles: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training, and information; cooperation among cooperatives; and concern for the community.

These principles constitute the most important distinctiveness of the cooperative identity. Cooperatives are organisations of an atypical business nature, evidenced by the primacy of individual and social objectives over capital; by democratic governance by members; by combining the interests of members with the general interest; by defending and applying the values of solidarity and responsibility, by reinvesting surplus funds in long-term development objectives or in providing services of interest to members or services of general interest; by voluntary and open membership; by autonomous and independent management.[14] It also follows from this definition that the scope of cooperatives is the "satisfaction of the economic, social or cultural needs and aspirations" of their members (mutualistic scope).

Article 2 of the RJCHC specifies the needs that cooperators aim to satisfy through housing and construction cooperatives, stating that their main purpose is the development, construction or acquisition of houses for their members, as well as their maintenance, repair or remodeling. They also aim to improve the housing quality of the areas in which they operate, promoting the treatment of the areas surrounding the developments for which they are responsible, including leisure areas, and ensuring the permanent maintenance of good living conditions in the buildings. In line with Article 2 of the PCC, it is clear from this rule that, primarily, housing and construction cooperatives pursue a mutualistic purpose.[15]

In fact, the housing and construction cooperative is created to eliminate the speculator intermediary in the sense that the cooperators directly take over the corporate function, thus relegating the social entity (the cooperative) to the role of a simple instrument for articulating and activating a certain group (the cooperators), to obtain a good - housing - under more favourable conditions than it would be obtained with the intervention of intermediaries.[16] This instrumentality of the housing and construction cooperative is based on the idea that the cooperative's social activity is necessarily orientated towards its members, who are the main

[14] See DEOLINDA MEIRA, "Cooperative Governance and Sustainability: An Analysis According to New Trends in European Cooperative Law", *In*: Tadjudje, W., Douvitsa, I. (eds) *Perspectives on Cooperative Law*, Springer, Singapore, 2022, pp. 223-230. https://doi.org/10.1007/978- 981-19-1991-6_21.

[15] See ANTONIO FICI, "El papel esencial del derecho cooperativo", *CIRIEC. Revista Jurídica de Economía Social y Cooperativa*, no. 27, 2015, pp. 23-33; DEOLINDA MEIRA, "O princípio da participação económica dos membros à luz dos novos perfis do escopo mutualístico", *Boletín de la Asociación de Derecho Cooperativo,* no. 53, 2018, pp. 107-137. DOI: http://dx.doi.org/10.18543/baidc-53-2018, pp. 107-137

[16] See, in this sense, CUNHA GONÇALVES, *Comentário ao Código Comercial Português,* volume I, Empreza Editora J. B., Lisbon, 1914, p. 541; and SÉRVULO. CORREIA, "Elementos de um regime jurídico da cooperação", *Estudos Sociais e Cooperativos,* no. 17, Ano V, Março 1966, p. 162.

beneficiaries of the economic and social activities it carries out. The housing and construction cooperative is constituted "by and for the members", with whom it operates within the scope of the activity addressed to them and in which they participate by cooperating (called cooperativised activity by Spanish legislation and doctrine).[17] This participation will take the form of a reciprocal exchange of services between the cooperative and the cooperators, services that are specific to the cooperative's corporate purpose.

As a result of the cooperative's mutualistic scope, a complex legal relationship is established in which, on the one hand, the obligation assumed by the cooperator to participate in the cooperative's activity and, on the other hand, the consideration provided by the cooperative stands out. Thus, the cooperator, unlike the member of a commercial company, will not only be subject to the obligation to contribute to the cooperative's share capital (an obligation regulated by Article 6 of the RJCHC, which establishes a capital contribution of no less than 100 euros, although the articles of association may require a higher contribution) but also to the obligation to participate in the cooperative's activities. In this sense, Article 22(2)(c) of the PCC establishes that cooperators must "participate in general in the activities of the cooperative and provide the work or service that is incumbent upon them, under the terms established in the articles of association". The statutes of the cooperative must include provisions on the participation of cooperative members in the activity of the cooperative, in particular with regard to the minimum extent and/or level of this participation.[18]

In short, the aim of a cooperative is not to make a profit and then share it but to give its members direct advantages in their individual economies.

4. Operations with third parties in housing and construction cooperatives

The teleological link between the cooperative and its members should not be understood in an absolute way, i.e. the cooperative should not be considered a closed organisation focused solely on its members. Thus, the mutualistic scope pursued by the cooperative, which distinguishes it from other social types, does not imply that it only operates with its members but that it can also operate with third parties, a possibility that already existed in the Rochdale cooperative.[19] These contractual relations with third parties show, from the outset, the affirmation of the sociability demanded by the cooperative: the cooperative will, first of all, satisfy the interests

[17] We have adopted the concept of cooperative activity defended by CARLOS VARGAS VASSEROT, *La actividad cooperativizada y las relaciones de la Cooperativa con sus sócios y con terceros*, Monografía asociada a *RdS*, n.º 27, 2006, p. 67, according to which this activity takes the form of a set of operations in which three circumstances are met: they must be internal operations, i.e. they must take place within the cooperative; they must be carried out by the cooperator with the cooperative or vice versa; and they must be closely linked to the pursuit of the cooperative's corporate purpose.

[18] See ANTONIO FICI, "Chapter I - Definition and objectives of cooperatives", In GEMMA. FAJARDO, ANTONIO FICI, HAGEN HENRŸ, DAVID HIEZ, DEOLINDA MEIRA, HAINS-H. MÜNKNER & IAN SNAITH (Authors), *Principles of European Cooperative Law. Principles, Commentaries and National Reports*, Intersentia, Cambridge, 2017, pp. 73-96. DOI: https://doi.org/10.1017/9781780686073.005

[19] See CHARLES GIDE, *Consumers' Cooperative Societies*, Manchester, Cooperative Union Limited, 1921, p. 49 et seq.

of its members to housing and, at the same time, it *will* spread outwards, expanding its services also in favour of those who, although not being members of the cooperative, have the same needs as the latter, and in this way new memberships can be generated. Therefore, cooperatives that operate with third parties must offer them the chance to become cooperative members and must inform them of this possibility.[20]

Although the law does not define what is meant by a third party, it seems to be a settled doctrine that, in the wake of Rui Namorado's teachings: "Third parties, from a cooperative point of view, are all those who maintain relations with a cooperative that fall within the pursuit of its main object, as if they were its members although they are not."[21] In other words, operations with third parties cover the activity between cooperatives and non-cooperative members (third parties) for the supply of goods, services or labour of the same type as those supplied to cooperative members. This means that the activities with third parties referred to by the legislator will refer to activities of the same type as those carried out with cooperators.[22]

In a nutshell, third parties are all those who acquire houses in the cooperative without being cooperators. This non-exclusive mutual profile will allow cooperatives to become more competitive by increasing their financial capacity. As a result, article 2.2 of the PCC established that "cooperatives, in pursuit of their objectives, may carry out operations with third parties, without prejudice to any limits set by the laws specific to each branch". In this way, the Cooperative Code eliminated the compulsory complementary nature of the activity with third parties that existed in previous legislation (Decree-Law 454/80 of 9 October), which stated that cooperatives could "also, on a complimentary basis, carry out operations with third parties", although it is accepted that the articles of association may prohibit carrying out operations with third parties.

In housing and construction cooperatives, the legislator has taken particular care of these operations with third parties. In fact, Article 14(1) of the RJCHC provides for the possibility of the cooperative carrying out operations with non-cooperators, but, unlike the Cooperative Code, it continues to enshrine the mandatory complementary nature of these operations, emphasising that they must not distort the cooperative's purpose or jeopardise the positions acquired by the cooperators.

Positive results from operations with third parties are profits, and, for this reason, the Portuguese cooperative legislator has prevented these results from being distributed among the cooperators, either during the life of the cooperative or at the time of its dissolution (Articles 99, 100, no. 1 and 114 of the PCC), being transferred in their entirety to indivisible reserves.[23]

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[20] See ANTONIO FICI, "Chapter I - Definition and objectives of cooperatives", cit.

[21] - RUI NAMORADO, *Cooperatividade e Direito Cooperativo. Estudos e pareceres*, Almedina, Coimbra, 2005, pp. 184-185.

[22] On this subject, see DEOLINDA MEIRA, "Às operações com terceiros no Direito Cooperativo Português (Comentário ao Acórdão do Supremo Tribunal de Justiça de 18 de dezembro de 2007)", *RCEJ - Revista de Ciências Empresariais e Jurídicas*, no. 17, 2010, pp. 93-111.

[23] See DEOLINDA MEIRA, "O regime da distribuição de resultados nas cooperativas de crédito e m Portugal. A critical analysis", *Boletín de la Asociación Internacional de Derecho Cooperativo*, no. 49, 2015, pp. 83-113.

In fact, the admissibility of operations with third parties generates a variety of economic results, which is why the cooperative will have to adopt separate accounting that makes it possible to clearly distinguish surpluses — resulting from operations with cooperators — from profits — resulting from operations with third parties. These separate accounts will allow the cooperative to account for divisible and non-divisible assets without any risk of confusion.
In this sense, Article 14(1) of the RJCHC states that the amount resulting from the operations with non-cooperators must be recorded separately from the amount realised with the cooperators and that this amount, under the terms of paragraph 2 of the same rule, must revert to the legal reserve. This is the only rule in Portuguese cooperative legislation that addresses the issue of separate accounting of results.

5. The specificities of the cooperator's participation in the activity of the housing and construction cooperative

How does the cooperator participate in the activity of a housing and construction cooperative? And how is the cooperative's counterpart realised?
Cooperators participate in the housing and construction cooperative activity, integrating themselves into a housing program, which the general meeting decides under the terms of Article 9 of the RJCHC. The cooperator is obliged to subscribe to certain bonds, called participation bonds, by Article 20, which are only amounts for the payment of a house to be acquired by one of the means provided for in the RJCHC.[24] These amounts, handed over to the cooperative, are intended to finance the housing program's development costs (architectural projects, licences, land acquisition, construction work, financial charges with banks, etc.).
Regarding the cooperative's fulfilment of its purpose, this is achieved by allocating housing to the members.
In housing and construction cooperatives, there can be two systems of ownership of the houses: (i) individual ownership (the right of ownership is transferred to the cooperator by the cooperative through a purchase and sale contract); (ii) collective ownership (the cooperative retains ownership of the houses) (Article 16 of the RJCHC).[25] In the case of collective ownership, and by the provisions of Article 18, the dwellings are transferred to the cooperators in one of two ways: granting a right to housing[26] or under the cooperative tenancy system (i.e. through a rental contract).
In the individual property regime, housing pricing is subject to a set of special rules. Therefore, and because the cooperative has a mutual and non-profit purpose, the price of the house cannot

[24] See, in this regard, the Lisbon Court of Appeal Judgement of 30/10/2014 (www.dgsi.pt).
[25] The most common form has been individual ownership. See GUERRA, PAULA; MATOS, FÁTIMA; MARQUES, TERESA & SANTOS, MÓNICA: "As cooperativas e as modalidades contemporâneas de direito à cidade", *Cooperativismo e Economía Social*, no. 35, 2013, p. 79, cit.
[26] Article 1484(1) of the Civil Code defines the right of use as the "right to use a certain third party's property and to obtain the fruits thereof, by the needs of both the holder and his family". Paragraph 2 characterises the right of habitation as a type of right of use. Thus, when this right of use "refers to dwelling houses, it is called a right of habitation").

exceed the cost, so the cooperator will acquire the house at a price lower than that which would be set on the market. In this regard, Article 17 of the RJCHC states that "the cost of each house corresponds with the sum of the following values: a) Cost of the land and infrastructure; b) Cost of studies and projects; c) Cost of construction and complementary equipment when integrated into the buildings; d) Administrative costs of carrying out the work; e) Financial costs of carrying out the work; f) Amount of licences and fees until the house is delivered in a condition to be inhabited; g) Construction fund, to be established in the articles of association, in an amount not exceeding 10% of the sum of the values referred to in subparagraphs a) to f) of this article."

When the price is paid in installments, the cooperative can reserve ownership of the house until it is paid in full or transfer it under the resolutive condition of non-payment of three successive or six interpolated installments. However, Article 26(2) and (3) rule out the application of Articles 781 and 934 of the Civil Code. Thus, failure to pay one of the installments does not imply that all of them are due. In turn, non-payment of a single installment that does not exceed one eighth of the price does not give rise to the termination of the contract, nor, whether or not there is a reservation of ownership, does it result in the loss of the benefit of the term concerning subsequent installments, without prejudice to any agreement to the contrary.

In this regime of individual ownership, the legislator sets limitations on the cooperator's ability to dispose of the property. In fact, under the terms of Articles 22 and 23 of the RJCHC, the property can only be transferred to cooperators. Thus, the user cooperator may dispose of the housing right by *the inter vivos* act, provided that the purchaser can be admitted as a member of the cooperative and the general meeting gives its agreement. On the other hand, *mortis causa* transfers of the right of habitation can take place without the need for any authorisation, provided that the heir registers as a cooperative member and cannot be refused admission. If, in the event of the death of the user cooperator, the successor does not wish to be or cannot be admitted as a cooperator, the right of habitation will be returned to the cooperative, and the successors will be reimbursed the sums to which the cooperator would have been entitled in the event of resignation. In addition, under the terms of Article 28 of the RJCHC, although it is accepted that the cooperators can sell their property to third parties once the price has been paid in full, the cooperative has the right of first refusal for thirty years from the date of first delivery of the dwelling, if the houses have been built with financial support from the State.

These limitations on the price of the house and on the possibility of disposing of the property under the individual ownership regime are based on the mutualist purpose of the cooperative and, in our opinion, constitute an important argument to rule out the contractual classification of the transfer of ownership of the property from the cooperative to the cooperator as a sale and purchase.

This question of the legal classification of the act of transferring housing under the individual property regime is one of the most debated issues in Portuguese doctrine and jurisprudence,[27]

[27] See RAUL GUICHARD, "A capacidade das cooperativas. Relações entre cooperativas e cooperadores", In *Jurisprudência cooperativa comentada* (coord. de Deolinda Meira), INCM, Lisbon, 2012, pp. 521-527.

and clarifying legislative intervention is needed when revising sectoral legislation of housing cooperatives.

Doctrine and case law are divided between two theses. On the one hand, some share the "dualist" or "contractual" thesis, according to which the transfer of housing by the cooperative to the cooperator would be external to the cooperative relationship, deserving its own qualification in the specific case — purchase and sale contract — subject to the corresponding regime, with the cooperator appearing in the dual position of cooperator and contracting party (the so-called "dual quality").[28] On the other hand, some share the "monist thesis", according to which the act of transfer of the house by the cooperative to the cooperator would be part of the cooperative relationship, being a "dimension" of it and would therefore correspond to statutory rights and duties, and would therefore be subject in the first instance to the cooperative rules contained in the law, the statutes, the internal regulations, and the decisions of the governing bodies. This monist thesis is close to the legal category of the "cooperative act,"[29] provided for in Latin American legislation, as it is a legal construction that covers the operations of cooperatives with their members and with third parties, in pursuit of their corporate purpose.[30]

Taking into account this last legal construction, when the cooperative transfers the house to its members, this act has the formal structure of a purchase and sale contract but has specificities that differentiate it from a mere purchase and sale contract. These specificities derive from the aforementioned mutualistic scope of the cooperative, which is based on the assumption that there is no opposition of interests between the cooperators and the cooperative, which rules out the contractual nature of the relationship underlying the transfer of ownership. As stated in the Lisbon Court of Appeal ruling of 16 December 1999, "the cooperative does not sell dwellings, it only transfers them to the cooperative members included in the housing programme, through purchase and sale, which functions as a legal expedient to put an end to the collective property built". In the same vein, the Porto Court of Appeal, in its ruling of 22 January 2001, considered that "since it was decided at the general meeting of a housing cooperative that the cooperative members would be obliged to bear the difference between the estimated cost and the actual cost of the development, with the latter being obliged to pay the remainder of the price", what was

[28] In Portuguese doctrine, defending this position, see MAFALDA MIRANDA BARBOSA, "Breves notas acerca da natureza jurídica do ato de transmissão da propriedade de um imóvel de uma cooperativa de habitação *e* construção para um cooperador", *Cooperativismo e Economía Social*, no. 38, 2016, pp. 135-162. In case law, the Lisbon Court of Appeal ruling of 15 April 2008. On this judgement, see PAULO VASCONCELOS, "Reembolso das entradas em cooperativa de habitação. Acórdão do Tribunal da Relação de Lisboa de 15 de Abril de 2008", *Cooperativismo e Economía Social*, no. 31, 2009, pp. 261-266.

[29] On the "cooperative act" notion, see DANTE CRACOGNA, "O acto cooperativo", *Pensamento Cooperativo-Revista de Estudos Cooperativos*, no. 3, pp. 175- 189.

[30] See GEMMA FAJARDO, "La no mercantilidad del suministro *de* bienes entre cooperativa y cooperativistas", *Revista de Derecho Mercantil*, no. 240, 2001, pp. 949-950; DEOLINDA MEIRA, *O regime económico das cooperativas no direito português*, Vida Económica, Porto, 2009, p. 228; and ANA AFONSO, "O problema da responsabilidade de cooperativa de habitação pelos defeitos de construção de fogo vendido a cooperador. Anotação ao Acórdão da Relação de Lisboa de 1 de Outubro de 2009", *Cooperativismo e Economía Social*, no. 32, 2010, pp. 294-304.

at stake was the fulfillment of an obligation resulting from the decision and not from a purchase and sale contract. Also worth mentioning, the Lisbon Court of Appeal's ruling of 2 February 2006 states that "What is at issue is not a purchase and sale contract, but the allocation of dwellings to the cooperative members, which is carried out under the guise of a purchase and sale contract". The higher court adds that there is no profit motive, on the one hand, and that there is no full contractual freedom, either in terms of the choice of subjects, the price or the possibility of later disposing of the property."

Remember that a housing and construction cooperative is set up to satisfy a need of the cooperator, so the transfer of ownership (in the case of individual ownership) or the use of the dwelling (in the case of collective ownership) is an internal act to fulfill the cooperative's mutual purpose. We are, therefore, not dealing with a purchase and sale contract but an act of allocating dwellings to cooperators. The system of adjudication, which is enshrined in Spanish law, seems to be the most appropriate solution to fit this act of transfer into the system of individual ownership of housing cooperatives.[31] This adjudication is the recognition of the individual right of each cooperator and results from the division of the co-ownership hitherto exercised by the cooperative. The moment of the award will be the moment when the cooperator takes ownership of the house, at which point the mutualist purpose of the cooperative is fully realised.

It is, therefore, imperative that the future revision of the sector's legislation takes this understanding into account.

6. Members of the housing and construction cooperative

The creation of a cooperative depends on a bureaucratic process whose acts are legislatively defined. One of the aims of the reform was to ensure that the formalities required were necessary and appropriate, avoiding excessive and pointless transaction costs. Legal requirements that are disproportionate, unreasonable or even pointless can lead to context costs that inhibit the cooperative initiative.

A relevant novelty of the 2015 reform in terms of setting up cooperatives was the reduction of the minimum number of cooperators in first-degree cooperatives from five to three (Article 11(1) of the PCC), while maintaining the possibility of complementary legislation for each branch "requiring a higher number of cooperators as a minimum", which is not the case for housing and construction cooperatives. Therefore, the minimum number of cooperators to set up a housing and construction cooperative is three. The reduction of the minimum number of cooperators may promote cooperative entrepreneurship in the housing and construction sector. The question of the minimum number of cooperators is justified by the mutualistic scope of the cooperative, which is poorly reconciled with a restricted social base. A broad membership base

[31] See ANA LAMBEA RUEDA, "Adjudicación y cesión de uso en las cooperativas de viviendas: usufructo, uso y habitación y arrendamiento", CIRIEC-España, Revista Jurídica de Economía Social y Cooperativa, nº 23, 2012, pp. 139-178.

in the cooperative will be a necessary condition for the realisation of the mutualistic aim.[32] However, this minimum number could not be so high as to prevent cooperatives from taking on projects that require a very limited number of persons for them to be viable.[33] Since the need for a minimum cooperative structure is unquestionable, the prevailing view was that this minimum number could not be less than three so that a majority could be formed against a minority (two against one), citing the fact that the cooperative is recognised in legislation as an entity whose democratic substratum is an internal requirement, incompatible with an organisation of just two cooperators, let alone a single cooperator.[34]

Since the 2015 reform, cooperative members can fall into two categories: cooperator members and investor members.

Cooperators are the reference members of cooperatives. They are referred to in the definition of a cooperative in Article 2(1) of the PCC and the RJCHC. As already mentioned, the cooperative was created to satisfy the housing needs of its cooperators, who will participate in the cooperative's activity. Candidates for cooperative membership must apply for admission to the cooperative's management body (Article 19(1) of the PCC).

The legislator has established that the statutes of each cooperative must contain the "conditions for admission" of members [Article 16(2)(a) of the PCC]; and if a candidate fulfills these conditions, the proposal for admission must also be the subject of a decision by the management body and/or the general meeting [Articles 38(k) and 47(d) of the PCC]. This decision will be constitutive in acquiring the status of a cooperator. Admission or refusal is communicated to the candidate within the time limit laid down in the articles of association or alternatively within a maximum of 180 days (Article 19(2) of the PCC).

In the specific case of housing and construction cooperatives, Article 8 of the RJCHC states that they can make the admission of new members conditional on the existence of housing programmes in which the candidates can be integrated. If they are not admitted on this basis, they must be registered in their book in the order in which they submit their applications, and this order must be respected when admitting new cooperators. The legislator adds that no housing and construction cooperative may use this option for more than three consecutive years. This limitation is intended to respect the principle of voluntary and open membership.

As a rule, therefore, there is no real subjective right to be admitted as a cooperative member. This involves a simple legal expectation, understood as an active position that, although possessing legal relevance, does not benefit from the guarantee mechanisms afforded to subjective rights.[35] In any case, reasons must be given for refusing admission (Article 19(2) of

[32] See, in this sense, ANTONIO FICI, "Chapter I - Definition and objectives of cooperatives", cit.

[33] See, in this regard, CARLOS VARGAS VASSEROT / ENRIQUE GADEA / FERNANDO SACRISTÁN SOLER, *Derecho de las sociedades cooperativas, Introducción, constitución, estatuto del sócio y órganos sociales,* LA LEY, Madrid, 2015, p. 152.

[34] See, in this regard, FRANCISCO VICENT CHULIÁ, *Ley General de Cooperativas, Comentarios al Código de Comercio y legislación mercantil especial* (coord. de Sánchez Calero / Manuel Albaladejo), Tomo XX, Vol. 1, Editorial Revista de Derecho Privado / Editoriales de Derecho Reunidas, Madrid, 1994, p. 174.

[35] See DEOLINDA APARÌCIO MEIRA, O regime económico das cooperativas no Direito Português: o capital social, cit., p. 108.

the PCC).

In addition to cooperative members, the Cooperative Code provides for investor members (members who do not participate in the cooperative's activity but only have a financial interest in it through their investment), one of the most important new features of the 2015 reform. These investor members can provide the cooperative with financing on better terms than those offered by the market when the resources brought in by the cooperative members are insufficient.

The legislator has subjected the figure of investor members to strict mandatory limits. The admission of investor members will always result from a decision by the cooperators. Therefore, when the cooperative is set up, the articles of association must necessarily set out the "conditions and limits for the existence of investor members, if any" [Article 16(1)(f) of the PCC]. Article 20(1) states that "the articles of association may provide for the admission of investor members". This means that investor members cannot be founding members of the cooperative.

In addition to the provisions of the articles of association, the admission of investor members also depends on a proposal from the management body to be submitted for approval at the general meeting (Art. 20 (3 and 4) of the PCC). Once admitted, investor members may participate, albeit to a limited extent, in the cooperative's decisions, but under no circumstances may they represent more than 25% of the number of effective members of the (management or supervisory) body to which they are elected (Article 29(8) of the PCC). This system is based on the need to safeguard the principles of democratic management and autonomy and independence. Investor members can be admitted by subscribing to equity securities or investment securities convertible into equity securities (Article 16(2) of PCC). [36]

7. The organisational structure of the housing and construction cooperative

Let us now focus on the organisational structure of housing and construction cooperatives.

Since the 2015 reform, the legal bodies of Portuguese housing and construction cooperatives include the general meeting, the management body and the supervisory bodies (Article 27(1) of the PCC) and, if the articles of association so provide a "Cultural Council", with powers delegated by the management body to plan, promote and carry out actions to boost associations and cooperative education and training (Article 10 of the RJCHC).

The general meeting, attended by all cooperators (Article 33 of the PCC), is the supreme body of the cooperative, and its decisions are binding on the other bodies (Article 33(1) of the PCC). In the Cooperative Code, the term "supreme body" of the cooperative has a threefold meaning: (i) the most important and decisive matters in the life of the cooperative fall within the remit of the general meeting (Article 38 of the PCC); (ii) the members of the governing bodies are elected by the general meeting from among the cooperative members (Article 33(2) of the

[36] On the figure of investor members, see MARIA ELISABETE RAMOS, "Membros investidores e processo fundacional da cooperativa", *CIRIEC-España, Revista Jurídica de Economía Social y Cooperativa*, nº 44, pp. 317-348. DOI: https://doi.org/10.7203/CIRIEC-JUR.44.27640

PCC); (iii) the members of the governing bodies are elected by the general meeting from among the cooperative members (Article 33(2) of the PCC). (iv) the decisions of the general meeting are binding on the other bodies and all members (Article 33(1) of the PCC).[37]

In the general meetings of first-level cooperatives, the rule is that all members have equal voting rights (article 40 of the PCC). However, it is possible for the articles of association to enshrine plural voting in first-level cooperatives, subject to certain mandatory legal limits (Article 41(1) of the PCC), which can be attributed to cooperators or investor members. If given to cooperators, it will always be based on the cooperator's activity in the cooperative (Article 41 of the PCC) and never on the shareholding. The Cooperative Code refers to the articles of association to define the conditions and criteria on which the allocation of plural voting rights to investor members depends (Article 41(5) of the PCC).

In the name of the principle of democratic member control and the principle of autonomy and independence, the Cooperative Code enshrines, in mandatory legal rules, limits on the allocation of plural voting (art. 41 of the PCC): a) limits on the size of the cooperative - plural voting is prohibited in cooperatives with fewer than 20 cooperators; b) limits on certain branches - plural voting is prohibited in worker production, craft, fishing, consumer and social solidarity cooperatives, whereas it is allowed in housing cooperatives; c) limits on the number of votes to be allocated to each cooperator/investor member - three in cooperatives with up to 50 cooperators, and five in cooperatives with more than 50 cooperators; d) limits on the matters to be decided by the general meeting - in resolutions provided for in paragraphs g), h), i) and j) of Article 38 of the CCoop, each cooperator/investor member has only one vote (the general rule in Article 40(1) of the PCC therefore applies exclusively); e) finally, limits for investor members - each cooperator may not have voting rights of more than 10% of the total votes of the cooperators and investor members may not, in total, have voting rights of more than 30% of the total votes of the cooperators (art. 41, no. 7 of the PCC).[38]

Cooperative management and supervision models must always ensure cooperative autonomy and member control.

Under the terms of Article 28 of the PCC, the administration and supervision of the cooperative can be structured in one of the following ways: a) board of directors and supervisory board (traditional structure); b) board of directors with audit committee and statutory auditor (anglo-saxon structure); c) executive board of directors, general and supervisory board and statutory auditor (dual structure).[39]

Each cooperative must necessarily choose the management and supervisory model it will adopt, and this choice must necessarily be set out in the articles of association (Article 16(1)(d) of the PCC).

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[37] See COUTINHO DE ABREU, "Artigo 33.º", In *Código Cooperativo Anotado,* coord. de Deolinda Meira & Maria Elisabete Ramos, Almedina, Coimbra, 2018, pp. 197-200.

[38] See DEOLINDA MEIRA/ MARIA ELISABETE RAMOS, "Artigo 41.º", In *Código Cooperativo Anotado,* coord. de Deolinda Meira & Maria Elisabete Ramos, Almedina, Coimbra, 2018, pp. 235-240.

[39] See ALEXANDRE SOVERAL MARTINS, "Artigo 28.º", In *Código Cooperativo Anotado,* coord. de Deolinda Meira & Maria Elisabete Ramos, Almedina, Coimbra, 2018, pp. 167-173.

The members of the management and supervisory bodies are elected by the general meeting (Article 38(a) of the PCC) from the cooperators or, to a limited extent, from investor members (Article 29(1) and (8) of the PCC). According to the cooperative doctrine, this mechanism was designed by the legislator to ensure that the members of the cooperative's bodies would focus their actions on promoting the interests of the members. This mechanism, by allowing the interests of the cooperators to be directly represented on the management and supervisory bodies, has the advantage that the members of these cooperative bodies, due to their experience from their dual role as beneficiaries and managers, are permanently aware of the interests of the cooperators and do not deviate from the main purpose of the cooperative.[40]

8. The economic regime of housing and construction cooperatives

We now examine the central issues of the economic regime for housing and construction cooperatives, taking into account the issues that were the subject of reform provisions in 2015. The general rule - which goes back a long way and remains the same - is that it is not possible to set up a cooperative without share capital. Therefore, the initial share capital must necessarily be determined in the cooperative's articles of association (Article 15, paragraph 1, subparagraph f) of the PCC). In addition, the cooperator can only become a member by contributing to the share capital, which cannot be less than three shares (Article 83 of the PCC) and which, in the case of housing and construction cooperatives, cannot be less than 100 euros. However, the articles of association may set a higher amount (Article 6 of the RJCHC). Joining the share capital is a necessary but never sufficient condition for becoming a cooperator since, as we have seen, it is compulsory to take part in the cooperative's activities.

In the reform, the legislator felt the need (and rightly so) to reduce the amount of the minimum share capital, lowering it from 2,500 euros to 1,500 euros (Article 81(2) of the PCC), while the complementary legislation that regulates each of the branches may set a different minimum, which is not the case with the RJCHC.

The variability of share capital continues to be expressly recognised by the legislator as an essential characteristic of the cooperative identity, forming part of the very definition of a cooperative (Article 2(1) and Article 81(1) of the PCC). The variability of the share capital is a consequence of the right to reimbursement, which stems from the recognition of a genuine right of resignation for cooperators, as stated in Article 24(1) of the PCC. [41] This right cannot be suppressed under any circumstances due to the need to respect the voluntary and free membership principle. However, it is recognised that the articles of association may set limits and conditions for its exercise. The economic consequence of this right to resign will be the reimbursement of the capital contribution. Article 89(1) of the PCC states that "in the event of

[40] See HANS-H. MÜNKNER, *Cooperative Principles and Cooperative Law*, 2nd revised edition, Wien, Zurich, Lit Verlag GmbH & Co. KG, 2015.

[41] Article 24(1) of the PCC states that "Cooperators may request their resignation under the conditions laid down in the articles of association or, if these are silent, at the end of a financial year, with 30 days' notice, without prejudice to their responsibility for fulfilling their obligations as members of the cooperative".

repayment of the capital securities, the resigning cooperator shall be entitled to the amount of the capital securities paid up according to their nominal value, within the period established by the articles of association or, alternatively, within a maximum period of one year."

An important specificity of housing and construction cooperatives should be highlighted concerning the right to reimbursement. As we have seen, taking part in the economic activity of this type of cooperative involves handing over the funds needed to build the house. Article 24 of the RJCHC established that, in housing and construction cooperatives, in the event of resignation or exclusion, the cooperator will be entitled to the reimbursement provided for in the Cooperative Code (reimbursement of capital securities), plus the value of the participation securities paid in to amortise the house, with the respective interest. The statutes may allow this repayment to be made in installments, with or without interest. However, "under no circumstances shall the sums paid as the price of the right to housing be reimbursed". This prohibition should mean that the cooperative will withhold these sums until another person (a substitute cooperator or a new cooperator) steps into the position of the outgoing cooperator. Until this happens, or if it does not happen, the cooperative will keep the amounts already provided by the outgoing cooperator.[42]

Article 88 of the PCC deals with the remuneration of equity securities, stipulating that, by means of a statutory clause, interest may be paid on equity securities, with the total amount of interest not exceeding 30 percent of net annual profits. This is a special feature of the share capital of cooperatives, which is the possibility for cooperators and investor members to obtain a net remuneration for the capital subscribed as a condition of membership, a circumstance prohibited in commercial companies. The fact that cooperatives are not profit-making does not prevent them from remunerating, within certain limits, the capital subscribed by cooperators and investor members. In the case of cooperative members, the purpose of this remuneration will be to compensate them for the effort that their capital contributions represent while at the same time providing an incentive for cooperative members to make more significant capital contributions.[43]

It should be noted, however, that the Portuguese legal system, unlike other legal systems, does not specifically set maximum limits for the interest to be paid to members but only for the overall amount of interest to be paid (30 percent).[44] Concerning the cooperative member's financial obligations, it should be noted that the cooperative's statutes may require, in addition to the obligation as mentioned above to contribute to the share capital, the payment of an admission fee, payable in one lump sum or in periodic installments (Article 90(1)). This is a non-refundable contribution, without the cooperator receiving any rights in return, and

[42] See PAULO VASCONCELOS, "Reembolso das entradas em cooperativa de habitação. Acórdão do Tribunal da Relação de Lisboa de 15 de Abril de 2008", cit., pp. 261-266.

[43] - See, in this regard, PILAR GÓMEZ APARÍCIO, "Algunas consideraciones sobre la remuneración del capital social en las sociedades cooperativas", *REVESCO*, no. 72, 3.er Cuatrimestre, 2000, p. 89.

[44] For an in-depth analysis of this specificity of the cooperative, see DEOLINDA MEIRA, "O regime de distribuição de resultados nas cooperativas de crédito em Portugal. A critical analysis", *Boletín de la Asociación Internacional de Derecho cooperativo*, no. 49, 2015, pp. 83-113.

constitutes a form of financing for the cooperative.

In fact, unlike contributions to the share capital, the cooperator does not receive any remuneration for the admission fee. Furthermore, in the financial structure of the cooperative, the admission fee enters the assets of the cooperative and not the share capital, so the cooperator will not be entitled to recover it in the event of resignation. Article 90(2) of the PCC stipulates that the amount of membership fees "shall revert to compulsory reserves, as laid down in the articles of association, within the limits of the law". A minimum of 5 percent of the value of the fees will revert to the legal reserve (Article 96 (2 and 3) of the PCC). The remaining value of the fees must go to the reserve for cooperative education and training (Article 97(2)(a) of the PCC).

The fee demanded when a cooperator joins will function as: (i) a non-refundable contribution, demanded from each cooperator and motivated by the costs involved in joining, which will be borne by the cooperative (installation costs for new work tools, increased maintenance costs, etc.); (ii) a way of partly compensating for the contribution made by previous cooperators to the cooperative's common assets.[45]

The legislator adds the possibility that the general meeting may decide on other forms of financing that are not part of the share capital and that may take the form of investment securities and bonds (Article 90(3) of the PCC).

About the liability of the cooperative and the cooperators towards the cooperative's creditors, the rule is that only the cooperative's assets will be liable to creditors for the cooperative's debts, so each cooperator limits their liability to the amount of the share capital subscribed, without prejudice to a clause in the articles of association to the contrary. However, the statutes may stipulate that cooperators are liable for the cooperative's debts. In this case, the liability is subsidiary in relation to the cooperative and joint and several between the cooperators responsible (Articles 23 and 80 of the PCC).

At this point, we shall focus on the legal regime of reserves, which are the cooperative's best financial resource, acting as a counterweight to the variability of share capital and providing long-term financial resources of their own for the operation of the cooperative enterprise. The Cooperative Code provides for the existence of five types of reserves: the legal reserve; the reserve for cooperative education and training; the reserves provided for in the complementary legislation applicable to each of the branches of the cooperative sector; the reserves provided for in the statutes; and the reserves set up by resolution of the general meeting.

The legal reserve is a reserve that must be set up by law and is considered one of the most important components of the cooperative's financial structure, which is essentially due to its purpose (to cover possible losses in the financial year) and its non-reportable nature (Article 99 of the PCC). Its sources are: admission fees (Article 90.1 of the PCC) and net annual surpluses (Article 100 of the PCC), in a percentage set by the articles of association or, if these are omitted, by the general meeting, and this percentage "may not be less than 5% (Article 96.2 of

[45] See, in this regard, GEMMA FAJARDO, *La gestión económica de la cooperativa: responsabilidade de los socios*, Tecnos, Madrid, 1997, pp. 59-60.

the PCC).[46]

The reserve for education and training is also a reserve that must be set up by law and is indivisible (art. 99 of the PCC), set up to ensure the "cooperative education and cultural and technical training of cooperators, cooperative workers and the community" (Article 97(1) of the PCC). The following go into this reserve: the part of the admission fee that is not allocated to the legal reserve; at least 1% of the annual net surplus from operations with cooperators (this percentage may be higher if the articles of association or the general meeting so decide); donations and subsidies that are specially earmarked for the purpose of the reserve; and the annual net profits from operations with third parties that are not allocated to other reserves (Article 97 (2) of the PCC).[47]

In turn, Article 98 of the PCC provides for the existence of three other types of reserves: the reserves provided for in the complementary legislation applicable to each branch of the cooperative sector, the reserves provided for in the articles of association, and the reserves set up by resolution of the general meeting.

Reserves of the first type may or may not be compulsory, depending on the provisions of the law from which they arise. The other two types of reserves are voluntary or free, as they depend on the collective will of the cooperators embodied in the articles of association or a resolution of the general meeting.

Housing and construction cooperatives must set up a reserve fund for conservation and repair and another reserve fund for construction (Article 12 of the RJCHC). The first is intended to finance conservation, repair and cleaning work on the property owned by the cooperative, and the articles of association must determine the form of integration. The second is intended to finance the construction or acquisition of new dwellings or social facilities for the cooperative.

Article 13 of the RJCHC also provides for the possibility of creating a voluntary reserve, called social reserve, which will be used to cover the risks of life and permanent invalidity of cooperators and to provide other benefits of a social nature, provided that the cooperative has the technical, economic and financial capacity to do so. In cooperatives where this social reserve has been created, it will be compulsory to create an individualised account for it, as this is the only way to determine "the share of the distributable reserves" to which the cooperator will be entitled when he/she resigns from the cooperative.

The compulsory reserves (legal reserve, cooperative education and training reserve, conservation and repair reserve fund and construction reserve fund), as well as the reserves created with profits from operations with third parties, cannot be shared in any way between cooperators and investors members (article 99 of the PCC). This applies both during the life of the cooperative and when it is dissolved.

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[46] See DEOLINDA MEIRA, "Artigo 96.º", In *Código Cooperativo Anotado,* coord. Deolinda Meira & Maria Elisabete Ramos, Almedina, Coimbra, 2018, pp. 520-525.

[47] See DEOLINDA MEIRA, "Projeções, conexões e instrumentos do princípio cooperativo da educação, formação e informação no ordenamento português ", *Boletín de la Asociación Internacional de Derecho Cooperativo*, no. 57, 2020, pp. 71-94.

When the cooperative's assets are liquidated, Article 114(1) of the PCC stipulates that the amount of the legal reserve — not allocated to covering losses for the year and which cannot be used for any other purpose — "may be transferred for the same purpose to the new cooperative entity that is formed as a result of the merger or split-up of the cooperative in liquidation". However, under the terms of paragraph 3 of the same article of the PCC, it was established that "when any new cooperative entity does not succeed the cooperative in liquidation, the application of the balance of mandatory reserves shall revert to another cooperative, preferably in the same municipality, to be determined by the federation or confederation representing the cooperative's main activity". Paragraph 4 goes even further by stating that "the reserves constituted under the terms of Article 98 of this Code shall be subject to the provisions of paragraphs 2 and 3 of this article, in terms of liquidation and if the articles of association make no provision for this", which means that this regime could also cover voluntary reserves if the articles of association fail to do so.

This impossibility of distributing the residual assets in the event of liquidation derives from the social function that the cooperative is called upon to fulfill and which implies that its destination, after liquidation, is the promotion of cooperativism (the so-called Principle of disinterested distribution).[48]

Finally, in the context of the economic regime, another important specificity of housing and construction cooperatives is the return of surpluses. Surpluses are the positive results that arise from the cooperative's pursuit of its mutual purpose. The cooperative surplus corresponds to the difference between the revenues and the costs of the operations that the cooperative carries out with its cooperators. It is an amount provisionally paid more by the cooperators to the cooperative or paid less by the cooperative to the cooperators in return for their participation in the cooperative's activity.

The rule in the Cooperative Code is that surpluses can be returned to the cooperators (Article 100(1) of the PCC). The return of surpluses will function as an *a posteriori* correction, through which the difference between the price charged and the cost, or the difference between the net income and the labour advances paid, will be returned to those who made the surplus, the difference being determined precisely at the end of each financial year.

The distribution of the return among the cooperators will be proportional to the transactions made by each of them with the cooperative in that financial year. Since the surplus is the result of the cooperative's transactions with its members, it is understandable that when the return occurs, it will correspond to the volume of these transactions and not to the number of shares held by each member.

However, there is no subjective right to the return of surpluses. The *principle of members' economic participation* (Article 3 of the PCC) points to three possible uses for surpluses: 1st - "development of their cooperatives"; 2nd - "support for other activities approved by the

[48] For a detailed analysis of this *principle*, see MARÍA LUISA LLOBREGAT HURTADO, *Mutualidad y empresas cooperativas*, Bosch, Barcelona, 1990, pp. 374 et seq.; DEOLINDA MEIRA, "Artigo 114.º", In *Código Cooperativo Anotado*, coord. de Deolinda Meira & Maria Elisabete Ramos, Almedina, Coimbra, 2018, pp. 607-610.

members"; 3rd - "distribution of surpluses for the benefit of members in proportion to their transactions with the cooperative." Cooperative legislation does not, therefore, impose an obligation on cooperatives to return surpluses to cooperators.[49]

In this context, housing and construction cooperatives are prohibited from returning surpluses. In fact, Article 15 of the RJCHC states that "the surpluses from each financial year, resulting from transactions with members, shall be applied to the reserves that the cooperative must set aside under the terms of the law or the articles of association". This legislative option thus contributes to better cooperative self-financing.

9. Conclusions

The right to housing is a fundamental right with an unquestionable personal and community dimension. It is the foundation from which citizens build the conditions that allow them to access other rights such as education, health and employment, contributing to social and territorial cohesion. Housing and construction cooperatives play a central role in promoting this fundamental right.

In Portugal, housing and construction cooperatives are governed by the provisions of Decree-Law no. 509/99 of 19 November and, in the absence of such provisions, by the provisions of the Cooperative Code. They therefore benefited from the reform of cooperative legislation in 2015, which introduced changes to important issues in the legal framework of cooperatives, such as the reduction in the minimum number of members, the introduction of investor members, the possibility of plural voting in first-degree cooperatives, the establishment of three alternative models of management and supervision of the cooperative, the reduction of the minimum share capital, the clarification of the liability of cooperators, the adoption of new solutions regarding cooperative reserves, as well as the widening of the list of statutory limits on the exercise of the right to reimbursement.

Essentially, in Portugal, housing and construction cooperatives benefit from an adequate legal regime. In fact, the legislator enshrines two housing ownership regimes - individual ownership and collective ownership - and regulates them exhaustively.

However, in a future revision of the sector's legislation, two fundamental aspects must be taken into account.

With regard to operations with third parties, the compulsory complementary nature of such operations should be eliminated. Operations with third parties, as well as allowing cooperatives to become more competitive by increasing their financial capacity, are an expression of the sociability demanded by the cooperative. For these reasons, in 1996 the Portuguese legislator eliminated the compulsory complementary nature of operations with third parties from the Cooperative Code, even though it prevents the distribution of the profits derived from these

[49] See DEOLINDA MEIRA, "The distinction between cooperative surplus and corporate profit as an evidence of the non-profit purpose of cooperatives", *In* H. Henrÿ & C. V. Vasserot (Ed.), *Una visión comparada e internacional del derecho cooperativo y de la economía social y solidaria. Liber Amicorum Profesor Dante Cracogna*., Madrid: Editorial Dykinson, pp. 95-109.

operations.

Taking into account the doctrinal and jurisprudential debate on the classification of the act of transfer of dwellings under the individual property regime, the solution provided for in the legislation in force, which qualifies this act as a purchase and sale, should also be amended. The adjudication regime is the most appropriate solution for this act of transfer. The legislator must consider that there is no opposition of interests between the cooperators and the cooperative, which excludes the contractual nature of the relationship underlying the transfer of ownership.

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CURRENT STATUS OF THE REGULATION OF RIGHT-OF-USE COOPERATIVE HOUSING IN SPANISH COOPERATIVE LAWS

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Abstract:

Housing is a fundamental right, but it is also a highly speculative market good. End users have grouped to gain access to housing through various formulas, among which are cooperatives. In Spain, the concept of right-of-use housing is a relatively new phenomenon. Its main characteristic is that the cooperative retains ownership of the building while granting its members the right to use the individual living spaces. This model will progress through an adequate legal framework that addresses and promotes its specific features, recognizing the value of living in a community. In response to the sector's demands, the model of right-of-use housing cooperatives has been addressed within cooperative or sector-specific legislation, mostly to safeguard the non-speculative nature of these projects. In this article, we analyse the content of these new laws.

1. Objectives of the work and methodology

The purpose of this work is to analyse the recent Spanish legislation that regulates right- of-use housing cooperatives, a model in which the cooperative maintains ownership of the building and awards its members the right to use individual housing spaces, and to assess whether these regulations can contribute to promoting and consolidating this type of cooperative that contributes to making effective the fundamental right of people to decent, adequate, affordable and sustainable housing.

To achieve this objective, the non-speculative nature of cooperatives is analysed, the content of the new regional laws that regulate this model is explained, and their suitability to protect and promote this model is analysed.

2. Introduction

Housing is a fundamental right, acknowledged in universal declarations of rights, such as Article 25.1 of the Universal Declaration of Human Rights or Article 11 of the International Covenant on Economic, Social and Cultural Rights, which refer to the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

Article 47 of the Spanish Constitution of 1978 also acknowledges this right. It states that “all Spaniards are entitled to enjoy decent and adequate housing”, adding that “the public authorities shall promote the necessary conditions and shall establish appropriate rules in order to make this right effective, regulating land use in accordance with the general interest to prevent speculation”. Likewise, the Autonomous

Communities that assume competence in housing matters, also recognise this right.[1]
At the same time, housing is a market good within a highly speculative real estate market. Therefore, to make this right effective, in addition to the housing policies implemented by the public authorities at state, regional or local level, housing users have set up mechanisms within the realm of private initiative without seeking commercial profit to attain decent and affordable housing. In many cases, this has been achieved through housing cooperatives, a legal status already recognised by the first cooperative laws of the Second Spanish Republic,[2] and later by Franco's laws.[3] This legal status is also found in the cooperative laws enacted after the Spanish Constitution came into force.

The choice of this legal status was not arbitrary but rather grounded in its personal and non-speculative nature, making it the ideal avenue for meeting the housing needs of citizens. This structure provides cooperative members and those who live with them with decent, suitable, and affordable housing *(*at cost price, as set out in various laws).

3. Non-speculative nature of the cooperative society. Special rules for housing cooperatives.

The International Cooperative Alliance (ICA) defines a cooperative as "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise" and adds that "as businesses driven by values, not just profit, cooperatives share internationally agreed principles and act together to build a better world through cooperation."[4].

Self-help, self-responsibility, democracy, equality, equity, and solidarity are cooperative values. The principles are voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training, and information; cooperation among cooperatives; and concern for the community.

Thus, cooperatives are independent societies that operate under the ICA principles and those of free membership and voluntary withdrawal. They have a variable capital and are managed democratically. These societies bring together individuals or legal entities who share common socio-economic needs or interests. They aim to improve the economic and social well-being of their members and the surrounding community, foster improved human relations, and prioritize collective interests over individual profit. By

[1] Thus, Article 26 of the Statute of Autonomy of Catalonia (Organic Law 6/2006 of 19 July) provides that "Those individuals who lack sufficient resources have the right to a decent home, and public authorities shall, therefore, establish by law a system of measures to guarantee this right, within the terms determined by law". The Statute of Autonomy of the Valencian Community (Organic Law 5/1982 of 1 July) states in Article 16: "The Generalitat of Valencia has to guarantee the right to decent housing to all Valencian citizens, especially to the most vulnerable" and that of Andalusia (Organic Law 2/2007, of 19 March) states in Article 25: "In order to favour the exercise of the constitutional right to decent and adequate housing, public authorities are required to promote public housing. The law shall regulate access to it on equal terms, as well as grants that facilitate it".

[2] The State Law of 9 September 1931 on the Legal Regime of Cooperatives listed them in Article 18.5, as did the Catalan Law on Cooperatives of 17 March 1934, which called them (Article 9.1) "housing and accommodation", classifying them as a subclass of consumer cooperatives. Earlier references to housing cooperatives can also be found, for example, in the Law of 12 June 1911, known as the Law on Cheap Houses.

[3] The Cooperation Law of 2 January 1942 included subsidised housing cooperatives among its classes, regulating them in art. 41 and Law 52/1974 of 19 December.

[4] The Cooperation Law of 2 January 1942 included subsidised housing cooperatives among its classes, regulating them in art. 41 and Law 52/1974 of 19 December.

engaging in collective business activities, cooperatives prioritize mutual assistance and the financial contributions of all members.[5]

According to this definition, the primary purpose of a cooperative agreement is not profit-making,[6] but rather meeting the needs and interests of its members and enhancing their living conditions through the advancement of a collective project.

This seems to be the view of the Spanish Constitutional Court: "Cooperativism has come to be understood as the voluntary grouping of human efforts for the direct and unmediated performance of fundamentally economic activities. The cooperative movement and its instrument, the cooperative society, have been characterised by a certain mutualist nature. They have always strived for a purpose that extends beyond the collective benefits of their members, contributing to the enhancement of the social environment in which they operate" (Ruling 155/1993 of 6 May).

From the above, we can determine that the cooperative lacks profitability as an objective, i.e., it does not pursue corporate benefits. To this effect, the Judgement pronounced by the 15th section of the Barcelona Provincial Court on 8 May 1995, declared with regard to a consumer cooperative, the following: "Nothing prevents the intermediation of other organisations which, from another perspective, link the non- profit nature to business initiative, whether they take the form of consumer and user associations or cooperative societies, protected by the Constitution (Arts. 9, 2, 51 and 1.1. of the Constitution)", although this is not undisputed in legal precedent or case- law.[7]

We can also argue that cooperative members do not receive dividends, therefore the cooperative lacks subjective profit. Thus, Article 2 of Legislative Decree 2/2015, of 9 May, which approves the Consolidated Text of the current Valencian Cooperatives Act, in defining the cooperative activity that members carry out within the company, states that these relationships are not for profit.

This is particularly evident in cooperatives which aim to generate savings for their members. This savings-oriented approach has also been recognized in minor case law, such as the ruling issued by the 15th Section of the Barcelona Provincial Court on September 23rd, 2010. The ruling declared that "... 'cooperative savings' in consumer cooperatives can be easily understood as a means to achieve the cooperative's objective of providing members and their families with consumer goods and services at better or more advantageous conditions, primarily in terms of cost. This is achieved by eliminating or reducing the commercial margin of the agents involved in the production and supply chain in the market, thereby bringing the member's cost (compensation cost) closer to the cost of acquiring goods or products by the cooperative, which represents the consumers grouped in the cooperative".

Although these rulings refer to a specific type of cooperative, consumer cooperatives, the concept of cooperative savings is also found in other forms of cooperatives in which the activity of the member

[5] This concept is almost literally included in some laws, such as Law 12/20105 of 9 July on Cooperatives in Catalonia (art. 1) or Law 5/2023 of 8 March on Cooperatives in the Balearic Islands (art. 2).

[6] On this matter, Fajardo García, G., in *La gestión económica de la cooperativa*: *responsabilidad de los socios.* Ed. Tecnos, Madrid, 199

[7] A summary of the different doctrinal positions can be found in *La naturaleza lucrativa o no lucrativa de las cooperativas*, a paper presented at the XVIII International Congress of Researchers in Social and Cooperative Economics (Mataró 2020).

constitutes, *lato sensu*, an act of consumption, as in the case of housing cooperatives.[8]

Spanish tax and accounting rules are clear in this respect. Thus, Article 15 of Law 20/1990 of 19 December on the Tax Status of Cooperatives sets out that transactions between cooperatives and their members should be calculated based on their market value, which is the normal price agreed upon between independent parties for the goods or services. However, there is an exception for certain types of cooperatives, including consumer and user cooperatives, housing cooperatives, agricultural cooperatives and cooperatives that provide services or supplies to their members as stated in their articles of association. In these cases, the "price of the relevant transactions shall be computed as the price at which they were performed, provided that it is not less than the cost of such services and supplies, including the corresponding part of the entity's overheads". Accordingly, accounting regulations stipulate that the consideration made by members in exchange for the receipt of goods or the provision of cooperative services are considered compensatory payments for costs incurred.[9]

References to cost are also found in certain regional legal provisions, which state that the allocation of housing to members is done at the cost price. For example, Article 122.1 of the Catalan Law, Article 113.5.c of the Andalusian Law or Article 128.7 of the Balearic Law.

The non-speculative nature of the cooperative society translates into other aspects of cooperative regulation, based on the cooperative principles of the ICA mentioned above:

1.1.1. The general principle of "one member, one vote" applies to the member's decision rights. The weighting of votes is only allowed in exceptional cases and is always based on the member's activity within the cooperative, it is never determined by the amount of capital contributed. The distribution of profits or the allocation of losses among cooperative members is also determined based on the cooperative activity performed by each member within the organization, rather than the capital contributed by them. Upon leaving the cooperative, members receive a refund of the capital they have contributed. However, any collective capital gains generated within the cooperative remain within the company. These gains are typically allocated to mandatory reserves, which cannot be distributed among the shareholders, even in the case of the company's dissolution.

1.1.2. The remuneration of the share capital is not paid out in the form of dividends, but in the form of interest, which is limited by law.

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[8] It could be argued that the housing cooperative is, in a way, a specific type within the larger category of consumer cooperatives. This has been the trend followed by some Spanish legal rules, such as Law 14/2011 of 23 December on Andalusian cooperatives. Article 83 of this law simplifies the types of first- degree cooperatives, introducing the following categories: consumer, worker, service, and special cooperatives, and within the former, it includes consumer cooperatives *stricto sensu*, housing, credit, and insurance cooperatives as subclasses. In Valencian legislation, classification criteria for these companies, as outlined in Article 86, include considerations regarding the socio-economic structure of the cooperative. According to these criteria, cooperatives can be classified as production cooperatives if their objective is to enhance the income of their members. On the other hand, consumer cooperatives are those whose objective is to achieve savings in the income of their members.

[9] This was the ruling of the Eleventh Rule of Order ECO/3614/2003 of 16 December of the Ministry of Economy, the first Spanish regulation to adapt the General Accounting Plan to the particularities of cooperative societies, which also established that account 756 must be labelled. And along the same lines, we find Rule Ten of the current regulation, Order EHA/3360/2010, of 21 December, which replaced the previous one.

1.1.3. The aforementioned cost price.

1.1.4. And, focusing on housing cooperatives, most Spanish laws, from State Law 27/1999 of 16 July to the various regional laws, stipulate that when the member proposes to transfer the rights they hold over the property, the cooperative has the pre-emptive right at the allotment price.

Given the above, the cooperative becomes the ideal social structure for housing projects in right of use, as the affordability of housing is maintained throughout its useful life. Although our analysis is focused on economic affordability, the new co-living system adds value to other aspects such as environmental sustainability, self-management, and fostering relationships with the cooperative building's surrounding environment, with a particular emphasis on the notion of care. In this sense, it has been said that the "cornerstone of collaborative housing is the common and democratic management of shared needs based on the principles of reciprocity and mutual support. For this reason, cooperatives provide an appropriate legal framework",[10] as self-management, mutual aid and community interest are also inherent to them.

4. The right-of-use housing cooperatives sector in Spain and Catalonia

Despite the legal provision granting the cooperative a pre-emptive right when a member intends to transfer their dwelling, this right has become inoperative in practice. This is mainly due to its short duration, which does not align with the useful life of the dwellings, as well as the common practice of dissolving the cooperative once the homes have been allocated to the members.[11] It could even be argued that when the cooperative allocates ownership of collectively developed housing to its members, only the initial members who served as promoters gain access to a cooperative dwelling. However, in most cases, subsequent transfers occur outside the cooperative and are subject to market rules and conditions.

The right-of-use model, characterised by the fact that the cooperative retains ownership of the dwellings, assigning to the members only the right to use and enjoy them, serves as a countermeasure to this practice. It emerges as an ideal instrument for satisfying the need for decent, affordable, and stable housing while preventing speculation and maintaining affordability throughout the useful life of the dwelling, at the same time it designs a model of shared coexistence, based on the values of mutual aid, sustainability, respect for diversity and collaboration with the environment.

The first Spanish experiences of right-of-use housing cooperatives, known as "senior cohousing", were born in the last years of the 20th century, to promote the active aging of its members, by providing them with housing appropriate to their needs, with community spaces in which to socialize and develop activities that foster their capabilities. These experiences found in the comprehensive consumer and housing cooperative their ideal vehicle, since the characteristics of the cooperative adjusted to the

[10] Keller, C. and Ezquerra, S. in *Viviendas colaborativas de personas mayores: democratizar el cuidado en la Vejez*, REVESCO. Revista de Estudios Cooperativos, 29 de enero de 2021. Ediciones Complutense. https://revesco.es/txt/revescochristelkellerysandraezquerra.htm

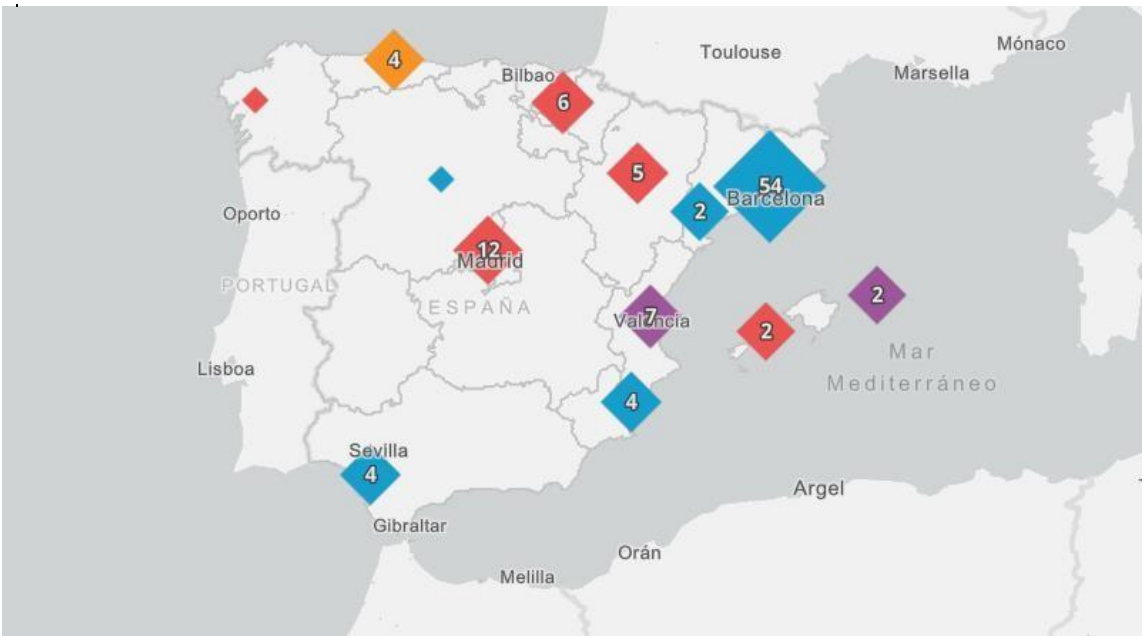
[11] In the article "¿Resurge la cooperativa en el sector de la vivienda?" published in *Las Provincias* on 4 April 2018, Professor Gemma Fajardo says: "But for cooperative housing to generate these effects, the cooperative must exist. If we liquidate the cooperative, once the dwellings have been built, as has been done in Spain for years, they go to the free market, generating advantages only for the cooperative member. The cooperative should not be dissolved after allocating the property to the cooperative members, but Spanish commonhold property legislation is compulsory and leaves little room for cooperative self-management." http://www.lasprovincias.es/extras/coopera/resurge-cooperativa- sector-20180403190102-nt.html

objectives and purposes of these experiences[12].

Although the right-of-use model is still residual in Spain, it has experienced significant growth, both in terms of the number of experiences and its new typologies (intergenerational housing, disabled people, LGBTQIA group,...), especially since 2010, in response to the serious global financial crisis of 2008.

There are currently more than a hundred projects, unevenly distributed throughout the territory, as can be seen in the following MAP 1, prepared by the Network of Red de redes de Economía Alternativa y Solidaria (REAS) and AlterHabitat.[13] Most of them adopting the class of comprehensive housing and consumer cooperatives.

MAP 1:



As it can be seen in the map above, around half the number of right-of-use cooperatives are located in Catalonia (54 in the current year 2024). Of these, more than a third are in the city of Barcelona, as can be seen in the following MAP 2.[14]

[12] In this sense, you can see, for example, the website of one of these senior cohousing projects, that of "Trabensol Sociedad Cooperativa Madrileña": https://trabensol.org/proyecto-social-2/

[13] In https://experience.arcgis.com/experience/21f036a19c87430b97ff21035f11a86a. The map places the number of cooperatives under the cession of use regime existing in each province of the peninsula and the Balearic Islands, although it does not incorporate the some projects that are being developed in the Canary Islands.

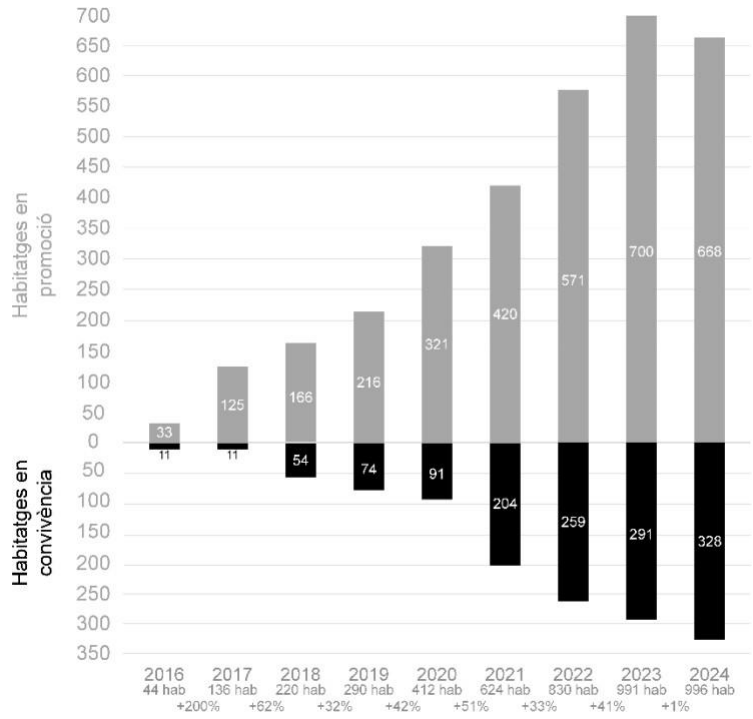
[14] This table has been prepared as internal documentation of LA DINAMO FUNDACIÓ, which has authorized its use for the preparation of this article.

MAP 2:

Right-of-use cooperatives in Catalonia **Right-of-use cooperatives in Barcelona**

At the time of publication of this work, cooperatives in Catalonia have built – or are in the process of building– a total of 996 homes, most of them in the last four years, as can it be seen in the following table, which differentiates those that are under construction (in grey in the table) from those in which members are already residing in the cooperative (in black in the table) and which represent approximately one third of the cooperative housing.[15]

[15] This table has been prepared as internal documentation of LA DINAMO FUNDACIÓ, which has authorized its use for the preparation of this article.



As said above, in absolute figures, this cooperative model is residual,[16] but despite this we cannot ignore its rapid growth, to which, without a doubt, the public housing policies promoted by the Barcelona City Council, pioneers in Spain, and which have been followed by other Spanish local or regional administrations, have contributed. Resulting in the fact that the majority of cooperative housing projects for use in Catalonia are located on publicly owned land.

In this regard, in 2016 the Barcelona City Council organised a first public competition to award surface rights on municipal land, for seventy-five years, for a fee lower than the market price. The recipients of the competition were housing and consumer cooperatives for use, whose members had to be the final users of the homes, or non- profit associations that promoted the constitution of this kind of cooperative. The competitions have been replaced by the so-called "CONVENI ESAL", signed by the City Council with various representative entities.[17]

The possibility of allocating the dwelling to the members for a title other than ownership is foreseen in all Spanish cooperative laws, without exception. All of them usually refer to the fact that the dwellings

[16] For these purposes, it should be taken into account that the total number of homes in Catalonia as of January 1, 2021 was 3,915,129, of which 76.4% constituted the main family home, according to data from the Catalan Institute of Statistics (IDESCAT) https://www.idescat.cat/novetats/.

[17] This is an agreement signed by the Institut Municipal de l'Habitatge de Barcelona (IMHAB) with various non-profit entities (ESAL): the Federation of Housing Cooperatives of Catalonia, the Coordinator of Foundations and the Network of Social Economy (XES), which has been published in the Gaseta de l'Ajuntament de Barcelona on November 13, 2023.

can be allocated "by any legally admissible title",[18] be it ownership, a limited real right of use and enjoyment (usufruct, right of occupancy, building lease) or a right of use of a contractual or obligatory nature.

However, most of the rules lack specific regulation when the use of the dwelling is allocated to the partner, relegating its regulation to the bylaws. In reality, the few special rules on housing cooperatives either refer directly to ownership or use terminology specific to rights in rem. As we shall see, only recently certain regulations have stipulated that the right of use within a cooperative is considered a mandatory corporate right, intrinsically tied to the member's status and excluded from any legal transactions conducted outside of the cooperative framework.

For this reason, the first experiences of cooperative housing in our country have configured the statutory right of use as a personal right, linked to the cooperative agreement. However, in his analysis of the Danish model *andel* Turmo (2004)[19] warns that, despite this generic provision in the Spanish cooperative laws, the right of use will not cease to be residual, as long as there is no legal mechanism that prevents the change of regime in the allocation of the dwelling, since the mere agreement of the general assembly to modify the bylaws will be sufficient to allocate the property to the members.

In analysing two successful models, the Danish and Uruguayan cases, Vidal (2018) underscores the importance of having legal frameworks and public policy instruments that incorporate "mechanisms to prevent profit-making and individual capitalization of equity value in cooperative properties". Vidal further highlights the need for regulations to address aspects such as the valuation of capital shares, the control of monthly rent, restrictions on housing subletting, prevention of the conversion of cooperative dwellings into individual ownership, and guidelines for the dissolution process of cooperatives. In summary, Vidal emphasizes the necessity for "comprehensive and coherent legal frameworks that

[18] This possibility was incorporated into our positive law in the first post-constitutional laws: Law 1/1982, of 11 February, on cooperatives in Catalonia, established it in Article 58.4, and Law 4/1983, of 9 March, in the Basque Country, in Article 81.3. Article 129.3 of the first post-constitutional state law on cooperatives, Law 3/1987, of 158.3 of Law 9/2018, of 9 October, of Extremadura; Article 116 of Law 2/2023, of 24 February, of Madrid; Article 120.2 of Law 5/1998, of 18 December, of Galicia; Article 119.3 of Law 4/2001, of 2 July, of La Rioja; Article 112.3 of Law 8/2006, of 16 November, of Murcia; Article 118.3 of the Castilian Law, Law 4/2002, of 11 April; Article 153.3 of Law 4/2010 of 29 June of the Principality of Asturias, Article 114.3 of Law 6/2013 of 6 November on cooperatives of Cantabria; Article 135.3 of Law 11/2010 of 4 November of Castilla La Mancha; 2 April, known as the General Law on Cooperatives, regulated it along the same lines. The same provision can be found in Article 89.3 of the current Law 27/1999 of 16 July, and in subsequent laws: Article 97.3 of Law 14/2011 of 23 December of Andalusia; Article 68.2 of the Foral Law 14/2006 of 11 December of Navarre; Article 84 of the Aragonese law, Legislative Decree 2/2014 of 29 August; Article 128.9 of Law 5/2023 of 8 March 23 of the Balearic Islands; Article 112.2 of the Canarian Cooperative Law, Law 4/2022 of 31 October. There was a brief exception to this regulatory approach with the enactment of the first Valencian regulation, Law 11/1985 of 25 October. This law limited housing cooperatives to the allotment of ownership or rental as stated in Article 74. This provision remained in effect until the enactment of Law 8/2003, of 24 March. The amended regulation, which is still in force today under Legislative Decree 2/2015, of 15 May, allowed for the allocation of cooperative housing to members through any legally acceptable means. For a more exhaustive analysis of the evolution of these rules, see *Viviendas Colaborativas: estado actual en laComunidad Valenciana*, Collective work coordinated by ALGUACIL MARÍ, M.P., Valencia, 2021, Ed. Aula de Emprendimiento en Economía social y Sostenible Universitat de València and Diputación de Valencia, pages 110 to 118 and https://fecovi.es/documentacion/publicaciones/9-Libro-Viviendas-Colaborativas-estado-actual-CV.pdf

[19] *Andel: El model escandinau d'accés a l'habitatge*, Turmo, R., Finestra Oberta, number 39 February 2004, Ed. Jaume Bofill Foundation, https://fundaciobofill.cat/uploads/docs/y/m/l/6/b/0/6/c/4/378.pdf.

effectively respond to the unique needs and characteristics of cooperative systems. Cooperatives need land, financing, and legal recognition to develop".[20]

This last analysis has been promoted by LA DINAMO FUNDACIÓ,[21] an entity whose mission is to foster and promote the cooperative housing model for use as an alternative to conventional models of access to housing, and whose purposes include the development and collaboration in studies and research in this field. In compliance with these purposes, it has also promoted other studies to analyse the public measures necessary to promote these projects, including the need to develop an appropriate legal framework, such as the cited work by BAIGES, C.M FERRERI, M. VIDAL (2019). According to this paper, comparative law experiences show that this model has spread, above all, in countries where there was a specific regulation of a protective nature.[22] This has been the case in Denmark, when regulating private housing cooperatives *(andel*) or common housing *(almen*), in Uruguay, the Netherlands, Germany or Italy. In some cases, these regulations and public policies promoting the model are found at the local level, in cities such as New York, Zurich, or Quebec.[23]

Due to this reason, the emerging housing cooperative sector in Spain has been advocating for the establishment of its own set of rules. They have actively formulated proposals regarding the content of future regulations, based on another of the documents prepared at the initiative of LA DINAMO FUNDACIÓ: "*The Advisable Legal Mark to Promote the Cooperative Model in Right of Use"*.[24]

This last document made a series of proposals on the content of a future regulation of right-of-use cooperatives, to promote and consolidate this model. This legal framework was to regulate the following points:

- Consider right-of-use cooperatives as a type of consumer cooperatives, thus placing the emphasis on housing, as a good for use, as the habitual and permanent residence of members and the people who live with it, and not as a real estate investment asset.
- Define the right-of-use cooperative, which includes elements for private use and elements for collective and community use.
- Expressly provide that the right to use cooperative housing constitutes the cooperative activity and, therefore, cannot be transferred independently and unrelated to the status of member.
- Prohibit the right of use of the partners from becoming an attribution of ownership over the housing. Thus, if the cooperative opts for the transfer of use regime, it will not be able in the future to agree on a modification of its statutes and regulations, to change the tenure regime of the members, who will always be users.

[20] Baiges, C., Ferreri, M. Vidal, L., in *Polítiques de referència internacionals per a la promoció d'habitatge cooperatiu d'usuàries,* p. 28 and 32, at https://ladinamofundacio.org/wp- content/uploads/2019/12/Document-estudis-internacionals-_La-Dinamo.pdf

[21] To learn more about this entity, you can consult its website: https://ladinamofundacio.org/

[22] E*l foment públic del cooperativisme d'habitatge en cessió d'ús a Dinamarca i Uruguai. Cap a la generació d'un marc legal de l'habitatge cooperatiu en cessió d'ús*. Vidal, L., https://ladinamofundacio.org/wp- content/uploads/2018/08/El-foment-public-del-cooperativisme_La-Dinamo.pdf.

[23] Baiges, C., Ferreri, M. Vidal, in *Polítiques de referència ..., op. cit. supra.*

[24] *Sobre el marc legal aconsellable per impulsar el model de cooperatives en règim d'ús* (*The Advisable Legal Mark to Promote the Cooperative Model in Right of Use)* is published at https://ladinamofundacio.org/wp-content/uploads/2018/08/Sobre-el-marc-legal-aconsellable_La- Dinamo.pdf.

- Eliminate the obligation for housing cooperatives to submit their annual accounts to external audit, when the company retains ownership of the property, to avoid a disadvantage compared to other models of ownership, co- ownership or collective ownership.
- Limit the transfer, *inter vivos* or *mortis causa*, of contributions to share capital, and with them, the status of partner, to members of the cohabitation unit who do not have the status of partners.
- Regulate a specific economic regime, limiting the different contributions that current and future members must make to cover the cost of construction, as well as including other provisions necessary to attend to the operation of the building; the non-distribution of the results; the provision of non-distributable collective funds, including a solidarity or mutual aid fund, which allows possible defaults to be dealt with - especially for members in vulnerable situations.
- Establish favourable tax measures.

The above proposals have been debated and accepted by the right-of-use cooperatives, which are grouped into federations of cooperatives and other non-profit organizations, state or regional, which have acted as interlocutors of the administrations, demanding the recognition of this cooperative model, its promotion and the enactment of appropriate legislation.[25]

These demands are gradually being addressed through the enactment of recent laws, especially at the regional level; these are analysed below.

5. Analysis of recent regulations governing cooperative housing in right of use

Indeed, most of the regulations analysed in this paragraph are the outcome of petitions formulated by right-of-use housing cooperatives through their federations or other representative associations. In the case of Catalonia, although it still does not have a law regulating this housing model, it is the autonomous community with the highest number of housing cooperative projects in Spain, and many of these projects have already been inhabited for a considerable period. Catalonia has taken a leading role in shaping the regulatory framework necessary to foster the growth of the new housing cooperative movement. Currently, efforts are underway to incorporate this framework into Catalonia's Cooperatives Act. Nonetheless, we will examine the pioneer regulations of other Autonomous Communities.

5.1. Balearic legislation. Housing Law *versus* Cooperative Law

The sectoral legislation on housing was the first to use the term "right of use" or "right to use"[26] as a *tertium genus* that can be placed between rental housing and ownership, although it is closer to the former. It is not surprising that the first explicit recognition of right-of-use housing cooperatives in Spanish legislation also came from the hand of a housing regulation, i.e., Law 5/2018, of 19 June, the Housing Law of the Balearic Islands.

[25] In the case of Catalonia, an autonomous community that is a pioneer in the claim for a legal framework on cooperative housing in cession of use, in addition to the documents of LA DINAMO FUNDACIÓ, you can consult the demands made by the Sectorial d'Habitatge de la Xarxa d'Economia Solidària (XES) in the https://xes.cat/habcoop-assequible.

[26] One of the first regulations to include this term was the Royal Decree 106/2018, of 9 March, which regulates the State Housing Plan 2018-2021, whose Article 70, entitled "Limitation of the price of rent or right of use", came to standardise the usage fee with the rent or rental price.

The Law refers to these cooperatives by including them among the objectives of the regulation set out in Article 2, namely: to promote the participation of right-of-use housing cooperatives in public housing policies.

In its eighth additional provision, "On measures for the promotion of housing cooperatives", the Law stipulates that public administrations may establish any of the forms of collaboration outlined in cooperative regulations with housing cooperatives or their representative entities. It also imposes on the public administration the duty to establish annual programmes for the promotion and encouragement of right-of-use housing cooperatives, which will be represented on the Autonomous Community Housing Board.

The ninth additional provision stipulates that public administrations may constitute building leases on their property in favour of housing cooperatives, by means of a public tender reserved for the latter, provided that they are legally constituted, duly registered as housing cooperatives and indicate in their name that they are housing cooperatives under a right-of-use system. Additionally, their bylaws must unambiguously state that the building will be used for the permanent residence of their members.

In addition to complying with the applicable cooperative regulations, the tenth additional provision of the Law lays down special rules which must also be complied with by right-of-use housing cooperatives which intend to bid for the aforementioned public tenders:

- If a member of the cooperative intends to transfer their rights to the dwelling *inter vivos*, they must adhere to the procedure outlined in the cooperative rules, which includes the preferential right of acquisition for applicants seeking admission, and follow the price specified within those rules.
- The right-of-use system must be permanent in time.
- These cooperatives must be non-profit.
- If there are no applicants for admission or if they decline to exercise their pre- emptive right, the governing board shall, within three months: (i) extend this right to applicants seeking admission to other right-of-use housing cooperatives; (ii) exercise the pre-emptive right directly in the cooperative's name if it has sufficient equity; (iii) offer this right to the public administration temporarily, without becoming a cooperative member, while promoting the entry of a new applicant. Only if none of these options are exercised, the member may freely transfer their rights to any individual who meets the necessary criteria for membership and subsequently becomes a cooperative member.

Following the initial regulation in the Housing Law, the Balearic legislator has further addressed this model in the new Law on Cooperatives, Law 5/2023, of 8 March. Article 130 defines for the first time right-of-use housing cooperatives as those "which retain full ownership or any other right over the land and/or building and provide, at cost price, to the user members and, where appropriate, to the other members of a cohabitation unit, the exclusive use of the dwellings and premises that can be used privately, together with the shared use of the common premises, for habitual and permanent residence. Their regulation shall be made explicit in the statutes or rules of procedure".

Furthermore, the article stipulates that these cooperatives are responsible for administering, managing, conserving, and enhancing the entire building. They allocate the corresponding financial contributions to the members and the cooperative is deemed the ultimate consumer in this context. Additionally, the article

includes the important point that these cooperatives are classified as consumer cooperatives for tax purposes.

As was previously the case with the Balearic Housing Act, the new cooperative law introduces additional requirements for these cooperatives to fulfil, including those required to be considered not-for-profit. Furthermore, they must provide services to satisfy the collective needs of their members. These user members may be both general and specific groups, such as the elderly, people with functional diversity, etc.

The Law further defines the legal nature of the right of use over private spaces or premises, which members can utilize for their personal needs. It describes this right as both personal and corporate in nature, emphasizing that it cannot be transferred through *inter vivos* or *mortis causa* acts. Therefore, the successors in title of the deceased member have the right to a claim assessment following the cooperative rules. The articles of association can include provisions that allow the full repayment amount to be withheld until the rights and obligations of the deceased member are transferred to a new member upon termination of membership.

Similarly, the Law defines cohabitation units as groups comprising users assigned to a dwelling, irrespective of whether a familial relationship exists among them, however, at least one of the individuals in the unit must be a user member of the cooperative. The articles of association or bylaws of the cooperative must govern the rights and responsibilities of both members and individuals residing with them. Furthermore, the rules of social discipline on the use of dwellings and common premises apply to all members and residents.

As a mechanism to protect this cooperative model, Article 130.5 establishes certain limitations by which right-of-use cooperatives must abide:

- They may not assign to the members the ownership or any other right in rem over the dwellings or premises that may be used for private purposes.
- Upon dissolution, the dwellings must be transferred to another cooperative of the same type, to the entities that group them or to other non-profit entities whose objective is affordable housing on a right-of-use basis, to continue to be used for the habitual and permanent residence of the members and their cohabitation unit.
- Right-of-use cooperatives cannot be transformed into any other type of company or any other type of cooperative. In the event of a merger or split, if the resulting cooperative is of a different type, the dwellings, and other premises susceptible to private use must be transferred to another or several cooperatives or the entities grouping them, following the provisions outlined in the previous section.
- These cooperatives may not carry out the commonhold division of the building except in justified situations, such as in the case of a pre-existing building that is already subject to commonhold division, legal or regulatory requirements or when it is necessary to facilitate obtaining financing from financial institutions. However, even in these exceptional cases, the commonhold division cannot result in the allocation of individual property rights nor rights in rem to members over the dwelling or the entire property.
- All the above limitations must be registered in the Land Registry.

The Law also contains special rules and limitations on the economic regime of these cooperatives:

1. To become a member, individuals must contribute to the cooperative's capital, with the

maximum amount equaling the development or acquisition costs of the property. Both the mandatory contributions of each member to the share capital and any additional mandatory contributions necessary to finance the construction must not exceed a total of 35 % of the development costs.

2. Members are solely obligated to make the contributions outlined in the preceding paragraph, which may be adjusted, if necessary, based on the General Index of Consumer Prices.

3. Furthermore, the members of the cooperative must make regular contributions as determined by the general assembly or, if applicable, the assembly of each project, to cover the operative expenses of the cooperative. This obligation does not exempt them from paying for other goods and services provided to them by the cooperative.

Lastly, like other housing cooperatives, these cooperatives are subject to the right of pre-emptive acquisition as stipulated in Article 133 of the Law. This right applies when a member intends to transfer their right to the dwelling *inter vivos* within five years, or any longer period specified in the bylaws (up to a maximum of ten years from the date of possession). Specific regulations apply if the cooperative is involved in the promotion of subsidised housing.

5.2. The Basque Country Law and its reference to right-of-use cooperatives

The first post-constitutional cooperative law was Law 1/1982 of 11 February 1982 on cooperatives in the Basque Country. Article 58.4 established that the use and enjoyment of the dwellings could be awarded and transferred to the members by any legally admissible title, a rule that was maintained in Article 114.3 of Law 4/1993, of 24 June.

Although this second Basque regulation provides a more precise classification of cooperatives, it is only in the recent law 11/2019 of 20 December that we find an explicit reference to right-of-use housing cooperatives.

Unlike the case of the Balearic Islands, the Basque legislator has limited its regulation to specific aspects of this model, without including the shielding rules that we have seen in the previous section.

Like its predecessors, the current Article 118 establishes that ownership or use and enjoyment can be transferred to members through any legally admissible title. It further states that “when the cooperative develops or acquires a group of dwellings and premises, as a unified building, for transfer to members, the whole property will be owned by the cooperative in full ownership or under another right, for an indefinite period or a fixed term if so provided in the bylaws. In this case, cooperating members will have a right of use over the dwellings and premises allocated to them by the cooperative in accordance with its bylaws and internal organisational rules governing their rights and obligations”.

Furthermore, in right-of-use cooperatives, membership acquisition is contingent upon making a capital contribution, with the maximum amount of this contribution being equivalent to the development or acquisition costs of the property. Additionally, members are required to make periodic payments determined by the cooperative bodies for the maintenance, improvement, and other related expenses associated with the residential property. We note that, in contrast to the Balearic Law, there is no limitation in any way on the contributions required from members, which does not favour the affordability of housing.

Similarly, according to the Basque law, when a member departs, their right of use will be made available to the governing board, which will then assign it to a new member, unless it is transferred upon death to

their rightful successors, who can request their admission as members within three months of the occurrence, following the general requirements stipulated in the Law. Otherwise, they will have the right to receive the corresponding claim assessment, however, the repayment may be postponed until a new member replaces the departing member in their rights and obligations.

In our opinion, although the new Basque regulation explicitly recognises the right-of-use model, it lacks a legal framework that adequately addresses the specific features of this housing model, particularly in terms of affordability. Consequently, its expansion is unlikely to match the pace observed in other regions that have implemented protective regulations. The only exception to this is the requirement for non-profit entities, as stated in the third additional provision of Law 3/2015, of 18 June, on housing in the Basque Country.

From reading the norm, we can conclude that the approved regulation contains those elements that must serve to guarantee that housing is affordable, remaining outside the market rules, both in the event of a partner's withdrawal, as well as in the event of the company's dissolution, while offering a clear regulatory framework that offers the necessary legal security to the cooperative, its members and third parties that contract with it.

5.3. The modification of the Law on Cooperatives of La Rioja

Law 4/2001, of 2 July, on Cooperatives of La Rioja has been amended[27] to incorporate a new class of cooperatives, right-of-use housing cooperatives, regulated in articles 129 ter and 129 quarter.

These cooperatives are defined as those that retain full ownership or any other right over the land and/or building and provide their members with private use of the homes as their habitual and permanent residence at cost price. Along with these private-use facilities, the Law makes reference to common and shared-use spaces and facilities. Both are managed, administered, maintained and improved by the cooperative, which is considered the final consumer and for tax purposes, it is considered a consumer cooperative.

The legal norm establishes the characteristics of these cooperatives: the members of these cooperatives can be specific collective partners (major, functional diversity, etc.) or general; these cooperatives must provide services to satisfy the collective needs of their members and meet the requirements for cooperatives configured as other non-profit entities; the right of use of the member over the homes or premises susceptible to private use is configured as a right of a personal and corporate nature, not real, and is not transferable by acts *inter vivos* or *mortis causa*, except in the cases and procedures contemplated in this law and defines the cohabitation units formed by the members.

The Law also imposes limitations: the ownership or any real rights over the dwellings cannot be awarded to the members; in the event of dissolution, the dwellings and other facilities susceptible to private use must be transferred to another cooperative of the same type, to the entities that group them or to other non-profit entities whose social object is affordable housing on a transfer-of-use basis; they cannot be

[27] This modification has been carried out by Law 1/2019, of 4 March, on Urgent Economic, Budgetary and Fiscal Measures for the year 2019 of the Autonomous Community of La Rioja.

transformed into any other type of company, or into any other type of cooperative and they cannot carry out horizontal division, except in exceptional cases.

Finally, the contributions to the capital and other obligatory contributions that the using members must make are regulated, limiting them to 30% of the costs of the promotion; they must make the periodic payments agreed upon by the cooperative's bodies; and new partners cannot be forced to make contributions greater than the old ones.

From reading the norm, we can conclude that the approved regulation contains those elements that must serve to guarantee that housing is affordable, remaining outside the market rules, both in the event of a partner's withdrawal, as well as in the event of the company's dissolution, while offering a clear regulatory framework that offers the necessary legal security to the cooperative, its members and third parties that contract with it.

5.4. Canarian legislation on cooperatives

The Autonomous Community of the Canary Islands has been the last to legislate on cooperatives. Until just a few months ago, Canarian cooperatives were subject to state law. With the enactment of Law 4/2022 of 31 October, Canarian cooperatives have their own law.

The first formulation of the draft law coincided with the emergence of several cooperative initiatives in the Canary Islands operating under the right-of-use system, albeit in the early stages of development.[28] This undoubtedly served as a motivation for the legislator in the Canary Islands to address this phenomenon. Although, like the Basque one, the Canarian legislator limits its regulation to only some aspects of these cooperatives.

Article 116, which addresses the *inter vivos* transfer of cooperative housing assigned as property and includes a pre-emptive right and right of first refusal for the cooperative, includes a specific provision for right-of-use housing cooperatives. In such cases, the article prohibits the *inter vivos* transfer of the right of use and enjoyment. Instead, when a member departs, the cooperative must take possession of the right and subsequently transfer it to other members in strict order of seniority, with a few exceptions: (i) when the transfer of the right of use takes place between spouses decreed or judicially approved in cases of separation or divorce; (ii) if so stipulated in the bylaws, in cases of justified voluntary or compulsory cancellation, in favour of the members of the cohabitation unit.

Likewise, the provision contains a special rule for cases of transfer *mortis causa*, allowing the transfer of the right of use to the heirs of the deceased member, after their admission as members, if they meet the general requirements and so request it within the legal deadline. If the successors in title do not apply for membership, they shall be entitled to a refund of the assignee's contribution. The Law also provides that if there are several successors in title, the cooperative may require that the right to apply for membership be exercised by only one, and the bylaws may provide that the transfer may only take place in favour of other members of the deceased member's cohabitation unit.

Although this Law regulates some specific aspects of this type of cooperative, with the corresponding legal security for members, it has not included any of the protective (and restrictive) rules that serve to

[28] This modification has been carried out by Law 1/2019, of 4 March, on Urgent Economic, Budgetary and Fiscal Measures for the year 2019 of the Autonomous Community of La Rioja.

avoid speculation and that we have found in other legal rules analysed.

5.5. Valencian legislation on cooperatives and the new Law on Collaborative Housing[29]

The Valencian legislator has opted to regulate cooperative housing by means of a special law, Law 3/2023, of 13 April, on Collaborative Housing in the Valencian Community, published in the Valencian Official Gazette on 19 April 2023, coming into force twenty days after its publication.[30]

This regulation is the first attempt to establish a comprehensive and inclusive framework for collaborative housing, with a specific focus on housing developed through cooperative societies. It encompasses various aspects of this housing and cohabitation model, including technical, construction, and financial aspects. It also specifies the types of entities eligible to undertake such projects, limited to non-profit associations and housing, consumer or multi-purpose housing and consumer cooperatives. These entities must additionally fulfil the criteria outlined in the cooperative regulations to be recognized as non-profit organizations (as stated in Article 3.1 of the Law).

This limit, as well as the use of a *lex specialis*, outside the Cooperatives Act, is in line with the nature of this rule. In effect, this law aims to promote this housing model. This can be seen from the first section of Article 19, entitled "Promotion measures", which states that "the regional and local authorities have the authority to implement measures aimed at giving effect to the constitutional right to decent, suitable, and affordable housing through policies that promote and manage collaborative housing directly or through non-profit organisations".

The regulations encompass various measures that apply throughout different stages of these projects, starting from the initial phases, including the provision of advisory services to citizens regarding collaborative housing, and promoting and facilitating access to housing through rehabilitation and development initiatives. Additionally, the regulations address financing aspects, such as offering guarantees and providing tax relief within the jurisdiction's authority. Notably, contributions made towards financing construction for housing under the right-of-use model receive the same tax treatment as the acquisition of a primary residence (Article 10.11), while fees for use are subject to the same tax treatment as rental income (Final Provision Three). The regulations also facilitate the acquisition of public land, including the direct transfer of building lease rights. Furthermore, direct financial assistance can be granted to users and entities regulated under the Law.

The law also provides special aid for collaborative housing cooperatives under a right- of-use model that

[29] The legal norm analyzed is based on the aforementioned study: *Viviendas Colaborativas: estado actual en la Comunidad Valenciana*, ALGUACIL MARÍ, M.P., SAJARDO MORENO, A., ALEGRE NUENO, M., GRAU LÓPEZ, C.R. and MERINO GARRIDO, F., Valencia, 2021, Ed. Aula de Emprendimiento en Economía social y Sostenible Universitat de València and Diputación de Valencia, in https://fecovi.es/documentacion/publicaciones/9-Libro-Viviendas-Colaborativas-estado-actual-CV.pdf.

[30] The Second Vice-presidency and Regional Ministry of Housing and Bioclimatic Architecture commissioned the team of the Aula Empresocial of the University of Valencia to prepare a basic document analysing the specific legal and fiscal aspects to be considered for the regulation and promotion of senior, junior, and intergenerational collaborative housing to draft the corresponding regulatory text, a study mentioned in note 12. Based on this study, the Parliamentary Group Unides Podem presented the proposal for a law on collaborative housing in the Valencian Community (RE number 61,744), as well as the request for processing by urgent procedure, published in the Official Gazette of the Valencian Parliament (Boletín Oficial de les Corts Valencianes) number 283 of 26 October 2022.

are classified as being of social interest.

In order to be eligible for these measures, the right-of-use projects must meet the requirements of the Law, both in objective aspects, relating to the building, and in subjective aspects, relating to the entities owning the building and their partners.

The regulation defines its scope of application both subjectively and objectively (Art. 3). It defines collaborative housing as a residential building or complex "whose sole ownership belongs to an entity owned by its users, whose management is shared, adopting the form of a non-profit cooperative or non-profit association", and must incorporate, at least: (i) dwellings or premises intended for private use, (ii) common elements of the building, and (iii) spaces or premises designated for common use, which serve various functions related to residential use and the provision of community and social services. The latter must have a minimum surface area of 20 % of the total (with a reduced requirement of 10 % for rehabilitation or acquisition of pre-existing buildings). The Law also establishes the basic building requirements to be met by these dwellings (arts. 5 to 9), relating to their functionality, safety, habitability, design, and quality,[31] and contains some special rules regarding distribution, minimum dimensions of communal spaces or the intended uses.[32]

The Law regulates the framework applicable to entities owning collaborative housing, which must be expressly stated in their bylaws. First, they must be non-profit entities; their purpose must be to provide accommodation, communal spaces and, where appropriate, complementary services for members and for those who live with them. The corporate purpose of these entities may encompass various activities, which are listed as illustrative examples. The transfer of housing to non-member third parties is restricted, with a maximum limit of 20 % of the total housing units. In the case of commercial premises, the bylaws may allocate a portion for businesses or social activities. Additionally, a minimum of five members or associates is required for the establishment of such entities.

The regulation sets several limits, including the prohibition for the cooperative to grant ownership or any other limited right in rem over the dwellings to the members. This prohibition extends to the building lease and applies regardless of the entity's title over the building, whether it is freehold or any other possessory right. It establishes that members have the right to use their dwellings privately and the common elements for community use, indefinitely, unless the entity's right is time-limited. This right of use is classified as a corporate and highly personal right, cannot be considered a right in rem and is non-transferable between members and to third parties, except in cases of *mortis causa* or *inter vivos* transfer to other members of the member's cohabitation unit. In such cases, the heirs or successors must meet the conditions to become a member as outlined by the Law. Finally, the person interested in acquiring membership must contribute to financing the construction with contributions to the share capital or the equivalent social fund, but these are limited *ex lege* to 30 % of the cost of acquiring, renting, or developing the residential collaborative housing complex. In addition, members must pay the periodic non-

[31] Among other stipulations, it is required that at least half of the private units must include a kitchen. Additionally, the communal spaces or premises intended for the provision of community and social services, such as a kitchen, dining room, laundry room, healthcare room, or other similar spaces, must be adequately sized to promote personal autonomy and emancipation of the residents.

[32] It is worth mentioning that, concerning the communal spaces, there is a requirement for at least one room to have a minimum surface area of 25 m^2, allowing for a square of 3.50 m^2 to be inscribed within it (except for laundries and communal bathrooms). Additionally, there is an obligation to have a room designated for meetings.

refundable fees set by the bodies of the cooperative or association, to cover the expenses derived from the financing, amortisation, maintenance and improvement of the dwellings and other facilities.

In addition to the above restrictive rules, the Law contains certain special rules to be applied by cooperatives that own collaborative housing (Art. 15).

The first of these is to specify that they may be housing cooperatives, consumer cooperatives or multi-purpose housing and consumer cooperatives. The regulation incorporates another special rule that supersedes the general provisions of the Law on Cooperatives. This rule establishes a specific system for joining, leaving, and transferring contributions within the cooperative. As a result, the cooperative's bylaws can outline the conditions mentioned earlier, such as restricting the process to other members of the member's cohabitation unit and potentially requiring a minimum seniority. If the right to use collaborative housing is held by multiple members, they are expected to designate a single person among themselves to represent them at general assemblies, with the right to speak and vote. The bylaws may regulate the figure of the temporary member and the legal reserve, established in accordance with cooperative legislation, can serve as collateral for loans taken by the cooperative for the construction or renovation of the building. The Training and Promotion Fund has various purposes beyond those outlined in cooperative legislation. These include organizing cultural, social, recreational, welfare, health, sports, and similar activities for the benefit of the building's occupants and the surrounding area, as well as the promotion and dissemination of collaborative housing.

Finally, the Law specifically addresses collaborative housing of social character (Art. 16) to comply with the provisions stated in Article 107.2 of the Treaty on the Functioning of the European Union, as well as introducing additional requirements if the owner of the collaborative housing is a cooperative (Art. 17). It is worth highlighting that these entities are only permitted to transfer the entire building or a portion of it to other similar entities or the Valencian government. In the event of dissolution, the building, residential complex, or any remaining assets must be transferred to a non-profit organization with similar objectives or to the regional government.

6. Conclusions

As observed, the regulation of right-of-use housing cooperatives can be approached from various perspectives, some of which lean towards granting ownership, as seen in the regulations of the Basque Country or the Canary Islands. However, we believe that such approaches may not effectively contribute to the advancement of the new model, which predominantly revolves around monetary considerations in today's context.

It has been shown that one of the added value elements provided by this cooperative model is to maintain the affordability of the home throughout its useful life, as the cooperative is the sole owner of the entire building. For this reason, it seems necessary that the legal regulations impose this ownership regime in perpetuity, since contemplating it only in the bylaws is not a sufficient guarantee, neither for the members, nor for third parties who contract with the cooperative, nor for the administrations, taking into account that the bylaws can be modified at any time by an agreement of the assembly. In this sense, after analysing the content of the new Spanish laws, it seems that the ones that will fulfil this purpose most effectively

are the Balearic Law, the Law on Cooperatives of La Rioja and the Valencian Law on Collaborative Housing.

In addition, the three legal norms require the creation of these cooperatives as non- profit entities (so that the profits cannot be distributed among the members, but must be reinvested in the cooperative itself), they limit the contributions to the capital that the members must subscribe and pay (between 30% and 35% of the total cost of the promotion), and they require that the amount of the monthly fees or rents that the must pay be agreed upon by the sovereign body, the general assembly.

Likewise, these laws restrict or prohibit the subletting of dwellings, they expressly say that the member does not hold a right over the dwelling separate from his status as a member, but enjoys this right of use precisely because he is a member of the cooperative; they prohibit the transformation of the right of use into individual property and the horizontal division of the building and even their transformation into another type of company is prohibited or limited. In addition, in the case of the Balearic Law, as an additional guarantee, it requires that the above limits be registered in the Land Registry, in order to be known by third parties.

We believe that a more suitable approach is to adopt a specific regulation tailored to the unique features and objectives of cooperative housing, as exemplified in the legislation of the Balearic Islands or Valencia. These regulations consider factors like affordability, the model of coexistence, and shared governance. They may even impose certain limitations on individual autonomy to ensure the development of projects that are anti-speculative and promote economic, social, and environmental sustainability. These regulatory limits are in response to requests from the sector itself, which demanded legal certainty and mechanisms to protect the model. The rules analysed have been the subject of open processes, in which the right-of-use cooperatives in each region have participated.

‘THERE IS NO PLACE ‘FOR’ HOME’: PRESSING CHALLENGES VIS-A-VIS LEGAL SOLUTIONS FOR THE DEVELOPMENT OF COOPERATIVE HOUSING IN GREECE

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Abstract
During the last decade, the intensification of housing issues has gone hand in hand with the revived interest in collaborative and cooperative housing. In fact, since 2010 projects have emerged in many European cities experimenting with alternative housing models based on collective ownership, decommodification of housing and democratic self-management. These efforts are often supported by specific institutional frameworks and public policies, as it is increasingly recognized that cooperatives can provide more equitable, inclusive, affordable, environmentally sustainable and democratic housing solutions.
In Greece, cooperative housing has not been historically developed, despite the institutionalization of (civil) building cooperatives as early as in the 1920s. At the same time, an absence is noted of a social or non-profit rental housing model, as public housing policy has over time prioritized the production and promotion of owner-occupied housing (Siatitsa, 2019). Lacking previous experiences and institutional capacities makes it harder to envision and implement similar projects in Greece (Cohab, 2023; Siatitsa and Karagianni, 2022).
Taking into account the above, this paper aims to contribute to the debate on housing cooperatives by exploring the legal dimension of housing cooperatives and their potential for development based on the current cooperative legal forms in Greece. The main rationale is that housing cooperatives constitute a significant instrument within an overall housing policy mix able to confront commodification in the housing market and construct “non-state public” (Ferreri and Vidal, 2022) housing models for those willing to follow this option.

1. Introduction: Housing cooperatives as alternative to the housing affordability crisis

The neoliberal policies of the previous decades entailed the shrinking of social housing policies and the weakening of public intervention in the function of housing markets even in countries with strong welfare traditions. Housing financialization and commodification trends have intensified in the post global financial crisis period, and even more after the pandemic and during the recent energy and cost of living-crisis. A growing concern is voiced at European Union level regarding the need to develop policies that can secure access to housing for all (European Parliament, 2020). Collaborative and cooperative housing models are considered part of the alternative housing tenures that could provide decent, affordable and inclusive housing, beyond the private housing markets.
Greece, as most European countries (Dubois and Nivakoski, 2023), is faced with an aggravating housing crisis, evident in the stark disparity between housing costs and local wages and incomes. Households are struggling with unaffordable and often inadequate housing, having very limited alternative options, as the

only available tenures are homeownership and renting. According to Eurostat data (2021), the country scores the highest rates of housing cost overburden (28,8% of the total population, 34.2% in urban areas, and 74,6% for tenants) and of housing related arrears (36,4%). Moreover, overindebtedness, exacerbated during the period of the sovereign debt crisis, is still a threat for thousands of households that risk to lose their first residence and property assets, living on a permanent economic suffocation and anxiety. Housing precarity is even more alarming for low-income populations, young people, migrants and vulnerable populations (Arapoglou et al. 2015; Siatitsa, 2021).

Addressing housing affordability and providing decent and secure housing for all is a big challenge, particularly for countries with little or no previous housing policy tradition such as Greece. Based on a familistic market-oriented and homeownership model, Greece never developed social or public housing as part of its welfare system (Maloutas et al. 2021, Siatitsa 2019). The lack of any social, public and cooperative housing stock, but also the lack of institutional infrastructures and administrative mechanisms for affordable housing are a big hindrance for the development of a more fair, inclusive and democratic housing sector in Greece (Siatitsa 2019). Moreover, there is a growing interest in alternative housing models, following the broader trend since the global financial crisis, and the formation of groups that seek to explore potentials for the development of cooperative forms of housing and collective ownership in Greece, despite the lack of an adequate legal framework and of related experiences within the given context.

Initially, we refer to the different forms of collaborative and cooperative housing in Europe in order to highlight their main characteristics. Then, we focus on their legal dimension in order to examine how the core values and international principles of the cooperative movement are specified in the case of the housing sector. In particular, we construct an analytical framework which relates analytical axes of cooperative legislation with the 7 international cooperative principles and envisaged non-state public dimensions/goals. Based on this analytical framework, we comparatively assess the two more suitable cooperative legal forms that have been introduced under the Greek legal framework in order to highlight the possibilities and difficulties of establishing housing cooperatives. We discuss the results of this comparative assessment along the analytical axes and ground our proposal for an adequate legal form of housing cooperatives in Greece. Finally, in the concluding section we discuss possible legal strategies to develop housing cooperatives in Greece and the necessary preconditions for this type of tenure to actually provide viable and secure alternative solutions to the housing unaffordability crisis.

2. Collaborative and cooperative housing in Europe

A renewed interest in collaborative housing models has emerged as a more democratic and affordable solution to the housing crisis, particularly in light of the global financial crisis. The term collaborative housing has been proposed as an umbrella term in order to include the broad spectrum of forms including cooperatives, community land trusts, co-housing, community-led or self-help housing (Czischke et al. 2020). As such, it includes a broad spectrum of collective and participatory housing experimentations within different societal contexts, with a varying degree of institutional recognition and public support, but also different organizational features (Mullins and Moore, 2018; Hagbert et al. 2020; Ferreri and Vidal, 2022). These experiments can provide a more democratic and affordable solution to the housing crisis by stressing the collaboration among residents, community and stakeholders as their main common

feature (Czischke et al. 2020). There are important variations in terms of motivation, political vision, socio-economic characteristics of participants, institutional framing and state involvement in each of these initiatives, which are context-bound and relate to the different historical pathways of the development of the housing sector at national or even at city level.

Housing cooperatives in Europe appeared in several countries in the 19th century parallel to the workers cooperative movement, but they expanded significantly in the early 20th century with the introduction of specific legal frameworks and particularly after World War II as part of massive urban reconstruction programmes. Regardless of the diversity of models and types of self-organized and/or collaborative housing (Mullins and Moore, 2018; Griffith et al, 2022), the question of legislation is of paramount importance as it relates with the design and implementation of housing policies. Even the so-called trans-legal initiatives (i.e. squats) can eventually be formalized through a process of legalization. The legal treatment of existing initiatives and/or more importantly the enactment of a special legal framework may foster or hinder the development of similar initiatives, facilitate housing commodification or push for de-commodification, undermine or safeguard the collective dimension of such initiatives (Balmer & Gerber, 2018).

Our focus on the cooperative legal form does not imply that there is only one type of housing cooperative. On the contrary, very diverse cooperative housing models have been produced internationally on the basis of the cooperative legal form (Ferreri and Vidal, 2022). In particular, Cooperative Housing International mentions the following distinct housing cooperative models as they have been developed in different contexts: a) the non-profit rental, b) the equity ownership, c) the limited equity, d) the mutual aid, e) the mutual home ownership, and f) the rights of use. The institutional trajectories of these models have been very diverse, however in most countries they eventually became an alternative path to private homeownership, or remained a marginal sector in the total housing stock, with few exceptions (see CECODHAS and ICA, 2012; Baiges et al., 2020).

In the context of neoliberalism, the legitimization of housing cooperatives in the housing policy mix is to some extent related to their private character (in comparison with public housing), the cost-effectiveness of the support measures involved (i.e. ground lease) which do not challenge the austerity agenda while they mainly address middle-income constituencies and not low-income groups (leaving intact the dominant competition logic) (Balmer & Gerber, 2018). Still, there is an ongoing debate regarding the political potential of cooperative housing to provide de-commodified, anti-speculative, affordable and inclusive alternatives to the mainstream housing model (Huron, 2018). The control over the collective management and/or ownership of the buildings and the partial decommodification of individual housing units (limits to the capitalization of surplus exchange values of homes) have been highlighted as two important conditions that can place housing cooperatives into the broader frame of struggles for the construction of the commons or for reclaiming the public beyond the realm of the state (Ferreri and Vidal, 2020).

International comparison of various forms of cooperative housing demonstrates the critical role of the state in shaping the outcomes of housing cooperatives at various phases of their production, evolution and maintenance (Baiges et al., 2020). Throughout these phases, the state can assume various roles in relation to housing cooperative actors. For example, in the case of Belgium and with a special focus on affordable housing, the state acted as facilitator for the development of rental cooperatives during the early phase of

housing policy, then moved to the role of coordinator of both municipal and cooperative housing, and in the context of disinvestment in social housing provision, the state finally assumed the role of regulator (Aernouts & Ryckewaert, 2019).

For the Greek context, and for the scope of this paper, it is important to understand how such models could be proposed as viable responses to the housing affordability crisis and as alternatives to the dominant homeownership ideal and housing production model. On the one hand as a stable alternative to private homeownership through collective and cooperative institutions rather than individual ones, and on the other as part of a social housing strategy that seeks to develop a decommodified (non- speculative/ not-for-profit), inclusive (not only for people with capital/not only for middle classes) and socially controlled housing stock in the long term.

3. International cooperative values and principles and cooperative housing

In this part, we examine how the international cooperative values and principles forming the distinct cooperative identity could be introduced in the legal and institutional framework of Greece in order to allow for housing cooperatives to develop. The main intention is to develop analytical axes for assessing the suitability of the existing cooperative legal forms in Greece. Towards this end, we also adopt the analytical framework developed by Ferreri and Vidal (2022), according to which housing cooperatives may act as potential non-state public actors able to address the housing question, by providing affordable, accessible and decommodified housing. From this perspective, we endorse the two important dimensions proposed by the authors: the right of collective management and/or ownership of the premises (the control of members of the cooperative over the usage and management of the housing stock); and the partial de-commodification of housing (the non-saleability of individual units in the open market). Finally, we also explore the provisions that should be in place in order to foster public- cooperative synergies enabling the production of cooperative housing, safeguard open access to diverse social groups and ensure long-term affordability, by limiting (or blocking/prohibiting) the future privatization and capitalization of the housing assets of the cooperative.

As defined by the Cooperative Housing International "*a housing cooperative is a legal association formed for the purpose of providing housing to its members on a continuing basis. It is owned and controlled by its members. A cooperative is distinguished from other housing associations by its ownership structure and its commitment to cooperative principles*." The provision of adequate housing to its members, which is the principal purpose of a housing cooperative, requires also particular legal provisions to "translate" and safeguard the cooperative identity, and to enable access to public support measures, in accordance to their contribution to broader social and public policy goals, beyond the mutual support to its members. Further complexities may emerge given the articulation of housing production and management with urban planning laws, fiscal policy and financial institutions that directly affect cooperative housing.

Initially enshrined in the ICA Statement of the Cooperative Identity in 1995, cooperative values and principles have been acknowledged by the Recommendation 193 of the International Labour Organization (ILO) concerning the promotion of cooperatives in 2002 (ILO R. 193/2002). This increased their legal value, as they went from being formulated by a non-governmental association (ICA) to being embraced by a tripartite transnational organization (ILO) (Henrÿ, 2012). The latter has also strengthened their legal relevance when aiming at establishing a supportive legal framework for cooperatives. Although the ILO

R. 193/2002 does not focus explicitly on housing cooperatives, it includes them as it states in Paragraph 1 that *'it applies to all types and forms of cooperatives*''. Thus, the following guidelines may be of relevance when reflecting on an adequate legal framework for cooperatives that are active in the housing sector.

A key concept highlighted in the ILO R. 193/2002, as stipulated in Paragraph 6, which is the building block for any general and special cooperative law, is its consistency with the cooperative values and principles. Furthermore, housing cooperatives, as is the case of any other type of cooperatives, should receive adequate treatment compared to other organizations and enterprises as well as receive support measures for the activities that meet specific and social and public policy outcomes (e.g. tax benefits for housing cooperatives offering affordable housing to vulnerable groups) (Paragraph 7.2, ILO R. 193/2002). The latter is also reflected in its Paragraph 5, according to which special measures should be applied to cooperatives that respond to the needs of their members and of the society, including those of disadvantaged groups to achieve their social inclusion. Furthermore, the ILO R. 193/2002 calls on governments to encourage the development of cooperatives as autonomous and self-managed enterprises, particularly when they provide services that otherwise would not have been provided, as it would be the case of housing cooperatives addressing unmet social, environmental and broader community needs (Paragraph 6.e). The latter is also interrelated with access to investment finance and credit, as stipulated in Paragraph 12.

Based on the above analysis, we propose the following analytical axes for the assessment of the Greek cooperative legislation in the housing sector. A modified version of analytical axes has been elaborated for the comparative assessment of Social and/or Solidarity Economy laws in selected European countries by Adam & Douvitsa (2022).

Analytical Axes	Cooperative Principles	Non-state public dimensions/goals
Objectives and activity	1: Open & voluntary membership 7: Concern for the Community	Accessibility
Number of initial founding members, entry and exit provisions.	1: Open & voluntary membership 7: Concern for the Community	Accessibility
Equity and/or profit distribution constraints.	3: Member Economic Participation	Affordability/decommodification & Accessibility
Autonomy and democracy	2: Democratic Member Control, 4: Autonomy and Independence, 5: Education, Training and Information	Control and collective management, State-Cooperative-Community Synergies
Public policies and measures	Mutual Benefit (equal treatment)	Social Benefit (specific support measures)

a. *Objective and activities (ref. Cooperative Principles 1: Open and Voluntary Membership and 7: Concern for the Community)*

The legal form should explicitly foresee the satisfaction of common housing needs through renting and/or ownership of any type of premises. The objective is inextricably linked with two cooperative principles: open and voluntary membership and concern for the community.

An important distinction in the objectives pursued is between mutual and social interest/benefit. The first relates to collective benefit of members, whereas the latter refers to the explicit pursuance of a more general social objective. Acknowledging that the boundaries between collective (mutual) and general (social) interest are indeed blurred, especially in light of the 7th cooperative principle (concern for the community), this distinction might prove useful in delineating different types of cooperative housing. For example, the explicit social purpose may refer to granting access to low-income and vulnerable social groups (possibly in certain percentages of total membership). This type of regulation safeguards against the insularity of housing cooperatives as middle-class enclaves through favouritism waiting lists for family members and friends (Aernouts & Ryckewaert, 2019) and/or actually leading to the gentrification of certain areas and the expulsion of low-income communities (Vidal, 2019). This demarcation line reminds us of the distinction between cooperatives in general and social cooperatives in particular (Borzaga & Galera, 2016). From this perspective, the law should allow both for the formation of social housing cooperatives as well as housing cooperatives based on the affiliation of members. The concern for the community (indirect social benefit) in this latter case may refer to the construction of accessible and environmentally friendly buildings, provision of services and infrastructure for the local community or a strategy to intervene in the local housing market (i.e. by acquiring building stock into the cooperative / by taking parts of the building stock out of the market).

b. *Required number of initial founding members, entry and exit provisions (ref. Cooperative Principles 1: Open and Voluntary Membership and 7: Concern for the Community)*

The legal form should safeguard the collective character of these initiatives without imposing a required number of initial founding members which hinders the development of housing cooperatives. In addition, the entry provisions should enable the openness of the cooperative without jeopardizing the ability to offer convivial living conditions for its members. Exit provisions reflect the potential of members to leave the cooperative following personal life changes and/or dissatisfaction with cooperatives rules without placing inexorable threats to the sustainability of the housing cooperative (reimbursement of initial capital and/or financial contributions in a timely manner and not reflecting market fluctuations).

c. *Equity and/or profit distribution constraints (ref. Cooperative Principle 3: Member Economic Participation).*

One of the core cooperative principles refers to member economic participation. Members contribute equitably to the cooperative's resources. The differentiation between rental and ownership cooperatives is significant in this regard.

In rental cooperatives, members rent a space from the cooperative which they collectively own (as a cooperative). Regulations may be imposed on the level of rents or monthly quotas so that they keep their

regulatory role in the housing market. For example, in Quebec (Canada), rents for new cooperative developments must not exceed 75-95% of the area mean price (Ferreri & Vidal, 2022). In general, rents should reflect the expenses of the housing cooperative and not the fluctuation of market prices. Additional regulations place controls on renting to non-members in order to ensure collective and democratic control of the cooperative and/or on subletting.

In ownership cooperatives, there is a distinction between direct and indirect home-ownership. In direct home-ownership, members have individual property rights including the right to transfer their individual property to another person. In this case, provisions should be put in place in the form of limited equity in order to clearly assign financial contribution while also enhancing the de-commodified nature of the housing cooperative. In indirect home-ownership, such as in the case of Sweden and Norway, members do not own their homes individually but obtain shares of the cooperative (Sørvoll & Bengtsson, 2018). Normally, regulations impose limits on the level of cooperative shares which are expected to reflect the cost of initial purchase or construction costs and not the market value which is subject to speculative forces (Balm & Gerber, 2018; Ferreri & Vidal, 2022). Further restrictions should safeguard against the conversion of collective into individual property as well as against the speculative dissolution of housing cooperatives (i.e. assets should remain within the cooperative sector).

In cooperative legislation, there is an important distinction between surplus and profit. Surplus is derived from transactions with members whereas profit is derived from transactions with non-members. Surplus may accrue to the indivisible reserves, be distributed to members in conjunction with their transactions with the housing cooperative and/or further the development of the cooperative. The legislation could foresee a ceiling in transactions with non-members (for example, renting flats of a housing cooperative to non-members) because that resembles a for profit private provider and reduces the democratic control of the enterprise. In any case, profits should not be distributed to members in order to safeguard the distinctiveness of the cooperative identity in comparison with a profit-maximizing enterprise. Non- profit social housing cooperatives also exist and they mainly operate on stable financial support by the state.

d. *Democracy and autonomy (ref. Cooperative Principle 2: Democratic Member Control, Cooperative Principle 4: Autonomy and Independence, Cooperative Principle 5: Education, Training and Information)*

Democracy is the defining feature of cooperatives. The rule one person-one vote indicates their distinctiveness in decision-making processes since the voting power rests with the status of the member and is not dependent on the number of cooperative shares as is the case in profit-maximizing capitalist enterprises. Justified exceptions to the strict adherence to this voting rule may apply upon justified specifications in the articles of association. Therefore, there are certain provisions with regard to the general assembly of members, the management board which is elected by members as well as supervisory boards beyond a certain size (usually calculated on the basis of total membership and/or economic size).

The main attribute of a member in the housing cooperative should reflect the status of user rather than investor. This can be implemented with provisions stating that the articles of association could envision ranging from the prohibition of the entry of legal persons in housing cooperatives to the imposition of a ceiling on the entry of legal persons as a percentage of total membership and/or restriction on their voting

rights. As mentioned with regard to profit-distribution above, non-profit social housing cooperatives are usually formed and maintained thanks to the stable financial assistance provided by the state. It is important to note that the participation of a private legal person (i.e a non-profit association) and/or a public legal person (i.e. municipality) may actually reflect the adherence to a general social interest purpose in the form of housing provision to less privileged social groups. Even in cases where housing cooperatives receive constant support from the state in its different levels (national, regional, local) and/or other private legal persons (i.e. civil society organizations), there must be provisions which ensure the autonomy of the housing cooperative.

Democracy necessitates adequate education and training of members. Housing cooperatives necessitate methods and tools in order to ensure effective participation and control by their members in terms of registrars, expenses monitoring and clear allocation criteria, timely submission of payments, techniques for collective decision making and conflict resolution, transparent housing rules, etc. In addition, it is significant to explore the potential of assisting members in energy saving and recycling through the implementation of relevant training courses. This latter dimension strengthens the positive environmental impact in conjunction with the positive social impact.

e. *Public policies and measures*

Public support measures can get various forms in articulation with the regulation of housing production mechanisms, urban planning laws and regulations, property taxation laws, welfare and social housing policies. As proposed by Balges et al. (2020), these can be classified according to different phases of the life cycle of a housing cooperative, namely policies and measures that are available during the production, management and maintenance phase. For example, during the production phase, state support is critical in reducing initial costs and scaling-up the reproduction of the model. Measures can enable access to land and existing buildings, finance and economic resources (direct and indirect subsidies) and technical support. Besides legal provisions that regulate access to and management of housing cooperatives (membership, administrative structures etc), public policies can improve their long-term affordability and accessibility by providing subsidies to cover housing costs for low-income and vulnerable members. Subsidies can be useful also to support maintenance, repair and improve the building stock in the long run, as very often cooperative members with low-incomes cannot invest in upgrading works.

All in all, the previous analysis highlighted crucial dimensions (resumed in five analytical axes) against which a legal form for housing cooperatives should be assessed.

In the following section, we will apply this analytical framework to explore the various legal forms of the Greek cooperative legislation in terms of their suitability for accommodating collective housing initiatives.

4. Cooperative legal forms and housing in Greece

Nowadays there is no special legal form for housing cooperatives in Greece. Early attempts in the interwar period included provisions for the creation of housing cooperatives as a special purpose cooperative (based on the first cooperative law of 1915) for particular professional groups - such as civil servants and army officers - as part of the first law for low-cost state housing provision, but produced limited outcomes (Kafkoula, 1994). The legal framework was updated in 1967 and defined as the main purpose of

construction cooperatives the provision to its members of access to urban or rural land for building a house or any other form of housing support. As in other southern European countries, they were conceived mainly as low-cost housing promoting vehicles for owner occupation. In Greece, they concentrated on acquiring land on which to build and provided the necessary urban infrastructure while private houses were built mainly through self-promotion (Allent et al. 2004:53). In the 1980s construction cooperatives were included in the planning laws for private urbanization and were distinguished between those aiming to provide main residence (civil construction cooperatives) and vacation homes (vacation construction cooperatives) (Presidential Decree 93/1987). The post-dictatorship constitutional protection of forestral areas since 1975 and subsequent laws for the protection of natural resources limited the advantages provided for cooperatives to access cheap land and created a deadlock for those that had already bought and approved urban plans in such areas. The legal framework was abolished in 2014 (by law 4280/2014). Subsequent legal provisions have focused on addressing the unresolved matter of approved yet pending urban plans by cooperatives.

The current legal landscape in Greece consists of an ever-growing number of special laws applicable to particular types of cooperatives, with conflicting or/and converging provisions, while a general framework for all cooperatives is absent (Douvitsa, 2020). Thus, our quest for an adequate legal form for housing cooperatives takes the form of a search among the special cooperative legal forms that currently exist. In this regard, we shall mainly focus on two legal forms: the civil cooperative of L.1667/1986 and the Social cooperative enterprise of mutual and social benefit (SCE) of L.4430/2016, as the rest of the legal forms seem unfitting due to the particular goal or activity they have to pursue by law (e.g. agricultural cooperatives, energy communities, worker cooperatives, forest workers cooperatives, social cooperatives of limited liability etc.).

Table 1 '*Comparison of the main traits of civil cooperatives and SCEs'.*

Analytical axes	Civil cooperatives	SCEs
a) Objective and activity	Mutual benefit	Mutual & social benefit
b) Required number of initial founding members, entry and exit provisions	≥15	≥ 5
	obligatory stay ≤3 years of withdrawing member	obligatory stay ≤1 year of withdrawing member
c) Equity and/or profit	Acquisition of voluntary shares with capital	Acquisition of voluntary shares with capital/work/property

distribution constraints	Possibility to distribute profit	Profit distribution constraint
	Lack of clarity between surplus and profit and their subsequent legal treatment	
	The remainder after liquidation may be distributed to members	
	Return of the capital of withdrawing member ≤ 3 months	
d) Democracy and autonomy	1 member – 1 vote	
	Simplified governance structures	
	The adherence of legal persons as members may be permitted in bylaws	Legal persons-members ≤1/3 of total number of members Legal persons of public law - members: prohibition by law Cap of income generated from transactions with the public sector
e) Public policies and measures	Subject to all support measures of SSE actors under the condition of being acknowledged as SSE actor	Being de jure SSE actors, SCEs are subject to all SSE support measures and additional measures, explicit for SCEs (e.g. exemption from business tax)
	If acknowledged as SSE actors, civil cooperatives with an annual turnover above a specific threshold, have to allocate ≥ 25% of the preceding years' turnover as annual payroll	As de jure SSE actors, SCEs with an annual turnover above a specific threshold have to allocate ≥ 25% of the preceding year's turnover as annual payroll

a) Objective and activities

With regard to the objective, art. 1 defines a civil cooperative as '*a voluntary association of persons with an economic purpose, which, without developing agricultural economic activities, aims, in particular through the cooperation of its members, at the economic, social and cultural development of its members and the improvement of their quality of life in general within a*

common enterprise'.

From the above it is evident that the legislator obligates any kind of civil cooperative to pursue a mutual purpose ('*aims, in particular through the cooperation of its members, at the economic, social and cultural development of its members'*); in other words a civil cooperative is bound by law to address the common needs of its members through the cooperative enterprise.

In this light, a housing cooperative established under the legal form of a civil cooperative is obligated by law to pursue a mutual purpose, covering the common needs of its members, be it by renting or owning a house through the cooperative. Such a housing - civil cooperative is neither prevented nor encouraged by law to pursue - as an additional objective - the social benefit of third parties or of the community overall, which may be stipulated in its bylaws.

Furthermore, in art. 1.2 L. 1667/1986, the legislator provides an indicative list of activities that a civil cooperative may undertake, in which housing is not mentioned. [1] Nevertheless, the indicative nature of the list, as well as the definition of a civil cooperative in art. 1.1 as being able to undertake any kind of activity as long as it is not related to agriculture, implies that a civil cooperative active in the housing sector is permitted by law to be established without facing any obstacles in this regard.

On the other hand, the legislator in art. 14.1 L. 4430/2016 defines SCEs as 'civil cooperatives of L. 1667/1986, which have as their statutory purpose the collective and social benefit'. The collective benefit is stipulated in the law as '*the joint service of the needs of the members of the SCE, through the formation of equal relations of production, the creation of stable and decent jobs, the reconciliation of personal, family and professional life'* and the social benefit as '*the meeting of local or wider social needs by harnessing social innovation through "sustainable development" or* 'social services of general interest' *or 'social inclusion activities'*.

The way in which 'sustainable development' and 'social services of general interest' are defined in the law are of interest for our discussion. In particular, 'sustainable development' includes '*economic activities, whether commercial or exchange, that promote environmental sustainability, social and economic equality, as well as gender equality, protect and develop common goods and promote intergenerational and multicultural reconciliation, emphasizing the specificities of local communities'*. It is worth noting that in the indicative list of activities of sustainable development provided in the law, the legislation makes an explicit reference to two topics relevant to housing: the environmental upgrading of settlements and the building stock, as well the management of real estate in accordance with social and environmental criteria.

[1] Art. 1.2 L. 1667/1986: *'(Civil) cooperatives are in particular producer, consumer, supplier, credit, transport and tourism cooperatives. The activities of (civil) cooperatives include in particular: (a) the joint organization of production; (b) the supply of goods to meet the professional, living and other needs of their members; (c) the provision of technical or organizational assistance to members for the purpose of increasing or improving their production; (d) the processing or marketing of the products of their members; (e) the provision of loans, guarantees, insurance or other financial facilities to their members; (f) vocational, cooperative and cultural training; (g) the satisfaction of social and cultural needs'*.

Furthermore, '*social services of general interest*', are defined as '*services that are accessible to all, promote quality of life and provide social protection to groups such as the elderly, infants, children, people with disabilities and chronic diseases and include education, health, social housing, social nutrition, childcare, long-term care and social assistance services, without, however, substituting for the general obligations of the state in the exercise of social policy'*.

The above indicates the intent of the legislator to introduce SCE as an adequate legal form to pursue the mutual and social benefit associated with the improvement of housing conditions not only of the cooperative members, but also of third parties, within the context of sustainable development activities or/and social services of general interest. Thus, the legal form of a civil cooperative is fitting for a housing initiative mainly focused on covering the needs of their members, whereas the SCE fits better with initiatives aiming not only to pursue mutual but also a social benefit.

b) Required number of initial founding members, entry and exit provisions

The minimum founding members in a civil cooperative is considerably higher (at least 15 persons- art. 1.3 L.1667/1986), compared to the case of SCEs (at least 5 persons – art. 15.2 L. 4430/2016). In this regard, the legal form of a civil cooperative may hinder small size housing initiatives from being established, for which a more suitable option would be that of a SCEs.

Concerning the entry provisions, the legislation provides flexibility to both legal forms, so that the bylaws may introduce appropriate conditions of entry to candidate members.

However, the issue of exit is regulated in the law and not left in its entirety to the bylaws. In the case of civil cooperatives, bylaws may stipulate an obligatory stay of up to three years of the withdrawing member (art. 2.7 L.1667/1986), whereas in the case of SCEs, the member may leave in the following year (art. 17.1& 17.4 L.4430/2016). In this regard, the three-year obligatory permanence of members may be more adequate for housing cooperatives compared to the shorter period stipulated in the case of SCEs.

With regard to the returned capital, in the civil cooperatives' case, the return of the cooperative share to the withdrawing member is either under the nominal or actual value, depending on which is lower (art. 2.9 L.1667/1986), whereas in the SCE case, the actual value is returned but cannot exceed three times the nominal value (art. 17.4 L.4430/2016). Despite the above divergences, in both cases, the cooperative is obligated to return the above capital in a period of three months, which may be considered as short in the case of a housing cooperative.

c) Equity and/or profit distribution constraints

Apart from the mandatory cooperative share, members may contribute to the cooperative in other ways. In this regard, the SCE provisions enable its members to contribute to the cooperative by acquiring voluntary cooperative shares by providing work or/and property (art. 16.4 L.4430/2016), and not only by capital, as it is the case in civil cooperatives (art. 3.3 L.1667/1986), renders the latter form as more flexible and closer to the particularities of a

housing cooperative.

Concerning the distribution of the positive economic result, the systems prescribed in each legal form under study are radically different. In the case of civil cooperatives, the distribution of profit to the members is not prohibited and can be prescribed in the bylaws (art. 9.4 L.1667/1986), whereas in the case of SCEs there is a non-distribution constraint of profit to members who are not workers (art. 21 L.4430/2016).[2]

Although the SCE's system of distribution is closer to the housing cooperative concept, as defined previously, the fact that in both legal forms there is a lack of differentiation between surplus and profit indicates the inadequacy of both legal forms, as they are currently in force. Also, the remainder after liquidation is not protected in the two legal forms after a dissolution of the cooperative for self-interest purposes (art. 10.2 L.1667/1986; art. 35.3 L.4430/2016).

d) Democracy and autonomy

In both legal forms, one-member one-vote is the mandatory rule for the decision-making processes in the general assembly, which guarantees the democratic governance of the cooperative (art.4.2 L.1667/1986, art.16.3 L.4430/2016). Furthermore, in both legal forms, simplified governance structures are prescribed in the law (e.g. for civil cooperatives with less than twenty members, the formation of a supervisory board is not mandatory (art.8.1 L.1667/1986), for a five-member SCE, instead of board of directors, a member is elected as the administrator (art. 20.1 L.4430/2016).

With regard to the preservation of the autonomy, in the case of civil cooperatives such an issue is mainly left to the bylaws to be regulated, as the latter may permit the adherence of legal persons as members (art.2.2 L.1667/1986), whereas in the case of SCEs the law stipulates that legal persons may not exceed 1/3 of total membership and there is also a prohibition of legal persons of public law becoming members (art. 14.4 &.5 L.4430/2016). In addition, to prevent SCEs from being mainly state-driven and state- supported, the law introduces a cap to the income generated by transactions with the public sector (art.14.8 L.4430/2016).[3] In this regard, the law on SCEs seems to provide more guarantees to enhance their autonomy with mandatory provisions.

e) *Public policies and measures*

One of the most significant measures in favour of SSE (Social and Solidarity Economy) actors is the free use of immovable property and movable property of the municipality (albeit for five

[2] Art. 21.4 L. 4430/2016: '*1. The profits of the SCE shall not be distributed to its members, unless they are employees, in which case paragraph 2 shall apply. 2. The profits shall be allocated annually as follows: a. 5% for the formation of a mandatory reserve, b. 35% shall be distributed to the employees of the SCE, unless two-thirds of the members of the General Assembly of the SCE decide, with reasons, to allocate part or all of this percentage to the activities referred to in point c), c. the remainder shall be allocated for the creation of new jobs and the general expansion of its productive activity*.'

[3] The percentage of the gross income from the activities of the joint venture that comes from legal persons of public law and local authorities may not exceed 65% of the total income of the enterprise, calculated on a three-year basis.

years, with potential extension, a timespan which is not suitable for a housing cooperative), as well as the signing of programmatic agreements between SSE actors and the public sector aiming at the social benefit.

SCEs enjoy the latter measures without any further evaluation process, as they are acknowledged in the law as SSE actors. On the other hand, civil cooperatives that wish to benefit from the above measures need also to comply with a set of conditions, so that they are acknowledged as SSE actors. In addition, in the case of SCEs, additional measures are also promulgated, such as the exemption from business tax.

Apart from the above mentioned support measures, the law also introduces a horizontal constraint in the investment policy of all SSE actors, as the Ministry of Labour who drafted the SSE law prioritized labour creation and protection even to the detriment of the SSE actors' own viability. In particular, according to art. 3 par. 4 L. 4430/2016, SSE actors with a high annual turnover[4] are obliged, from the second year of operation, to present an annual payroll expenditure at least equal to 25% of the turnover of the previous financial year. The above obligation applies not only to SCEs as de jure SSE actors but also to those civil cooperatives that acquire the SSE actor status, by fulfilling specific conditions.

This constraint introduces a serious blockage to set up housing cooperatives, either as SCEs or civil cooperatives (acknowledged as SSE actors). Irrespective of their legal form, housing cooperatives are expected to have a high annual turnover (including any potential grant income) in order to cover the high infrastructure costs without the need to create paid vacancies to fulfill their objective. Thus, from this point of view, the dilemma on choosing between SCEs or civil cooperatives (acknowledged as SSE actors) becomes redundant, as both legal forms seem unfitting for the development of housing cooperatives.

5. Discussion: The need for an adequate legal form for cooperative housing in Greece

By focusing on housing cooperatives, our study seeks to highlight and further explore their potential to act as non-state public actors and providers of affordable, de-commodified housing solutions accessible to all (Ferreri and Vidal, 2022). More specifically, through the establishment of housing cooperatives, the right of collective management and/or ownership of the premises is exercised (the control of members of the cooperative over the usage and management of the housing stock); along with the partial de-commodification of housing (the non-saleability of individual units in the open market). In addition, potential public-cooperative synergies may emerge for the production of cooperative housing, safeguarding open access to diverse social groups and ensuring long-term affordability, by limiting (or blocking/prohibiting) the future privatization and capitalization of the housing assets of the cooperative.

As the legislation plays a paramount importance in hindering or enabling housing cooperatives to unleash their potential vis-à-vis the housing crisis, we examined the Greek cooperative

[4] This obligation applies to SSE actors with a turnover in the preceding year of more than 300 % of the annual wage bill of a full-time employee, based on the minimum statutory wage excluding bonuses.

legislation to identify suitable legal forms for establishing housing cooperatives based on the following analytical axes: a) the type of activity and objectives foreseen (mutual or social benefit), b) the required number of initial founding members, entry and exit provisions, c) constraints on equity and/or profit distribution,
d) the autonomy and democratic governance and, e) relevant supportive public policies and measures.

Our comparative study is limited to the examination of two legal forms: the civil cooperative of L.1667/1986 and the social cooperative enterprise of mutual and social benefit (SCE) of L.4430/2016, as the rest of the existing cooperative legal forms seemed unfitting due to the particular goal or activity, they are obliged to pursue by law.

On the one hand, civil cooperatives primarily pursue a mutual purpose and are established by a large number of founding members. Furthermore, the law allows them to distribute their profits to their members, who may acquire voluntary shares only with capital. Thus, civil cooperatives appear to be suitable for large-scale, for-profit, housing initiatives benefiting mainly their members.

On the other hand, SCEs (Social cooperative enterprises) can be established by a small minimum number of founding members to pursue both mutual and social objectives. They also allow the acquisition of voluntary shares not only with capital but also with work and property. In addition, they are subject to profit constraints and guarantees safeguarding their autonomy from the public sector. Most of the above traits encourage initiatives towards applying non-speculative, inclusive housing cooperative solutions to address the current housing crisis, potentially allowing the establishment of small-scale, independent initiatives that could act as potential non-state public actors.

Nevertheless, both legal forms face certain practical (e.g., the three-month window to return capital to a withdrawing member) and substantial (e.g., distribution of remainder after liquidation to the members) shortcomings if used to set up housing cooperatives. Additionally, although both legal forms may be subject to the measures prescribed for in L. 4430/2016 on SSE, a closer examination of such measures reveals their inadequacy either due to the terms that they establish on SSE actors activity (e.g. a limited duration of 5 years for the free concession of municipal immovable property to them) or on their investment policy (e.g. at least 25 % of their turnover of the preceding year needs to be allocated as wages). The latter shows how unfitting the existing general measures are when applied to housing cooperatives. For instance, the large initial capital required to produce cooperative housing or the overall high value of real estate throughout the cooperative's operating cycle, which makes it impossible to set up such cooperatives without the existence of special financial tools and programs.

Based on the above observations, we may conclude that the existing cooperative legal forms and overall legislation do not enable the development of housing cooperatives in Greece. A closer examination of some key shortcomings that were brought to the fore above also reveals key pathologies of the Greek cooperative legislation on cooperatives. In particular, the co-existence of civil cooperatives and social cooperative enterprises that could both potentially

undertake housing activities is part and parcel of the plethora of cooperative legal forms in Greece. Both of these legal forms are part of the Greek legal landscape which consists exclusively of special cooperative laws applied to different cooperative categories in the absence of a general cooperative law. Thus, the focus of the Greek legislator is on the differences among the various types of cooperatives, while no law or policy acknowledges a minimum core of elements that should be common in all cooperatives, irrespective of the category that cooperatives belong to. Thus, shortcomings associated with specific organization traits as they were identified above (e.g. civil cooperatives' possibility to distribute profit to their members, civil cooperatives and social cooperative enterprises' capacity to distribute the remainder after liquidation to their members) are not only inadequate for housing cooperatives, revealing the Greek legislator's lack of consideration for the housing sector, but are also indicative of the cooperative legislation's misalignment with the cooperative identity.

6. Conclusions: Can the current cooperative legislation in Greece address the housing question?

With the 2008 crisis, followed by the pandemic and currently the ongoing cost-of-living crisis, the already severe housing inadequacy, unaffordability, as well as over-indebtedness in Greece have been exacerbated, making it a mission-impossible to rent, let alone own a house. However, as the housing crisis has deepened, so has the search for viable, democratic and inclusive housing solutions, which has intensified, attracting a growing interest in the public discourse.

Taking into account the above, the present article aspires to shed light on collaborative housing models and in particular on housing cooperatives as an alternative solution to the ongoing housing crisis that has affected severely not only Greece but other European countries as well, albeit in different degrees.

Following recent developments in the production of alternative collaborative and cooperative housing across Europe, and the proliferation of public-cooperative or public-community partnerships aiming to provide affordable, democratic and inclusive housing solutions, we see such alternative housing forms as an integral part of a much-needed social housing policy mix in Greece. It was beyond the scope of this paper to discuss in detail the various dimensions and priorities of an integrated social housing policy mix, that would need to address more broadly the multitude of housing hardships and unmet needs, such as the disproportionate increase of housing prices relative to local wages, the lack of adequate and affordable housing, the weak support and care mechanisms for vulnerable populations at the local level, and the residual nature of housing policies within the welfare system, to name just a few.

However, given the current total lack of a non-profit social housing sector in the country, it is clear that the potential of housing cooperatives to emerge, depends on broader reforms related to housing production and property management, that would acknowledge the social and common good purpose of housing and allow for social, cooperative and public actors to play an active role in its provision.

Furthermore, we argue that establishing a special legal form in line with the cooperative identity, and adapted to the particular needs of housing cooperatives, would allow for social dynamics and collective bottom-up initiatives to take an active role in this direction. This could facilitate experimentation and the introduction of social innovations in housing, in collaboration with municipal authorities willing to support such endeavours. Nevertheless, simply introducing a special housing cooperative legal form should not be seen as a panacea that would automatically lead to the creation of housing cooperatives capable of addressing the housing crisis. Specific reforms in urban planning, taxation and credit policy will be also needed, along with suitable financing mechanisms and tools, and provisions to ensure their long-term maintenance and sustainability.

In conclusion, we need to stress, once more, that the institutionalization of specific support measures for cooperative housing production requires a broader, comprehensive and long-term strategy to promote affordable and social housing, encouraging not only housing cooperatives but involving also other forms of de-commodified housing and social providers as a viable and effective response to the pressing housing crisis which affects most strata of the Greek population.

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THE PARTICULARITIES OF THE COOPERATIVE HOUSING SYSTEM IN URUGUAY

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Abstract:

This article initially provides an introductory analysis of public policies and state-institutional frameworks concerning the *right to decent housing* as enshrined in Article 45 of the Constitution of the Eastern Republic of Uruguay. This article further outlines the general legal framework governing cooperatives in Uruguay before delving into a detailed examination of the cooperative housing system.

1. Introduction

This article aims to provide a detailed description and analysis of the legal framework governing housing cooperatives in Uruguay. To provide context, this article first offers an overview of the country's public housing policies, along with a brief historical account of the regulation of housing cooperatives before the enactment of the current General Law of Cooperatives, Law No. 18,407.

Law No. 18,407 is structured into four parts, three of which apply to all types of cooperatives: General Provisions (Title I), Promotion and State Control (Title III), and Special and Transitory Provisions (Title IV). Title II, however, is dedicated to specific types of cooperatives, with each type addressed in separate chapters. Notably, the chapter on housing cooperatives is the most extensive, comprising 44 articles.

This article will focus primarily on the provisions within this specific chapter, offering an in-depth examination of its content. While the other parts of the law will be briefly mentioned to provide context, the central emphasis will be on the legal stipulations that directly affect housing cooperatives.

2. Right to housing and public policies on this subject

Article 45 of the Constitution of the Republic states: "*Every inhabitant of the Republic has the right to enjoy decent housing. This law shall aim to ensure hygienic and affordable housing, facilitating its acquisition and encouraging private capital investment for that purpose."*

This provision was introduced during Uruguay's first constitutional reform in 1917, with the original Constitution dating back to 1830. Along with other social rights, it reflects the belief—using modern terminology—that "*one of the basic needs of human beings is the possession of a physical space in which to live a dignified daily life*." (Louredo Casado, 2020, p. 168).

In line with the framework outlined above, and without prejudice to the freedom to build, sell, and rent housing under general regulatory systems (such as the Civil Code, other laws, or municipal urban planning regulations,) it is important to highlight various public policy instruments designed to fulfill the constitutional mandate. One notable example is the creation of the National Institute for Affordable Housing (INVE) in 1937 through Law No. 9,736, with the purpose of *"constructing affordable housing to be leased or sold to state or private employees, retirees, and pensioners, as well as the necessary facilities for services within the corresponding neighborhoods, such as bathrooms, laundry rooms, dispensaries, dining rooms, nurseries, playgrounds, supply premises, and more"* (Article 2, Law No. 9,736). Additionally, INVE was tasked with promoting private sector housing construction, acquiring real estate necessary for its purposes, constructing housing on behalf of promising buyers or landowners, building housing for private institutions with similar aims, repairing housing not acquired by the Institute, and leasing, selling, and managing the housing it acquired or built.

This state agency was directly connected to the Executive Branch through the Ministry of Public Works and was managed by a five-member Honorary Commission appointed by the Ministry. INVE played a significant role in housing development until 1968, when a new public policy and institutional framework for housing was introduced.

It is also noteworthy that throughout the 20th century, other specific housing systems were implemented by various public entities. Although these initiatives were more limited in scope, they provided housing access for employees of specific agencies, such as police officers, municipal officials, and workers at hydroelectric dams. In some instances, housing was also constructed for the general population, particularly by the departmental local governments, which developed entire neighborhoods of *municipal housing* aimed at low-income individuals who faced challenges accessing the private real estate market. These municipal neighborhoods were often complemented by additional infrastructure provided by local governments, such as retail spaces for essential goods and services, polyclinics, and other community facilities.[1]

On December 17, 1968, Law No. 13,728 was enacted, introducing the National Housing Plan (PNV), a comprehensive public housing policy for Uruguay that has been highly regarded[2] and that could even be considered as a *State Policy*. Its implementation has spanned multiple government administrations, and although it has undergone some modifications with varying emphasis and resource allocation depending on the government in power, the plan remains in

[1] The Uruguayan territory is divided into 19 departments, each governed by a Departmental Governor (executive branch) and a Departmental Board, which consists of 31 council members-legislators (legislative branch). These government bodies are based in the capital city of each department. In addition, since 2010, Uruguay introduced a "third level of government," establishing Municipal Councils in all towns with at least 2,000 inhabitants. Each Municipal Council is composed of five members (councilors), with the most voted member serving as the Municipal Mayor. Like the national authorities, all departmental and municipal officials serve five-year terms.

[2] See: https://institutojuanpabloterra.org.uy/wp-content/uploads/2019/12/Vivienda-Concurso-Juan-Pablo-Terra-2da-edicio%CC%81n_compressed.pdf

force currently.

The National Housing Plan (PNV) introduced several mechanisms to promote the construction and acquisition of housing, including loans to public housing developers, loans to private developers for resale, loans to entrepreneurs building housing for their employees, loans for new non-residential premises, loans for the acquisition of used housing, construction loans for families, systems for public housing construction, a cooperative housing system (as detailed in Chapter X of the law), and funds (a union solidarity system to support housing acquisition.) This law also established key components of public policy, including general principles, beneficiary classifications, housing conditions and types, credit terms, an adjustment system (including the creation of the Re-adjustable Unit as a unit of value), subsidies, and the creation of the National Housing Fund, which constituted a tax where all formally employed individuals contributing to social security became taxpayers. A savings and loan system was also introduced. The PNV led to the creation of the National Housing Directorate (DINAVI) within the Ministry of Public Works, which today is part of the Ministry of Housing and Land Management (MVOT); and it also expanded the role of the state-owned Banco Hipotecario del Uruguay (BHU) within the public housing support framework.

Law No. 18,125, enacted on April 27, 2007, introduced a new state framework for housing, establishing a coordinated system involving three distinct agencies, collectively known as the "Public Housing System." The MVOT, responsible for designing and implementing public policies regarding housing; the National Housing Agency (ANV), which executes these policies; and Banco Hipotecario del Uruguay (BHU), which serves as the banking entity for issuing mortgage loans for family housing and handling the financial operations of the entire system.

3. Housing cooperatives and their first legal regulation

Law No. 13,728 was the first law to incorporate housing cooperatives into Uruguay's legal framework.[3] However, it's worth noting that a few years earlier an initiative led by a private entity, *Centro Cooperativista Uruguayo* (CCU), had already established three housing cooperatives in the cities of 25 de Mayo, Fray Bentos, and Salto, which resulted in the construction of three housing complexes. For this development, it was necessary to rely on cooperative law No. 10,761 (1946), which originally applied to consumer and production cooperatives. It was accepted that in the absence of specific legislation for a particular type of cooperative, this law could govern their operations.

Since then, the housing cooperative system has experienced significant growth. As of February

[3] This law, pertaining to housing cooperatives, was regulated by Executive Decree No. 633/69—a comprehensive regulation that, in certain aspects, led to multiple interpretations (such as the valuation of shares in housing cooperatives).

2024, there were 2197 housing cooperatives across the country.[4] The system's evolution can be divided into several phases: an initial period of rapid development between 1970 and 1972, during which "*more than 40% of state resources for housing were allocated to financing cooperatives;*" a subsequent period of decline from 1973 to 1985, during which cooperatives were deprioritized; a resurgence beginning in 1989, marked by initiatives such as the creation of *land banks* by the local government of Montevideo and other local governments to address a critical need for cooperative formation; and another significant boost starting in 2005.[5] Throughout these phases, the legal framework governing housing cooperatives has largely remained consistent, with only minor modifications over time.

4. The current cooperative legal framework: the approval process and a summary of Law No. 18,407

Just as housing cooperatives had their own legal regulation (Chapter X of the aforementioned Law No. 13,728), all branches of cooperativism in Uruguay were governed by specific laws dedicated to each one. Thus, when the General Law of Cooperatives 18,407 was enacted in 2008, there were already specific laws for agricultural cooperatives, consumer cooperatives, production cooperatives (now referred to as worker cooperatives), housing cooperatives, savings and credit cooperatives, and social cooperatives.[6]

Faced with this fragmented and unharmonized legislative context, the cooperative movement led by the Uruguayan Confederation of Cooperative Entities (CUDEOOP) undertook intense efforts and various proposals to unify the legal framework for cooperatives in the country. After a long struggle, they succeeded in having the Legislative Branch consider a bill entirely drafted by cooperative organizations. This process was finalized in 2008 with the approval of the General Law of Cooperatives No. 18,407.[7]

Nowadays, this law is regulated by three Executive Decrees: 183/018, 208/020, and 113/022. The most comprehensive of these regulatory bodies, which generally governs Law 18,407, is the first. The second decree pertains to virtual meetings of cooperatives, while the third contains provisions related to savings and credit cooperatives.

Law 18,407 is divided into four parts, or Titles: Title I (Articles 1 to 97) comprises seven chapters covering general provisions, incorporation, members, organization and administration, economic regime, association, merger and incorporation, economic collaboration modalities,

[4] Retrieved August 5, 2024, from https://www.inacoop.org.uy/datosyestadistica
[5] Raúl Zibechi, retrieved August 5, 2024, from https://www.alainet.org/es/articulo/122689?language=es
[6] Similarly, there were other types of cooperatives, such as those for insurance, tourism, and reciprocal guarantee funds, which, despite lacking their own specific legislation, were regulated by the Law of Consumer and Production Cooperatives (Law No. 10,761), as it was indeed the law with the broadest applicability. These types of cooperatives were also addressed by Law No. 18,407.
[7] The fully updated Law No. 18,407 can be read at: https://www.impo.com.uy/bases/leyes/18407-2008

and dissolution and liquidation. Title II (Articles 98 to 184) regulates the specificities of each type of cooperative: Worker, consumer, agrarian, housing, savings and credit, insurance, reciprocal guarantees, social cooperatives, and cooperatives for artists and related trades (a non-exhaustive list, according to the law itself). Title III (Articles 185 to 214) addresses the promotion and public encouragement of cooperatives as well as state control over them. Title IV (Articles 215 to 224) includes provisions necessary to facilitate the transition of cooperatives to the new legal regime. Within this structure, Title II, Chapter V (Articles 117 to 161) specifically addresses housing cooperatives, which is the focus of this paper.[8]

Law No. 18,407 draws its primary inspiration from the "Draft of Framework Law for Latin America" and various Spanish laws, particularly the Basque Country Law in effect at that time. Such law also incorporates a concept of cooperatives directly inspired by the definition provided by the International Cooperative Alliance at the 1995 Manchester Congress, fully reflecting the cooperative principles in their final formulation. Additionally, it introduces the distinctive Latin American legal concept of the "*cooperative activity*," a sui generis figure designed to define and regulate the legal relations between members and their cooperatives.

The law explicitly defines Cooperative Law and establishes that in the event of legal gaps or omissions, the provisions of the Commercial Companies Law shall apply subsidiarily, provided they are compatible with cooperative law.

An expedited procedure is established for the incorporation of cooperatives, requiring only the registration of the Articles of Association that was approved during the incorporation meeting—with the Registry of Legal Entities, Cooperatives Section, which conducts a legality check. Cooperatives may be formed at the first, second, or subsequent degree.

Generally, the law requires a minimum of five persons to form a cooperative, although for housing cooperatives, the minimum is ten persons, or six members if the cooperative intends to rehabilitate existing buildings.

The law outlines the main rights and obligations of cooperative members, leaving the specification of additional rights and obligations to each cooperative's articles of association. Furthermore, these articles of association must establish the minimum requirements for membership, stipulate penalties for non-compliance, and define the grounds for member exclusion.

Regarding the organization and management of cooperatives, the law adheres to a classic structure: General Meeting, Board of Directors, Fiscal Commission, and Electoral Commission, with detailed regulations on their composition, competence, powers, and operations. The

[8] It is worth noting that a significant portion of Executive Decree No. 183/018 is dedicated to housing cooperatives. Out of the 122 articles in the Decree, 49 specifically address these cooperatives (from Article 42 to Article 91).

possibility of establishing an Executive Committee is also provided.

The economic regime is comprehensively addressed, beginning with a listing and definition of various equity resources: (i) capital stock, (ii) special equity funds, (iii) legal, statutory, and voluntary reserves, (iv) donations and bequests, (v) capitalization instruments, (vi) adjustments from monetary or valuation changes, and (vii) retained earnings. The law also includes provisions on capital reimbursements, surplus distribution, and activities involving non-members. It should be noted that almost all these points have specific provisions and solutions tailored to housing cooperatives.

In terms of the documentary and accounting regime, all cooperatives must comply with "*the legal provisions in force and the standards and criteria issued by the Internal Audit Office of the Nation or other relevant agencies*."

A key innovation introduced by Law No. 18,407 is the creation of the National Cooperative Institute (INACOOP), a parastatal entity [9] with a management structure that includes representatives from both the government and the cooperative movement. INACOOP is financed by resources from the state and the cooperatives themselves and is responsible for supporting cooperative development through various programs.

Finally, state oversight was centralized under the Internal Audit Office of the Nation, a decentralized body of the Ministry of Economy and Finance. However, subsequent amendments to the law have transferred oversight of housing cooperatives to the Ministry of Housing and Land Management (MVOT).

5. The special regime for housing cooperatives

As previously mentioned, Chapter V of Title II of Law No. 18,407 governs housing cooperatives. Before delving into its specifics, it is worth noting that Article 98 of the law provides that, in cases of discrepancies between the general part of the law and the specific chapter pertaining to each cooperative, the provisions of the specific chapter shall prevail.

The following description and commentary are based exclusively on Law No. 18,407, and all articles referenced hereafter pertain to this law. Any references to articles from the law's regulatory decrees will be explicitly identified.

[9] Although not explicitly provided for in the Constitution of the Republic, many "parastatal" entities exist in Uruguay. These entities, while serving public purposes, are governed by private law in terms of personnel regulations, hiring practices, and other aspects. Generally, they are funded primarily by public funds, though private funds may also be involved in some cases. They are managed by Boards of Directors with a mixed composition, including both State representatives and representatives from trade associations relevant to the sector in which the entity operates.

5.1. Concept and Purpose

Article 117, which complements the general concept outlined in Article 4 of such law[10], defines housing cooperatives as follows: *"(Definition and Purpose).- Housing cooperatives are those whose primary purpose is to provide adequate and stable housing to their members through the construction of housing by their own efforts, mutual aid, direct administration, or contracts with third parties, and to offer services that are complementary to housing.*"

The main objective, therefore, is to "*provide adequate and stable housing for its members through the construction of housing*." The article further specifies the methods by which housing may be constructed for this purpose: Own Effort[11]: Although the law is somewhat vague on this concept, it is generally understood to mean that members contribute labour to the construction of their own housing (this method has not yet been implemented). Mutual Aid[12]: This involves cooperative members working together in solidarity to build the housing complex. Each member will be allocated a house, with allocation determined by a draw at the end of the construction process. Families will be categorized according to their bedroom requirements prior to the draw. Direct Administration or Contracts with Third Parties: These categories pertain to the administrative and financial management of the construction work. They refer to whether the cooperative directly manages the work and its registration with the social security agency or contracts the work out to a third-party contractor.

Additionally, Article 117 provides that housing cooperatives are also tasked with " *providing services that are complementary to housing*." These services are crucial as they contribute to the living environment of the residents. In practice, cooperatives often construct shared facilities such as common use rooms, kindergartens, schools, polyclinics, gymnasiums, and libraries. These amenities not only benefit cooperative members but also serve the broader neighborhood and surrounding community.

5.2. Applicable legal regime

Article 118 of the law provides that housing cooperatives are governed by Law 18,407, — which might appear redundant, — but also specifies that they are subject to the provisions of Law No. 13,728. This seeming contradiction is resolved as follows: Law No. 18,407 governs

[10] The general concept of a cooperative as defined in Article 4 of the Law states: "*Cooperatives are autonomous associations of individuals who voluntarily unite based on their own efforts and mutual assistance to meet their common economic, social, and cultural needs through a jointly owned and democratically managed enterprise."*

[11] In Article 54 of Decree No. 183/018, "own effort" is referred to as "*individual self-construction*," and cooperatives are defined as "*those in which the work contributed by the member and their family is dedicated to the construction of the family's housing*."

[12] Mutual aid is defined in Article 124 of the law as follows: "Mutual aid is the communal work undertaken by members for the construction of cooperative housing units and under the technical direction of the cooperative." In Article 54 of Decree No. 183/018, mutual aid cooperatives are described as "those in which the work contributed by members and their families is carried out communally for the construction of the members' housing units."

all aspects related to the operation of the cooperative as such. However, Law No. 13,728 applies to matters that, while not strictly within the purview of Cooperative Law, pertain to housing more broadly. For instance, Law No. 13,728 established the Re-adjustable Unit and sets forth general principles applicable to housing issues as these regulations shall also apply to housing cooperatives.

5.3. Cooperative Principles for Housing Cooperatives

Article 119 redundantly states that these cooperatives must adhere to the principles outlined in Article 7 of the law. However, it further stipulates the application of additional rules, also referred to as principles, which are as follows:

Subparagraph A) provides that "*They shall provide housing at cost, not admitting any type of speculative practice*." This clearly emphasizes the prohibition of profit motives within the cooperatives.

Subparagraph B) states that these cooperatives' "*surpluses shall not be capitalizable in the shares of the members, nor may they be distributed among them*." This provision reinforces the earlier principle by ensuring that any surpluses resulting from efficient management are not distributed or capitalized for the benefit of individual members but are instead reinvested in the cooperative.

Subparagraph C) addresses the concept of co-ownership, specifying that "*In the same cooperative, there may be members with sole ownership of the shares and the derived right of use and enjoyment over the dwelling, as well as members with shared ownership of the shares with the right of use and enjoyment over the same dwelling*." This provision, introduced by a 2017 amendment to Law No. 18,407 specifically for housing cooperatives, will be discussed in detail below.

5.4. Classifications (or classes) of housing cooperatives

Thus far, we have systematically addressed the contents of the first three articles of the chapter on housing cooperatives. However, we will now diverge from this approach. To enhance understanding of the chapter and the context of this work, it is pertinent at this point to discuss the various classifications of housing cooperatives outlined in the chapter we have been examining.

5.5. Parent cooperatives and cooperative housing units

In the initial categorization outlined in Article 126, we identified, on the one hand, parent cooperatives, which are defined as "*those that openly accept members through a commitment to systematic savings contributions and are dedicated to assisting them in organizing*

cooperative housing units. They support in decision-making and execution of programmes related to obtaining credit, acquiring land, planning, constructing, and awarding housing, as well as performing functions delegated to them by the affiliated cooperative units" (Article 148). Historically, these cooperatives were known as *cooperative factories*. Although this model is now rarely used, it was quite prevalent in the early days of the system, particularly during the 1970s and 1980s, and was especially common among certain unions such as those for construction workers, transportation employees, and municipal workers. In practice, individuals would often start their cooperative experience within the parent cooperative before transitioning to their own cooperative units. The parent cooperatives played a role in fostering the establishment of new cooperative units and provided various services to them, thereby enhancing efficiency through economies of scale. For example, the parent cooperative might produce building materials like bricks and reinforced concrete sheets for multiple cooperatives.

This law (Articles 148 to 151) further establishes specific operational rules for parent cooperatives. They must operate within a defined guild or territorial area and cannot exceed 1,000 members who do not yet have adjudicated housing. Additionally, the cooperative units they organize—considered their subsidiaries—must remain affiliated with the parent cooperative until they have fully adjudicated housing and settled any outstanding debts.

On the other hand, cooperative housing units are defined by their direct purpose: *providing housing and complementary services* directly to their members "*by constructing for that purpose a building or a housing complex, or by acquiring it in the cases provided for in article 131*" (article 127). Today, housing cooperative activities are absolutely concentrated in this model. The State, through the Ministry of Housing and Land Management (MVOT), has set up administrative regulations detailing the requirements for cooperatives to apply for loans.

5.6. User cooperatives (use and enjoyment) and homeowner cooperatives (ownership).

Both this classification (Article 128) and the one described in the following section pertain specifically to cooperative housing units, not parent cooperatives. The classification criteria are based on the nature of the members' legal rights to the dwellings, essentially defining the rights assigned to members over their residences.

User Cooperatives: In these cooperatives, members are granted the right of use and enjoyment of the housing, while the cooperative retains ownership of the property. Each member receives a "document of use and enjoyment" once they occupy the housing. This document outlines the primary obligations and rights of both the member and the cooperative (Article 135).[13]

[13] In Chapter X of Law No. 13,728, this document was referred to as a "contract of use and enjoyment." However, to distinguish it from the concept of a "contract," the term was changed to "document." Furthermore, Article 135 specifies that the "document of use and enjoyment" is signed "in the exercise of the cooperative act."

Homeowner Cooperatives: These cooperatives confer individual ownership of the dwellings to the members, operating under the horizontal property regime (Article 130). However, even though ownership is granted, members cannot freely dispose of the property; they "*shall use the dwelling solely as their own and their family's residence and are prohibited from renting or selling it without justified cause and prior authorization from the financing agency*" (Article 147).

Homeowners' cooperatives are categorized into two sub-classes. The first subclass consists of cooperatives that provide *immediate delivery* of the property, while the second subclass comprises those with *deferred delivery*. In the case of immediate delivery, the property is transferred to the members "*immediately*" after the construction and adjudication of the housing units. Concurrently, a novation is granted for the change of debtor on the mortgage loan[14], meaning that the member directly assumes the debt associated with their housing unit, and the cooperative exits the credit relationship. Conversely, in cooperatives with *deferred delivery*, the cooperative retains ownership of the property and delays its transfer to the members until the mortgage loan is fully repaid. During this period, the member's relationship with the cooperative is governed by the regulations applicable to users.[15]

5.7. Mutual aid cooperatives and pre-savings cooperatives.

This classification criterion aligns with the one described in the previous section. Accordingly, a User Cooperative will be categorized as either a mutual aid cooperative or a pre-savings cooperative. Similarly, a homeowners' cooperative may also be classified as either a mutual aid cooperative or a pre-savings cooperative.

Mutual aid cooperatives are those in which members contribute their initial share through labour directly on the land and/or housing complex under construction, under the technical supervision of the cooperative (Art. 124). The collective working hours of all members constitute the *community work* or *mutual aid* provided.[16] These contributions can be made either directly by the member or by members of their family unit, valued in Re adjustable Units, and included in the cooperative's capital. According to Article 54 of Decree 183/018, this contribution must represent at least 10% of "*the appraised value of the completed houses, as*

[14] Notably, all housing cooperatives in Uruguay are constructed through a mortgage loan provided by the State.
[15] In any case, even if the debt has been restructured, the homeowners may continue the existence of the cooperative if the articles of association so provide. However, once all members have approved the restructuring of the mortgage loan, and if the housing units are governed by the legal regime of horizontal property (which covers all aspects related to the administration of the building or housing complex, the use and maintenance of common spaces and assets, etc.), there seems to be little incentive to keep the cooperative "alive."
[16] Indeed, the articles of association of each cooperative must specify the type of cooperative it is. However, the regulation of mutual aid work is outlined in an internal regulation of each cooperative.

specified in Articles 23 and 24 of Law No. 13,728 of December 17, 1968."[17]

It is crucial to highlight that "neither self-construction nor mutual aid… will result in any contributions to social security and welfare organizations" (Article 124). This is almost a direct consequence of the fact that communal work is not categorized within the capital-labor relationship (wage labour), and thus it is not counted towards an individual's retirement benefits in the social security system.[18]

In contrast, pre-savings cooperatives involve members providing prior savings instead of working hours. These savings must also amount to at least 10% of the appraised value and are included in the cooperative's capital stock.

5.8. Regulation of various aspects

The following is a succinct enumeration of various aspects regulated for *User Cooperatives*, as the law primarily focuses on this type of cooperative. The minimal regulation of homeowners' cooperatives—limited to just two specific articles (146 and 147)—can be attributed to the likelihood that they will eventually fall under the general regime of horizontal property, which is extensively regulated under Common Law. It should also be noted that as long as these cooperatives have not transferred ownership of the dwellings to their members, they will be governed by the User Cooperative regime. Lastly, it is evident that the legislature of the time[19] showed a clear preference for regulating the User Cooperative regime in greater detail.

As previously mentioned, in a users' housing cooperative, holding shares grants the right to use and enjoy one of the cooperative housing units, as specified in the *document of use and enjoyment* (Art. 135). The member shall use the assigned housing unit as a residence for themselves and their family, and may not lease or assign it (Art. 136).

The grounds for the withdrawal of a member (by an inter vivos transaction) are common to all types of cooperatives: resignation or exclusion. In both cases, the member must vacate the dwelling within 90 days from the day following the resolution date (acceptance of resignation or exclusion). The cooperative then has 12 months from the restitution of the dwelling to reimburse 50% of the member's capital stock. The remaining 50% must be reimbursed after a new member is appointed to replace them, but no later than 48 months from the restitution of

[17] Here is an application of Law No. 13,728 to cooperatives: since it concerns issues applicable to all housing, regardless of the construction method used, the construction and appraisal values referred to in Articles 23 and 24 of this law primarily relate to (or serve as the basis for) the loans that the State will provide for the construction of the housing.

[18] It is worth noting that the contribution in the form of "self-construction" has not been utilized in housing cooperatives in Uruguay. Instead, the alternative of "mutual aid" has been widely used.

[19] It should be noted that while Cooperatives Law No. 18,407 was enacted in 2008, the origins of the housing cooperative system can be traced back to 1968, as established in Chapter X of Law No. 13,728.

the dwelling (Art. 137).

In the event of a withdrawal due to resignation, the member is entitled to a refund equivalent to the appraised value of their share, minus any outstanding debts and minus 10% of the resulting value. If the withdrawal is deemed unjustified, the deduction increases to 25% of the resulting value. This applies within 10 years of the adjudication of the dwelling; however, withdrawals occurring more than 10 years after the adjudication cannot be considered unjustified (Art. 138).

In the case of a member's exclusion and subsequent resistance or delay in vacating the dwelling, two different procedures are established: (a) during the period from admission to the adjudication of the dwelling, an internal procedure applies (Art. 140, subparagraph A); and (b) after the adjudication of the dwelling, a judicial process is required (Art. 140, subparagraph B). In this latter case, the cooperative's articles of association may stipulate a reduction in the member's reimbursements ranging from 50% to 75% (Art. 140, subparagraph B).

In the event of a member's death, the heirs may choose between: (a) continuing with the holding of the shares (and the use and enjoyment of the dwelling), in which case they must designate one of them as the full member, or (b) withdrawing from the cooperative and receiving the value of the shares.

In the event of the dissolution of marriage or other judicially recognized cohabiting union, the spouse or cohabitant who retains custody of the children will have preference to continue using and enjoying the property, without prejudice to the corresponding compensations (Art. 141). The most recent amendment to this rule (in 2017) also included a preference for the person who has been subjected to gender violence by their partner.

The main obligations of the cooperative include: constructing the dwellings, granting members material possession of them, defending members against third-party disturbances, and paying loans, interest, contributions, repairs, and other common obligations and services (Art. 143). The cooperative is responsible for repairs resulting from normal use of the dwelling, provided they are not caused by the fault of the user, during the first five years (Art. 144). To regulate relations between the cooperative and its members (users), the provisions of the Civil Code and other laws related to leasing must be applied, as long as they do not conflict with Law No.18,407 (Art. 145).

The following special features regarding organization and administration should be noted: (i) elections of members of the Board of Directors and the Fiscal Commission must always be conducted by secret and compulsory ballot, and if a list system is used, the principle of proportional representation must be applied; (ii) the honorary nature of the members of the corporate bodies, meaning that, unlike other types of cooperatives (savings and credit, consumer, agricultural, insurance, etc.), the directors may not be remunerated; (iii) the possibility for a member of the family unit to act on behalf of the member in corporate bodies;

(iv) members may be represented at meetings by another member (similar to the general rule) and also by a member of the family unit (Arts. 120 and 121); (v) cooperatives with fewer than 20 members may reduce their governing bodies to just the General Meeting and the Board of Directors. In such cases, the functions of the Fiscal Commission and the Commission for Cooperative Education, Promotion, and Integration shall be carried out by the General Meeting itself (Art. 132).

Regarding the equity aspects, it is worth noting that the capital contributions made by the members (shares) must be recorded in indexed units, ensuring their continuous adjustment. Each capital contribution must not be less than two indexed units. Additionally, the cooperative may charge fees for administration, maintenance, and common services, which are not part of the capital contributions and therefore are non-refundable in the event of a member's withdrawal (Articles 123, 139, and 142).

A particularly significant aspect of the cooperative housing system is the role of Technical Assistance Institutes (IAT). These institutes are required to "*provide legal, cooperative education, financial, economic, and social services at cost to the cooperatives... and may also include technical services for project and construction management*" (Art. 156). IATs must be legal entities, being constituted under corporate, cooperative, or associative forms (Art. 157), and they are prohibited from distributing surpluses if obtained; instead, any surpluses "*must be used exclusively for achieving their corporate purpose*" (Art. 160). The cost of IAT services may not exceed 10% of the total value of the works (Art. 159). The mandatory requirement for housing cooperatives to hire an IAT during the construction stage (Art. 9, Decree 183/018) has been crucial for the proper development of the system. Initially, IATs were exclusively intended to serve housing cooperatives, but a legal amendment in 2020 extended their competence to include "*other non-profit entities*" (Art. 156).

Finally, we address the issue of co-ownership, which refers to the possibility within a housing cooperative for "*members with shared ownership of their shares with the right of use and enjoyment of the same dwelling*." This is the latest innovation introduced in the chapter on housing cooperatives, arising from recent movements and advances in gender equality. The law allows two individuals who "*permanently reside together, are responsible for the family unit, and are in a marriage, a recognized de facto union [concubinage], or a de facto union without judicial recognition, regardless of their gender and marital status, to constitute shared ownership and simultaneously be members*" (Art. 119).

This law provides that each member shall exercise their shareholder rights independently, and "*when a housing cooperative includes both sole owners and members with shared ownership, the vote of the former shall be weighted twice*" (Art. 119).

Additionally, couples with co-ownership are prohibited from jointly participating on the Board

of Directors and the Fiscal Commission or simultaneously serving on both bodies (Art. 119).

6. Brief final comments

This paper introduces the institutional framework on housing and the legal framework of cooperatives in Uruguay, with a focus on Chapter V of Title II of Law No. 18,407 concerning housing cooperatives. This chapter has its roots in a comprehensive regulatory body of public housing policies (Law No. 13,728 of 1968), which includes the *National Housing Plan*, some of whose provisions remain in effect currently.

Undoubtedly, as a Uruguayan author (Nahum, 2004) has observed, the cooperative housing system in the country is based on three pillars: (i) participation and management (or self-management) by the people, (ii) the accumulation of technical knowledge within the Technical Assistance Institutes (IATs), and (iii) the legal-institutional-state framework that supports it.

The focus here is on sharing the essence of this third pillar, which, while it may require some adjustments or improvements, has undoubtedly played a significant role in the development of the cooperative housing system in Uruguay.

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Legislation

RECENT DEVELOPMENTS IN US COOPERATIVE LAW

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Background

The federal system in the United States allocates government authority between the federal (national) government, the 50 states, the District of Columbia, and a handful of other colonial territories such as Puerto Rico and Guam. The legal enabling environment for cooperative enterprise is similarly divided. Federal government policy is largely exercised through tax law, with favorable and restrictive provisions that define cooperative models nationally. Business entity formation is a matter of state law, which is fragmented and greatly variable among the 52+ jurisdictions.

In the U.S. system, legislation is created by Congress and the 52-plus state-level legislatures; interpretation and implementation of law is largely delegated to administrative agencies. Enacted legislation is generally described as "law," "statute," or "code." Internal cooperative governance documents are referred to as "bylaws" or "operating agreements."

The Internal Revenue Code (IRC) – the national tax laws – offers the only uniform application of "cooperative" and provides favorable tax treatment to cooperative revenues from business with members. The IRC's definition is vague, referring only to "any corporation operating on a cooperative basis." 26 U.S.C. §§ 1381(a)(2). Federal courts have interpreted this more carefully. *Puget Sound Plywood, Inc. v. Commissioner*, 44 T.C. 305 (1965), acq. 1966-2 C.B.

Federal Law and Policy

Recent years have seen significant developments in national law and policy, particularly in the area of worker ownership. In the U.S., the field of worker ownership is growing as a means of offering employees an ownership stake and sometimes a voice in businesses. Worker cooperatives are growing in number, but the vast majority of employee stakeholders is through an Employee Stock Ownership Plan, or ESOP. An ESOP is a form of employee benefits that places shares of the employer corporation into a trust for the benefit of participating employees. ESOPs take many different forms, ranging from a modest performance incentive to 100% worker ownership and democratic worker governance – the latter category a small minority.

The *Worker Ownership and Readiness and Knowledge Act* (WORK Act) of 2023 is a significant advancement of federal policy in support of employee ownership, including worker cooperatives. The resulting *Employee Ownership Initiative* is the first federal worker ownership grant program in the US Department of Labor. The legislation authorizes $50 million over five years to promote employee ownership, by supporting new and existing state employee ownership programs, including:

- Federal grants toward state employee ownership programs for education and outreach about the benefits of employee ownership and business succession planning.
- Gathering data and information about state employee ownership programs.
- Serving as a clearing house on best practices within employee ownership.
- Hilary Abell, a prominent and talented employee ownership advocate was appointed as its first Division Chief.

In contrast, progress has been disappointingly slow in implementation of the *Main Street Employee Ownership Act*, passed in 2018. This Act required the US Small Business Administration (SBA) to recognize cooperatives as enterprises eligible on parity with investor-driven businesses for its loan programs and other benefits. Full realization of the Act was hampered by intransigence on the part of a previous presidential administration and reluctance on the part of SBA leadership to acknowledge the cooperative business model. The agency has made more substantial progress in recent years.

Congress enacted the *Corporate Transparency Act* to combat money laundering and other financial crimes. The law universally requires reporting of "beneficial ownership" of any enterprise that is not already subject to federal financial reporting requirements - including cooperatives – to a new federal agency – the Financial Crimes Enforcement Network (FinCEN). "Beneficial Ownership" is defined as an ownership share of 20.0% or more, or otherwise significant control of a business. Few cooperatives fall under the 20.0% ownership requirement, but must still file a report to FinCEN and identify at least one controlling officer.

Interagency Working Group on Cooperative Development

The most successful advance in federal policy is occurring at the administrative level. The 2014 Farm Bill created the Interagency Working Group on Cooperative Development (IAWG) "to foster cooperative development and ensure coordination with federal agencies and … cooperative organizations" 7 U.S.C. section 1932(e)(12). Led by the US Department of Agriculture's (USDA) Rural Development division, the Working Group has engaged formal participation from federal agencies as well as numerous State, Local, Tribal, and private sector actors. The effort has gained momentum and spread understanding of cooperatives well beyond its traditional home in USDA. To date, the IAWG has compiled century's worth of cooperative economic statistics, established working groups and offered webinars to a national audience on: Food, Environment, Worker Cooperative Conversions, Housing, Child Care, Real Estate, Equitable Governance, Equitable Ecosystem Development, and Cooperatives in the Carceral System.

Change of Administration

The recent election creates substantial uncertainty with respect to USDA Rural Development and programs related to cooperative development. Donald Trump's attempt to eliminate Rural Development completely did not receive approval from Congress. Presidential appointees later instituted a gag order preventing the agency from publicizing its programs and successes. As

noted above, implementation of the Main Street Employee Ownership Act was also slow.

State Law and Policy

As noted, any consistency in US cooperative law comes from the federal tax code. There is considerable variation in coverage and level of detail in laws among the various states.

Along with the federal WORK Act, a decade of advocacy by worker cooperative movement leaders is starting to bear fruit in some state legislatures and some large cities. Notable developments include:

- **Colorado**
  Colorado Governor Jared Polis created the Colorado Employee Ownership Office by executive order in 2020. The legislator provided statutory authority for the Office in 2024. The law offers tax benefits for businesses converting to worker ownership – cooperatives and ESOPs – and creates a 12-member Employee Ownership Commission to support the work of the Office.
- **Washington State**
  The governor of Washington State signed legislation in 2023 creating the Washington Employee Ownership Program within that state's Department of Commerce. The law offers tax benefits for employee ownership transactions, and establishes a revolving loan fund to finance such conversions. The new Employee Ownership Commission serves as an advisory board for the program.
- **New York City**
  In 2015 one of the country's largest cities created the Worker Cooperative Business Development Initiative to create innovative ways for New Yorkers to overcome economic and social inequality. The program has found success and grown significantly, with a 2024 budget of $9.8 million.
- **Chicago**
  More recently, the City of Chicago created the Chicago Community Wealth Building Ecosystem (CCWBE) as a significant aspect of its recovery from the COVID pandemic. Initially hosted by the Center for Urban Economic Development (CUED) at the University of Illinois Chicago (UIC) and the Community Enterprise & Solidarity Economy Clinic of the UIC School of Law, the project supports worker-owned cooperatives, community land trusts, limited equity housing cooperatives, community investment vehicles, and other ecosystem partners.

THE CHALLENGES OF THE NEW COOPERATIVE LEGAL FRAMEWORK IN MADAGASCAR

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The cooperative legal framework is changing in Madagascar. A new cooperative law has been in force since August 2023, and its implementing decree is currently being drawn up. The aim of this contribution is to outline the limitations of the former law, as well as the reforms introduced by the new law. This post is very general and will soon be supplemented by a detailed paper on the new Malagasy cooperative legal framework, once the decree implementing the new Malagasy cooperative law comes into force.

Until 2023, cooperatives in Madagascar were governed by Law no. 99-004 of 21 April 1999 on cooperatives, supplemented by Decree no. 2014 - 1003 of 16 July 2014 implementing this law. An analysis of this former legal framework revealed a number of shortcomings, some of which are highlighted in the next paragraph.

Firstly, the law and the decree did not specify the registration deadlines, nor the rules relating to the publication of the registration of cooperatives. Secondly, the law and the decree granted the State significant incursions into the operation of cooperatives, to the point of jeopardizing their autonomy and independence. Thirdly, the law and the decree made no mention of the decision-making procedures at general meetings. Similarly, there was no mention of the arrangements for sharing patronage refunds within cooperatives, or of the conduct of audits. Fourthly, the law and the decree set limits on the range of activities of cooperatives. Finally, the law and the decree did not specify any rules relating to the transformation of cooperative societies. The same applies to the rules governing the creation and operation of apexes.

In 2018, the Malagasy Government, with the technical support of its partners, initiated a cooperative law reform project to correct these and other shortcomings in the law and decree. Using a participatory approach, a new law was adopted and came into force in 2023, Law no. 2023 - 016 governing cooperative societies in Madagascar. Its implementing decree is currently being drafted and will be adopted in the coming months.

The new law contains 240 articles and the definition of a cooperative contained in Article 2 is that contained in the ICA International Statement on Cooperative Identity. Similarly, the cooperative principles are listed in Article 3, with the clarification that cooperatives are constituted and managed in accordance with these principles. Similarly, the minimum number of members is set at 5, whereas under the former law there were differences depending on the sector of activity. In addition, the new law introduces two categories of members: cooperative

members and non-cooperative members.

With regard to registration, Article 21 of the new law sets out the deadlines for examining applications for registration, while Articles 25 to 27 relate to the publication of registered cooperatives. From now on, the State can no longer convene meetings in cooperatives or deal with conflict management. Its role has been limited to registering, monitoring and promoting cooperatives. An important element in the relationship between the State and cooperatives, as far as control is concerned, is the introduction of rules on auditing (Articles 176 to 181).

In regard to governance, the new law is clear: decisions are taken at a general meeting in accordance with the "one person, one vote" rule. In addition, patronage refunds are distributed to members in proportion to the activities carried out. Similarly, the new law specifies that cooperatives may engage in activities in all areas of human life (Article 4). Finally, the new law provides further details on the transformation of other entities into cooperatives and that of cooperatives into other entities (Articles 213 to 221), liquidation surpluses (Article 233), and the procedures for setting up and operating apexes (Articles 129 to 149).

The implementing decree currently being drafted will clarify certain articles of the new law. The new law is modernizing Malagasy cooperative law, in order to boost the cooperative movement. However, major steps need to be taken to disseminate the new law to the general public, in particular through capacity-building initiatives to secure support and compliance with the new law, to assist the government in setting up the register, to support the launch of the audit mechanism, and so on.

IMPLICATIONS AND EFFICACY OF THE INDIAN MULTI-STATE COOPERATIVE SOCIETY AMENDMENT ACT 2023: A COMPREHENSIVE ANALYSIS

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Abstract:
The *Multi-State Cooperative Society Amendment Act 2023* is a significant milestone in the evolution of India's cooperative sector. The Act aims to address governance deficiencies and enhance cooperation among cooperatives in India. One notable example is the Act's establishment of the Cooperative Rehabilitation, Reconstruction, and Development Fund to revive ailing multi-state cooperative societies. This initiative aims to support struggling cooperatives. However, it also imposes a financial burden on profitable entities. Requiring profitable cooperatives to contribute to the fund may raise questions about equity and competitiveness within the sector. The Act also introduces measures to promote democratic governance, including the establishment of the Cooperative Election Authority, Information Officer, and Ombudsman. These initiatives aim to enhance transparency, accountability, and member participation in cooperative decision-making processes, to foster a more inclusive and responsible cooperative environment. However, challenges persist, particularly regarding the balance between central and state government jurisdiction over cooperative governance. Disputes over legislative competency and potential encroachments on state autonomy underscore the need for nuanced approaches to cooperative regulation that respect both principles of federalism and cooperative principles. This paper evaluates the implications and efficacy of the Act, focusing on key provisions and their potential impact on cooperative governance, financial sustainability, and overall sectoral development.

Introduction:

The genesis of cooperative societies in India can be traced back to the grassroots movements of farmers protesting against the oppressive interest rates levied by bankers in Poona and Ahmednagar. These early instances marked the informal beginnings of cooperative principles being applied to address the financial challenges faced by rural communities. However, it was not until the enactment of the *Cooperative Credit Societies Act* in 1904 during British rule that cooperative societies took on a formal structure and shape. The *Cooperative Credit Societies Act, of 1904* was an important milestone in the evolution of cooperative governance in India. It provided a legal framework for the establishment and regulation of cooperative credit societies, laying the foundation for cooperative principles such as voluntary membership, democratic control, and member participation in decision-making processes. Importantly, this legislation categorized cooperation as a provincial subject, granting individual provinces the authority to

enact their own cooperative laws to suit local needs and circumstances. This decentralized approach to cooperative governance persisted through subsequent constitutional reforms, including the *Montague-Chelmsford Reforms* and the *Government of India Act, of 1935*. Under these reforms, the autonomy of provinces in matters of cooperative legislation was upheld, reflecting the diverse socio-economic landscapes across different regions of India. The year 1942 marked another significant development with the enactment of the Multi-Unit Cooperative Societies Act by the Government of British India. This legislation was introduced to address the growing need for cooperative societies with membership spanning multiple provinces. By providing a legal framework for multi-unit cooperative societies, this Act facilitated cooperation on a broader scale, enabling collaboration and resource-sharing across provincial boundaries. Following India's independence, cooperative societies emerged as integral components of national development strategies, particularly highlighted in the first five-year plan (1951-56). The government emphasized the adoption of cooperatives across various sectors to promote community development and empower rural communities. Today, multi-state cooperative societies continue to play a crucial role in various sectors such as agriculture, textiles, poultry, and marketing. These societies operate across state boundaries, drawing their membership from multiple regions. Governed by relevant legislation, they adhere to cooperative principles of voluntary association, democratic governance, and member participation in decision-making processes. Through their collaborative efforts, multi-state cooperative societies contribute to inclusive growth and sustainable development across diverse regions of India.

Constitutional perspectives on Cooperatives:

97th Constitutional Amendment Act 2011:

The *97th Constitutional Amendment Act of 2011* was another significant milestone The Act recognized the right to form cooperative societies as a fundamental right under Article 19 of the Constitution. This amendment acknowledged the crucial role of cooperative societies in fostering socio-economic development and empowerment at the grassroots level.

Directive Principle of State Policy on the Promotion of Cooperative Societies (Article 43-B):

In line with the recognition of the importance of cooperative societies, Article 43-B of the Indian Constitution was introduced as a new Directive Principle of State Policy. This provision emphasizes the state's responsibility to promote the growth and sustenance of cooperative societies as vital instruments for socio-economic progress and equitable development.

Introduction of Part IX-B:

A pivotal addition to the Constitution, Part IX-B, titled "The Co-operative Societies," was incorporated, comprising Articles 243-ZH to 243-ZT. This dedicated section underscores the constitutional significance of cooperative societies, providing a framework for their establishment, governance, and functioning, and ensures their institutionalization within the constitutional fabric of the nation.

Establishment of the Ministry of Cooperation:

Recognizing the pivotal role of cooperative societies in the nation's socio-economic landscape, the establishment of a dedicated Ministry of Cooperation headed currently by Shri Amit Shah, marked a significant step forward. This ministry was tasked with providing greater acknowledgment, support, and oversight to cooperative societies, to enhance their institutional capacity and enable them to effectively contribute to national development goals.

Reactions of Various States to the 97th Constitutional Amendment Act, 2011

The aim of the *97th Constitutional Amendment Act, 2011*, was to enhance the democratic governance and autonomy of cooperative societies across India. Each state responded differently to the amendment, resulting in varied implementation. This Section provides an overview of how different states have responded:

Bihar

In Bihar, the Registrar can supersede the Board of a Cooperative Society under certain conditions, such as persistent defaults, negligence, actions against the society's interests, or a constitutional deadlock. Supersession can last up to six months, extendable to one year for banking societies, with mandatory consultation with the Reserve Bank of India. Section 81 of the *Bihar Cooperative Societies Act* states: "The Registrar can supersede the Board of the Co-operative Society... for a period not exceeding six months... The dissolution of the Board... shall be done in consultation with the Reserve Bank of India."

Gujarat

Gujarat allows the State Government or Registrar to supersede the Managing Committee based on persistent defaults, negligence, actions against the society's interests, or a constitutional deadlock. A decision must be made within fifteen days of issuing the notice. Section 81 (1) of the *Gujarat Cooperative Societies Act* specifies: "The State Government or... the Registrar, after giving the committee an opportunity of being heard... may... supersede or keep under suspension the committee."

Haryana

In Haryana, the Registrar can supersede the committee of any cooperative society for persistent defaults, negligence, actions against the society's interests, or failure to conduct elections. Supersession can last up to six months, extendable to one year for banking societies. The Registrar must allow the committee to present objections before issuing an order. Section 34 (1) of the *Haryana Cooperative Societies Act* states: "The Registrar may... supersede the committee... for such period not exceeding six months and in case of a cooperative society carrying on business of banking for a period not exceeding one year."

Karnataka

Karnataka amended its laws to limit the government's and Registrar's power to supersede boards of cooperatives without government financial involvement. Supersession cannot exceed six months, during which elections must be held. This amendment aims to prevent the misuse of supersession for political reasons. Section 30 of the *Karnataka Cooperative Societies Act* asserts: "The Government (Registrar) shall not have powers to supersede the boards in case of

such cooperatives where there is no government finance involved... such a move shall not exceed a period of six months."

Kerala

Kerala amended its laws to restrict the supersession of committees to societies receiving government assistance, excluding those under the *Banking Regulation Act.* Supersession can last up to six months, extendable to one year for societies under the *Banking Regulation Act.* Section 32 of the *Kerala Cooperative Societies Act* indicates: "The maximum period of supersession will continue to be one year in respect of Committees of societies coming under the purview of the *Banking Regulation Act*."

Maharashtra

Maharashtra has detailed provisions for the supersession of committees based on actions against the society's interests, failure to conduct elections, financial irregularities, or judicial directives. The Registrar must consult the federal society before taking action. A new committee or a committee of administrators is appointed to manage the society for up to six months. Section 78A of the *Maharashtra Cooperative Societies Act* provides: "The Registrar may... supersede the committee... to manage the affairs of society for a period not exceeding six months."

Tamil Nadu

In Tamil Nadu, the Registrar can supersede the board of a registered society for persistent defaults, negligence, actions against the society's interests, or a constitutional deadlock. An administrator is appointed to manage the society for a period not exceeding six months. Section 88 of the *Tamil Nadu Cooperative Societies Act* states: "Where the board of any registered society... is of persistent default... the Registrar may... supersede the board and appoint an administrator... for a specified period not exceeding six months."

Uttar Pradesh

Uttar Pradesh limits the supersession of the Committee of Management to societies with government financial involvement. The Registrar can supersede the committee for persistent defaults, negligence, actions against the society's interests, or failure to conduct elections. The Registrar must seek the opinion of the General Body and provide a reasonable opportunity for objections. Section 35 (1) of the *Uttar Pradesh Cooperative Societies Act* notes: "The Registrar may... supersede the Committee of Management of any Cooperative Society... for a period not exceeding six months."

Implementation issues

Constitution of Cooperative Election Commission

Despite some states forming independent Cooperative Election Commissions, elections are often conducted by the Cooperative Department personnel mainly due to the large number of societies and logistical challenges of conducting elections. This undermines the intent of the Amendment for impartial elections.

Office-Bearer Elections

Having the Cooperative Election Commission conduct all elections, including for office-

bearers and casual vacancies, is considered impractical and may not meet practical needs.

Auditing Challenges

Many auditors are reluctant to audit smaller primary cooperative societies in rural areas due to financial weaknesses, as these societies may not afford the audit expenses.

Member Participation

The Amendment requires a minimum quorum of 20 percent in general body meetings to ensure democratic participation. However, implementing this poses quorum challenges for large cooperatives, who may need to conduct midterm elections to satisfy this requirement, placing a strain on their finances.

Constitutional validity of the 97th Amendment Act

Background and Context

The *97th Constitutional Amendment Act*, concerning the regulation of Co-operative societies within states, was contested because Co-operative Societies are included in Entry 32 of the State List in the Seventh Schedule of the Constitution. Article 368(2) requires amendments to subjects in the State List to be ratified by at least half of the state legislatures. However, Parliament approved the 97th Amendment without this required ratification, leading to challenges regarding its constitutionality.

Gujarat High Court's Decision

In ***Rajendra N. Shah v. Union of India,*** the Gujarat High Court declared the 97th Amendment unconstitutional. The court determined that co-operative societies are exclusively within the legislative domain of state legislatures as outlined in Entry 32 of List II, Schedule VII. By introducing Part IX-B without state ratification, the Amendment encroached upon state powers, thereby violating the federal structure of the Constitution. The High Court ruled the Amendment ultra vires and unconstitutional.

Supreme Court's Decision

The Supreme Court, in a 2:1 majority decision, upheld the Gujarat High Court's ruling that the 97th Amendment was unconstitutional concerning co-operative societies within a State due to the lack of necessary state ratification. However, the Court maintained the Amendment's validity regarding multi-state co-operative societies. Justices R F Nariman and B R Gavai stated that Part IX-B is applicable to multi-state co-operative societies but not to those operating solely within a State, where ratification was required but not obtained.

Dissenting Opinion

Justice K.M. Joseph, agreed with the majority that the provisions in Articles 240-ZI to 243-ZQ and Article 243-ZT are unconstitutional without state ratification, however he disagreed on the application of the doctrine of severability. He believed that maintaining the unconstitutional provisions was necessary to ensure the functionality of Articles 243-ZR and 243-ZS.

Analysis of the Supreme Court’s Ruling

Exclusive State Legislation

The Supreme Court reaffirmed that matters reserved for states should be legislated solely by

state legislatures. Article 243 ZI confirms that states have the authority to legislate on the incorporation, regulation, and dissolution of co-operative societies.

Requirement for Ratification by the States

The Court emphasized that any Amendment affecting subjects in the State List must be ratified by at least half of the state legislatures, a step that was not taken for the 97th Amendment.

Validity of Multi-State Co-operative Societies Provisions

The Court distinguished between Multi-State Co-operative Societies and other co-operative societies, stating that the former are under Parliament's jurisdiction and do not require state ratification.

Impact of the Judgment

The Supreme Court's decision to invalidate the section of the 97th Constitutional Amendment relating to co-operative societies within a State, while upholding the provisions for Multi-State Co-operative Societies, reinforces the federal structure of the Indian Constitution. The ruling highlights the necessity of following constitutional requirements for state ratification in matters falling within the State List, bolstering the principle of federalism.

Historical development of cooperative legislation in India:

In the early stages of cooperative development in India, communities at various levels, including villages, towns, and districts, pooled their resources to address economic needs. Initially focused on providing credit, these resource pools lent money to members in need, who repaid the loan amount with interest in installments. The surplus income generated, after covering management expenses, was distributed among members as dividends. Often, this surplus was reinvested to expand the pool's operations, contributing to the creation of a Capital Fund.

Cooperative Societies Act, 1904:

As these community resource pools evolved, they became known as Cooperative Credit Societies, primarily focused on providing credit facilities to their members. Recognizing the importance of regulating and formalizing their operations, the Central Government enacted the *Cooperative Societies Act of 1904*. Under this legislation, all such societies were required to register, ensuring their compliance with legal norms. The Act was instrumental in controlling the functioning of these societies, with the primary objective of safeguarding the interests of their members.

Cooperative Societies Act, 1912:

In 1909, a conference of Co-operative Societies Registrars reviewed the *Co-operative Societies Act of 1904* and proposed amendments. After consulting state governments, the Central Government enacted the *Cooperative Societies Act of 1912* (Act 2 of 1912), applicable to all types of cooperative societies. The Act aimed to establish a socialist pattern of society in India through cooperative development. It introduced the cardinal principle of grouping cooperative societies into unions and financing them through central banks to ensure adequate funding. Section 4 facilitated the registration of societies, leading to the establishment of District and

State Cooperative Banks, also known as Apex Banks. Amendments to the Banking Companies Act empowered the Reserve Bank of India to regulate these cooperative banks.

Multi-State Co-operative Societies Act, 1984:

The proliferation of cooperative societies, both in terms of numbers and geographical scope, presented challenges in terms of regulation and conflict resolution. Societies registered in one state but functioning across multiple states found themselves entangled in the complexities of conflicting state laws governing their operations. This situation led to uncertainty, especially in cases where grievances arose. To mitigate these challenges, there arose a pressing need for a unified legal framework governing cooperative societies operating across state borders. In response to this need, The *Multi-Unit Co-operative Societies Act of 1942* (Act 6 of 1942) was enacted, providing a foundational legal structure for such entities. Drawing from the experiences and lessons learned from over four decades of implementing this Act, the Central Government introduced a more comprehensive measure in the form of the *Multi-State Co-operative Societies Act of 1984* (Act 54 of 1984). This updated legislation aimed to address the shortcomings of its predecessor and streamline the regulation of cooperative societies with operations spanning multiple states. Notably, the *Multi-State Co-operative Societies Act of 1984* repealed the earlier Act of 1942, signifying a significant step towards establishing a more efficient and cohesive regulatory framework for cooperative societies operating across state boundaries.

Multi-State Co-operative Societies Act, 2002:

The *Multi-State Co-operative Societies Act of 2002* was enacted to consolidate and amend laws about cooperative societies operating across state boundaries. It aims to promote the formation and democratic functioning of cooperatives, facilitating economic and social betterment while ensuring functional autonomy. The Act, comprising 126 sections, introduced several new provisions, including the concept of federal cooperatives and detailed procedures for amending by-laws, aligning with provisions of The *Companies Act, 1956.* Under this Act, cooperative societies, including credit societies, agricultural and housing societies, industrial and consumer cooperatives, and cooperative banks, must adhere to cooperative principles outlined in the First Schedule. Membership is open to all individuals without discrimination, emphasizing voluntary participation. Democratic principles govern the functioning of these societies, ensuring equal voting rights for all members. Additionally, the Act mandates that cooperative societies with limited liability must suffix "Ltd." to their names, signifying limited liability. Notably, the Act prohibits the registration of new multi-state cooperative societies with unlimited liability. Rules formulated under the previous 1984 Act continue to apply, except where inconsistent with the *Multi-State Co-operative Societies Act of 2002.*

Multi-State Co-operative Societies (Amendment) Act, 2023:

As per the Constitution, states are responsible for regulating the incorporation, functioning, and dissolution of state co-operative societies, while Parliament holds authority over matters concerning multi-state co-operatives. The *Multi-State Co-operative Societies Act of 2002* governs the formation and operations of multi-state co-operatives. The Constitution was

amended in 2011 to introduce guidelines under Part IXB for the governance of co-operative societies, applicable to multi-state co-operatives. However, the Supreme Court clarified in July 2021 that Part IXB applies solely to multi-state co-operatives, with states retaining jurisdiction over state co-operatives. Despite this legal framework, experts have identified several shortcomings in co-operative functioning, including governance inadequacies, politicization, membership issues, capital formation challenges, and difficulty in attracting skilled professionals. Furthermore, instances of indefinite postponement of co-operative board elections have been reported. In response, in 2022 a Bill was introduced to amend the Act to align with Part IXB of the Constitution and address governance concerns. The Bill, referred to a Joint Committee on December 20, 2022, received favourable feedback, with the Joint Committee submitting its report on March 15, 2023, endorsing most of its provisions. The amendment bill was passed in the Lok Sabha on July 25, 2023, and in the Rajya Sabha on August 1, 2023.

Salient features of the multi-state co-operative Societies (amendment) Act, 2023:

Establishment of Co-operative Election Authority: The Bill proposes the establishment of a Co-operative Election Authority by the central government to oversee the election process of multi-state co-operative societies. This authority will supervise the preparation of electoral rolls and conduct elections for board members.

Amalgamation of Co-operative Societies: While the Act allows for amalgamation and division of multi-state co-operative societies, the Bill extends this provision to permit state co-operative societies to merge into existing multi-state co-operative societies, subject to state laws.

Creation of Co-operative Rehabilitation Fund: A Co-operative Rehabilitation, Reconstruction, and Development Fund will be established to revive sick multi-state co-operative societies experiencing significant losses. The central government may devise a rehabilitation scheme for these societies, with funding provided by profitable multi-state co-operative societies.

Restriction on Redemption of Government Shares: The Bill introduces restrictions on the redemption of shares held by central and state governments in multi-state co-operative societies, requiring prior approval for redemption.

Introduction of Co-operative Ombudsman: The central government will appoint one or more Co-operative Ombudsman with territorial jurisdiction to address complaints from members of multi-state co-operative societies regarding their deposits, equitable benefits, and individual rights. Appeals against the Ombudsman's decisions can be made to the Central Registrar within a specified timeframe.

A comparative study between the changes made in the multi-state co-operative Societies Act, 2002, and the multi-state co-operative Societies (amendment) Act, 2023:

CHANGES INTRODUCED IN:	MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002	MULTI-STATE CO-OPERATIVE SOCIETIES (AMENDMENT) ACT, 2023
Election Mechanism:	Under the provisions of the *Multi-State Co-operative Societies Act of 2002*, the election of board members is managed and conducted internally by the existing board of the cooperative society.	The *Multi-State Co-operative Societies (Amendment) Act of 2023* introduces a significant change by establishing a Co-operative Election Authority. This Authority, to be established by the central government, is entrusted with the responsibility of conducting elections for board members of multi-state co-operative societies
Amalgamation Process:	The *Multi-State Co-operative Societies Act of 2002* allows for the amalgamation and division of co-operative societies through the passage of a resolution at a general meeting. This resolution requires the approval of at least two-thirds of the members present and voting.	The *Multi-State Co-operative Societies (Amendment) Act of 2023* introduces a significant change by permitting state co-operative societies to merge into an existing multi-state co-operative society. However, this merger is subject to the respective state laws governing co-operative societies.
Co-operative Rehabilitation Fund:	The *Multi-State Co-operative Societies Act of 2002* does not specifically provide for a dedicated fund to support sick cooperative societies. Therefore, there is no statutory obligation for multi-state co-operative societies to contribute to such a fund.	The *Multi-State Co-operative Societies (Amendment) Act of 2023* establishes a Co-operative Rehabilitation, Reconstruction, and Development Fund. This fund aims to facilitate the revival of sick cooperative societies
Restrictions on Redemption of Government Shareholding:	According to the provisions of the *Multi-State Co-operative Societies Act of 2002*, the redemption of shares held by certain government authorities in a multi-state co-operative society is subject to the bye-laws	The *Multi-State Co-operative Societies (Amendment) Act of 2023* imposes stricter restrictions on the redemption of shares held by government authorities. Under the amendment, any shares held by the central and state governments cannot

	of the society. However, there is no specific requirement for prior approval from the central and state governments for the redemption of such shares	be redeemed without their prior approval
Complaint Redressal Mechanisms:	In the *Multi-State Co-operative Societies Act of 2002*, there is no provision specifically addressing the appointment of a Co-operative Ombudsman for the redressal of complaints. Therefore, the process of complaint redressal may vary depending on the internal mechanisms and procedures established by individual multi-state co-operative societies. Appeals may be directed to the Central Registrar or other relevant authorities as per the provisions of the act.	The *Multi-State Co-operative Societies (Amendment) Act of 2023*, the central government will appoint one or more Co-operative Ombudsmen with territorial jurisdiction. These Ombudsmen will be responsible for investigating and adjudicating complaints related to multi-state co-operative societies. The amendment sets a strict timeline of three months for completing the process of inquiry and adjudication from the receipt of the complaint. Additionally, it establishes a mechanism for appealing decisions, with appeals to be made within one month to the Central Registrar appointed by the central government.

Shortcomings of the multi-state co-operative Societies (amendment) Act, 2023:

Financial Burden on Profitable Co-operatives for Reviving Sick Ones:

The *Multi-State Co-operative Societies (Amendment) Act, 2023* proposes the establishment of the Co-operative Rehabilitation, Reconstruction, and Development Fund to revive sick multi-state co-operative societies. These are identified as co-operatives with accumulated losses surpassing their paid-up capital, reserves, and surpluses, and having incurred cash losses over the same and preceding financial years. Profitable multi-state co-operative societies are mandated to contribute to this fund, either one crore rupees annually or one percent of their net profit, whichever is lower. While this initiative aims to assist struggling co-operatives, it raises concerns about imposing financial burdens on well-functioning ones. This provision could potentially divert resources from profitable entities to bail out their less successful counterparts, posing challenges to their competitiveness.

Government Control over Redemption of Shareholding:

The proposed amendment to the Multi-State Co-operative Societies Act introduces restrictions on the redemption of shares held by central and state governments in multi-state co-operative societies. Previously, redemption was governed by the society's bye laws or through mutual

agreement between the society and the entity holding shares. However, the Bill mandates prior approval from the respective governments for redemption, aiming to maintain government control over malfunctioning co-operatives. While this may prevent societies from pre-emptively redeeming government shares before board supersession, it raises concerns regarding co-operative principles of autonomy and independence.

Impact on Democratic Member Control and Autonomy:

Granting veto powers to governments over share redemption could conflict with co-operative principles of democratic member control and autonomy. Co-operatives are envisioned as democratic, autonomous, and self-help organizations controlled by their members, as outlined in the First Schedule of the Act. The proposed amendment may undermine these principles by allowing external interference in the affairs of co-operatives, potentially diluting their autonomy and democratic decision-making processes.

Legislative Competency Dispute:

The amendment to Section 17 of the main act, which permits the consolidation of any State cooperative society with an established Multi-State Cooperative Society (MSCS), is seen as a violation of state governments' rights and an encroachment into their jurisdiction. This dispute over legislative competency underscores broader challenges within India's federal structure, revealing tensions between central and state governments. It raises concerns about potential encroachments on state autonomy and emphasizes the delicate balance needed between uniform regulation and local autonomy in cooperative governance.

Challenges in Cooperative Governance:

As government and legislative oversight increased, the cooperative sector has faced growing instances of mismanagement and corruption. These issues undermine democratic principles and erode public trust. Addressing governance deficiencies demands comprehensive reforms, enforcement, and a cultural shift towards transparency and accountability among cooperative members and leadership.

Way forward:

Preserving Cooperative Autonomy: Government aid to co-operatives should be provided as grants or interest-free loans instead of share capital to prevent government control and preserve co-operative autonomy. Any government-provided share capital should be promptly redeemed to maintain democratic governance.

Balancing State and Central Governance: Addressing legislative competency disputes requires a nuanced approach that respects both state and central governments' roles in cooperative governance. A balance between uniform regulatory frameworks and states' rights is crucial for fostering inclusive cooperative development.

Monitoring and Evaluation Mechanism: Implementing a robust monitoring and evaluation mechanism to assess the implementation and impact of the *Multi State Cooperative Society Amendment Act 2023*. Regular assessments will help identify any shortcomings or areas requiring further improvement.

Addressing Financial Strain on Profitable Co-operatives:

To alleviate the financial burden on profitable co-operatives, consider implementing a tiered contribution system based on the financial health and size of each entity. This approach would ensure that well-functioning cooperatives contribute proportionally while mitigating the risk of diverting resources disproportionately from profitable entities.

Conclusion:

The *Multi-State Cooperative Society Amendment Act 2023* represents a commendable stride forward in bolstering India's cooperative sector, addressing governance shortcomings and fostering greater collaboration among cooperatives. However, certain provisions, notably the imposition of financial obligations on profitable cooperatives to support struggling counterparts, raise concerns regarding equity and competitiveness. While the Act aims to rejuvenate ailing cooperatives, it must ensure that the burden placed on financially stable entities is reasonable and equitable. Meticulous oversight and evaluation of the Act's implementation are crucial to ascertain its efficacy in promoting cooperative development while safeguarding the interests of all stakeholders and nurturing sustainable growth across the sector.

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Book Reviews

SOME THOUGHTS ON THE BOOK: 'UNA VISIÓN COMPARADA E INTERNACIONAL DEL DERECHO COOPERATIVO Y DE LA ECONOMÍA SOCIAL Y SOLIDARIA. LIBER AMICORUM PROFESOR DANTE CRACOGNA' [A COMPARATIVE AND INTERNATIONAL VIEW OF COOPERATIVE LAW AND THE SOCIAL AND SOLIDARITY ECONOMY. LIBER AMICORUM PROFESSOR DANTE CRACOGNA [1]]

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This collective and comprehensive work, of 632 pages, coordinated by Professors Hagen Henrÿ of the University of Helsinki and Carlos Vargas Vasserot, Director of the CIDES Research Center of the University of Almeria, honoring Professor Dante Cracogna on his 80th birthday, provides a comprehensive study of cooperative law and the social economy at the global level. A clear sign of the internationality and globality of this work is that it contains 30 chapters written by 32 authors from 23 universities from 3 different continents. Although it is mainly written in Spanish, it also has contributions in English and French.

Following a meaningful prologue by the two coordinators of the work, the book's chapters treat general conceptual issues of cooperative law combined with chapters examining the reception of cooperative law and the social economy by the different legal systems. Additionally, there are chapters treating much more specific aspects of cooperatives and other social business entities within the social economy. Despite the large number of contributions and the variety of topics covered, the coordinators have successfully categorized them into three separate blocks ranging from the most general topics to more specific issues.

Block I, entitled 'General Part', is the most extensive one, with twelve chapters dealing with general and cross-cutting issues of cooperative law. Thus, the first chapter: 'Quel droit coopératif ? Un assemblage d'idées, reçues d'ailleurs (What type of cooperative law? A collection of ideas, received from elsewhere)', written by Hagen Henrÿ, acts as an introduction to the main thread of the first Block. This is followed by a succession of chapters related to singular aspects of cooperative law, such as the second chapter entitled 'La renovación

[1] Una visión comparada e internacional del derecho cooperativo y de la economía social y solidaria. Liber Amicorum profesor Dante Cracogna. Hagen, H. & Vargas Vasserot, C., (Coords). Dykinson: Madrid. ISBN: 978-84-1170-783-1. Available at: https://www.dykinson.com/libros/una-vision-comparada-e- internacional-del-derecho-cooperativo-y-de-la-economia-social-y-solidaria/9788411707121/

[2] Hired by the novel research project CPUENTE2023/03 of the PPITUAL, Junta de Andalucía-FEDER 2021-2027. Programme: 54.A.

democrática y el límite del mandato (Democratic renewal and the limitation of the mandate of office holders)' by Carlos Torres Morales, which analyzes democracy in Latin American cooperatives; or the chapter on the legal configuration of the cooperative, entitled 'Consideraciones para la regulación de un tipo societario moderno de sociedad cooperativa: los valores y principios cooperativos como límite del principio de la autonomía de la voluntad de los socios (Considerations concerning the regulation of a modern type of cooperative society: the cooperative values and principles as a limit to the principle of the autonomy of the will of the members)' by Enrique Gadea Soler; the fourth chapter prepared by Rubén Colón Morales entitled 'La realización de valores de uso como elemento identitario del modelo empresarial cooperativo (The realization of use value as an identifying element of the cooperative business model)'; and Deolinda Meira's contribution 'The distinction between cooperative surplus and corporate profit as an evidence of the non-profit purpose of cooperatives'.

The following chapter, written by Juan Enrique Santana Félix, is a short pause in the study of cooperative law, as it is dedicated to 'Ensenanza del maestro Cracogna y sus efectos inspiradores (The teachings of Master Cracogna and their inspiring effects)'. It contains some letters and lessons learned from the Master. The following chapters return to the study of cooperative law with chapters such as 'Sociedad posmoderna y crisis de valor: la utopia axiológica del cooperativismo como fuente de inspiración para la (re) construcción del *fraternae et socialis hominis (*Postmodern society and crisis of values: the axiological utopia of cooperativism as a source of inspiration for the (re) construction of the fraternae et socialis hominis)' by José Eduardo de Miranda; and the one entitled 'La función social como principal justificación de un régimen fiscal adecuado para las cooperativas (The social function as the main justification for an adequate tax regime for cooperatives)' by Marina Aguilar Rubio; 'La naturaleza jurídica de la cooperativa (The legal nature of the cooperative)' by Orestes Rodríguez Musa and Orisel Hernández Aguilar; the chapter entitled 'Adopción y evolución del principio de interés por la comunidad en el seno de la alianza cooperativa internacional (The adoption and evolution of the principle of community interest within the international cooperative alliance)' by Daniel Hernández Cáceres; the chapter entitled 'Los enredos jurídicos del derecho cooperativo y el derecho de la economía social y solidaria (The legal entanglements of cooperative law and the law of the social and solidarity economy)' by Willy Tadjudje; and concluding with the last chapter of this Block by Antonio José Macías Ruano entitled 'La autoayuda y la ayuda mutua, un doble valor cooperativo (Self-help and mutual aid, a double cooperative value)'.

Block II, entitled 'Derecho comparado e internacional (Comparative and international law), is made up of eight chapters that analyze matters related to the regulation of cooperativism and the social economy, as well as the public policies developed by different countries and international organizations for the promotion and development of cooperatives and/or the social economy. This Block includes the chapter by Antonio Fici entitled 'La empresa social

en la legislación y en las políticas de la UE (Social enterprises in EU legislation and policies)'; the chapter 'Asian co-operative laws from developmental state and norm locarization perspectives' by Akira Kurimoto; the one entitled 'La legislación cooperativa enfocada en abordar los retos globales en torno a la Agenda 2030 de las Naciones Unidas (ODS) (Cooperative legislation focused on addressing global challenges around the United Nations 2030 Agenda (SDGs)' by Graciela Fernández Quintas; 'Una mirada comparada a las instituciones públicas para el desarrollo cooperativo en Hispanoamérica (A comparative look at public institutions for cooperative development in Spanish America)' by Jaime Alcalde Silva; 'La realización de cooperativas transfronterizas en le Mercosur: el siguiente paso en un legado (The realization of cross-border cooperatives in Mercosur: the next step in a legacy)' by Leonardo Rafael de Souza; 'El impuesto sobre la renta y las cooperativas: obeservaciones preliminares sobre el regimen fiscal de 50 países (Income tax and cooperatives: preliminary observations on the tax regime of 50 countries)' by Ifigeneia Douvitsa and Hagen Henrÿ; 'Aproximaciones al derecho cooperativo comparado: un enfoque empirico del séptimo principio cooperativo y su presencia en la legislación latinoamericana (Aproximations to comparative cooperative law: an empirical approach to the seventh cooperative principle and its presence in Latin American legislation' by Carlos Naranjo Mena; and the chapter by Santosh Kumar Padmanabhan entitled 'Cooperatives & public international law: causes and consequences'.

The last of the Blocks, entitled 'Special Part', contains ten chapters analyzing different types of cooperatives together with other entity types falling within the social economy. The Block begins with the chapter entitled 'Las empresas sociales con forma mercantil como parte de la economía social. Propuestas de regulación en España y análisis crítico del anteproyecto de Ley Integral de Impulso de la Economía Social (Social enterprises in the form of commercial enterprises as part of the social economy. Proposals for a regulation in Spain and critical analysis of the draft bill of the Integral Law for the Promotion of the Social Economy)' by Carlos Vargas Vasserot. This chapter is followed by the following: 'Los clubes de barrio como entidades de economía social y solidaria (Neighborhood clubs as social and solidarity economy entities)' by Alberto García Muller; 'Quel modèle de coopératives comme support des platformes coopératives (Which cooperative model should support cooperative platforms)?' by David Hiez; 'El régimen disciplinario en las cooperativas en relación con el procedimiento sancionatorio (The disciplinary regime in cooperatives in relation to the sanctioning procedure)' by Ligia Roxana Sánchez Boza; 'Las cooperativas, los sindicatos y la negociación colectiva en Uruguay (Cooperatives, trade unions and collective bargaining in Uruguay)' by Sergio Reyes Lavega; 'Las cooperativas sociales de servicios para trabajadores y la necesidad de un marco legal adecuado para su funcionamiento (Social cooperatives for worker services and the need for an adequate legal framework for their operation)' by Antonio José Sarmiento Reyes; 'Las cooperativas de utilidad pública e iniciativa social (Public utility and social initiative cooperatives)' by Vega María Arnáez Arce and Alberto Atxabal Rada; 'Las cooperativas de múltiples partes asociadas con finalidad social y las cooperativas

multiactivas. Expresiones de un nuevo y viejo cooperativismo en Argentina (Multi-stakeholder cooperatives with a social purpose and multi-purpose cooperatives. Expressions of a new and old cooperativism in Argentina)' by Patricia A. Fernández Andreani; 'Las políticas públicas para las cooperativas en el Paraguay (Public policies for cooperatives in Paraguay)' by Hernando Esteban Raichakowski González; and the chapter by Ana Montiel Vargas entitled 'Análisis legal de la figura de las empresas de inserción en España (Legal analysis of the figure of insertion companies in Spain)'.

Finally, the work also contains Professor Dante Cracogna's personal and professional curriculum vitae as elaborated by the coordinators. It traces the trajectory of his achievements in the realms of teaching, research, and advocacy in the cooperative field. Highlights among these achievements are his participation in activities of the ICA, and other bodies associated to it; his active participation in the elaboration of the ICA Statement on the Cooperative Identity (1995) and the ICA Guidance Notes to the Co-operative Principles (2015); and the active role that the Professor had in the elaboration of some legal texts, such as.for example, in the Draft Framework Law for Cooperatives in Latin America and its update, in the Draft Statute for Cooperatives of Mercosur and in the Recommendation on the Promotion of Cooperatives (no. 193) of the ILO; and his nearly four hundred legal works. These works can be found in the extensive 'List of Professor Dante Cracogna's publications' ordered by subject' at the end of the book, which has also been prepared by the coordinators. It is a detailed compilation of all his contributions in different areas of law that have fostered the improvement of cooperativism worldwide. These publications are classified in four subject areas: cooperative law and social and solidarity economy law; general theory of law; insurance law; and other topics of corporate and commercial law.

We also take this opportunity to convey our most sincere congratulations and recognition to Professor Dante Cracogna for such an extraordinary career of service.

To conclude, it should be noted that the edition of the work has been funded by the research projects +D+i PID2020-119473GB-I00 of the Ministry of Science and Innovation of Spain and the State Research Agency and the PPIT-UAL project, Junta de Andalucía-FEDER 2021-2027 carried out within the framework of the Research Center on Social Economy Law and Cooperative Enterprise (CIDES) of the University of Almería (Spain) .

The work is also available in open access and free of charge on the following website: https://www.dykinson.com/libros/una-vision- comparada-e-internacional-del-derecho-cooperativo-y-de-la-economia-social-y- solidaria/9788411707121 and in the institutional repository of the University of Almeria at: https://repositorio.ual.es/handle/10835/14916

RESUME OF "THE BASQUE COOPERATIVE LAW IN THE CONTEXT OF INTERNATIONAL COOPERATIVE LAW"

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"The Basque Cooperative Law in the Context of International Cooperative Law" is an in-depth analysis of the evolution and significance of cooperative legislation in the Basque Country within a global context. Coordinated by experts in cooperative law, the book explores how the Basque Cooperative Law 11/2019 aligns with international trends in cooperative law and how it can serve as a model for other jurisdictions.

The text, published in English, Spanish, and Basque, is divided into two main sections. The first focuses on the international perspective of cooperative law, while the second explores the Basque Cooperative Law through the lens of various key stakeholders.

A key aspect addressed in the first part is the translation of cooperative principles, as defined by the International Cooperative Alliance (ICA), into effective legal norms. These principles include democratic management, economic participation of members, and the autonomy and independence of cooperatives. The text examines how these principles have been implemented in the Basque legislation and how they can be applied in other legal contexts to strengthen the global cooperative movement.

Another important topic in this section is the relationship between cooperative law and sustainable development. It is argued that cooperatives, due to their structure and principles, are particularly well-positioned to contribute to the United Nations' Sustainable Development Goals (SDGs). The Basque Cooperative Law 11/2019 is presented as an example of how cooperative legislation can be designed to promote not only economic efficiency but also social equity and environmental sustainability.

This first section also offers a comparative analysis, examining cooperative legislation in other regions of the world, including Europe, Americas, Africa, Asia, and Oceania. This comparison allows readers to understand the different ways in which cooperative law has evolved in response to specific social, political, and economic contexts. For example, in Latin America, cooperative legislation has been influenced by a strong focus on social justice and the fight against inequality, while in Asia the evolution of cooperative law has been driven by the need to adapt to emerging economies and globalization.

The second section of the book delves into the legal innovations of the Basque law, analyzing its avant-garde approaches in the international context. This analysis is accompanied by a critical perspective. It also addresses the complexity associated with the implementation of

legal changes in cooperatives, discussed by one of the country's most prominent legal advisors.

The book emphasizes the importance of collaboration among academics, legislators, and cooperative movement actors to continue developing and improving the legal framework for cooperatives. It highlights the role of academic institutions, such as the Institute of Cooperative Law and Social Economy (GEZKI) at the University of the Basque Country, in promoting the study and innovation of cooperative law. International collaboration is seen as crucial for strengthening cooperatives globally, allowing the exchange of ideas and best practices across different regions.

Overall, "The Basque Cooperative Law in the Context of International Cooperative Law" is an exhaustive work that not only documents the evolution of cooperative law in the Basque Country but also offers a broad vision of how cooperatives can and should play a central role in the global economy. The work is an indispensable reference for legislators, academics, and anyone interested in social economy and cooperative law, providing both theoretical analysis and practical examples of how legislation can be adapted to meet the challenges of the 21st century.

SOME REFLECTIONS ON THE BOOK: "LOS PRINCIPIOS COOPERATIVOS Y SU INCIDENCIA EN EL RÉGIMEN LEGAL Y FISCAL DE LAS COOPERATIVAS [THE COOPERATIVE PRINCIPLES AND THEIR IMPACT ON THE LEGAL AND TAX REGIME OF COOPERATIVES]" [1]

Ana Montiel Vargas[2]

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This work, edited by Professors Marina Aguilar Rubio and Carlos Vargas Vasserot and coordinated by Professor Daniel Hernández Cáceres, all from the University of Almería, is an indispensable read for anyone interested in the legal framework of cooperatives. It is a true treatise on Cooperative Law, consisting of over eight hundred pages and twenty-nine chapters, which bring together experts from various universities and countries across different areas of knowledge. It includes contributions from twenty authors, all leading specialists in the field and researchers with an international and interdisciplinary approach. The editors have made a significant effort to systematize these works into a high-quality monograph. Consequently, this book undoubtedly represents a substantial compilation of theoretical and reflective contributions, ranging from broader aspects to specific issues in the corporate and fiscal realms of cooperatives. The book's importance and timeliness are especially noteworthy, given that no updated monographic studies are addressing these topics comprehensively. The book "Los Principios Cooperativos y su incidencia en el régimen legal y fiscal de las cooperativas" [The Cooperative Principles and their impact on the legal and tax regime of cooperatives] is divided into four main sections: the cooperative principles and values of the International Cooperative Alliance; the legal reception of various cooperative principles; emerging cooperative principles; and the cooperative principles and the taxation of cooperatives. The first section, titled "The Cooperative Principles and Values of the International Cooperative Alliance", presents the origin and development of the cooperative principles and values of the ICA, including their debated status as a legal source and their required adherence by national legislators. This section consists of eight chapters authored by eight researchers. The first chapter, authored by Carlos Vargas Vasserot, is entitled "The Cooperative Principles and their Legislative Reception". This chapter examines the temporal and spatial relativity of cooperative principles, shedding light on the challenges faced by the ICA in creating universally applicable principles. The second chapter analyses the "Origin and Evolution of the Cooperative Principles of the ICA", authored by Daniel Hernández Cáceres. The author reviews the various iterations of the ICA principles, concluding with the 2015 guidance notes.

[1] Aguilar Rubio, M., y Vargas Vasserot, C., (2024). Los Principios Cooperativos y su incidencia en el régimen legal y fiscal de las cooperativas. Dykinson: Madrid. ISBN: 978-84-1170-758-9. Avaiable: https://repositorio.ual.es/handle/10835/16274

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The third chapter, written by Dante Cracogna, reflects on "The Cooperative Principles Before and After Seoul 2021". With mastery, the author reflects on the role of the ICA and its numerous revisions of cooperative principles. The chapter culminates with insights from the XXXIII ICA Congress and its most immediate repercussions. The fourth chapter, titled "The Cooperative Principles in International Public Law: Significance and Effects for Cooperative Law", was authored by Hagen Henrÿ. A profound reflection is offered by the author on the citations of cooperative principles found in texts from international, regional, and national organizations, alongside comparative cooperative law. Additionally, the diverse regulations and recommendations of the ICA are deftly analysed, evaluating their potential as legal sources. Subsequently, "The Non-Legal Nature of Cooperative Principles: their Moral Essence" was written by Miguel Ángel Santos Domínguez. Here, the cooperative legal structure is analysed by the author, along with the juridical nature presented by cooperative principles concerning their defining elements. Thereafter, the chapter authored by Antonio José Macías Ruano titled "Cooperative Values" is presented. In this section, the author reflects on the significance of cooperative values, devoting a section to the analysis of each of them. Following this, it is the encounter of the contribution "Influence of Cooperative Values and Principles on the Configuration of the Social and Solidarity Economy (SSE)" by Manuel García Jimenez. Concluding this first section is the final chapter titled "Cooperatives as a Paradigm of Social Innovation", which was developed by Jaime Alcalde Silva. Various reflections on social innovation are encompassed here, including the emerging phenomenon of Benefit Corporations and the complex landscape of social enterprises. The second section, titled "The Legal Reception of Various Cooperative Principles", focuses on Spanish positive law, with specific reference to national legislation and cooperative regulations in Andalusia. Across its seventeen chapters, this section critically examines the seven cooperative principles defined by the ICA, evaluating their integration—or absence—into cooperative legislation. Regarding the first cooperative principle of voluntary and open membership, the discussion addresses legal exceptions that challenge the practicality of this principle, particularly the increasing limitations on members' exercise of their voluntary withdrawal rights. This principle is explored in two chapters authored by Carlos Vargas Vasserot: "Formulation and Legal Reception of the Principle of Voluntary and Open Membership: Voluntary Withdrawal and Legal Limitations" and "Open Membership in Cooperative Legislation: A Principle Under Scrutiny Today". Subsequently, the second cooperative principle of democratic member control is examined, focusing on topics such as the possibility of weighted plural voting, delegate assemblies, and corporate governance practices in the board of directors and general assembly. This section comprises four chapters, the first by Carlos Vargas Vasserot titled "Weighted Plural Voting vs. Democratic Management Principle", the second by Cristina Cano Ortega "Corporate Governance in the General Assembly", the third by Fernando Sacristán Bergia on "Delegate Assemblies and Their Configuration", and the final chapter by Trinidad Vázquez Ruano and Ángel Martín Gutiérrez on "Corporate Governance in the Board of Directors". Next, the third principle of economic participation is discussed, focusing on the

economic regime, the share capital of cooperatives, and the establishment of reserves and fund allocation. This principle is divided into three chapters: the first two by Manuel Paniagua Zurera titled "Share Capital in the Cooperative Society" and "Economic Regime of the Cooperative Society", and the concluding chapter by Daniel Hernández Cáceres on "Establishment of Reserves and Fund Allocation". The fourth principle, autonomy and independence, is addressed in a chapter titled "The Principle of Autonomy and Independence" by Dante Cracogna. The fifth principle, education, training, and information is explored in a chapter of the same name authored by Antonio José Macías Ruano. The sixth principle, cooperation among cooperatives, is addressed by Cristina Cano Ortega in a contribution bearing the same title. Lastly, the seventh principle, concern for community, is explored in a chapter also titled similarly and written by Daniel Hernández Cáceres. The third section, titled "New Cooperative Principles", meticulously examines the additional cooperative principles acknowledged by Law 14/2011 of Andalusian Cooperative Societies, which complement the original seven principles established by the ICA. These newly recognized principles include business and environmental sustainability, the equal rights and obligations of members, gender equality, and the promotion of stable and quality employment. Each principle is thoroughly analysed in dedicated chapters authored by Sonia Rodríguez Sánchez, Antonio José Macías Ruano, Encarnación García Ruiz, and Juan Escribano Gutierrez. The final section: "Cooperative Principles and the Taxation of Cooperatives", comprises four comprehensive chapters. The initial two chapters provide a broad overview, discussing the tax system and cooperative principles, as well as the limited profit principle as it pertains to cooperative taxation. The subsequent chapters address more specific issues, such as the taxation of urban capital gains concerning the principle of cooperation among cooperatives, and the taxation frameworks applicable to social initiative cooperatives and other entities within the social economy. These chapters are authored by distinguished experts: Marina Aguilar Rubio (contributing the first and the last chapters), Juan José Hinojosa Torralvo, Miguel Ángel Luque Mateo, and Juan Jesús Gómez Álvarez.

The collective volume presented herein is of unequivocal interest, constituting a seminal reference in the cooperative sector, both for research and for dissemination beyond the cooperative movement. Indeed, this study, elucidating the essence of a cooperative society, transcends referenced community, offering invaluable support to any scholarly inquiry at both national and international levels. This work does not focus on a static view of the current legal framework; instead, it provides the keys to understanding the uniqueness of the cooperative structure and regulations, as well as the evolution in the appreciation of the content and projection that cooperatives should possess. It alerts us to the deficiencies, needs, and capitalist tendencies in the legislative policies, which will serve to understand and improve the legislative projection of cooperative values.

In conclusion, we must extend our congratulations to the editors and authors of this work for their meticulous and comprehensive examination of the subject. It is without doubt that we are

presented with an authentic treatise on Cooperative Law. Its scientific rigor, exceptional quality, and profound value are indisputable, ensuring its status as a pivotal reference for many years to come. Finally, it is noteworthy that the work has been published by the prestigious Dykinson publishing house in both print format and open access, allowing all interested parties to download it from the Institutional Repository of the University of Almería (https://repositorio.ual.es/handle/10835/16274).

A BRIEF REVIEW OF THE BOOK "COOPERATIVE ECONOMIC THEORY AND THE PRACTICE OF CHINESE FARMERS' COOPERATIVES,"[1]

Ziwei XU

University of Luxembourg;

The book "Cooperative Economic Theory and the Practice of Chinese Farmers' Cooperatives," authored by Peng Yuan and Xiaoshan Zhang, consists of two sections. The first section is dedicated to introducing and explaining the foundational principles underlying cooperatives and the evolution of cooperative theory. It also provides a thorough review of the theory and practice of agricultural cooperatives from a global perspective, examining the relationship between cooperatives and the State, along with relevant national legislation and the development of cooperative entities. The second section focuses on outlining and illustrating various types of Chinese farmers' cooperatives currently in operation—specifically, agricultural production cooperatives, agricultural product marketing cooperatives, agricultural supply cooperatives, agricultural capital mutual aid cooperatives, and agricultural service cooperatives—and their inherent functions from both economic and managerial viewpoints. This review assesses the book's treatment of Chinese cooperative law and the implementation of this legislation from a legal standpoint, particularly regarding the membership rights of farmers within specialized cooperatives and the public regulation governing these cooperatives, including the underlying state-cooperative relationship.

1. Membership Rights (ownership, control, beneficiary)

This book does not contain a separate chapter analyzing the rights of members in farmers' cooperatives; Rather, it explains and analyzes the rights of members in Chinese Farmers' Cooperatives based on the principles of cooperatives as defined by the International Cooperative Alliance (ICA). The rest of this book deals with members' rights in a peripheral manner.

According to the authors, Chinese Farmers' Cooperatives are owned and controlled by the members (users of the cooperative), whose votes may be weighted according to each farmer member's "trade volume," which is the degree of member participation in the cooperative (the extent to which members use the cooperative's services).

[1] Peng Yuan & Xiaoshan Zhang (2009), Cooperative Economic Theory and the Practice of Chinese Farmers' Cooperatives (in Chinese: 合作经济理论与中国农民合作社的实践), Capital University of Economics and Business Press. It first needs to be clarified that this book was published two years after the implementation of the Law of the People's Republic of China on Farmers' Specialized Cooperatives (July 1, 2007), and since the Law was revised once after a decade of its application (December 27, 2017) and the book was completed already 15 years ago, so the cases and provisions therein may be for reference purposes.

The principle of democratic control dictates the principle of "one member, one vote" in order to prevent the concentration of power. In practice, it appears that there are only a few Chinese Farmers' Cooperatives in which voting rights are weighted and distributed exclusively on the basis of the volume of trade. The authors of this book argue that the implicit reason for this is that the economic interests of the members are not equal and that they do not all bear the same risks and responsibilities, thus the voting rights should be different. However, the book does not proceed with a legal analysis of this contention.

The principle of democratic control exercised by cooperative members is not absolute. Under Chinese Cooperative Law, if a member possesses additional voting rights, the aggregate of such rights cannot surpass twenty percent of all cooperative members' total basic voting rights. This stipulation does not represent a complete departure from the principle of democratic control; rather, it embodies a flexible adaptation that considers operational efficiency while simultaneously balancing equity. Moreover, the limitation on the total number of votes that any individual member may cast serves to protect the interests of all members, considering that general resolutions necessitate a simple majority. In contrast, significant resolutions—such as mergers, separations, dissolutions, and liquidations—require the consent of more than two-thirds of the membership. The one-fifth (1/5) limit imposed on additional voting rights results from compromises among representatives of various interests within the cooperative. It seeks to balance efficiency and fairness, as well as idealistic principles and practical realities. Ultimately, the essential criterion for evaluating this compromise is whether the interests of farmer members are adequately protected and whether the surplus benefits derived from the cooperative are sufficiently substantial to justify their membership.

On the other hand, members' control over cooperatives is also affected by two other factors: the influence of enterprise members on individual members' right to decide and government intervention in members' decision-making. As for the former, since enterprises can become members of cooperatives, whether these enterprise members will adversely impact the overarching power of the members to make decisions depends most of all on whether their goals are aligned. Should there be a convergence of goals between company members and individual members, and if they establish interdependent and lasting business relations through mutual fairness and trust and prevent each other from acting opportunistically, there will be no question of the company taking control of the cooperative by using its strong position, so that the farmer members will be in a subordinate and dominant position. Furthermore, in practice, the enterprise members may possess additional voting rights if they engage more frequently in transactions with the cooperative

than individual members.[2]

As for the latter, it is likely to happen in cases where rural communities lead farmers to establish cooperatives. Among them, one of the most intractable issues is how to deal with the relationship between village committees and cooperatives, in which case the leaders of the cooperatives are usually village secretaries or directors, which is conducive to the utilization of community resources but is in effect an intrusion into the autonomy of the cooperatives, resulting in a lack of operational independence and democratic decision-making. A typical example is that the surplus income of cooperatives is often used directly by the leaders of village committees and commissions to cover the public expenses of the village collectives (because, in their eyes, the cooperatives belong to the village collectives and should contribute to the village collectives as they develop, without yet realizing that this is an infringement on the interests of some of the members), and there is a lack of participation in the decisions made by the members. In this regard, not only is it necessary to strengthen institutional construction and improve the decision-making and financial systems of cooperatives, but it is also imperative that more members become aware of their rights and participate in the decision-making and management of cooperatives to ensure that cooperatives operate independently and autonomously, and to effectively protect the interests of their members.

2. Public Regulation

The co-authors did not allocate a chapter in this book to the topic of public regulation; however, they did engage with the relationship between the State and cooperatives, particularly in relation to their interactions following the reform and opening-up period. Indeed, the inquiries posed (how do the various types of cooperatives in rural China manage their relationship with local governments? In which way can cooperatives develop with governmental support while preserving the principles of autonomy and independence? etc.) are significantly influenced by the historical context of China and specific national conditions. The efficacy of governmental regulation concerning cooperatives is intricately tied to the overarching interests of cooperative members. Furthermore, it is important to recognize that government regulation aims to rectify legal violations, a responsibility that should be distinguished from the fundamental objectives of the government in fostering cooperative development.

Effective regulation by the government is an essential safeguard for maintaining a sound order of competition in the market. The direct legal rationale for this regulation is located in Article 7, paragraph 2 of the Law on Farmers' Specialized Cooperatives (Law no. 83/2017), which clarifies that "the State shall protect the legitimate rights and interests of farmers' specialized cooperatives

[2] "Cooperatives: a new ownership model for the digital economy (In Chinese:合作社数字经济的新所有权模式)" provides an example. https://media.orrick.com/Media%20Library/public/files/insights/2023/cooperatives-path-to-compliance-for-web3-cn.pdf.

and their members, which shall not be infringed upon by any entity or individual." Governmental authorities may regulate cooperatives in the context of market failures, wherein enterprises are regulated to achieve objectives that serve the public interest.

Monitoring can also occur in the process of promoting the development of farmers' cooperatives, and supervision by governments at various levels (the agricultural administrative authorities of people's governments at the county level and above) may also manifest itself in the fight against pseudo-cooperatives, which in practice are now known as "shell" or "zombie cooperatives"[3]. For that handful of enterprises that have misused state financial support or tax incentives under the umbrella of specialized cooperatives, if the supervisory authorities fail to correct, penalize, and hold legally accountable these behaviors in time, they will not only harm the interests of the farmers' specialized cooperatives and their members but also cause unfair competition to other enterprises, which, in turn, affects the normal order of competition in the marketplace. Hence, an additional aim of government regulation is to ensure that the common benefits of cooperative members will not be exploited by individuals and pursued for their economic gain.

This monitoring function should be distinguished from the fundamental functions of the government in promoting the development of farmers' specialized cooperatives, which are "guidance, support, and service"[4]. The guidance provided by the government to cooperatives is mainly reflected at the macro-policy level, directing the cooperatives to adhere to the purpose of serving their members, seeking the common interests of all members, and enabling disadvantaged farmers to enhance their economic interests by joining the cooperatives through such means as policies, regulations, and institutional construction. The government's support is primarily embodied in fiscal policy support, financial support, tax benefits, and industrial policy guidelines. The services offered by the government to farmers' cooperatives are free and obligatory, and the government budget covers the costs incurred. It is worth pointing out that the Ministry of Market Supervision is tasked with the responsibilities of registering, modifying, and canceling farmers' specialized cooperatives and their branches, as well as for the filing of farmers' specialized cooperatives. However, it should be emphasized that this Ministry does not have the authority to

[3] CCP Central Agricultural Office, Ministry of Agriculture and Rural Development, General Administration of Market Regulation, etc., Notice on the issuance of the special clean-up work program for farmers' specialized cooperatives "shell cooperatives" (In Chinese: 关于印发《开展农民专业合作社 "空壳社" 专项清理工作方案》的通知), ZNF [2019] No. 3, https://www.gov.cn/zhengce/zhengceku/2019-10/28/content_5445887.htm; All China Federation of Supply and Marketing Cooperatives, Clearing and revitalization of "zombie enterprises" to promote the revival of the enterprise flame(In Chinese: 清理盘活"僵尸企业"助推企业浴火重生), https://www.chinacoop.gov.cn/news.html?aid=1774372. In the latter, Wenshang County Nanwang Supply and Marketing Cooperative bankruptcy liquidation and settlement by the Shandong Provincial People's Court as a "typical case", Guo Lou Supply and Marketing Cooperative bankruptcy case has become the first case of bankruptcy and settlement of Wenshang Court, the first bankruptcy case in Shandong Province, the city and even the province to carry out the debt settlement and "zombie enterprise" cleanup provides a reference and benchmark.

[4] Art. 11 para. 2, Law no. 83/2017. (Article 9 of the former Farmers' Cooperatives Law (law no. 57/2006))

"manage" cooperatives, indicating its inability to intervene in their internal affairs cooperatives.

3. Conclusion.

The content of this book is generally abundant, and its authors aim to convey that Chinese farmers' cooperatives are a consequence of the new Chinese market economy. However, the advancement of farmers' cooperatives in China extends beyond mere economic considerations; it is intrinsically linked to the awakening of farmers' democratic consciousness and the evolution of the humanistic spirit. Consequently, the establishment of farmers' cooperatives in China requires a certain humanistic foundation. The principle of democratic governance within cooperatives serves to cultivate members' awareness of their participatory role in democracy. Within the framework of democratic governance, which is exercised by the farmer members, it is the process of decision-making that holds greater significance than the decisions themselves.

On the other hand, the development of cooperatives cannot be separated from the actual level of economic development and the awareness among farmers. It is imperative to recognize that Chinese farmers establish cooperatives primarily to safeguard their economic interests, rather than to advocate for a particular ideology. The ethical considerations of the members of these cooperatives do not sufficiently outweigh their economic motivations. Furthermore, government policies must delineate the appropriate structure for property rights and organizational arrangements that cooperatives should adopt to qualify for governmental support and protection. In this context, the scope of governmental oversight should be clearly defined, and its regulatory authority must be adequately restrained to preserve the autonomy of cooperatives in their operations and decision-making processes.

Further reading

Published books:

- **Ammirato, Piero,** Cooperative Enterprises, Routledge 2024
  Among the many topics of cooperative development world-wide the book analyses and compares the cooperative law of 26 jurisdictions.

- **Hiez, David,** Sociétés Coopératives, 3rd ed., Dalloz 2023
  Published in its 3rd edition, this book continues to be the only treatise on cooperative law in France. It covers all subject matters and includes a chapter on the 'French version' of the European Cooperative Society (SCE).

Doctoral theses:

- **Apps, Ann** doctoral thesis on "Why Can't We Co-operate. The Impact of Law and Regulation on the Growth and Development of Co-operative Enterprise in Australia" was approved by the University of Newcastle, Australia. The thesis examines how law and regulation has shaped the co-operative landscape in Australia and examines particularly the relationship between competition law and the demutualisation of larger commercially oriented co-operatives.

- **Daniel Hernández Cáceres'** thesis "El principio cooperativo de interés por la comunidad en derecho español y ocmparado. Especial referencia a las cooperativas sociales [The cooperative principle of concern for the community in Spanish and comparative law. Special reference to social cooperatives], University of Almería/Spain 2023, is a study on the evolution of the 7th ICA Principle (Concern for Community) from a historical-legal perspective from the first cooperative experiences to the 2015 ICA Guidance Notes to the Co-operative Principles. It also analyzes how this principle has been incorporated and how it has been concretized in several European and South American legislations.

- In his doctoral thesis on "El emprendimiento cooperativo: Una vía inexplorada [Enterprsing cooperatively. An unexplored way]" **Antonio Gallego Sánchez** makes us aware of the fact that cooperatives remain a much applauded but much less practiced specific organizational type, thus its potential to address social and work problems is underutilized.

- The title of **Leonardo De Souza's** doctoral thesis, "A ciberdemocracia cooperativa como alternativa às assembleias gerais para o exercício da gestão democrática de sociedades cooperativas [Cooperative Cyberdemocracy as an Alternative to General Assemblies for the Practice of Democratic Management of Cooperative Societies"], summarizes its content. The thesis researches the possibility of an adaptation of the 2nd ICA Principle (Democratic member

control) through Information and Communication Technologies (ICTs). Contrary to the underlying hypothesis, the empirical findings show, however, that the use of ITCs led to reduced member participation. The author then suggests a new Cooperative Cyberdemocracy as an alternative route toward more Democratic member control. That, in turn, he argues, requires fundamental legal innovations to support adequate governance structures.

- **Solel, Yifat** wrote her doctoral thesis at the Haifa University Law School in Haifa/Israel on **"**Cooperatives and Democracy: Can the distinct legal and organizational cooperative models withstand homogenization presumption". It researches the role of democracy in nowadays economies and the role of cooperatives as the embodiment of economic democracy, as well as the role of democracy within cooperatives, specifically in the ones for which democratic processes are not easy to operate, such as, for example, cooperatives with a high number of members in which simple direct democratic practices are not viable.

Hagen H e n r ÿ

Past events

IV INTERNATIONAL FORUM ON COOPERATIVE LAW. DONOSTIA – SAN SEBASTIAN, 29 NOVEMBER – 1 DECEMBER 2023

Aitor Bengoetxea Alkorta

The IV International Forum on Cooperative Law was held in Donostia – San Sebastian from 29 November to 1 December 2023, organised by Ius Cooperativum, together with GEZKI research institute, the International Co-operative Alliance (ICA) and the Faculty of Law of the University of the Basque Country (UPV/EHU).

Thus, following the successful International Cooperative Law Forums hosted in Montevideo (2016), Athens (2018) and Seoul (2021), the Basque Country was honoured to host this top-level meeting forum of legal experts specialising in Cooperative Law. The main theme chosen for this edition of the Forum was "The principle of cooperation among cooperatives: a principle of the past or for the future?" a particularly appropriate theme for a Forum on Cooperative Law to be held in the Basque Country, not only because of the importance of Basque cooperativism, but also because of the strong trend towards cooperation between Basque cooperatives.

In particular, the sixth cooperative principle, cooperation among cooperatives, states that cooperatives serve most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures. The Forum raised the need to reflect on this principle in the current context, and also taking into account the new formulas and practices that exist or may exist to implement it. To this end, the different formulas or solutions for economic or political cooperation among cooperatives, the adaptation of regulation to secondary cooperatives, transactions between secondary cooperatives and cooperative members, the relationship with other cooperative principles, the management of conflicts within cooperation structures, etc. were proposed as specific topics for debate, which were effectively worked on in the various plenary and communications sessions.

Thus, around 50 academic papers from over 20 countries were presented at the Forum (including papers and communications), dealing with cooperation among cooperatives (either from a more general perspective, from the cooperative principles perspective, taxation, regulation in different countries, from specific sectors – especially agriculture or the energy sector –, conflict resolution mechanisms, cooperation with other types of entities, gender perspective and so on), as well as other relevant issues in the field of cooperative law (labour relations, social cooperatives, cooperatives in the financial sector, winding up of cooperatives, sustainability, digital platforms, indirect mutuality, etc.). Some of the contributions at the Forum will be available in the corresponding Proceedings Book, as well as in other publications, such as the IJCL.

It is also noteworthy that the Forum was attended not only by people from academia, but also by participants from the sector itself, with an interesting round table in which different members of Basque cooperativism (Mondragon, Ikastolen Elkartea, Olatukoop, Konfekoop, Kooperatiben Kontseilua) presented their experiences of economic and associative inter-cooperation, and the

presence and contributions of legal practitioners and institutions. The programme was rounded off with a round table discussion involving various academic journals, awards for young academics, as well as the presentation of two books on cooperative law, including a tribute to Professor Dante Cracogna, who received a well-deserved and heartfelt tribute from the organisers and the audience.
The social events included a dinner in a typically Basque atmosphere, as well as a visit to Mondragon Unibertsitatea, a member of Mondragon Corporation, where participants were able to learn first-hand about this worldwide known reference.

PERSPECTIVES OF COOPERATIVE LAW DEVELOPMENT IN EUROPE – CONFERENCE

Dominik Bierecki
Pomeranian University in Słupsk and Cooperative Research Institute in Sopot

Summary
Cooperatives are an important part of European countries' economies and play a crucial role in the social economy. Throughout European countries, legislation regarding cooperatives are differently organized. Cooperatives are considered either as a genus of a legal person or as a species of a company or association. Few legislation constitutionally guarantees the role of cooperatives in a state's economy. Some countries have only general law on cooperatives, others complete the general regulation with a number of laws on specific types of cooperatives. There is also legislation which only provides a number of legal acts on specific types of cooperatives. Moreover, some legislation has regulations on cooperatives which are applicable in autonomous regions. Yet other countries have codified their cooperative law. Also, EU law constantly provides legislation with which cooperatives have to comply.
Because of that, on March 7th and 8th 2024 the Cooperative Research Institute in Sopot and Ius Cooperativum organized the conference: *Perspectives of Cooperative Law Development in Europe.* The conference took place in Warsaw, Poland and was attended by participants from Europe and South America. The Scientific Committee of the Conference consisted of Professor David Hiez (University of Luxembourg), Professor Piotr Pałka (Sopot Academy of Applied Science), Professor Dominik Bierecki (Pomeranian University in Słupsk and Cooperative Research Institute in Sopot) and Dr. Jacek Skoczek (Cooperative Research Institute in Sopot).
The conference was divided into 4 sessions. The 1st session was devoted to the legal aspects of housing cooperatives in Polish law. The session was chaired by Professor Piotr Pałka and consisted of 6 papers by:
1. Professor Krzysztof Pietrzykowski (University of Warsaw): *Members' rights to premises in a housing cooperative in Poland de lege ferenda and from a comparative law perspective,*
2. Dr. Ewelina Badura (Krakow University of Economics): *The issue of the legal status of land under cooperative buildings,*
3. Dr. Katarzyna Królikowska (Kozminski Univerisity in Warsaw): *Cooperative housing tenures as intermediate tenures in Poland and Germany*

4. Ewa Derc (Cooperative Research Institute in Sopot): *Activities of ordinary management and activities exceeding the scope of ordinary management in housing cooperatives*
5. Paulina Pałach (Krakow University of Economics): *The impact of the termination of marriage on the rights of spouses to a residential premises in a housing cooperative*
6. Sebastian Wojdył (Cooperative Research Institute in Sopot): *Real estate transactions in the new model of housing cooperative.*

Housing cooperative law in Poland is very specific and concerns issues related to the specific purpose of housing cooperatives, the nature of members rights to apartments, dwellings and premises and relation of ownership rights to corporate rights of cooperative members. Since 2022, housing cooperatives in Poland may adopt a form of a civil law agreement and not act as a legal person. The latter created an alternative cooperative model of securing housing needs of cooperative members.

The second session was entitled *Cooperative Principles and Social and Solidarity Economy* and was chaired by Professor Dominik Bierecki. The session included 5 papers by:

1. Professor David Hiez (University of Luxemburg): *The relationships of cooperatives and the social and solidarity economy: opportunities and threats,*
2. Professor Hagen Henrÿ **(**University of Helsinki): *Cooperative Law. National and/or International? The Case of the Cooperative Principles,*
3. Professor Aneta Suchoń (Adam Mickiewicz University of Poznań): *Cooperative principles and their implementation in the regulations on setting up and operating a cooperative in the agri-food sector,*
4. Professor Dominik Bierecki (Pomeranian University in Słupsk): *Cooperative principles in concepts of social economy and social enterprise in Polish law,*
5. Ziwei XU (University of Luxemburg): *The rule of asset lock in the regular operation of social enterprises in Italy.*

During the session, matters of relation of cooperatives and their principles to social economy were discussed. The session gave an overview about Polish concepts of social economy and social enterprise and rules of activity of social enterprises in Italy. Moreover, the session included remarks on legislator obligation to translate the Cooperative Principles as enshrined in the 1995 International Cooperative Alliance (ICA) Statement on the cooperative identity. Also, an idea of metaprinciple of Cooperative Principles, namely the democratic member control was presented and its relation to the principle of sustainable development.

The third session was titled *Cooperatives' History and Challenges for the Future*. It was chaired by Professor Piotr Pałka and included 6 papers by:

1. Professor Przemysław Dąbrowski (Pomeranian University in Słupsk): *The cooperative movement in Poland in the 19th and 20th centuries (until 1939),*
2. Professor Mariola Lemonnier (University of Łódź): *Directions of development of cooperatives in France from a legal and historical perspective,*
3. Professor Irakli Burduli (Tbilisi State University): *Cooperative Law: From the Perspective of a Post-Soviet State,*
4. Professor Emanuele Cusa (University of Milano-Bicocca): *The legal forms to set up the Italian renewable energy communities,*
5. *Professor* Piotr Pałka (Sopot Academy of Applied Science): *Citizens' energy community as an example of energy transformation in housing cooperatives,*
6. Łukasz Mroczyński-Szmaj (University of Rzeszów): *The new face of cooperatives: energy cooperatives as a chance for the Polish Energiewende? Polish-German comparative context.*

This session gave an overview of the history of the cooperative movement in Poland, the situation of cooperatives in post-soviet societies. It also explained what reforms were carried out to adapt the new idea of cooperatives to the new economic conditions in France and around the world and introduced the newest challenges for cooperatives, including in the context of energy transformation.

Fourth session was entitled *Cooperatives under Financial, Tax and Bankruptcy Law* and was chaired by Dr. Jacek Skoczek. The session included 7 papers by:

1. Professor Rafał Adamus *(*University of Opole): *Selected conclusions for the future from the analysis of the bankruptcy of cooperative savings and credit unions in Poland,*
2. *Dr.* Ifigeneia Douvitsa (Hellenic Open University) and prof. Hagen Henry, (University of Helsinki): *Corporate Income Tax and Cooperatives: Evidence from 50 Countries,*
3. *Professor* Anna Zbiegień-Turzańska (University of Warsaw): *Cooperative and corporate governance; a real or only apparent mutual incompatibility? Some remarks with regard to corporate governance in cooperative banks,*
4. *Dr.* Jacek Skoczek (Cooperative Research Institute in Sopot):*Limits of application of the institution of a free credit by a credit union's member,*
5. *Dr.* Marta Stepnowska (John Paul II University of Lublin): *Acquisition of entitlement to the post-liquidation property of cooperatives,*
6. Jaonna Mędrzecka (Cooperative Research Institute in Sopot): *Commission lending and the Actual Annual Interest Rate of consumer credit,*
7. Zbigniew Miczek, *The liabilities incurred by a member of a board of a housing cooperative for failure to file for bankruptcy: the civil and criminal aspects.*

The major part of this session was devoted to credit unions and cooperative banks in the context of relation of corporate governance to the Cooperative Principles and consumer protection in cooperative transactions. At this session the issue of converging the tax regime of cooperatives with the tax regime of for-profit companies was raised and thus a reflection was made on how cooperative income should be taxed according to the cooperative identity.

The papers presented at the Conference are scheduled for publication in the journal *Law and Social Bonds (Prawo i Więź)*, no. 4/2024. The author sincerely thanks the contributors to the conference for their time and interesting remarks which resulted in fruitful deliberations.

ICA CCR EUROPE, 2024

24-26 June, 2024: One of the sessions during the ICA CCR Europe Research Conference at the University of Dundee, in Dundee/United Kingdom under the overall theme of 'Co-operatives, Hybrids, and Democratic Organisations as the Future of Sustainable and Equitable Socio-Economic Development: Operationizing Co-operatives and Democratic Organizations to address contemporary challenges and problems' dealt with the theme of "The Cooperative Identity through the Legal Innovations in the last Decade".

Upcoming events

12-13 June, 2025: The ICA CCR Europe Research Conference in Helsinki/Finland on "Cooperative Identity – who we are as a movement, a form of organization and as cooperators" will have a track on cooperative law.

8-11 July, 2025: The ICA-CCR 2025 Global Research Conference in Montreal/Canada on "Intercooperation for Our Common Futures" will have a stream on cooperative law. Further information at: https://icaccr2025.org/

24-29 August, 2025: Co-op Law Summer School 2025 in Pula, Croatia
After the first such course in 2023 and again hosted at the J. Dobrila University of Pula/Croatia and organized by the International Center for Co-operative Management at the Saint Mary´s University in Halifax/Canada the 2nd Co-operative Law Summer School will explore the relationship between co-operative law, the co-operative identity, and sustainable development. It is open to anyone with a strong interest in co-operative law and policy, i.e. to lawyers, law students in advanced stages of study, co-operative practitioners, co-operative advocacy and government relations professionals, policymakers, and regulators.
Further information at: https://www.smu.ca/iccm/programsandcourses/shortcourses/co-operative-law-summer-school.html

16-18 October, 2025: As a contribution to the International Year of Cooperatives the Asia-Pacific Cooperative Research Partnership (Professor Akira Kurimoto) will organize a research conference at the Osaka Umeda Campus, Kansai University, in Osaka/Japan with a sub-theme on "Institutional framework (cooperative law and policy)".

November 2025 (tentatively): Ius Cooperativum, in collaboration with the Cooperative Law Committee of the International Cooperative Alliance will organize at the University of Bissau in Bissau/Guinea the 5th International Forum on Cooperative Law under the theme of "Cooperative Law and Sustainable Development". Further information to be published at: www.iuscooperativum.org

News

INVOLVEMENT OF THE INTERNATIONAL COOPERATIVE ALLIANCE IN THE INTERNATIONAL COURT OF JUSTICE PROCEEDINGS CONCERNING CONVENTION NO. 87 OF THE INTERNATIONAL LABOR ORGANIZATION

Hagen Henrÿ
Helsinki University

Upon request by the International Labor Organization (ILO) for an advisory opinion concerning the question of whether the right to strike is protected under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and in recognition of the general consultative status of the International Cooperative Alliance (ICA) with the ILO, the International Court of Justice (ICJ) invited the ICA in November 2023 to submit a written contribution concerning this question.

Not the least because it opined that contributing to the procedure could be an occasion to make the role of cooperatives and the importance of cooperative law known to the ICJ, the ICA Cooperative Law Committee (ICA CLC) prepared a brief, which the ICA submitted to the ICJ. The ICJ will give its opinion in 2025.

The aim of the ICA CLC when drafting the brief was to not only express agreement with other organizations and with the predominant opinion in academia that the right to strike forms part of the right of freedom of association, but to explain why any limitation of that right would have negative effects on cooperative organizations. The ICA CLC saw at least two such effects. Firstly, the implementation of the 2002 ILO Promotion of Cooperatives Recommendation [No. 193] (ILO R. 193) would be hampered. Its Paragraph 10 requires the translation of the cooperative identity into cooperative law. The argument is the following: According to Article 10 of the ILO Constitution the Office of the ILO has to assist the constituents of the ILO to implement the ILO instruments, both conventions and recommendations. One means to do that is the scrutiny of the implementation of these instruments by the ILO Committee of Experts on the Application of Conventions and Recommendations. Limiting the scope of ILO Convention 87 by denying that it protects the right to strike would limit the work of that Expert committee and it would create a precedent for the interpretation of other ILO instruments, including ILO R. 193, by that Committee. Secondly, any limitation of the right to strike would potentially affect the legal obligations of the ILO and the ICA to cater for social justice, the fulfillments of which are reciprocally dependent. For the ILO this obligation follows from the very first sentence of its

Constitution; for the ICA this obligation follows from its Articles of Association that include the definition of cooperatives as enshrined in the text of the 1995 ICA Statement on the cooperative identity. The objective of cooperatives according to this definition includes meeting the social needs of the members. As the exercise of the right to strike of workers and their organizations has often led to improving social conditions, any denial of this right would have a negative effect in terms of social justice, create an additional burden for cooperatives and affect their ability to cater for social justice.

As an additional argument the brief points out that any limitation of the right to strike would limit the scope of the right to freedom of association that is protected under Article 22 of the legally binding International Covenant on Civil and Political Rights, hence it would create a potentially harmful precedent for the freedom to form cooperatives.

Practitioners' Corner

POLISH HOUSING COOPERATIVES WILL BE ABLE TO CARRY OUT TASKS AS A CIVIC ENERGY COMMUNITY

Piotr Pałka

Sopot Academy of Applied Science

Introduction

The European Union is implementing a transformation process towards the widespread use of green energy. The implementation of the activities is long-term and is to be completed by 2050. This is when the EU area is to become a model example of a zero-emission economy prepared also for the Polish housing cooperatives which will be able to carry out tasks as a civic energy community.

As of 7 September 2023, a polish amendment to the Act on Housing Cooperatives entered into force, as a result of which housing cooperatives will be able to perform tasks as a civic energy community within the meaning of Article 3(13f) of the Act of 10 April 1997. - Energy Law (Journal of Laws 2022, item 1385, as amended). In order to do so, it is necessary to enact amendments to the statutes of a given housing cooperative, as the amendment consists in amending the provision of Article 1(2) of the Act on Housing Cooperatives by adding point 6 to paragraph 2 after point 5. Thus, the provision of Article 1(4) of the Act on Housing Cooperatives, according to which it is the statutes of a cooperative that determines which activity, from among those listed in paragraphs 2 and 3, the cooperative conducts, will apply.

A civic energy community is an entity with legal capacity which:

(a) is based on voluntary and open participation and in which decision-making and control powers are vested in members, shareholders or partners who are exclusively natural persons, local government units, micro-entrepreneurs or small entrepreneurs within the meaning of Article 7(1)(1) and (2) of the Act of 6 March 2018. - Entrepreneurs' Law (Journal of Laws of 2023, item 221, 641, 803 and 1414), for which economic activity in the energy sector is not the subject of basic economic activity defined in accordance with the provisions issued pursuant to Article 40(2) of the Public Statistics Act of 29 June 1995,
(b) has as its primary objective the provision of environmental, economic or social benefits to its members, shareholders or associates or the local areas in which it operates,
(c) may deal with:
- in relation to electricity:

generation, consumption or distribution, or selling, or trading, or aggregation, or storage, or
- carrying out projects aimed at improving energy efficiency, as defined in Article 2(12) of the Energy Efficiency Act of 20 May 2016, or
- providing charging services for electric vehicles, as referred to in the Act of 11 January 2018 on electromobility and alternative fuels, or
- the provision of other services on the electricity markets, including system services or flexibility services, or
- the generation, consumption, storage or sale of biogas, agricultural biogas, biomass and biomass of agricultural origin within the meaning of Article 2(1), (2), (3) and (3b) of the Act of 20 February 2015 on Renewable Energy Sources (Journal of Laws of 2023, item 1436 and 1597).

A civic energy community in the light of Article 11zi of the Act of 10 April 1997 may carry out its activities in the form of:

1) cooperatives within the meaning of Article 1 § 1 of the Act of 16 September 1982. - Co-operative Law (Journal of Laws of 2021, item 648 and of 2023, item 1450) and a housing co-operative referred to in the Act of 15 December 2000 on housing co-operatives (Journal of Laws of 2023, item 438 and 1463);
2) a housing community referred to in Article 6 of the Act of 24 June 1994 on Ownership of Premises (Journal of Laws of 2021, item 1048);
3) an association within the meaning of Article 2, paragraph 1 of the Act of 7 April 1989. - Law on Associations (Journal of Laws of 2020, item 2261), excluding an ordinary association;a partnership, excluding a partnership within the meaning of Article 4 § 1 of the Act of 15 September 2000. - Commercial Companies Code (Journal of Laws of 2022, item 1467, 1488, 2280 and 2436 and of 2023, item 739 and 825);
4) farmers' cooperatives as referred to in the Act of 4 October 2018 on farmers' cooperatives (Journal of Laws, 2073).

If a civic energy community operates exclusively in the field of renewable energy sources, decision-making and control rights shall be vested in the members, shareholders or associates residing or established in the area of operation of the same electricity distribution system operator.

A member, shareholder or partner of a civic energy community shall retain the rights and obligations arising from its status as a final customer or active customer, including a household electricity customer.

A civic energy community shall operate in the area of operation of a single electricity distribution system operator to whose grid the installations belonging to the members, shareholders or associates of that community are connected. The area of operation of a citizens' energy community shall be determined on the basis of the points of connection of installations belonging to members, shareholders or associates of that community to the electricity distribution network

with a rated voltage of 110 kV or less. The activities of a citizens' energy community may not include interconnections with other countries. The statutes or agreement of the civic energy community shall determine the method of billing and the distribution of electricity that is generated by the civic energy community's owned generating units.

However, from 24 August 2024, the provision of Article 11 zm of the Energy Law will also enter into force, according to which a civic energy community may only undertake activities after obtaining an entry in the list of civic energy communities maintained by the President of the Energy Regulatory Office (ERO). Obtaining an entry in the list of civic energy communities does not exempt a civic energy community from the obligation to obtain a licence or an entry in the register of regulated activities, in the event that a civic energy community undertakes activities subject to the obligation to obtain a licence or an entry in the register of regulated activities. Thus, the commencement of activities by a housing cooperative as a civic energy community will be possible not only after the amendment of the statute and registration of this amendment in the National Court Register, but also after obtaining an entry in the list of civic energy communities maintained by the President of the Energy Regulatory Office.

Conclusions

The formation and functioning of civic energy communities brings benefits resulting from the use of dormant resources. The initiative minimizes energy losses during long-distance transmission. It also creates greater energy independence for communities vulnerable to price changes and system failures. Membership in the civic energy community is also supposed to contribute to greater electricity already at the household level, and this is due to lower energy supply prices, as well as reduced energy consumption.

COOPERATION AMONG COOPERATIVES: IS GOVERNMENT INTERVENTION AN OBSTACLE OR A FACILITATOR?

Juan Enrique Santana Félix, JD
Commission on Cooperative Law of the Puerto Rico Bar Association

Summary:
I. Introduction, II. Doctrine, III. ICA Report, IV. Facts Under Analysis, V. Application of Cooperative Principles to the Facts, VI. Conclusion, Bibliography

Abstract:
This article examines the cooperation among credit unions in Puerto Rico, focusing on the development of these entities, the legislation that governs them, and the challenges that arise when requesting the creation of branches. It explores cooperative principles, the doctrine supporting them, and the role of government intervention in this context. The importance of maintaining solidarity among cooperatives to meet common needs and avoid harmful competition between cooperatives is discussed. Specific cases that have generated controversies between cooperatives and the state regulation governing the opening of new branches are analyzed, highlighting the need for transparency and fairness in this process.

I. Introduction:

In the context of cooperation among credit unions in Puerto Rico, this article reflects on the importance of cooperative principles, the meaning of cooperation, and the ideals for relationships between cooperative entities. It questions whether these principles are utopian or if they can be practically applied, considering the need to strengthen solidarity among cooperatives to jointly meet the needs of their members and communities.

II. Doctrine:

Historically, cooperation among cooperatives has been a natural extension of mutual aid among these entities. The reformulation of cooperative principles in 1966 included the sixth principle, which urges cooperatives to collaborate with each other to better serve their members and communities. The importance of cooperation among cooperatives as a universal principle of cooperativism is highlighted as necessary for the adaptation to the competitive business environment without compromising cooperative values and principles.

III. ICA Report:

The report presented to the ICA Centenary Congress in 1995 emphasizes the growing importance of cooperation among cooperatives in a context where large capitalist organizations represent serious competition. There is a trend towards greater unity within the cooperative movement to

face external competition. However, it is observed that some cooperatives have opted to compete with each other, deviating from the principle of cooperation and giving rise to the phenomenon of "branchism." State regulation in Puerto Rico appears to have limited the autonomy of cooperatives by granting the authority to create and authorize the opening of branches to a state body, generating tensions and challenges in the sector.

IV. Facts Under Analysis:

Controversies or disputes between several credit unions in Puerto Rico are analyzed, questioning government authorization to open a branch in an area already served by another cooperative. The lack of transparency and the violation of the intervention rights of one of the affected cooperatives highlights the need to ensure fairness and the participation of all interested parties in these regulatory processes. In summary, the article addresses the challenges and tensions surrounding cooperation among credit unions in Puerto Rico, emphasizing the importance of maintaining solidarity and collaboration among these entities to preserve cooperative values in a competitive and regulated environment.

A. Introduction:

The Bulletin of the International Association of Cooperative Law, No. 59/2021, presents an article by Dr. Dante Cracogna titled "Cooperation Among Cooperatives: Principle or Necessity?" which analyzes the meaning of the term "principle" and the scope of the ideal of cooperation among cooperatives. It reflects on whether these principles are utopian ideals or are capable of a practical application to reduce unhealthy competition between cooperatives.

B. Doctrine:

Throughout history, cooperative principles did not initially contemplate cooperation among cooperatives, but this idea became an essential component with the reformulation of principles in 1966. The sixth principle establishes collaboration among cooperatives to better serve their members and communities. The 1995 Declaration on the Cooperative Identity ratified this, recognizing cooperatives as enterprises that must adapt to compete in non-cooperative environments.

C. ICA Report:

The report presented to the ICA Centenary Congress in 1995 highlights the growing role of cooperation in the cooperative movement in response to the competition from large capitalist organizations. However, some cooperatives have opted to compete with each other, distorting the sixth cooperative principle and promoting practices contrary to solidarity. The lack of adequate regulatory provisions in support of a healthy cooperative ecosystem has allowed harmful competitive actions to endanger the autonomy and independence of cooperatives.

D. Facts Under Analysis:

In 2008, the Puerto Rico Court of Appeals resolved a controversy between two credit unions, one known as Las Piedras and the other as Yabucoeña, which sought to review an administrative determination by the Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico (COSSEC) that authorized the former to open a branch within its service area. The court concluded that cooperatives deserved greater transparency in these cases, guaranteeing equal access to information and procedures for all involved parties. This decision was based on the importance of protecting the economic interest of cooperatives and the provisions of the Cooperative Law, which require considering the impact of new entities on the cooperative movement.

In this case, the affected cooperative had been operating for over 53 years in the area where a new branch was to be created, and the regulator approved the request to open the branch without considering this fact. The smaller cooperative argued that several cooperatives had previously expressed concerns about market saturation due to the presence of other cooperatives in the area. However, the regulator decided that any cooperative with adequate financial and managerial conditions could open a new branch, without considering local market saturation or the banking sector, which established branches without authorization.

As a result, it was determined that prospectively, any cooperative requesting the establishment of a branch that demonstrated acceptable financial and managerial conditions would not be denied its request. The decision was based on the notion that cooperativism could not be viewed in terms of geographical limits.

Upon review, the court determined that opening a branch in an area already served by another cooperative required more transparency. It was argued that all cooperatives should have equal access to information about new branches in their market. The regulator ignored this right, violating the adjudicative process based on a legal norm and a judicial precedent, San Antonio v. PRCC, 153 D.P.R. 374 (2001), recognizing that: "The economic interest of a competitor concerned about fair and legal competition in the market is undoubtedly an interest that is not excluded by the concept of 'legitimate interest' that serves as a prelude to any applicant for intervention in the adjudicative processes of an administrative agency" and added that the Cooperative Law, supra, in its article 3.01, established that:

"*The philosophical foundations of cooperativism and its application through the organization and operation of credit unions are an essential part of the prerequisites for the authorization of a cooperative. The financial and regulatory requirements stem from the clear understanding that cooperativism is a distinct form of economic activity, based on principles specific to this type of organization.*

The organization of a new cooperative entity will require an affirmative determination by the Corporation that it is necessary and convenient for the population it will serve and will not unduly affect existing cooperatives, thus contributing to the orderly and adequate development of the cooperative movement in Puerto Rico. The Corporation is empowered to adopt by regulation the evidence, documentation, and information required from proponents and the criteria the

Corporation will use to make the required determination under this section. Except for entities organized or controlled by cooperatives, after their first six months of existence, all cooperatives must have at least thirty-five (35) members who do not have a family link within the fourth degree of consanguinity or second degree of affinity among themselves." Emphasis [in the original].

The court overturned the COSSEC decision on the branch opening and ordered an administrative hearing to justify the requested intervention. The ruling did not elaborate on or discuss the Sixth Cooperative Principle. After years of litigation, another controversy arose when COSSEC authorized the branch opening, and the affected cooperative argued that the decision should have considered whether it would affect existing cooperatives. After the administrative hearing, the branch of Coop. Las Piedras was authorized to operate in the town known as Yabucoa, where the Yabucoa Cooperative was originally established, if it could show that it met the requirements to expand its operations without harming its members and depositors. The COSSEC Board of Directors confirmed this decision, leading to another judicial review. It was argued that COSSEC had erred by not determining if the new branch would affect other cooperatives and by considering insufficient evidence presented by Coop. Las Piedras.

The Appellate Court then expressed that Law No. 255, supra, granted credit unions the opportunity to participate fully in the financial market, making them more competitive and prominent in the country's economic development. It indicated that the growth and strengthening of cooperativism were of high public interest, promoting broad and full participation in financial services markets and full access to financial services. Among the powers granted to COSSEC was the authority to issue licenses, permits, and authorizations. Article 3 of Law No. 114, supra, 7 L.P.R.A. sec. 1334b(c)-(2).

It provided that the 2002 Regulation of the Cooperative Credit Union Law, Regulation No. 7051, established criteria that allowed the sustained economic development of credit unions, fostering the liberalization of authorized activities and investments and the flexibility of their operations. Regarding the management of these branches, Law No. 255, supra, contemplated that they could be established either as mobile units or as permanent establishments, provided they complied with current regulations and, in any case, with the prior approval of COSSEC. With the legislative authority conferred, COSSEC instituted in Section 12(a) of the Regulation the institutional public policy regarding the establishment of branches, stating that:

"[…]

i. The Corporation will carry out a weighted evaluation of the circumstances and elements that influence the establishment of new branches, considering the financial condition of the cooperative requesting the establishment of a branch and the financial impact on the requesting cooperative. The geographic location of the requesting cooperative and the effects of competition between cooperatives will not be considered as evaluation factors. However, the Corporation may use all information and data at its disposal to evaluate the request, regardless of its nature."

Therefore, as long as the requesting cooperative met the financial and operational capacity conditions required by law, it would receive authorization from the regulator to establish a new branch. As a result, the trial court decided to grant a preliminary injunction, suspending the opening

of the branch until a hearing was held to address the merits of the case.
The analysis of the aforementioned case, decided in 2008, contrasts with the recent cases handled by COSSEC, which have generated controversy. For instance, the San Antonio Cooperative challenged the authorization of a branch opening in Juana Diaz, already served by several cooperatives. The recent decision to approve the establishment of Coop. Juana Diaz caused the affected cooperative to argue that this decision would adversely affect its market share, contributing to harmful competition with a fellow cooperative. In this case, COSSEC authorized the branch opening based on the legal provisions and regulations that granted it discretionary authority to evaluate and approve branch openings without considering the geographic location and the effects of competition between cooperatives on a healthy cooperative ecosystem.
Upon reviewing these facts, we note that the lack of transparency and the absence of a clear and consistent regulatory framework have led to repeated disputes between cooperatives, resulting in prolonged legal battles and tensions within the sector. This situation underscores the need to ensure that cooperative principles, especially the sixth principle of cooperation among cooperatives, are upheld and that the regulatory processes are fair, transparent, inclusive, and appropriate to the needs of the cooperative sector.

E. Application of Cooperative Principles to the Facts:
Applying cooperative principles to the analyzed facts reveals that cooperation among cooperatives is crucial to avoid harmful competition and ensure sustainable growth. The sixth cooperative principle emphasizes the need for cooperatives to collaborate to better serve their members and communities. In the cases discussed, the principles of transparency, fairness, inclusivity, and actions appropriate to ensure a healthy cooperative ecosystem were compromised, leading to conflicts and legal disputes. Ensuring that cooperatives work together and that regulatory processes support the sixth cooperative principle can help mitigate these challenges and foster a more harmonious cooperative environment.

F. Conclusion:
In conclusion, cooperation among cooperatives is essential to uphold the principles of cooperativism and ensure sustainable growth. The analyzed cases highlight the need for transparency, fairness, inclusivity, and actions appropriate to ensure a healthy cooperative ecosystem in the regulatory process to avoid conflicts between cooperatives and promote collaboration. By adhering to cooperative principles and ensuring a fair and supportive regulatory framework, cooperatives can better serve their members and communities, contributing to the overall development of the cooperative movement in Puerto Rico.

Bibliography:
- Cracogna, Dante. "Cooperation Among Cooperatives: Principle or Necessity?" Bulletin of the International Association of Cooperative Law, No. 59/2021.
- Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico (COSSEC)

regulations and legal provisions.
- Relevant court cases and legal precedents related to cooperative branch openings in Puerto Rico.

4th INTERNATIONAL FORUM ON COOPERATIVE LAW, COOPERATION, PRINCIPLE 6[1] AND NET ZERO

Cliff Mills[2]
Anthony Collins Solicitors LLP

Abstract:
The world's economies are founded on competition, which provides the framework for enterprise driven by the profit motive and the pursuit of private gain. Competing for growth results in humanity living beyond the limits of planetary boundaries, and many people falling short of meeting their basic needs. Achieving net zero requires a different approach.
Cooperation provides an alternative economic foundation for enterprise, based on the pursuit of fairness and concern for the impact of enterprise. It enables cooperative arrangements founded on values and principles to replace commercial contracts concerned only with private rights.
Principle 6 [3] was introduced to enable cooperation to achieve the scale needed to challenge the dominance of competition-based enterprise. It encourages cooperatives and other enterprises, public bodies and institutions to collaborate amongst each other and thereby to move to the next level: from cooperation within businesses to cooperation between businesses and other organisations.
This paper is written from a UK perspective but its arguments will resonate with other jurisdictions in a number of respects.

1. Introduction

In her ground-breaking book Doughnut Economics,[4] economist Kate Raworth explains the need for humanity to find the balance between providing access to the basic things people need to live – food, water, housing, work, education etc. – and at the same time living within the boundaries of the earth's resources. She highlights the role played by extractive enterprises focussed on pursuing growth in a competitive environment.
By its nature, an enterprise whose purpose is the pursuit of private gain is not designed to achieve a public good such as Net Zero. This requires enterprises founded on a different purpose, where meeting the needs of people is the primary objective rather than securing financial rewards for

[1] Principle 6: Cooperation among Cooperatives, of the International Cooperative Alliance's Statement on the Cooperative Identity
[2] This is a revised version of a paper presented to the 4th International Forum on Cooperative Law, San Sebastian, November 2023
[3] Principle 6: Cooperation among Cooperatives, of the International Cooperative Alliance's Statement on the Cooperative Identity
[4] Doughnut Economics: Seven Ways to Think Like a 21st Century Economist, Raworth K 2017

private investors. Such is the nature of cooperation,[5] but how is it designed to achieve this?

2. Purpose

This is not about member democratic control, limited return on capital and indivisible reserves: those are the means. What is the aim, or purpose of cooperation and of its early pioneers?

It was all about fairness: in Rochdale, to enable people to have access to uncontaminated food, at a fair price and without being cheated on measures; access to everyday essentials, without exploitation of the weak, and without providing special rewards for the powerful.[6]

To achieve their aim, the Pioneers needed a different mechanism for trade. The existing competitive market mechanism was broken and was patently not a fair system. That broken mechanism was based on two parties, a buyer and a seller, concluding a private sale transaction by means of a contract. This binary, competitive approach wasn't working.

The Pioneers adopted an alternative approach, which removed the binary buyer and seller relationship: the customers collectively *were* the shop, selling to customers individually. There were no longer two competing interests. Customers controlled the shop and so could stamp out contamination and cheating on measures.

The removal of the competitive seller/buyer relationship meant also that there was no longer any need for a sale contract. But it was still necessary to decide the price to be paid for goods, and to find a mechanism for ensuring that the price was fair. This needed to cover all necessary costs though it would not include a profit margin as that would undermine the very purpose.

A provisional price could be calculated based on the cost of the wholesale purchase, plus provision for foreseeable overheads and risks. This is what customers paid at the counter; but it was only provisional. The final fair price could only be determined when the accounts were prepared at the quarter end. At this point, if the total paid by customers exceeded total costs, generating a surplus, customers had paid too much and needed to be reimbursed.

Every transaction was recorded in a ledger against each member's name, enabling the surplus to be fairly distributed as a dividend or rebate to all members based on what they had bought. The members themselves decided in general meeting the level of dividend to be paid. This was the mechanism devised to establish a fair price.

This new way of doing business[7] was based not on a contractual transaction between shop and customer, but on the rules set out in the constitution of the cooperative; in some jurisdictions it is referred to as a "cooperative act". Every member had signed up to these rules, and they set out how the trade was conducted, how the business was governed, and how decisions were made. The rules replaced the personal (consumer) contract and were underpinned by values and principles specifically aimed at enshrining fairness, preventing oppression and avoiding any

[5] See A Reflection on the Nature of a Cooperative https://legislation.coop/en/media/library/position-paper-legislation/nature-co-operative-reflective-piece

[6] See, for example, Johnson Birchall, Co-op: the people's business 1994 Manchester University Press

[7] Contrary to common perception today, the radical invention by the Rochdale Pioneers wasn't a novel legal structure: it was a completely new way of doing business. The legal structure merely provided the mechanism.

preferential treatment. Contract-based competition for private benefit was replaced by cooperation for the benefit of all.

Just as the Rochdale approach replaced consumer contracts with cooperation, so the Mondragon approach (and other worker cooperative traditions) replaced employment contracts with cooperative arrangements and eliminated the binary employer and employee relationship. Producer cooperatives similarly aim to provide a consensual mechanism for businesses to collaborate on getting access to primary supplies or equipment, or on together achieving more from the output of their businesses.

To summarise: cooperation provided a mechanism for customers, workers and producers to collectively achieve a greater level of fairness, pushing back against oppression or providing special rewards. It was specifically an alternative to 'business as usual' based on binary contractual transactions.

The primary objective was achieved *within and through* cooperatives by those choosing to participate and conduct their trade though such collective endeavours.

3. Scale

Moving to the next level and increasing the scale of cooperative enterprise occurred organically with the establishment by primary cooperatives of secondary or federal societies. In the UK, the establishment of the Co-operative Wholesale Society in 1863 (adopting that name in 1872) was less than 20 years after the Rochdale Pioneers opened their first store. Cooperation between societies is a logical step to save duplication and achieve economies of scale. It facilitates the establishment of a cooperative supply chain and is the next step in building a cooperative economy.

The importance of this was thought to be sufficiently great that in 1966, a report of the Commission on Cooperative Principles to the 1966 International Cooperative Alliance's Congress in Vienna stated that its joint authors thought it "important to add a principle of growth by mutual cooperation among cooperatives: - All co-operative organisations, in order to best serve the interests of their members and their communities, should actively cooperate in every practical way with other co-operatives at local, national and international levels." [8]

There were particular reasons for recommending this addition at this time. Federations and secondary organisations serving all kinds of economic, technical and educational purposes were already playing and were predicted to play a much more important role in future than previously; it was often the method by which cooperation advanced from one stage of a supply chain to the next; secondary organisations eventually grew from a district or regional basis into national organisations; and there was no reason why such cooperation should halt at national frontiers.[9] It was all about progressing beyond cooperation at a local level, advancing from micro to macro.

The 1966 Commission recognised that large-scale "capitalistic concerns" had become the

[8] Report of the Commission on Cooperative Principles submitted to theICA 1966 Congress
[9] Ibid

Movement's most redoubtable competitors through vertical and horizontal integration and would continue to evolve towards oligopoly and monopoly at international level through multi-national organisations. To challenge this, greater unity and cohesion was therefore needed within the Movement by cooperation among cooperatives.

A recent ICA Discussion Paper [10] refers to the re-examination (over a period of several years culminating in 1995) of the ICA Statement "against a backdrop of major economic and social changes wrought by the liberation of the remaining European colonies; the end of the Cold War and the dramatic expansion of the European Union; the rise of neo-Liberal economic policies; the globalization of the world economy; and the advent of the new Information Age".

Principle 6 was included in the text that was put forward to and adopted by the ICA as the Statement on the Co-operative Identity (the ICA Statement) at its 1995 Centennial Congress and General Assembly in Manchester, England. In his background paper to the Manchester Congress [11], Ian MacPherson also referred to the fundamental importance of scale, particularly emphasising the importance of international joint activities. He added: "as nation states lose their capacity to control the international economy, co-operatives have a unique opportunity to protect and expand the direct interests of ordinary people".

MacPherson also emphasised the importance of strengthening support organisations, warning that it was easy to become preoccupied with the concerns of a particular cooperative or type of cooperative; different kinds of cooperatives needed to join together when speaking to government or promoting cooperation to the public, and for this general support organisations were needed.

4. Cooperation among cooperatives

Just as in the primary (consumer or worker) context, a contract is the normal market mechanism for commercial dealings in a business-to-business context. Typically, a supply chain will comprise a series of business-to-business contracts binding the various parties to perform their role in the chain, ultimately enabling the personal/consumer contract.

Contract law in the UK was developed by the law courts as a way of providing certainty for businesses, both in dealing with consumers and other businesses. It enabled parties to know exactly what their rights and obligations were between each other, and to be confident that the contract terms would ultimately be performed – if necessary, by an order of a court of law.

A fundamental principle of contract law is freedom of contract – the ability for parties to agree to whatever arrangements they wished. Provided that the parties have fulfilled the legal requirements for a contract to exist, a court will recognise and enforce it. But it will not look behind a contract at its fairness – that is the function of the market, not the law. The freedom of contract principle respects the free choice of the parties, and is the foundation of laissez-faire, free market thinking. Contracts are both needed and designed to facilitate trade in a competitive market environment.

[10] Examining our Cooperative Identity, Alexandra Wilson, Ann Hoyt, Bruno Roelants and Santosh Kumar 2021

[11] Background Paper to the Statement on the Cooperative Identity 8th January 1996

Another principle of contract law is "privity of contract": contracts only confer rights and obligations on the parties. It is a private agreement between them: it defines their rights and obligations as against each other, thereby locating the parties in a binary and essentially competitive or adversarial relationship with each other. Third parties are not relevant here.

Contracts are useful and fundamental to commerce and trade. But their lack of concern for fairness and third parties enables them to be a mechanism for maintaining power imbalances and securing the long-term oppression and disadvantage of the weaker party. The binary, adversarial nature of a contract can become a mechanism for increasing market domination by the powerful, but with no inherent concern for weaker parties, or impacts on third parties.

Cooperation is a mechanism for opting out of competitive market transactions and replacing contract-based relationships with something fairer. The Rochdale Pioneers used cooperation to replace the consumer sales contract. Cooperation among cooperatives encourages and enables a commercial relationship to be established between cooperatives and similarly to use the mechanism of cooperative governance to replace contract law.

Principle 6 talks about "working together through local, national, regional and international structures". Secondary cooperatives and federal arrangements create the same opportunity for business-to-business cooperative trading as primary cooperatives do for consumers and workers. There can be a tendency to see the role of secondary bodies as a representative one, or a simple mechanism to provide certain services to members; but that is to limit unnecessarily the scope of what is possible.

5. Principle 6 and Net Zero

In his paper explaining how the 1995 Statement on the Cooperative Identity had evolved, [12] Ian MacPherson also noted "growing pressures on the environment" amongst the challenges faced during the 1990s, although climate change and the destruction of biodiversity had not yet become widely recognised as the urgent issue we see today. Principle 7 was nevertheless also adopted in 1995 incorporating concern for communities and the role of cooperatives working for sustainable development of their communities.

If the first 150 years of cooperation were mainly concerned with providing people with an alternative to competition in accessing goods, services and work, the urgent need today is for cooperation to provide an alternative to competition amongst and between businesses – for "the common good" to quote MacPherson, and for future generations and the future of the planet, as some might express it today.

Cooperation among cooperatives is a principle which aims to build a cooperative economy through the agency of cooperatives working together, but in practice it is a mechanism for business-to-business cooperation, whether or not those businesses are cooperatives. Producer cooperatives are in effect a manifestation of this approach, as (arguably) are multi-party cooperatives. Importantly, this approach can also apply to public bodies such as councils in the

[12] Background Paper to the Statement on the Cooperative Identity

UK which are performing a statutory function on behalf of their electorate.

An interesting contemporary illustration of this in the UK is Cooperative Network Infrastructure, a cooperative of landowners (including public bodies) and operators, set up to provide a fibre network for digital access for a geographical region. The landowners are all paid a fair rate for fibre to be carried in ducting on their land, but the cooperative owns the fibre network. The operators buy access to the unlit fibre network. The role of the cooperative is to act as a neutral host, preventing any monopoly ownership.

This sort of approach is taking cooperation to another level, but it is also enabling cooperation between businesses and other organisations to address the challenges of the climate crisis and other contemporary challenges. Whether you label it concern for the community or cooperation between cooperatively-minded organisations, it is a powerful mechanism to meet today's biggest needs. [13]

6. Conclusion

The predominant legal structure for business today, investor-ownership and company law, has a built-in commitment to private shareholder primacy. The principle legal mechanism for business dealings – contract law – is focussed on the rights and interests of the parties to the contract and not the impact on others. In both contract and company law, private interests take priority to the wider needs of humanity, which are beyond their main focus of attention.

Cooperation provided an alternative mechanism for individuals to access work, products and services through collective endeavour where market mechanisms were failing. The urgent need today is for businesses and other organisations to collaborate, for the broader objective of reducing the damage caused to the planet by commercial activity. Principle 6 establishes an imperative for cooperatives to work together collectively to increase the scale of cooperative endeavour and build a cooperative economy. But it also provides a template for business-to-business cooperation and cooperation between cooperatives and other organisations whether or not they are themselves cooperatives.[14]

[13] Another example of this is OxFarmToFork, a cooperative arrangement between colleges of Oxford University and local growers and producers, specifically aimed at rebuilding local agriculture and establishing a sustainable basis for farmers and agricultural workers to earn a living wage. See goodfoodoxford.org/ox-farm-to-fork

[14] Another powerful illustration of Principle 6, I would submit, is a cooperative of local councils in the UK, the Co-operative Councils Innovation Network, a collaboration between councils who are committed to finding better ways of working for, and with, local people for the benefit of their local community. See councils.coop

Interview with Andriani Mitropoulou

Douvitsa: *Thank you, Ms. Mitropoulou, for accepting this interview! It is my great pleasure to interview you with Hagen Henrÿ for our journal as your work has guided my research and enhanced my understanding of complex matters in cooperative law. As with the other interviewees may we start by asking what made you develop an interest in the subject of cooperative law and whether cooperatives in general, and cooperative law in particular, was part of your formal education.*

I thank you for the honor you have bestowed upon me and for the opportunity to speak about an institution to which I have dedicated a significant part of my life—not only through the legal study of issues arising from the application of cooperative law in agricultural cooperatives, which I have specifically focused on, but also through my efforts to promote the cooperative institution among Greek farmers and producers. This is because I firmly believe that there can be no primary sector, and especially no agriculture, in a country without agricultural cooperatives. My involvement in this field of law began when I was recruited by the Panhellenic Confederation of Agricultural Cooperative Unions (PASEGES) as a legal advisor. At that time, I had completed my postgraduate studies at the College of Europe in the area of European law, and my country's focus on the common agricultural policy of the then European Community was paramount. The concepts of responsibility, solidarity, and autonomy, which define this institution, are core values that I strive to embody. This means that my relationship with the institution is deeply personal and experiential. For this reason, I often find myself at odds with political leaders when they introduce anti-cooperative provisions into national laws.

Douvitsa & Henrÿ: *Having served the cooperative movement in many instances, such as by being appointed as the legal advisor for PAGESES, the National Confederation of Agricultural Cooperatives of Greece, what were the key legal shortcomings and issues you were confronted with in practice that you wish to highlight?*

Between 1978 and 1982, PASEGES was a member of the International Cooperative Alliance (ICA) and operated with absolute respect for the cooperative principles and values that define the institution. During this time, it founded a cooperative school in Thessaloniki for the training of administrative staff employed by agricultural cooperative organizations (primary, secondary, and tertiary), ensuring they received proper cooperative training and education. Simultaneously, PASEGES maintained a research service composed of prominent scientists who kept cooperatives informed on matters related to the Common Agricultural Policy (CAP). It also had a legal service comprising four legal advisers who handled all legal issues affecting PASEGES members, including approximately 150 associations of agricultural cooperatives, representing around 6,000 primary agricultural cooperatives. The legal matters we addressed covered cooperative law, tax

law applying to cooperatives, European law, and specialized labor laws applicable to cooperative officials and workers. PASEGES organized meetings where lawyers educated cooperative members on current legislation, helping them implement the laws in practice. However, after 1982, the sector suffered a catastrophic decline, a "chronicle of a foretold cooperative death" that was so evident it could not be disputed. This culminated in PASEGES being placed into liquidation—a devastating institutional loss for the country. Unfortunately, this disaster remains largely unrecognized due to a lack of education and understanding. Those in power seem to believe that agriculture is solely about subsidies from the European Union, even though such subsidies are decreasing. When these subsidies inevitably decline further, will we remember agricultural cooperatives? Starting anew will be exceedingly difficult because the times, and with them the opportunities, have changed. Returning to the situation of PASEGES, under these adverse conditions, our work as lawyers became limited to addressing routine issues for PASEGES members, with no significant scientific or institutional interest, as the cooperative institution had essentially dissolved. Legal interest in the sector re-emerged after 2011, with the introduction of the profoundly anti-cooperative law 4015/2011. This law forced most agricultural cooperative enterprises (secondary and tertiary cooperative organizations, as well as cooperative joint-stock companies) into compulsory liquidation due to their debts to banking institutions—an example of unauthorized state intervention that undermined cooperative autonomy. The result was the near-total dissolution of agricultural cooperatives, with only a few minor exceptions. Under these circumstances, many cases involving agricultural cooperatives went to court, leading to the emergence of legal issues that were often misinterpreted by the judiciary due to a lack of understanding of cooperative principles. These principles should guide the interpretation of cooperative law. Particularly misunderstood were issues related to the concept of surplus generated by agricultural cooperatives and the cooperative property, which represents the property of generations.

Douvitsa: *As you have been part of cooperative lawmaking, in the latest legal reform of agricultural cooperatives in Greece, I had the pleasure of hearing your speech before the Greek Parliament, where you expressed your opinion of the inadequacy of the legal draft especially about investor members. Why do you think law- and policymakers in Greece – and abroad – have such difficulty understanding the essence of cooperatives and translating it appropriately into law.*

Firstly, I want to make it clear that the latest law governing agricultural cooperatives in Greece, Law 4673/2020, was drafted by individuals who were entirely ignorant of the principles that define a cooperative. This is extremely dangerous because by violating the cooperative identity, you create a legal entity that is anything but a cooperative. It seems to have been overlooked that no one is forcing farmers to establish cooperatives to promote their economy and culture. The legal framework is broad enough for them to collaborate by forming a capital company under commercial law. However, if they choose to establish a cooperative, they should respect the principles of this significant institution, which, in my opinion, not only aims to serve their financial

needs but also to shape their character—promoting humanitarian values over individualism. The crisis facing agricultural cooperatives in Greece is unparalleled in its history and differs significantly from crises in other countries. Over the past 50 years, socialist and other governments have sought to implement social and clientelist policies through agricultural cooperatives. They did so by directly intervening in cooperative entrepreneurship, despite the Greek Constitution explicitly prohibiting such interference. These governments politicized cooperative leadership, forced cooperatives to hire excessive numbers of workers to address unemployment, and compelled them to purchase the entire production of their members and third-party farmers, often beyond their capacity to manage. As a result, cooperatives had to resort to bank loans to survive, leading inevitably to bankruptcy. Adding to these issues was the closure of cooperative schools and the abolition of farmer cooperative education programs. Globally, I believe that the drive for quick profits, unrestrained individualism, disregard for the environment, and the prevailing consumerist culture—prioritizing quantity over quality—pose significant barriers to the crucial role of collective effort in benefiting everyone, not just individuals. In my opinion, the opening of markets and unchecked competition are as detrimental to agricultural cooperatives as they are to humanity itself. However, cooperatives have a unique advantage: they provide their members with quality in both production and life. This strength lies in their local focus, prioritizing care for their community. Communities, after all, are the building blocks of a country.

Douvitsa & Henrÿ: *If we may return to the issue of investor members, as this is an issue that keeps coming up in public debate including in other countries where cooperative legal reforms are underway. What is your view on the popularity of such provisions and how they may affect the cooperative identity?*

Regarding investor members in Greece, I am entirely opposed to the idea, primarily because there is no cooperative education in place to establish boundaries for the application of this concept. Without such education, cooperatives risk deviating from their principles. I firmly believe that cooperatives must operate strictly within the framework of international cooperative principles, as adherence to these principles is the only way to achieve the desired results. If cooperatives deem it necessary to register investor members, it should be under strict conditions that ensure these members do not undermine the cooperative's principles or financial stability. For instance, investor members could be allowed to invest funds, but safeguards must be in place to address potential issues with capital adequacy if these members decide to withdraw their investments. Investor members must recognize that a cooperative, by its nature, has a long lifespan, and this should factor into their decision-making. Investor members might participate in the Supervisory Board of the cooperative and, possibly, as a minority on the Board of Directors. They could also have speaking rights in the general assembly, but without voting rights that would upset the balance of power. These limitations are illustrative but necessary to preserve the cooperative's identity. In my view, cooperatives with a strong sense of cooperative consciousness cannot and should not shift towards a capitalist model, as this presents a legitimate risk. Instead, cooperatives could explore

collaboration with local government bodies, allowing these entities to invest capital in cooperatives for projects that serve the public interest, such as renewable energy initiatives. For example, in the United States, agricultural cooperatives reportedly supply all the electricity required for agriculture. Investor members require this sort of framework and should not be allowed under the provisions of the current Greek cooperative law. This law allows an investor member to control up to 40% of the votes in a cooperative's general assembly. Such an assembly is meant to operate democratically and as a union of members, not as a capital company. In my opinion, this arrangement constitutes institutional confusion and undermines the cooperative identity.

Douvitsa & Henrÿ: *Given the plethora of special cooperative laws in Greece for different types of cooperatives, how do you think this has affected the unity of the cooperative movement? Do you think that a general cooperative law is missing from the Greek legal landscape?*

This is true. According to Aristotle, a state with many laws is a poorly governed one. In Greece, where agricultural cooperative legislation is frequently and hastily modified whenever there is a need to showcase a project in the agricultural sector, a single, comprehensive cooperative law would have spared us from these constant and often disastrous changes. I firmly believe that a framework law—extensive enough to address all issues relevant to cooperatives, without references to commercial legislation—is absolutely essential. Such a law would prevent the frequent misinterpretations in jurisprudence, where cooperatives are judged either as commercial companies or as unions. Both interpretations are incorrect, as the nature of a cooperative is neither capitalistic (like a capital company) nor ideological (like a union). Therefore, I am a strong advocate for a unified cooperative law that respects the unique character of cooperatives while allowing their statutes to regulate internal operations in alignment with their specific purposes. This approach would provide the stability and clarity needed for cooperatives to thrive.

Douvitsa & Henrÿ: *For many decades you have worked with Professor Papageorgiou, who is one of Greece's best-known professors of cooperative economics. He has highlighted your dedication to cooperative law. Please tell our readers how you met him and whether you think it is important for cooperative lawyers to work with economists to ensure a better understanding of cooperatives and improvements to the sector overall?*

Professor K. Papageorgiou is a distinguished figure in cooperative economics and he has been a guiding light for many students at the Agricultural University, inspiring them to embrace the cooperative institution. His philosophy of life is rooted in responsibility, solidarity, and a deep love for humanity and its needs. He views individuals as independent personalities rather than alienated entities. His philosophy and views left an indelible mark. I had the privilege of working under Professor Papageorgiou when he served as General Manager at PASEGES. As a young lawyer taking my first steps in the cooperative world, his leadership and guidance were invaluable. Unfortunately, his tenure at PASEGES was cut short for purely political reasons, as the

organization decided to terminate its collaboration with him. In my view this was one of PASEGES greatest mistakes and it marked the beginning of its loss of direction. However, my collaboration with Professor Papageorgiou continued uninterrupted. He always had the kindness and patience to review my writings and provide his insightful observations. For me, Professor Papageorgiou became my great cooperative mentor—a role that, regrettably, law schools in my country fail to provide. He helped me understand that one cannot truly grasp the essence of a cooperative without first comprehending its economic function. Inspired by this realization, I delved deeply into the practical workings of cooperatives, making this understanding a part of my professional foundation. This has fueled my tireless dedication to the cooperative institution, which I deeply believe in and remain committed to.

Douvitsa & Henrÿ: *You have been the founding member of the Institute of Cooperative Studies in Greece which has also launched the Journal of Social Economy. What was the reason behind the establishment of such an institute and the launch of the journal and are there any lessons that other initiatives, including Ius Cooperativum and our journal, could learn from your experience?*

The periodical, Cooperative Economy, was essentially a continuation of the highly significant Cooperative Course magazine, which had been founded by distinguished university professors in the past and as an initiative of lawyers. The magazine's readership grew primarily due to its coverage of pressing and relevant topics, such as developments in the cooperative institution, commentary on judicial decisions, critiques of cooperative legislation, and statistical updates on international cooperatives. These topics were often curated and edited by Professor Papageorgiou, adding further depth and credibility to its content. Allow me to share my perspective: Ius Cooperativum could build on this legacy by including the publication of decisions from the Court of Justice of the European Union, monitoring and commenting on national jurisprudence across member states, and publishing studies that advance cooperatives' development. Such studies could include analyses of successful cooperatives in other countries, offering practical examples that others might follow. One area of great importance, in my view, would be the comparative study of national cooperative legislations—not merely listing them but analyzing their structures, strengths, and weaknesses in detail. This could illuminate the factors that contribute to the success or failure of cooperative frameworks in different contexts. Additionally, I believe that efforts should be made to highlight and promote successful cooperatives, analyzing the practical reasons behind their achievements. For example, I would be particularly interested in studying how cooperatives in the United States have successfully provided electricity to their members. Such analysis represents a critical transition from theory to practice, demonstrating how cooperative principles can yield tangible benefits for their communities.

Douvitsa & Henrÿ: *The interest in cooperative law is increasing. The 2023 Report of the Secretary-General of the United Nations on "Cooperatives in social development" (Doc. A/76/209) is one example of this interest. This is in sharp contrast with the reality of education,*

where cooperatives are at best underrepresented or at worst totally absent in research and education curricula. What do you think should be done about this, especially since in your work You always highlight the importance of education?

As I firmly believe there can be no agriculture without cooperatives, I equally believe that there can be no cooperative institution without education. I am reminded of the English philosopher and political economist John Stuart Mill, who famously stated: "Education is desirable for the whole human race. But it is a necessity of life for the cooperative members." To establish a cooperative, it is essential to understand the principles that govern the institution and its economic function. This includes grasping the distinction between the cooperative's social character and the concept of public benefit, which are often confused in practice and, regrettably, in court decisions. The cooperative's social character is rooted in the 7th cooperative principle. Moreover, cooperative members and professional executives—especially managers—must deeply understand the principles within which they operate. Above all, they must always remember that their primary goal is not profit but the satisfaction of their member's needs. This means that profit should serve the members, not the other way around. Education is equally critical for those responsible for auditing cooperatives, so they do not evaluate them as if they were commercial law companies. They must understand that cooperatives operate within a unique framework, distinct from capital-driven enterprises. For example, Article 12, paragraph 4, of the Greek Constitution provides for tax relief for cooperatives as part of their developmental role. This is because cooperatives create social property, which is preserved and passed on to future generations. Understanding this broader purpose reinforces the cooperative's role as a socially and economically transformative institution.

Douvitsa & Henrÿ: *Career opportunities for cooperative lawyers inside and outside academia are scarce. How were you able to make a career out of your interest in cooperative law? What kind of advice would you give to young people thinking of developing a career in cooperative law?*

This is a challenging question in the context of the reality in Greece. I was fortunate to work with agricultural cooperatives during a period when the Common Agricultural Policy (CAP) was the sole policy shared among all member states of the then EEC. The CAP strongly promoted the producer group model, which operated on democratic principles. This naturally aligned the concept of Producer Groups with the agricultural cooperative model. I still firmly believe that a successful Producer Organization (PO) can only thrive under the legal framework of an agricultural cooperative and not as another type of legal entity. After all, who else can achieve such significant product concentration under proper conditions of control—conditions rooted in cooperative ideology rather than coercion? Who else but the agricultural cooperative prioritizes sustainable development and environmental protection as core goals? To young lawyers interested in this field, I would say: pursue the cooperative institution only if you are passionate about it. Passion will drive you to advocate, through professional organizations, for the inclusion of cooperative law in law school curricula. It will motivate you to push for the establishment of

cooperative institutes to study past achievements and to analyze global cooperative models. By doing so, you will realize that you are not only practicing law but also contributing to the economic, social, and cultural development of communities—a fundamental goal of the cooperative institution.

Douvitsa & Henrÿ: *As we stated earlier, you have not only published widely on cooperative law, but you have also engaged in law-making, consultancies, and counselling. Please tell us about these opportunities and how they link to other aspects of your work.*

I served as a member of several law-making committees tasked with drafting legislation related to agricultural cooperatives and interprofessional organizations (IOs) of farmers. In the agricultural sector, IOs operate with a union structure and are governed by national legislation on unions or civil non-profit companies, while also being supplemented by relevant provisions of Union law. This institution is critically important, forming, alongside agricultural cooperatives and producer organizations, the comprehensive legal framework within which the agricultural sector should operate. Regrettably, in Greece, the institution of IOs has not yet functioned effectively, despite the passage of the first national law for these organizations in 1999. I believe that the agricultural sector's underperformance, compared to its immense potential, can largely be attributed to deficits in the development and support of both agricultural cooperatives and IOs. As I have emphasized previously, I am convinced that a producer organization can only succeed within the cooperative framework. Cooperatives can lawfully claim numerous privileges from the state without violating Union law or fostering dependency on government support. This is because of the cooperative's substantial social contribution, which must be showcased through effective and principled operation. My belief in the power of cooperation is not theoretical, as cooperation necessitates tangible action. Historically, agricultural cooperatives in Greece have made significant contributions, particularly in infrastructure projects that have benefited the country. In this context, I had the opportunity, thanks to my close relationships with many cooperatives, to give non-profit lectures aimed at highlighting the advantages of the cooperative institution for agriculture. A key focus of my efforts was fostering faith among cooperative members in their cooperative model, encouraging them to avoid external dependencies—particularly external borrowing—and reliance on the state, which has historically undermined them. Lastly, I must emphasize that my participation in law-making committees often brought me into conflict with the views of the respective government. However, I refused to compromise, as I firmly believe that cooperatives must never deviate from their foundational principles.

Douvitsa & Henrÿ: *Given the emergence of other concepts, such as social enterprises, social economy, social and solidarity economy, what kind of impact might they have on cooperatives?*

I believe these institutions can function in parallel, as they theoretically complement each other. However, in agriculture, I believe agricultural cooperatives should operate under cooperative

legislation, incorporating necessary modifications and adjustments driven primarily by technological advancements, to ensure the well-being of farmers.

Douvitsa & Henrÿ: *Two years ago, the ICA launched an online questionnaire inviting all interested parties to share their thoughts on whether its 1995 Statement on the Cooperative Identity should be reformed. One opinion expressed was that the ICA Statement, in its current form, does not do enough to emphasize cooperatives' response to the climate crisis. What are your thoughts on this? Do you think the cooperative identity as it has been stated in 1995 should be revised? How would a revision of the Statement affect cooperative law and policies, if at all?*

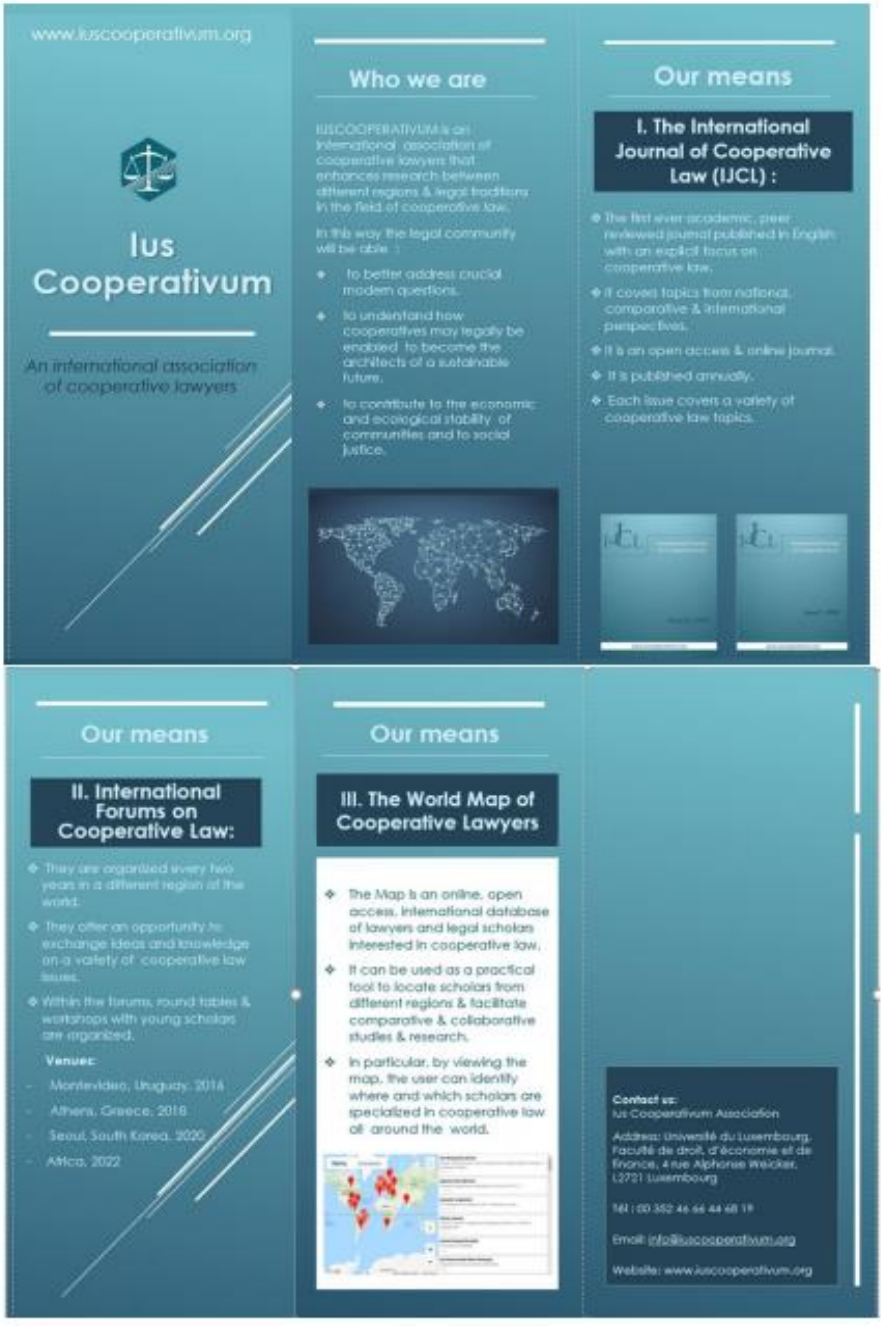
My view is that the cooperative principles are already complete, and I do not believe any changes are necessary. I am concerned that any expansion or alteration could lead to interpretative challenges. The more concise these principles are, the more useful they become for interpreters and practitioners. New technologies can be adopted without interference from the existing framework, which I support, as I have not observed any deficiencies in cooperative action. In particular, agricultural cooperatives have the capacity to address a wide range of activities on behalf of their members, as long as these activities are provided for in their statutes. These cooperatives hold significant potential to contribute to the national economy by increasing the national product through their operations. By their nature, agricultural cooperatives typically have a local focus, investing primarily within their own regions and rarely extending beyond their localities or abroad. At least in Greece, I am not aware of any cases where agricultural cooperatives have invested internationally. Environmental protection can also be effectively achieved through the 7th cooperative principle. This is reinforced by the local and regional actions of cooperatives, as well as by the sustainable development and environmental protection rules established by the European Union.

Douvitsa & Henrÿ: *2025 was declared by the UN as the second International Year of Cooperatives within only 13 years, under the theme 'Co-operatives build a better world'. What kind of legal and policy interventions do you think are needed so that the above theme may become a reality?*

I consider the declaration of 2025 as the International Year of Cooperatives to be an extremely significant milestone. This underscores the fact that humanity, for its very survival, has an essential need for the cooperative institution. However, we must move beyond mere observations and wishful thinking. The United Nations, through its agencies and within the scope of its statutory powers, should compel states to adopt a series of measures that promote and implement the principles of cooperation. In my view, cooperatives are uniquely positioned to require their members to take proactive steps for environmental protection. Additionally, states should collaborate with cooperatives to address pressing challenges, ultimately improving the quality of life for citizens in meaningful and impactful ways.

Douvitsa & Henrÿ: *Thank you again for the interview, Ms. Mitropoulou!*

Thank you very much.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Ius Cooperativum
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In this way the legal community will be able :
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to understand how cooperatives may legally be enabled to become the architects of a sustainable future.
to contribute to the economic and ecological stability of communities and to social justice.
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