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## ARTICLES / ARTÍCULOS

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Las cooperativas de trabajo como instrumento para la inclusión laboral de los migrantes

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# Workers' cooperatives as a tool to promote labour market inclusion for migrants<sup>1</sup>

(Las cooperativas de trabajo como instrumento  
para la inclusión laboral de los migrantes)

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**Summary:** 1. Cooperatives: an opportunity for migrants who are vulnerable and at risk of social exclusion to enter the labour market. 1.1. Ideological and regulatory support for the use of cooperatives: values and principles. 1.2. The first and seventh cooperative principles: the foundations for the approaches to promote the integration of migrants who are vulnerable and at risk of social exclusion. 2. The need to protect the most vulnerable migrants: from social exclusion to labour market inclusion. 3. Associated workers' cooperatives as an instrument for the social inclusion of the most vulnerable migrants. 4. Conclusions. 5. References

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**Abstract:** The aim of this study is to identify the ways in which worker cooperatives can promote labour market inclusion for migrants. To that end, first, we will refer to the legal literature that supports the suitability of the cooperative formula in order to achieve the aforementioned purpose. By means of this analysis, our main contributions will be the following: the description of the channels that worker cooperatives offer to regularise the entrance and the work of migrants in the European Union, avoiding this way different phenomena, such as, smuggling of migrants, human trafficking or informal work; the description of the contribution of worker cooperatives to the integration process of migrants, paying special attention to their training-learning and their potential, the different initiatives of social entrepreneurship and the creation of networks and associations with local communities that favour the assistance, counsel and social cohesion; and the study of the ways in which Public Administrations can promote workers cooperatives taking into account their contribution to favour decent work for migrants.

**Keywords:** Workers cooperatives, migrants who are vulnerable, labour market; social inclusion.

**Resumen:** El objetivo de este estudio es identificar las formas en que las cooperativas de trabajo asociado pueden promover la inclusión de los migrantes en el mercado laboral. Para ello, en primer lugar, nos referiremos a la literatura jurídica que avala la idoneidad de la fórmula cooperativa para lograr el propósito mencionado. Mediante este análisis, nuestras principales aportaciones serán las siguientes: la descripción de los canales que ofrecen las cooperativas de trabajo asociado para regularizar la entrada y el trabajo de los migrantes en la Unión Europea, evitando así diferentes fenómenos, como el tráfico de migrantes, la trata de seres humanos o el trabajo informal; la descripción del aporte de las cooperativas de trabajo asociado al proceso de integración de los migrantes, prestando especial atención a su formación-aprendizaje y su potencial, las diferentes iniciativas de emprendimiento social y la creación de redes y asociaciones con las comunidades locales que favorezcan la atención, asesoría y cohesión social; y el estudio de las formas en que las Administraciones Públicas pueden promover las cooperativas de trabajadores teniendo en cuenta su contribución a la promoción del trabajo decente para los migrantes.

**Palabras clave:** Cooperativas de trabajo asociado; migrantes vulnerables; mercado de trabajo; inclusión social.

## 1. Cooperatives: an opportunity for migrants who are vulnerable and at risk of social exclusion to enter the labour market

### 1.1. *Ideological and regulatory support for the use of cooperatives: values and principles*

Cooperatives can be defined as business and legal entities with a well-defined identity that are grounded in universal cooperative values and principles. These values and principles should guide their behaviour and actions in relation both to other entities (cooperatives or otherwise) and to the community within which they operate. This includes either a local or a "global community", regardless of its location, size, or any other traits. Cooperatives provide an opportunity to promote social goods that transcend their own scope.

Cooperative values and principles should specifically determine cooperatives' nature and way of being, and how they respond to the challenges they face.<sup>2</sup> One of these challenges is that posed by the integration of migrants, particularly of those who are the most vulnerable and at risk of social exclusion, both in modern societies in general and in the cooperatives within these societies.

In western societies, or rather, in more advanced communities, cooperatives and society in general should meet the challenge of the integration and inclusion<sup>3</sup> of the migrants who "arrive" at the places where they operate. In their role as social agents (in the case of Spain, as well-established social agents which are a significant part of the employment and socioeconomic fabric), cooperatives must address this challenge by considering both the original cooperative philosophy perspective and the economic point of view.

Within this general approach to the challenge of the employment and professional integration of migrants both in general and within cooperative corporate structures in host societies (or rather, in recipient societies), cooperative principles and values should become the philosophical and ideological basis for cooperatives to implement their policies. The principles of action to take as a reference point are the following:

- a) First principle: Voluntary and open membership. Cooperatives are voluntary organisations, open to all people who are capable of using their services and willing to accept the responsibilities of being a member, without any social, political, religious, racial, or gender discrimination.

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<sup>2</sup> Martínez Etxeberria 2018.

<sup>3</sup> Martínez Etxeberria 2020, 99-212.

- b) Second principle: Democratic management by members. Cooperatives are organisations democratically managed by members, who actively participate in setting their policies and making decisions. The men and women elected to represent and manage cooperatives are accountable to the members. In primary co-operatives members have equal voting rights (one member, one vote). Co-operatives at other levels are also organised in a democratic manner.
- c) Third principle: Economic participation of members. Members contribute equitably to the capital of their cooperatives and manage it democratically. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: the development of their cooperative, possibly by setting up reserves, part of which are indivisible; benefiting members in proportion to their operations with the cooperative; and supporting other activities approved by the members.
- d) Fourth principle: Autonomy and independence. Cooperatives are autonomous, self-help organisations managed by members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.
- e) Fifth principle: Education, training, and information. Cooperatives provide education and training to members, elected representatives, managers, and employees so that they can contribute effectively to the development of their cooperatives. They inform the general public, especially young people, and opinion leaders, of the nature and benefits of cooperation.
- f) Sixth principle: Cooperation among cooperatives. Cooperatives serve their members as effectively as possible and strengthen the cooperative movement by working together through local, national, regional, and international structures.
- g) Seventh principle: Concern for the community. Cooperatives work to achieve the sustainable development of their political communities approved by their members.

Regarding the suitability of the use of cooperatives for the entry and integration of migrants into the labour market (more specifically, those who are most vulnerable and at potential risk of social exclusion), the first and seventh principles are particularly important and will be the focused on at the beginning of this analysis.

## 1.2. *The first and seventh cooperative principles: the foundations for the approaches to promote the integration of migrants who are vulnerable and at risk of social exclusion*

The starting point for understanding how cooperatives should benefit migrants should be to define the term "migrant". According to the Cambridge Dictionary, a migrant is "a person that travels to a different country or place, often in order to find work". There are multiple motivations and situations that compel people to migrate. However, a distinction can be made between those migrants who choose to abandon their places of origin temporarily or permanently, despite enjoying an adequate socioeconomic situation there, from those who decide to migrate driven by different kinds of necessities.

This presentation concentrates on those migrants whose situation in their countries of origin was extremely precarious, for whom migration was a matter of necessity rather than an option. Their personal situation and social contexts in their countries of origin were precarious and they are potentially at risk of social exclusion in countries of destination. Taking into account the special idiosyncrasy of cooperatives, these can be an optimal environment for integration and development of vulnerable migrants in the host societies.

The philosophical and cooperative grounds that support the integration of these migrants are the first principle (voluntary and open membership) and the seventh cooperative principle (concern for the community). Following MARCUELLO SERVÓS and SAZ GIL, "cooperatives must be open to all people who can contribute to and benefit from the project, and are willing to accept responsibility for being a member, without any discrimination. This principle allows the enrichment and expansion of the networks that can be accessed, including those are available and accessible for new members".<sup>4</sup>

In addition to the first principle of cooperatives, which states that they "must be open to all people who can contribute to and benefit from the project, and are willing to accept responsibility for being a member without any type of discrimination" within the societies of which they are part, the right to equality and non-discrimination is also at play. In Spain, this right is set forth in Article 14 of the 1978 Constitution,<sup>5</sup> which is the reg-

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<sup>4</sup> Marcuello Servós and Saz Gil 2008, 63.

<sup>5</sup> Spanish Official Journal, 29 December 1978, number 311.

Article 14: Spaniards are equal under the law, and cannot be discriminated against on grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance".

ulatory framework that should guide the integration of both of migrants and other groups who are at risk of social exclusion.<sup>6</sup>

Article 129.2 of the Spanish Constitution<sup>7</sup> is also pivotal, as it identifies cooperatives as the business model to be promoted by the public authorities. This is based on the understanding that cooperatives are the ideal model for achieving social goals such as integrating groups at risk of social exclusion (including migrants).

When considering the Spanish regulatory framework other than the Constitution, there is a law that is especially relevant to cooperatives and their potential to be favourable social economy models for the integration of groups such as highly vulnerable migrants. This is Law 5/2011, of 29 March, of the Social Economy<sup>8</sup> (Law 5/2011). Article 4 of Law 5/2011 specifically establishes that "the action of social economy enterprises is guided by the following principles:

- a) Giving predominance to people and social goals over capital. This is materialised in autonomous, transparent, democratic, and participatory management, which leads to prioritising decision-making that is based on people and their contributions in the form of work and services provided to the enterprise or based on the cooperative's purpose, rather than related to their contributions to the equity.
- b) Applying the profit obtained from the business activity (mainly from the work, service or activity carried out by members) to the cooperative's purpose.
- c) Promoting solidarity, both internally and externally (towards society), with a view to encouraging commitment to local development, equal opportunities between men and women, social cohesion, the incorporation of people at risk of social exclusion into the labour market, creation of stable, well-paying jobs, personal, family and work life balance, and sustainability.
- d) Independence from public authorities".

Point c) of Article 4 of Law 5/2011 is directly linked to the seventh cooperative principle, which refers to concern for the community, some-

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<sup>6</sup> Martínez Etxeberria 2020, 25-47.

<sup>7</sup> Article 129.2: "The public authorities shall efficiently promote the various forms of participation within businesses and shall encourage cooperative entities by means of appropriate legislation. They shall also put in place the necessary means to facilitate access by workers to ownership of the means of production."

<sup>8</sup> Spanish Official Journal, 30 March 2011, number 76.

thing that cooperatives should work towards in order to achieve the sustainable development of the communities approved by their members.

Similarly, it is worth highlighting the Opinion of the European Economic and Social Committee on "Social economy enterprises as a driver for migrant integration" of 23 May 2018 (the Opinion).<sup>9</sup> The conclusions and recommendations of the Opinion established that "recent events in the field of migration have put the system for entering the European Union under pressure and acted as a real stress test for migration, social and public security policies in the EU and its Member States".

Therefore, the European Economic and Social Committee "considers it vital that the European institutions, together with the governments of the Member States, promote coordinated policies making for clearer, more sustainable and efficient arrangements for people from third countries to enter and settle in Europe, work, become citizens and obtain international protection".

For this reason, the Committee calls for "particular focus on migrants who may be in danger of social exclusion such as the sick, people in mental distress or with disabilities, and the elderly, that is, those who are the greatest exponents of potential social exclusion in societies called to be host societies".

On these issues, the European Economic and Social Committee has observed that "social economy enterprises have managed to identify common principles of action (that is, inclusive, subsidiary and protects the most disadvantaged people), rising to the challenge of assisting migrants in a proactive manner and mobilising communities and the public in the areas concerned".

For this reason, the Committee called on the European Commission to "give priority to this form of enterprise when shaping EU policies and programming EU funding, particularly with regard to the design of the European Pillar of Social Rights, as stressed at both the Conference on Social Economy on 16 November 2017 and the European Summit on 17 November 2017, held in Gothenburg".

Points 1.5 to 1.11 of the Opinion provide different approaches worth noting for the purposes of this study, all of which are reproduced verbatim below:

"Social economy enterprises create good quality jobs in labour intensive sectors and, particularly, in sectors with a high proportion of non-European workers. In these social economy enterprises, the participatory dimension is important due to the security and protection

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<sup>9</sup> OJEU of 10 August 2018, C 283.

provided when an economic activity is set up, as they help people to leave the informal economy and undeclared work.

As a result, social economy enterprises have a fundamental role and are active in four key aspects of the migrant integration process: health and assistance; housing; training and education (in particular by raising awareness about the rights and duties deriving from settling in the European Union); and work and the active inclusion of migrants in the societies hosting them.

The EESC believes that in view of their specific tendency to gravitate towards the care sector and activities connected with the sharing economy and the circular economy, social economy enterprises can encourage and support not just the creation of new jobs, but also entrepreneurship and access to economic activities for migrants and refugees. The European Union must continue to promote social economy enterprises, since they are one of the drivers of migrants' development and inclusion, both professionally and socially. The Committee therefore asks the European institutions to prioritise policies geared towards social economy enterprises, a request it also made in its contribution to the Commission's 2018 work programme.

In the light of the evidence supporting the value of social economy enterprises in facilitating the inclusion of migrants in the labour market and society, the Committee calls on the EU, the Member States and the international community to establish employment incentives for social economy enterprises that deal with professional integration.

In view of the progress report on action in the area of migration, presented in November 2017, the Committee emphasises that a coordinated approach by the EU and the Member States is needed. Specifically, without an efficient entry mechanism, migrants will obviously continue to make inappropriate use of the international protection system, as has been observed in the last few years. The Committee vigorously stresses that instances of improper use of the international protection system do not warrant the restrictions introduced by some Member States on the possibility for third-country nationals to request asylum in their country.

The EESC encourages the Commission and the Council to step up coordination with migrants' countries of origin and transit countries in order to open up opportunities for better living conditions. This applies particularly to people who are on the move for economic reasons or as a result of famine or climate change, whilst the EU should pursue a more stringent foreign policy towards countries where wars, dictatorships and persecution cause people to flee.

The Committee would in particular urge the EU to tackle the issue of migration by addressing the root causes forcing people to move: poverty, conflict, discrimination and climate change. This will

inevitably require renewed commitment on the part of the European Union in the area of diplomacy and international development cooperation, including a full-scale extraordinary plan for investment in development cooperation”.

But it is not only the European Economic and Social Committee that holds views to the effect that social economy enterprises and, therefore, cooperatives, can be the ideal framework for the integration of these population groups, as they fit in with their cooperative philosophy and the equitable treatment that they must give to the people who are part of their structures.

The ILO,<sup>10</sup> under the Fair Recruitment Initiative, also identified the problems of abuse in the hiring of these groups and has made an effort to guarantee the fair hiring of all workers. This was noted by TATSIANA USHAKOVA, who stated that “for decades, the ILO has strived to ensure the fair recruitment of all workers”. Many of the provisions on recruitment were included in Annex I *Recruitment, placing and conditions of labour of migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer* and Annex II *Recruitment, placing and conditions of labour of migrants for employment recruited under government-sponsored arrangements for group transfer*, Convention No. 97 and Recommendation No. 86, respectively, whose main objective is to protect migrant workers, facilitate the control and regulation of recruitment and prevent unauthorised employment’.<sup>11</sup>

We believe that cooperatives, as social economy enterprises, are called upon to ensure the integration of these groups under conditions of equality and equity. In so doing, they will comply with their purpose, with their underlying values and principles, and with the development of the societies where they operate, of which they are part.

## **2. The need to protect the most vulnerable migrants: from social exclusion to labour market inclusion**

Migration is not a new topic. Certainly “since earliest times, humanity has been on the move”.<sup>12</sup> However, migration remains a highly topical issue. In the current context of globalisation, “these movements

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<sup>10</sup> ILO, 2004; ILO, 2014.

<sup>11</sup> Ushakova, 2021.

<sup>12</sup> Introduction of the New York Declaration for Refugees and Migrants, adopted by the United Nations General Assembly in 2016 (A/RES/71/1).

reach vast dimensions in absolute terms, to the point of becoming a defining trait of globalisation",<sup>13</sup> insofar as migration is "its cause, its integral part and its consequence, all at the same time".<sup>14</sup>

The causes of migrations are very diverse. "Some people move in search of new economic opportunities and horizons. Some do so to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Other migrate in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. Many move, indeed, for a combination of these reasons".<sup>15</sup> In any case, what can be said is that "the ultimate cause of these migration flows is the imbalance between their countries of origin [...] and their destination".<sup>16</sup>

While migration movements occur for very heterogeneous reasons, the truth is that, at present, the migration phenomenon is "substantively employment-related".<sup>17</sup> The prospect of achieving better opportunities or living conditions, mainly linked to developing a more successful career than in the place of origin, is one of the main motivations for current migrations. Migrant workers "represent the vast majority of international migrants".<sup>18</sup> Their contribution is twofold. Migrant workers contribute to the growth and development of destination countries through their work; and their countries of origin benefit from the remittances sent by these workers and from the skills they acquire in the places of destination.<sup>19</sup> Thus, migration can be a positive experience which can help to strengthen the capacities of both individuals and communities and, at the same time, benefit the places of origin, transit, and destination.<sup>20</sup>

Notwithstanding the foregoing, it must be borne in mind that the migration processes triggered for work reasons can also involve serious problems and even serious human rights violations. Many migrant workers can become victims of workplace abuse and exploitation in

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<sup>13</sup> Lantarón Barquín 2020, 54.

<sup>14</sup> Ushakova 2021, 128.

<sup>15</sup> Introduction of the New York Declaration for Refugees and Migrants, adopted by the United Nations General Assembly in 2016 (A/RES/71/1).

<sup>16</sup> Lantarón Barquín 2020, 56.

<sup>17</sup> *Ibidem*: 54.

<sup>18</sup> Consejo Económico y Social 2019, 19.

<sup>19</sup> ILO 2007: Preface.

<sup>20</sup> Report of the United Nations Human Rights High Commissioner. "Principles and practical guidelines on the human rights protection of migrants in vulnerable situations". 2018, Section 8.

their place of destination. Likewise, many particularly vulnerable migrants encounter barriers in their destination that prevent them from achieving their effective integration in the labour market and in society as a whole. Practices such as human trafficking and the smuggling of migrants have become aggravated, which has resulted in an increasing vulnerability of the migrant population.

Furthermore, the covid-19 pandemic is having a strong economic and social impact around the world and, therefore, is also affecting businesses and workers, some of whom are migrants.<sup>21</sup> Migrant workers, especially the most vulnerable, have been mainly affected by the crisis caused by the current pandemic, since most of them “are concentrated in sectors of the economy with high levels of temporary, informal or unprotected work, characterised by low wages and lack of social protection, including in care work, which in many countries is largely carried out by women migrant workers”.<sup>22</sup>

Migrants in vulnerable situations are thus “persons who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care”.<sup>23</sup> Specifically, their vulnerability to human rights violations “is the result of multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights”.<sup>24</sup>

The causes that produce this vulnerability may be traced back to the places of origin and be the trigger for the decision to move to another country.<sup>25</sup> Factors such as extreme poverty, armed conflicts, natural disasters, climate change and environmental deterioration, gender inequalities, family separation, unemployment, lack of decent work, lack of health services, inaccessibility to education, and difficult access to food and water, among others, lead many people to leave their countries of origin and move to another country in search of better life opportunities. In this scenario, migrants are especially vulnerable to suffering violations of their human rights throughout their migration process.

Likewise, the factors that originate—or accentuate—the vulnerability of migrants can also have an impact during transit and even at the place

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<sup>21</sup> ILO 2020a, 2.

<sup>22</sup> ILO 2020b, 1. Also see ILO 2020c, 1-2.

<sup>23</sup> Report of the United Nations Human Rights High Commissioner. “Principles and practical guidelines on the human rights protection of migrants in vulnerable situations”. 2018, Section 12.

<sup>24</sup> *Ibidem*, Section 13.

<sup>25</sup> *Ibidem*, Section 14.

of destination. Many migrants travel in hazardous conditions, suffer violence or abuse on their journey and, in many cases, move irregularly. Many people even turn to traffickers to enable them to move to another country and some become victims of trafficking in persons in the process. In addition, once they are in the country of destination, different factors may aggravate the vulnerability of migrants, such as their irregular situation, the denial of humanitarian assistance or situations of exploitation.<sup>26</sup>

In some cases, migrants who are forced to leave their countries of origin have access to international protection as refugees. Under the Spanish legal framework, Article 13.4 of the Constitution recognises the right of asylum of citizens from other countries and stateless persons as provided in the Convention Relating to the Status of Refugees, adopted in Geneva on 28 July 1951, and the Protocol Relating to the Status of Refugees, adopted in New York on 31 January 1967,<sup>27</sup> as well as in Law 12/2009, of 30 October, regulating the right to asylum and subsidiary protection.<sup>28</sup> Specifically, the term “refugee” applies to “any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, provided that there is no exclusion under Article 8 or denial or revocation under Article 9 preventing them from being protected” (cf. Article 1 of the 1951 Refugee Convention and Article 3 of Spanish Law 12/2009). However, not all asylum seekers obtain a favourable resolution. For example, in 2020, 60% of the resolutions on asylum applications in Spain were unfavourable, 35% granted protection for humanitarian reasons<sup>29</sup> and only 5% provided international protection<sup>30</sup> to applicants. The granting of asylum in Spain involves recognising the refugee status of the applicant, who will then have the right to

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<sup>26</sup> *Ibidem*, Section 15.

<sup>27</sup> Instrument of accession of Spain (Spanish Official Journal, 21 October 1978, number 252).

<sup>28</sup> Spanish Official Journal, 31 October 2009, number 263.

<sup>29</sup> Protection for humanitarian reasons entails the granting of a temporary residence permit to asylum seekers whose application has been denied at the request of the Interministerial Commission for Asylum and Refuge. Information retrieved from the Spanish Commission for Refugees (CEAR) website: <https://masquecifras.org/#glosario-razones-humanitarias> (last accessed on 27 May 2021).

<sup>30</sup> *Idem*.

reside in Spanish territory and engage in work, professional and business activities (cf. Article 34.3 of Organic Law 4/2000, of 11 May, on the rights and freedoms of foreigners in Spain and their social integration (hereinafter, Foreign Nationals Act)).<sup>31</sup>

Similarly, under Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence,<sup>32</sup> Spain grants foreign women who are victims of gender violence the rights, protection and security measures provided in applicable legislation, regardless of their administrative status (cf. Article 31 *bis* of the Foreign Nationals Act). Specifically, foreign women who have been victims of gender violence and have irregular administrative status in Spain may apply for a residence and work permit due to exceptional circumstances as soon as a protection order has been issued in their favour; or, failing that, if a report has been issued by the Public Prosecutor's Office that determines that there are signs of gender violence.

In addition, foreign nationals who have irregular status in Spain and are victims, injured or witnesses of an act of smuggling of migrants, illegal immigration, labour exploitation or labour trafficking, or exploitation in prostitution of people in need, may be exempted from administrative responsibility and not be expelled if they denounce the perpetrators or accessories to these crimes, and cooperate with the competent authorities by providing essential data or testifying in proceedings against the perpetrators (cf. Article 59 of the Foreign Nationals Act).

Under Article 59 of the Foreign Nationals Act, special protection is also granted to foreign persons who are victims of human trafficking and are in an irregular administrative situation in Spain. Therefore, when the competent administrative bodies consider that there are sufficient reasons to believe that a foreign person in an irregular situation has been a victim of trafficking, they must inform the interested person about the provisions applicable to their situation. They are also required to submit a proposal for a period of recovery and reflection to be granted before a resolution can be issued. Specifically, that period must be at least 90 days long, and must be sufficient for the victim to decide whether or not they wish to cooperate with the authorities in the investigation of the crime and the criminal process as appropriate. During this period, the victim of trafficking who is in an irregular situation is allowed to temporary stay and the competent authorities must ensure their subsistence, security, and protection.

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<sup>31</sup> Spanish Official Journal, 12 January 2000, number 10.

<sup>32</sup> Spanish Official Journal, 29 December 2004, number 313.

It should be noted, therefore, that the legislator grants special protection to some particularly vulnerable migrant groups. However, it is worth mentioning that in many cases, migrants do not fit into the protective legal framework described (they are not refugees, they are not victims of gender violence, they have not collaborated against organised crime, they are not victims of trafficking); but this does not mean that these migrants do not need specific protection. On the contrary, they are particularly vulnerable and require suitable protection from the public authorities.

A significant part of the most vulnerable migrant population is currently in a situation of social exclusion or, at least, at risk of social exclusion.<sup>33</sup> Among other possible effects, social exclusion is a barrier both to accessing the labour market and to gaining decent employment.

In general terms, the term "social exclusion" refers to "populations in a situation of social disadvantage in today's world".<sup>34</sup> More specifically, social exclusion is a process through which individuals or groups are wholly or partially excluded from full participation in the society within which they live.<sup>35</sup> As a consequence, a gap exists between the person and society that prevents the individual's social rights from being fully exercised.<sup>36</sup>

Based on this concept, social exclusion can be defined as a structural, dynamic, multifactorial, multidimensional, and heterogeneous phenomenon.<sup>37</sup> In particular, it is a phenomenon that is based on a certain social, political, economic, and cultural structure. It is also a dynamic and changing process made up of different phases and occurring in different degrees, which has varying impacts on each individual depending on a series of factors. In this regard, social exclusion is also characterised by being multifactorial, that is, by originating by very different causes, including lack of economic resources, unemployment, job insecurity, lack of social protection, disease, disability, ageing, low educational level or no formal education at all, poverty, illiteracy, loneliness or the absence of family ties.<sup>38</sup> Social exclusion is a broader concept than economic poverty, since it encompasses both its causes and effects.<sup>39</sup> It is also a multidimensional phenomenon that can be ap-

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<sup>33</sup> Solanes Corella 2008, 146.

<sup>34</sup> Charro Baena 2009, 630.

<sup>35</sup> Deakin and Thomas 1995, 129.

<sup>36</sup> Fernández Fernández and Álvarez Cuesta 2014, 196.

<sup>37</sup> Hernández Pedreño 2010, 29-31 and Subirats i Humet 2005, 11.

<sup>38</sup> Charro Baena 2009, 630 and Marco Fabre 2000, 14.

<sup>39</sup> Arrieta Idiakez 2017, 2 and Muñoz de Bustillo Llorente 2002, 94.

proached from different perspectives, including economic, social, labour, educational, health, residential, relational and participatory.<sup>40</sup> Based on all these characteristics, social exclusion can be described as a heterogeneous, multi-causal phenomenon that affects different individuals and groups, and takes place to different extents depending on the circumstances of each particular case.<sup>41</sup>

From a legal perspective, situations of social exclusion render the mandate contained in Article 9, section 2 of the Spanish Constitution<sup>42</sup> devoid of meaning. Under Article 9, "it is the duty of the public authorities to promote the conditions necessary to ensure real and effective freedom and equality for every individual and the groups of which they are part; remove any obstacles that prevent or hinder their full force and effect; and facilitate the participation of all citizens in political, economic, cultural and social life".

In order to redress this situation, it is essential to promote social integration and, especially, the social inclusion of migrants and their entry into the labour market by finding decent employment. Entry into the labour market "is the principle and pillar of their normalisation, since having an employment contract is the best safeguard against exclusion and the main mechanism for acquiring rights".<sup>43</sup>

This need is manifested in the provisions of section 2 of Article 2 *bis* of the Foreign Nationals Act, according to which all public authorities must exercise their immigration-related powers based on respect for certain principles, including the social integration of immigrants through transversal policies aimed at all citizens (cf. section c).

Within the Spanish legal framework, a source of reference in this regard is Law 44/2007, of 13 December, on the regulation of the regime for social enterprises,<sup>44</sup> which aims to "regulate the legal regime of social enterprises and establish a framework that promotes the entry into the labour market of people in a situation of social exclusion through this type of enterprise" (cf. Article 1.1). As stated in the Preamble of Law 44/2007, social integration processes should be closely linked to the relationship with the world of work. For the working-age population, employment is not only a source of income, but also the basis for a network of social relationships that facilitate their integration.

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<sup>40</sup> Hernández Pedreño 2010, 31.

<sup>41</sup> Laparra Navarro y Pérez Eransus 2008, 38.

<sup>42</sup> Spanish Official Journal, 29 December 1978, number 311.

<sup>43</sup> Aretxabala 2012-2013, 314-315

<sup>44</sup> Spanish Official Journal, 14 December 2007, number 299.

Social enterprises are part of the social economy, that is, "one of the most coherent and direct ways to contribute to the sustainability of social rights".<sup>45</sup> In general terms, the initiatives promoted by the social economy "represent common benefit, cooperation, [...] and provide an environment that is more receptive to the integration of certain groups of low-skilled immigrants or those with special difficulties, among others".<sup>46</sup>

Pursuant to Article 2 of Law 44/2007, social enterprises can employ people in situations of social exclusion who are unemployed and registered with the public employment services and have special difficulties to enter the labour market, and who are included in any of the following groups:

- a) Minimum income benefit recipients, or beneficiaries of similar schemes, and the members of the household unit who are beneficiaries of such schemes.
- b) People who are not eligible for the minimum income benefit, either because they do not meet the requirements in terms of period of residence or registration, or regarding the formation of the recipient unit, or because they have exhausted the period of entitlement to the benefit.
- c) Young people from Institutions for the Protection of Minors who are aged between eighteen and thirty.
- d) People with drug addiction problems or other addiction disorders who are in the process of rehabilitation or social reintegration.
- e) Prison inmates who are allowed to have a job, and whose employment relationship is not included in the scope of the special employment relationship regulated in Article 1 of Royal Decree 782/2001, of 6 July, which regulates the special employment relationship for people who are convicted and perform work in prison workshops, and the Social Security protection of those subjected to community service,<sup>47</sup> as well as parolees and former prisoners.
- f) Minors who are detention centre residents within the scope of Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors,<sup>48</sup> whose situation allows them to have a job and whose employment relationship is not included in the

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<sup>45</sup> Aretxabala 2012-2013, 317.

<sup>46</sup> *Idem*.

<sup>47</sup> Spanish Official Journal, 7 July 2001, number 162.

<sup>48</sup> Spanish Official Journal, 13 January 2000, number 11.

scope of the special employment relationship under Article 53.4 of the Regulation of Organic Law 5/2000, approved by Royal Decree 1774/2004, of 30 July,<sup>49</sup> as well as those who are in supervised freedom and former interns.

- g) Residents from alternative accommodation centres authorised by the Autonomous Regions and the cities of Ceuta and Melilla.
- h) People referred by prevention and social integration services authorised by the Autonomous Regions and the cities of Ceuta and Melilla.

Although migrants are not expressly mentioned in Law 44/2007, it can be concluded that those migrants in a situation of special vulnerability may be included within its scope and, therefore, this can be an effective way to promote their social integration and their entry into the labour market. As will be discussed in the following section, social enterprises can effectively contribute to the social inclusion of especially vulnerable migrants, given their inclusive business nature. However, establishing to what extent cooperatives can also operate as social enterprises is quite a different matter.

### **3. Associated workers' cooperatives as an instrument for the social inclusion of the most vulnerable migrants**

In line with the Opinion of the European Economic and Social Committee of 23 May 2018, on "Social economy enterprises as a driver for migrant integration", analysed in the first section, associated workers' cooperatives can be an instrument for the social inclusion and the entry into the labour market of the most vulnerable migrants.

It is also worth considering in this regard the statements made in ILO Promotion of Cooperatives Recommendation, 2002 (No. 193) of 20 June 2002. The Recommendation indicated that, as cooperatives operate in all sectors of the economy (section 1), measures should be taken to promote the potential of cooperatives in all countries, regardless of their level of development. The aim was to help their members, among others, to create and develop income-generating activities and sustainable decent employment. This would improve social and economic well-being, taking into account the need to eliminate all forms of discrimination; and establish and expand a distinctive, viable and dynamic social sector of the economy that includes cooperatives and re-

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<sup>49</sup> Spanish Official Journal, 30 August 2004, number 209.

sponds to the social and economic needs of the community (section 4, letters a, f, and h). Additional emphasis was placed on these measures when it was recommended that special steps should be adopted to enable cooperatives, as enterprises and organisations inspired by solidarity, to meet the needs of their members and the needs of society, including those of disadvantaged groups, with a view to achieving their social inclusion (section 5). Furthermore, it urged governments to adopt measures to facilitate cooperatives' access to investment finance and credit, including special provisions for disadvantaged groups (section 12, letter d). Closely connected with social inclusion, governments were advised that they should promote the important role that cooperatives play in transforming what are often marginal survival activities (sometimes referred to as the "informal economy") into legally protected work which is fully integrated into mainstream economic life (section 9).

In light of the above recommendations, an analysis follows of how associated workers' cooperatives can put into practice the social inclusion of the most vulnerable migrants and their entry into the labour market under the Spanish legal system.

The actions to be taken by associated workers' cooperatives with respect to this population group depend on various issues that affect any enterprises.

As a general rule, it should be assumed that these migrants generally have low professional qualifications, which in itself is a factor that will hinder their employability in a Western society in general and in Spain in particular. This is mainly related to how jobs have become increasingly technical and investment in R & D & i policies is on the rise, as a result of the ecological and digital transitions in the labour market promoted by EU institutions.<sup>50</sup>

Likewise, aspects such as the language, culture and religion of migrants may greatly affect their employment opportunities, due to the compatibility/incompatibility that they may have with certain jobs. Indeed, jobs that require working directly with the public are different from those that do not involve such interaction. Certain clothing cannot be used in some positions based on occupational risk criteria. Some jobs such as fishing or agriculture cannot allow for periodic delays, and therefore there can be no accommodation for religious reasons. These are just some of the examples that illustrate the above statements,

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<sup>50</sup> A clear example of the importance of these transitions can be seen in Commission Recommendation (EU) 2021/402, of 4 March 2021, on an effective active support to employment following the COVID-19 crisis (EASE) (OJEU of 8 March 2021, L 80).

which have been extensively covered by the case law of the Court of Justice of the European Union and the European Court of Human Rights.<sup>51</sup>

By virtue of the characteristics of the sectors of economic activity in which worker cooperatives operate, and in accordance with their individual specific purposes, the first cooperative principle of voluntary and open membership can become a powerful instrument, as cooperatives will be committed to a high level of service to members. This is, after all, the main reason for their existence and is in line with the 1995 International Cooperative Alliance Statement on the Cooperative Identity.<sup>52</sup> It must be understood that each associated workers' cooperative can only provide work for a limited number of members whose skills match the needs of the cooperative. Hence, in practice, cooperatives can set reasonable limits on membership acceptance.<sup>53</sup>

Regarding the employability of the most vulnerable migrants, several scenarios can be identified.

In the first place, several factors must be considered in the case of general associated workers' cooperatives, as their specific purposes do not include the integration or social inclusion of migrants. The size of the cooperative, in terms of the number of members necessary to carry out the cooperative activities, will clearly influence the real possibilities for action on the subject area of this study. The same can be said regarding the economic sector or special field in which the cooperative is engaged.

Thus, sectors such as fishing, agriculture, construction, the handling of food products, and care (within the so-called *silver economy*, which rarely employs national population) and are optimal for implementing the collective management mechanism of contracts at source regulated in Article 39 of the Foreign Nationals Act and in Title VIII of Royal Decree 557/2011, of 20 April (Foreign Nationals Regulation).<sup>54</sup> As its name indicates, this mechanism involves hiring foreign workers at source. It is based on a global estimate by the State of the foreign labour force required to cover job offers that cannot be met internally in the domestic employment market (made up of Spaniards; citizens

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<sup>51</sup> See, for example, the Judgment of the Court (Grand Chamber) of 14 March 2017, *Samira Achbita v. G4S Secure Solutions NV*, Case C-157/15; and the Judgment of the European Court of Human Rights of 15 January, on the Case of *Eweida and Others v. The United Kingdom*.

<sup>52</sup> Macpherson 1995, 24.

<sup>53</sup> Martínez Charterina 2016, 57.

<sup>54</sup> Spanish Official Journal, 30 April 2011, number 103.

of the European Union or Switzerland, Norway, Liechtenstein and the United Kingdom, and resident foreigners).<sup>55</sup> The great advantage of this mechanism is that it allows the migration flow to be organised in a manner consistent with the employment needs of the companies concerned, both in quantitative and qualitative terms.

Associated workers' cooperatives interested in hiring migrants through this mechanism are required to engage workers under employment contracts pursuant to the requirements of employment legislation. This is obviously also the case for nationals, as it is often the usual way to access a cooperative. Subsequently, depending on the needs of the cooperative, the employment relationship may become a corporate one. Those people who have previously worked as employees in the cooperative are obviously in a better position to become members in the future. This is demonstrated by the fact that the law allows the possibility of not requiring the probationary period initially provided for in cooperatives' bylaws for members if a person has previously been employed in the cooperative for a certain period of time that is usually, at least, equal to the probationary period, and that person meets the statutory requirements for admission as a member.<sup>56</sup>

There are cases in which cooperatives will only be able to hire migrants on a temporary basis, as required by the type of business they engage in, as is typically the case with seasonal agricultural work. In fact, the Foreign Nationals Regulation sets out residence and work visas for these cases, valid during the period when migrants are authorised to live and work in Spain, for up to 9 months (Article 174.4).

But when the business engaged in by cooperatives extends over time, cooperatives may operate within the scope of Article 167 of the Foreign Nationals Act and arrange the hiring of workers in their countries of origin, by issuing general job offers. Provided that they have the approval of the Ministry of Labour and Social Economy, they may also process job offers targeting specific individuals. This is intended to ensure that migrants hold stable jobs.

The jobs generated by the circular economy could also be considered, either on a cross-cutting basis, when cooperatives specialised in a certain line of business incorporate a related department, or when the cooperative is directly engaged in it.<sup>57</sup>

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<sup>55</sup> Cavas Martínez and Fernández Collados 2010, 179.

<sup>56</sup> This is established, for example, in Article 133.1 of Law 12/2015, of 9 July, on Cooperatives in Catalonia (Spanish Official Journal, 14 August 2015, number 194).

<sup>57</sup> The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Re-

It seems that the most appropriate mechanism for the integration of the most vulnerable migrants into "general" associated workers' cooperatives is through policies and schemes for economic inter-cooperation. A clear example of this is the concept of the cooperative group.<sup>58</sup> The entity leading the group may issue instructions to the cooperatives that make up the group to ensure that they reserve certain jobs for the most vulnerable migrants; and it may also direct them to establish commitments for a periodic contribution of resources based on how their business fares or on the profit and loss accounts of each of the cooperatives, in order to create a fund for the employability of the most vulnerable migrants. This employability can be expressly linked to specific training for access to cooperative jobs, and to the promotion and development of cooperatives or new activities that enable the entry of these migrants into the labour market. These schemes can be useful to regularise the status of many migrants who are in an irregular administrative situation by creating so-called social ties in Spain. To this end, cooperatives should provide them with an employment contract of no less than one year, in accordance with the provisions of Article 124.2.b) of the Foreign Nationals Regulation.

These schemes for economic inter-cooperation are also important to implement the sixth cooperative principle, relating to cooperation between cooperatives, in the sense of strengthening joint structures at regional, national, and international levels.<sup>59</sup> Many cooperatives extend their mandate to third countries, thus enabling their economic and social development. In this way, they contribute to realise the idea that the best migration policy is the one that generates well-being and social peace in the countries of origin, to the point of discouraging the population from leaving.

On a different note, as indicated earlier, associated workers' cooperatives can also include the integration or social inclusion of migrants among their specific purposes. There are several types of these workers' cooperatives in place.

Firstly, social integration cooperatives are largely composed of groups that have difficulties in accessing the labour market, including

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gions, of 11 March 2020, on a new Circular Economy Action Plan for a cleaner and more competitive Europe [COM (2020) 98 final], expressly refers to the potential of the social economy (to which cooperatives belong) as a pioneer in job creation linked to the circular economy (see p. 17).

<sup>58</sup> In this regard, see Embid Irujo, Alfonso Sánchez and Vázquez Pena 2019, 1242-1243.

<sup>59</sup> De Miranda 2017, 130.

people in a situation of social exclusion in the broad sense, and therefore, the most vulnerable migrants. What is of interest here is that these cooperatives are legally established as associated workers' cooperatives when their activities involve organising, distributing, and marketing products and services resulting from the work of their members.<sup>60</sup> Their viability can be improved by having public organisations participate as members.<sup>61</sup>

Secondly, associated workers' cooperatives can also obtain the qualification of a social initiative cooperative when they operate on a non-profit basis and their purpose involves performing business activities intended to employ socially excluded people and, in general, addressing social needs not met by the market.<sup>62</sup> As they pursue general interest purposes, they may also obtain a public utility status.<sup>63</sup> This means that they are entitled to some exemptions, tax savings, subsidies and other economic, fiscal and administrative benefits.

Thirdly, some regulations on cooperatives in Spain govern specific forms of associated workers' cooperatives that may prevent many people (especially the most vulnerable migrants) from working in the informal economy. For example, Law 4/1999, of 30 March, on Cooperatives of the Autonomous Region of Madrid,<sup>64</sup> governs street trade cooperatives (see Article 108); and Law 11/2019, of 20 December, on Cooperatives in the Basque Country, sets out the provisions applicable to business development cooperatives (see Article 135). The latter are characterised by enabling members to be entrepreneurial, offering them professional guidance, facilitating specific business skills for engaging in the activity in question and tutoring that activity during the first years.

Finally, there is a third way to enable the entry of the most vulnerable migrants into the labour market: an associated workers' cooperative that is basically a social integration cooperative and at the same time a social enterprise in the terms of Law 44/2007, of 13 December.

The main issues to consider in order for this arrangement to succeed are the following: (a) respecting the minimum percentage of peo-

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<sup>60</sup> Fajardo García 2013, 266.

<sup>61</sup> The latest rule issued in Spain was Law 11/2019, of 20 December, on Cooperatives in the Basque Country (Spanish Official Journal of 16 January 2020, no. 14), which regulates this form of cooperative in Article 133 and following.

<sup>62</sup> Their non-profit nature should be qualified, as it was under Decree 61/2000, of 4 April, which regulated non-profit cooperatives in the Basque Country (Basque Official Journal of 3 May 2000, no. 82) (see Article 2).

<sup>63</sup> Rodríguez González 2017, 674-675.

<sup>64</sup> Spanish Official Journal, 2 June 1999, number 131.

ple in the process of entering the labour market set by Law 44/2007, considering that they will participate through temporary itineraries under an employment contract; (b) ensuring that this minimum percentage is included within the maximum number of employment contracts that the cooperative may enter into by law; and (c) respecting the limit of operations with non-member third parties when engaging in the cooperative's business.

The advantages of this mixed arrangement lie in that, in accordance with Law 9/2017, of 8 November, on public sector contracts,<sup>65</sup> one or more of the lots in public procurement procedures may be reserved for social enterprises (see Article 99 and Fourth Additional Provision). Regarding the process involved in awarding public contracts, the qualitative criteria to be taken into account include subcontracting with social enterprises (see Article 145); and this is also part of the tie-breaker criteria for cases when there is a draw between two or more bids after applying the award requirements, as the bids submitted by social enterprises will be given priority (Article 147).

Undoubtedly, this is a way for the public authorities to promote the work of the people who are employed by social enterprises. However, as indicated in the second section of this paper, the problem is that, according to the legally determined concept of social exclusion held by Law 44/2007, migrants may only work for social enterprises if they are minimum income benefit recipients or if they are not eligible for this benefit according to the criteria established by law.

Nevertheless, the public authorities can establish special conditions for the execution of the contract, provided that they are linked to the purpose of the contract, which also benefit the associated workers' cooperatives mentioned before. These include social or employment conditions aimed to promote the employment of people who have most difficulty in accessing the labour market. Under Article 202 of Law 44/2007, social enterprises will be given special priority in these cases.

#### 4. Conclusions

First. From a theoretical-conceptual point of view, cooperatives constitute an adequate formula for the incorporation and integration into the labor market of migrants, more specifically the most vulnerable ones and at potential risk of social exclusion, based on the first and

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<sup>65</sup> Spanish Official Journal, 9 March 2018, number 272.

seventh cooperative principles, related to the voluntary and open adhesion of the partners and to the interest in the community, respectively.

Second. The first and seventh cooperative principles, interpreted in the light of article 129.2 of the Spanish Constitution and article 4.c) of Law 5/2011, of March 29, on Social Economy, make it possible to specify the constitutional mandate regarding the promotion of cooperatives, by setting as one of their objectives the achievement of the sustainable development of the communities in which they are located. More specifically, the materialization of the aforementioned objective implies the labor and social integration of the most vulnerable migrants and those at potential risk of social exclusion. Hence, it is justified to encourage cooperatives that focus on the insertion of these people, as stated in the Opinion of the European Economic and Social Committee on «Social economy enterprises as a driver for migrant integration », dated May 23, 2018.

Third. The socio-labor integration of migrants in terms of decent work prevents them from being victims of labor abuse and exploitation, and of phenomena such as human trafficking or smuggling of migrants. Certainly, the socio-labor integration of these people is essential to prevent them from remaining in an irregular administrative situation, which is precisely one of the circumstances that favors the aforementioned phenomena. Without a doubt, the international protection mechanisms aimed at the most vulnerable migrants, such as refugees, victims of gender-based violence, migrants who collaborate against organized networks and victims of trafficking, facilitate the transition towards social and labor insertion. But aside from these mechanisms, it should not be forgotten that, in accordance with the Foreign National Act, the Public Administrations must ensure the social integration of all migrant persons, especially if we take into account that an important part of the most vulnerable migrant population is currently in situation of social exclusion or, at least, at risk of social exclusion.

Fourth. Associated work cooperatives, based on ILO Recommendation no. 193, constitute an adequate formula for the social and labor inclusion of the most vulnerable migrants.

Fifth. Associated work cooperatives that are not destined to this purpose will be adequate for the employability of this group depending on several factors, which are, mainly, the size of the cooperative, in terms of the number of members necessary to carry out the cooperative activity, and the economic sector of the cooperative. Especially in sectors where

the national population is scarce, these cooperatives can opt for the collective management of contracts at origin contemplated in the Foreign National Act. In this way, the first hiring of these people by the cooperative will be of a labor nature and, subsequently, the contractual novation should be carried out to convert them into partners. The economic inter-cooperation formulas can also motivate the employability of this group of people in these cooperatives. Thus, the head entity of the group, on the one hand, can give instructions to the cooperatives that constitute the group in order to reserve certain jobs for the most vulnerable migrants; and, on the other hand, can give instructions to set commitments for the regular contribution of resources calculated according to the business evolution or income statement of each of the cooperatives, in order to provide a fund aimed at the employability of the aforementioned group.

Sixth. Among the associated work cooperatives that have the integration or social inclusion of migrants among their specific purposes, there are different modalities. In particular, these are social integration cooperatives and cooperatives that have obtained the qualification of social initiative.

Seventh. Some regulations on cooperatives in Spain regulate specific modalities of associated work cooperatives that may prevent many people, and especially the most vulnerable migrants, from providing services in the informal economy. This is the case of the itinerant trade cooperatives in Madrid and the business promotion cooperatives in Euskadi.

Eighth. It is possible that an associated work cooperative, which will be a social integration cooperative, is constituted, at the same time, as an insertion company. The advantage of this mixed formula is that Law 9/2017, of November 8, on public sector contracts, contains certain measures to prioritize the hiring of insertion companies.

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