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Considerations for the regulation of a flexible type of co-operative society: co-operative values and principles as limits to the autonomous will of the members

(Consideraciones para la regulación de un tipo societario flexible de sociedad cooperativa: los valores y principios cooperativos como límite de la autonomía de la voluntad de los socios)

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Summary: 1. Introduction 2. On the origins and evolution of the modern co-operative movement. 3. Co-operative models: the need to regulate a flexible model, with each society being governed by its own articles of association. 4. Co-operative values and principles as limits to the autonomous will of the members. 5. References.

Sumario: 1. Introducción. 2. Sobre los orígenes y la evolución del movimiento cooperativo moderno. 3. Los modelos cooperativos y la necesidad regular un modelo flexible a través de la autorregulación estatutaria. 4. Los valores y principios cooperativos como límite de la autonomía de la voluntad de los socios. 5. Bibliografía.

Abstract: The aim of this paper is to argue that, as there is only one type of enterprise for conducting economic and social business under the co-operative model (unlike the various types of corporations available), there is a need for the different legal systems to regulate a co-operative type of company which overcomes the existing models of co-operativism (the classic model, also known as social, and the economic model, also known as functional). An organisational structure needs to be designed that is suitable for developing a co-operative project more in line with either the economic model or with the social model or based on an SME or on a large cooperative, according to the members' needs and objectives. This involves articulating a flexible

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model of legal regulation of the co-operative type of society, in which co-operatives themselves can regulate themselves through the provisions approved by their members and included in their articles of association. They must only be constrained by co-operative values and principles. These are sufficiently broad to allow the formation of a cooperative society as a genuinely participatory democratic structure, free from restrictions from the past, open, attractive (from the point of view of its usefulness) and in line with the times, in which its members can see their needs met and their views represented, on the basis of mutual help. In my view, opposition to this approach has no legal or logical basis, but can only serve the interests of those who seek to avoid unwanted competition. Unless this approach is adopted, the co-operative model could be marginalised, to the benefit of truly capitalist options.

Keywords: regulatory flexibility; autonomous will; cooperative principles and values.

Resumen: El objetivo que se persigue con este trabajo es defender, dado que, en nuestro ámbito, a diferencia de en el de las sociedades capitalistas, solo existe un único tipo societario para desarrollar una actividad económica y social bajo el modelo cooperativo, que es necesaria la regulación por los distintos ordenamientos de un tipo societario cooperativo en el que se superen los modelos del cooperativismo (el clásico o social y el economicista o funcional) y en el que se diseñe una estructura organizativa apta para la constitución, bajo la normativa de un mismo ordenamiento, de un proyecto cooperativo más acorde con el modelo economicista o con el modelo social o bien basado en una PYME o en una cooperativa de gran tamaño, a criterio de sus miembros y de sus necesidades y objetivos. Y que ello pasa por articular un modelo flexible de regulación legal del tipo cooperativo, donde las propias cooperativas puedan autorregularse a través de las cláusulas estatutarias aprobadas por sus socios, que deben tener como único límite el respeto a los valores y principios cooperativos, que son suficientemente amplios para permitir la constitución de una sociedad cooperativa como auténtica estructura democrática participativa, ajena a las restricciones del pasado, abierta, atractiva (desde el punto de vista de sus utilidades) y acorde con los nuevos tiempos, en la que sus miembros puedan ver satisfechas sus necesidades y reflejadas sus visiones, sobre la base de la ayuda mutua. A nuestro juicio, la oposición a este planteamiento no tiene sustento jurídico ni lógico, sólo puede encuadrarse en el interés de evitar molestas competencias. De lo contrario, el modelo cooperativo podría quedar condenado a la condición de marginal, en beneficio de las opciones verdaderamente capitalistas.

Palabras clave: flexibilidad regulatoria; autonomía de la voluntad; principios y valores cooperativos.

1. Introduction

The aim of this paper is to argue the advisability of ensuring that the different co-operative legislations regulate a flexible type of corporate organisation, in which the autonomous will of the members plays a critical, leading role, provided that it does not contradict the values and mandate contained in the co-operative principles.

The first issue to be considered is that, unlike commercial companies, there is only one type of corporate organisation for engaging in economic and social activity under the co-operative model.

In practice, many existing legal provisions are suitable for large co-operatives, which is often the type of organisation on which the legislator focuses, even though the co-operative movement is also expanding among SMEs and even micro-enterprises (e.g. GADEA, 2016:1288). It is proposed here that the solution to this problem is to adopt flexible regulatory provisions.

Secondly, it is worth noting that, while co-operatives were born in the wake of a class-biased movement, their social role has evolved and, they have become a technical instrument that can be useful to various social classes.

Co-operatives today should be freed from the fundamental concerns of being structured in a capitalist sense. In this way, subjects should have the opportunity to use them to engage in any lawful economic activity on the basis of a strictly personal democracy, not based on the capitalist participation of each member.

In order to meet this challenge and to enable co-operatives to play an important role in the economy, it is necessary to provide them with a flexible legal framework that allows them to operate in the market with the same opportunities as the rest of the businesses with which they must compete.

The various applicable laws should therefore make it possible to set up an organisation that is externally similar to a profit-making company, while remaining true to co-operative values and principles, in particular, solidarity and social purposes (DIVAR, 1985: 48).

The key is thus overcoming the existing models of co-operativism: *the classical (or social)* and the *economics-based (or functional)*. The formation of a co-operative society should have a genuinely participatory democratic structure in which its members can see their needs satisfied and have their views represented, based on their autonomous will and subject to the limits set by co-operative values and principles (DIVAR, 1990: 87). Otherwise, the co-operative model could be marginalised, to the benefit of truly capitalist options.

In the following pages I will first discuss the origins and evolution of the co-operative movement and the existing co-operative models. This will be followed by discussion focused on the limits or red lines to self-regulatory articles of association, based on the autonomous will of the members, which should only be set by the provisions contained in the co-operative values and principles.

2. On the origins and evolution of the modern co-operative movement

As is well known, the modern co-operative movement was born in the second half of the 19th century as a reaction of the working classes to the excesses of the capitalist system of the time. It was first aimed at correcting and then overcoming the capitalist system, through the co-operativisation of the economy and society (the utopia of co-operation is most widely represented by C. GIDE and the Nîmes School; on this question, see LAMBERT, 1970: 121; and DRIMER, 1981: 267 ff).

The Rochdale Society of Equitable Pioneers was the forerunner of the modern co-operative movement. It began as a consumers' co-operative more than a century and a half ago, and formulated and successfully implemented the basic principles that characterise this type of organisation to this day. It was formed in the town of Rochdale (Manchester, England) on 28 October 1844. Faced with the undignified working conditions typically found in the factories at the time of the Industrial Revolution, several textile workers (27 men and one woman) came together and with great effort raised twenty-eight English pounds (one pound per member). They started their activities on 21 December 1844 by opening a shop at 31 Toad Lane, Rochdale. At first, they only supplied basic food items (flour, oatmeal, sugar and butter) and were open one afternoon a week. Contrary to the expectations of local shopkeepers, the business was a success from the start and within three months they were open five days a week and gradually added new members. Soon after, they sold all kinds of household supplies and started manufacturing products. The organisation itself acquired housing for its members and land to provide work for unemployed or poorly paid members, without ever forgetting the necessary education of its members. Before long, consumer co-operatives, imitating that of the Pioneers, were springing up all over England and later in various countries.

However, the Rochdale co-operative did not emerge in isolation, but was clearly influenced by the theories of the Welshman Robert

Owen (1771-1858), one of the main precursors of co-operativist ideas and socialism at the time (HOLYOAKE, 1973: 43), and by previous failed experiments carried out in different parts of England. The Pioneers considered the reasons for these failures, which included allowing buying on credit, members' lack of solidarity and sense of belonging to the organisation, and the poor distribution of profits, and learnt some lessons from them to design their society. Unlike previous co-operatives, the Rochdale venture was initiated by the members themselves, some of whom were certainly enlightened and had worked with local charities.

Against this background and influence, the pioneers established a set of fairly rigorous organisational operating standards, from which the so-called Seven Rochdale Principles² can be drawn. The observance of these principles of the internal working of the organisation was critical to its success. Given their clarity and simplicity the co-operative movement spread to the rest of the world, which took them as dogmas.

Even today, these principles, subject to some necessary adaptations, are the basis of the Co-operative Principles contained in the Statement on the Co-operative Identity of the International Co-operative Alliance (ICA).³ These Principles were last reformulated in 1995, on

² 1. Open membership; 2. Democratic control; 3. Distribution of surplus money; 4. Limited interest on capital; 5. Political and religious neutrality; 6. No buying on credit; 7. Promotion via education.

³ The ICA is an independent non-governmental organisation that brings together, represents and supports co-operatives worldwide (230 members from 88 countries). It was founded in London in during the first international co-operative congress of the fledgling co-operative movement at the request of the British Co-operative Union. Since its foundation, the ICA has been recognised as the most important international voice for the defence, promotion and identification of co-operativism. In 1982 its headquarters moved from London to Geneva, Switzerland. The current ICA articles of incorporation (last approved by the General Assembly held on 6 June 2008 and developed by a Regulation of the same date) contain the organisation's basic rules of operation and organisational structure. As stated in Article 1 of its Articles of Association, the main purposes of the ICA are: a. to promote the world co-operative movement, based upon mutual self-help and democracy; b. to promote and protect co-operative values and principles; c. to facilitate the development of economic and other mutually beneficial relations between its member organisations; d. to promote sustainable human development and to further the economic and social progress of people, thereby contributing to international peace and security; and e. to promote equality between men and women in all decision-making and activities within the co-operative movement. The ICA periodically holds Co-operative Congresses, the theme of which is decided by the ICA General Assembly (thirty-two Congresses have been held to date). The ICA carries out important work in delineating the contours of the co-operative phenomenon. To do so, within some of these world congresses, it formulates and revises the list of *principles* and *co-operative values* which, once approved by the ICA Assembly, make up the ICA

the occasion of the 31st World Co-operative Congress, held in Manchester, very close to Rochdale.

Having said that, it should be noted that the original comprehensive concessions which attracted such illustrious co-operativists in the 19th century gradually gave way to more realistic visions. Moreover, at present, the co-operative model is one of the options for operating within the private economy system, subject to a geographical factor. While the co-operative principles highlight the significant consistency across co-operatives, namely, the objective of satisfying needs through a jointly owned and democratically managed enterprise, regardless of location, it is no less true that the role played by co-operatives is far from consistent across the board.

In general, it could be said that in less developed countries the driving force for the co-operative movement is reacting to the imbalances of the system, and therefore a co-operative is often ultimately a marginal corrective to the system. In more developed countries, however, a more enabling approach is more widespread, which does not exclude the original functions, but is very much focused on strengthening and appropriately articulating co-operative development. This is not aimed at changing or replacing the system, as advocated in some conceptions of utopians of economic co-operation, but at entrusting it with an integrating role within it (VERRUCOLI, 1965: 102 ff).

3. Co-operative models: the need to regulate a flexible model, with each society being governed by its own articles of association

Two main conceptions of co-operativism have been traditionally identified in comparative research, which are reflected in the different ways in which this phenomenon has been regulated in legislation. VERRUCOLI (1958: 4 ff.) explained the main pathways in the historical evolution of co-operativism in different European countries, by establishing the differences between a sociological model, an economic model and a mutualist model, a thesis which has been followed and developed by his disciple DABORMIDA (1989: 5-68). In Spain, PAZ CANALEJO (1991: 59-84) and PANIAGUA (2013: 159 ff) have provided further details on the economic (or functional) model and the social (or classical) model (pp. 176-180). Within the *economic model*, which historically emerged

Statement on the Co-operative Identity from time to time. In 2013, the ICA approved a major document entitled *Blueprint for a Co-operative Decade*, which outlines an ambitious strategy to make co-operatives the fastest-growing business model by 2020.

in Germany, inspired by the SCHULZE-DELITZSCH principles, the main purpose of co-operatives is the promotion of the economic interests of their members. This aim is articulated on the basis of a democratic structure, the establishment of a variable capital structure open to the entry of new members, accompanied by a very flexible economic regime and a legal framework close to that of corporations. The classic or social model is based on French legislation. Whereas it is more restrictive in legal terms, in that it limits to a greater extent the co-operative's scope of action as a company operating in the ordinary course of business, and it is broader in terms of satisfying the interests of its members. In addition to satisfying their economic interests, it pays special attention to covering other types of interests (social, educational, training, etc.) and those of the community in which the co-operative conducts its business.

Whether a legal system subscribes to one model or the other is not a simple matter. The economic model is used in Germany and other neighbouring countries, such as the Netherlands, Denmark, Austria, Switzerland, Sweden and Finland. It inspired the European legislator in the drafting of the Statute for a European Co-operative Society, basically made up of Council Regulation (EC) No. 1435/2003 (SCE Regulation) (VICENT CHULIÁ, 2003: 51 ff and 2013: 90 ff). Furthermore, MARTÍNEZ SEGOVIA (2003: 67 ff) considered that the Regulation follows a halfway model essentially based on mutual societies.

While it is true that the SCE Regulation is based on an economic model, in which it is difficult to find in its text any trace of the co-operative principles of the ICA,⁴ it is so permeable to the national rules of

⁴ The omission of the co-operative principles in the SCE Regulation, which is the legal underpinning of this European supranational instrument created to facilitate the cross-border activities of cooperatives, contrasts with the content of its Recitals. Recitals 7 and 8 refer to the fact that cooperatives are governed by particular operating principles that are different from those of other economic agents, and specifically mention the principles of democratic structure and control, distribution of the net profit on an equitable basis and the primacy of individuals over capital. Recital 10 of the Regulation recognises that the SCE must comply with a number of principles (mutual benefit, shared control, profits according to participation, etc.). However, all these principles are not explicitly included in the Articles of the SCE Regulation, and only the principle of open and voluntary membership (1st Principle ICA) (Arts. 14-16), democratic control (2nd Principle ICA) (Arts. 58 and 59), and economic participation (3rd Principle ICA) can be identified. The latter is specifically developed in Art. 1(3) (mutual and participatory character), Art. 65 (legal reserve), Art. 66 —(dividend), Art. 67 (allocation of surplus and limited return on equity capital) and Art. 75 (distribution of assets in the event of winding-up). However, looking at the details of all these Articles, exceptions and qualifications can be found to most of these principles (plural voting, existence of investment

the States where the society is domiciled, and to the co-operative's articles of association, that the end result can be either a highly economics-based SCE in the Germanic style or a more mutual-oriented society, in a purer or more classical sense of co-operativism.

The social model is characteristic of French legislation and is used in Belgium, Portugal, in some Canadian provinces such as Quebec, and in Latin American legislation.

Nevertheless, in other legal systems, adherence to one model or the other has not been a constant. This has been the case in Spain, where co-operative legislation has undergone different phases and can be linked to either model at different times; it has even been considered to be a mixed model, as it includes characteristics from both approaches.

While Spain, like most Latin American countries, has mostly followed the social model, there has been a clear move towards the economic conception of co-operativism since the last quarter of the 20th century. This trend had been timidly initiated by the General Co-operatives Act of 1974, was then continued by the General Co-operatives Act enacted in 1987, was much more actively promoted by the Basque Country Co-operatives Act and, albeit less rigorous than the Basque law, also by the Spanish Co-operatives Act of 1999.

In light of the lack of a unified conception of co-operativism and that the models outlined above⁵ should not be considered incompatible, this paper is focused on the argument that, in order to avoid the marginalisation of co-operatives in favour of capitalist types of company, it is necessary to regulate a type of co-operative under a single legal framework that is suitable for the formation of a basic co-operative; one that is more in line either with the economic model or with the social model, according to the members' needs and objectives, where the choice is left to the discretion of its members.

members, possibility of having alternative systems to distribution in the event of winding-up, etc.). Therefore, there is only a limited obligation to abide by them. The SCE Regulation contains no provisions about the principle of autonomy and independence (4th ICA Principle), the principle of education, training and information (5th ICA Principle), the principle of co-operation among co-operatives (6th ICA Principle) and the principle of concern for community (7th ICA Principle), which does not mean that it cannot be regulated through the articles of association in order to model an SCE as a more social co-operative.

⁵ For details of the legal regime of cooperatives in most comparative law systems, see CRACOGNA-FICI-HENRY, 2013. Restricted to the European Union, see MONTOLIO, 2000 and FICI, 2013.

This involves articulating a flexible model of legal regulation of co-operative societies where they can self-regulate through the articles of association approved by their members. They would only be restricted according to co-operative values and principles. However, these are sufficiently broad to allow for the formation of a society mainly aimed at promoting the economic and social activities of its members and the satisfaction of their needs, with their active participation, on the basis of mutual help.

Based on this approach, the co-operative values and principles should now be analysed, since they constitute the limits of the autonomy granted by the articles of association and, therefore, of co-operative's members self-regulating ability to meet their common economic and social needs and aspirations.

4. Co-operative values and principles as limits to the autonomous will of the members

The co-operative principles, formulated and revised by the ICA from time to time, are flexible guidelines that define the democratic nature of co-operatives, the role of the different stakeholders and the way in which surplus is distributed.

The co-operative principles need to be accepted as criteria to be observed and complied with by co-operative societies and, therefore, must be taken as a reference to determine the limit of the principle of the autonomous will of their members.

The principles determine the essential traits that make co-operatives different from other types of enterprise and make the co-operative movement valuable. Therefore, they play a vital role as core foundations for these organisations, although their legal impact is subject to the extent to which they have been incorporated into the respective domestic legal systems. This significantly determines their legal effectiveness as corrective criteria for possible *contamination* of the relevant legislator. Therefore, it is important that internal rules in the different legal systems are drafted in a flexible way, emphasising the self-regulation of co-operative members, while also taking the provisions contained in the co-operative values and principles as limits (on the legal value of the principles, TRUJILLO DÍEZ, 2000: 1333 ff).

As noted above, the current version of the co-operative principles (the two previous ones were approved at the 1937 Paris and 1966 Vienna Congresses) is contained in the International Co-operative Al-

liance Statement on Co-operative Identity, adopted at the ³ 1st Congress held in Manchester in 1995 to commemorate the centenary of the ICA.

Between 1990 and 1992, under the leadership of SVEN BÖÖK, ICA members and independent researchers extensively discussed and analysed the nature of co-operative values. The results of this study were reported in the book entitled *Co-operative Values in a Changing World*, written by BÖÖK and published by the ICA. This book, together with *Co-operative Principles: Today and Tomorrow*, written by W. P. WATKINS, are the pillars on which the Statement on the Co-operative Identity is based.

In addition to the 1995 statement, a document entitled *Guidance Notes to the Co-operative Principles* was developed by the ICA Principles Committee to address the need for more detailed and updated guidance on the application of the Principles in governance and on the business of co-operatives in the 21st century. It was published by the ICA in 2015 was.

As noted by JEAN-LOUIS BANCEL, chairman of the ICA Principles Committee, this guide and the successive ones to be published are necessary. In his own words:

The Principles are not inscribed in stone, nor are they rigid rules to be followed; they are the sound ethical principles to be applied with vision and proportionately according to the national economic, cultural, social, legal and regulatory context and particularities within which each co-operative enterprise operates. A co-operative is the only form of entrepreneurship organisation with such an international agreed and recognised definition, values and principles. The Principles make a valuable difference.

The *Guidance Notes* provide detailed guidelines and advice on the practical application of the Principles for the governance and management of a co-operative enterprise. While co-operative values are immutable, the application of co-operative principles needs constant re-evaluation to provide support in any economic, social, cultural, environmental and political changes and challenges involved.

On co-operative values, the Alliance Statement noted that co-operatives are based on the values of *self-help*, *self-responsibility*, *democracy*, *equality*, *equity* and *solidarity*. Furthermore, it stresses that, in the tradition of their founders, co-operative members (without ruling out the possibility that they may be found in other types of organisations) adopt the ethical values of *honesty*, *openness*, *so-*

cial responsibility and *caring for others*. Co-operative principles can be said to be guidelines by which co-operatives put their values into practice.

The ICA lists seven co-operative principles: 1. Voluntary and open membership; 2. Democratic member control; 3. Members' economic participation; 4. Autonomy and independence; 5. Education, training and information; 6. Co-operation among co-operatives and 7. Concern for the community.

The first three principles are primary principles and are considered to be substantial to the co-operative movement and address the *internal dynamics* typical of any co-operative. The last four, described as secondary, address both the *internal functioning* and the *external relations* of the co-operatives.

A starting point for the analysis of the principles will be the formulation contained in the 1995 ICA Declaration. Each of these will then be discussed, with special emphasis on the mandates that are particularly important for the legislator:

1. *Voluntary and open membership*: "Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination".

The first principle states that "co-operatives are voluntary organisations, open to all persons *able to use their services* and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination" deserves special attention.

As highlighted in the *Guidance Notes to the Co-operative Principles*, the use of the expression "able to use their services" is intended to highlight that co-operatives are organised for specific purposes and that, in many cases, they can only effectively serve a certain type of member or a limited number of members. For example, fishing co-operatives primarily serve those involved in commercial fishing, usually in a given port or area; co-operative housing can only house a certain number of members; worker co-operatives can only employ a limited number of members. In other words, there may be understandable and acceptable reasons why a co-operative might impose a limit on membership. Apart from this, a co-operative should not impose any limits on membership. Consumer co-operatives for food distribution, insurance or banking are open to all consumers of these services or of the locations where they operate.

Furthermore, this statement requires that membership be open to all persons *without discrimination*, irrespective of any personal characteristics, thus reaffirming the commitment of co-operatives to the recognition of the dignity of all individuals and preventing an internal rule from regulating the eligible members of a co-operative that might discriminate against certain persons or groups of persons.

2. *Democratic Member Control*: "Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner."

Putting democratic governance into practice in co-operatives, as in any human organisation, is not a simple task, as it goes beyond the mere act of voting and requires an organisational structure; within it, the powers of the assembly and of the executive body must be adequately delimited controlled.

This varies according to the size of each co-operative and the nature of its activity. In fact, it can be said that there is no particular way of organising governance; it is therefore left to each organisation to structure its own governance through its articles of association, which must be granted broad autonomy by law. However, the resolutions to be adopted must ensure real and effective democratic control by the members, rather than favouring a theoretical democratic system controlled by a manager or by a set of administrators who perpetuate themselves in office.

The *Guidance Notes to the Co-operative Principles* emphasises that democratic control by members must be protected by co-operative legislation and by the society's articles of association. These regulate such matters as revocation, accountability and removal from office by members at large (through due democratic process) of elected representatives who take advantage of their position or fail to fulfil their duties as elected representatives; and the duty of elected representatives to report regularly to the other members and to be accountable for their work and actions performed in office.

Furthermore, to ensure continuous democratic renewal in co-operatives, it is recommended to establish fixed terms of office for each position, for example, of three or four years, and require that one third or one quarter of the elected governing

board retire and be re-elected every year, in order to strike a balance between democratic renewal and the maintenance of experience.

For this purpose, it is good practice to set term limits for elected officers, setting a maximum number of years for the elected member to serve. Such restrictions have become the norm for non-executive directors in listed companies and co-operatives should set an example by adopting them as good democratic practice.

The rule (one member, one vote) for primary co-operatives is clear, but the interpretation of the last subparagraph raises more doubts. The Alliance Report (which explains the reasons that have led to the adoption of the Statement on the Co-operative Identity) clarifies that the rule for voting on co-operatives at other levels is open-ended. The co-operative movements themselves are considered to be best able to define what is democratic in a given circumstance. It is even recognised that, in many secondary and tertiary co-operatives, proportional voting systems have been adopted to reflect the diversity of interests, the number of members in associated member co-operatives and the commitment among the co-operatives involved. However, it has also been pointed out that such arrangements must be reviewed periodically and that it is normally unsatisfactory if smaller co-operatives in such situations have so little influence that they feel virtually disenfranchised.

The problem that arises with regard to compliance with this second principle is that, despite the fact that in its wording it refers to the *rule of one member, one vote* in primary co-operatives, the reality is that the different legal systems are increasingly generally recognising weighted plural voting for members of some types of primary co-operatives and, in particular, for certain types of members (for example, for members that are legal persons).

Nevertheless, the ICA itself, in its *Guidance Notes to the Co-operative Principles*, pointed out that the phrase *one member, one vote* in the Manchester Declaration concerning the second principle described the customary voting rules in primary co-operatives and coincides with what was usual in the mid-1990s, when the principles were last formulated and most primary co-operatives had a homogeneous group of members. The *Notes* added: 'In these co-operatives the rule for equal voting rights, one member, one vote, is self-evident. In multi-stakeholder or hybrid

primary co-operatives different voting systems may, for good reason, need to apply'. A good reason for this is to encourage and politically recognise the participation of certain members, which would allow the articles of association to set voting rights in proportion to the volume of co-operative activity they carry out in the co-operative.

It should be noted that the possibility of attributing plural voting rights to certain members and in certain types of primary co-operatives (such as those in the agricultural or service sectors) is justified and based on mutuality, i.e. on the co-operative activity carried out by the member and not on the capital contributed, without prejudice to setting a limit on the maximum number of votes that a member can hold (thus VARGAS VASSEROT, 2022: 96).

The provisions of Article 59 of Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (SCE) are apt in this regard. However, they are based on the assumption that "1. Each member of an SCE shall have one vote, regardless of the number of shares he holds". It then notes:

2. If the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for a member to have a number of votes determined by his/her participation in the co-operative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30% of total voting rights, whichever is the lower.
3. *Financial participation of partners:*
Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative 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: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

This principle describes both members' share in the capital and how surplus is to be distributed. The statement that 'members contribute equitably to, and democratically control, the capi-

tal of their co-operative emphasises the need for members to contribute capital to their co-operative, while at the same time allowing different legislations to require that individual members contribute different amounts according to their economic capacity, without this having any impact on the decision-making process. In the allocation of surpluses, the flexibility is striking: "Members allocate surpluses for any or all of the following purposes...". However, in a modern legal system based on the corporate nature of the co-operative, it is unthinkable that the various regulations do not require a mandatory reserve fund.

Regarding the interpretation of this principle, the main problem arises with respect to the possible distribution of the reserves in case of winding-up and liquidation of the co-operative by the free decision of its members. On this point, in the document prepared by the ICA, *Guidance Notes to the Co-operative Principles*, although this is not considered advisable and the most appropriate action in the event of liquidation of the co-operative would be to ensure that some provisions are included in the articles of incorporation requiring that the residual net worth of the co-operative be given to another co-operative enterprise or to a not-for-profit community benefit or charity chosen by the members. The *Guidance Notes* state:

When this happens and members decide that a co-operative should cease to operate and its assets be dissolved, there is no compulsion inherent in this 3rd principle that prevents the co-operative's residual asset value, which represents its indivisible reserves, being distributed to its members on the dissolution of its business.

Therefore, the different legislations should leave it to the self-regulation of the members, via articles of association or bylaws, to decide what type of co-operative they wish to set up, without prejudice to the fact that those which do not aim to make a financial profit, but rather to develop and strengthen local economies for the benefit of their members and the community in general, should be granted more favourable tax treatment.

4. *Autonomy and independence.*

Co-operatives are autonomous, self-help organisations controlled by their 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 co-operative autonomy.

This principle was not explicitly included in the 1996 formulation. At that time, the ICA adopted a more condescending position to prevent countries with communist regimes from leaving the international body, given that they limited the autonomy and independence of their co-operatives.

Now, after the fall of these regimes, the ICA has returned to the position of 1937, when it enshrined *political and religious neutrality* as one of its principles, and warns and urges co-operatives not to jeopardise their independence and democratic member control through arrangements that put the autonomy of the co-operative at risk.

There are three dimensions to this warning and exhortation: "agreements with governments", "agreements with other organisations" and, where a co-operative raises capital, agreements to receive "capital from external sources". All three categories of agreements could potentially jeopardise the autonomy and independence of a co-operative, as well as the right of its members to exercise democratic control of its affairs.

Especially in the case of new and growing co-operatives, autonomy and independence can be jeopardised if a co-operative's products and services are too dependent on a single purchaser and, similarly, in the event of over-reliance on certain dominant sources of supply.

Improving the relationship with governments has been helped by Recommendation 193 of the International Labour Organisation (hereafter ILO), which incorporates the Alliance's definition of a co-operative and states that: "For the purposes of this Recommendation, the term 'co-operative' means 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".

This means that the Statement on the Co-operative Identity of the Alliance is an internationally recognised text and involves an important change in the status and legal value of the Statement on the Co-operative Identity of the Alliance.

ILO Recommendation 193 calls on governments to: "encourage the development of co-operatives as autonomous and self-managed enterprises, particularly in areas where co-operatives have an important role to play or provide services that are not otherwise provided."

ILO Recommendation 193 therefore urges governments to create an environment in which co-operatives can thrive and re-

presents a crucial achievement by ratifying the principle of autonomy and independence following the adoption of the Declaration on the Co-operative Identity.

The Recommendation provides clear guidelines for countries to review their legislation and policy on co-operatives. It clearly states:

Governments should introduce support measures, where appropriate, for the activities of co-operatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions.

However, government support for co-operatives should not be equated with government control of co-operatives: the autonomy and independence of co-operatives, as well as the democratic rights of members to control them, should always be respected by the government.

It is also useful for co-operatives when their autonomy and independence is threatened by governments, in that it provides a defensive framework for co-operatives to be "treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organisation".

As emphasised in the *Guidance Notes to the Co-operative Principles* in relation to the role of national federations, apex organisations and the ICA itself, national apex organisations, in partnership with the Alliance, have a key role to play in ensuring that States comply with internationally accepted standards to establish legal and regulatory frameworks within which co-operatives can thrive. The apex organisations also have the role of providing advice and good practice guidance to co-operatives on how to avoid or manage the risks to independence and autonomy posed by market dominant suppliers or purchasers of products and services, as well as a role in co-operating with regulatory authorities to ensure appropriate and effective regulation.

The ultimate objective is that the autonomy and independence of a co-operative is reinforced by rules or bylaws that require the governance exercised by its governing board to be accountable to the general assembly of members.

Governance arrangements should include systems of checks and balances, including mechanisms to bridge the knowledge gap between professional management and members, including in-

ternal and external audits, which ensure that members, in general assembly, receive independent reports from auditors on the governance and management of their co-operative, on compliance with this fourth principle and on any risks to their autonomy and independence.

5. *Education, training and information:*

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public —particularly young people and opinion leaders— about the nature and benefits of co-operation. Co-operatives cannot ignore their responsibility to provide education and training for their members, elected representatives, managers and employees, as this is an essential part of ensuring the success and sustainability of any co-operative enterprise.

However, a co-operative's commitment to education is not only oriented inwards, towards members, elected members, managers and employees, but it is also outwards facing. It requires co-operatives to "inform the general public [...] about the nature and benefits of cooperation". This obligation to inform others about the nature and benefits of co-operatives applies "particularly" to "young people and opinion leaders". The meaning of "young people" is obvious: it is the next generation. "Opinion leaders" refers to all those who influence public opinion, such as politicians, civil servants, media stakeholders and educators.

The three activities that make up this fifth principle: "education", "training" and "information", each have a different role to play in co-operative education: "education" involves understanding co-operative principles and values and knowing how to apply them in the day-to-day running of a co-operative; "training" is about developing the practical skills needed by members and employees to run a co-operative in accordance with ethical and effective business practices and to democratically control the co-operative enterprise in an accountable and transparent manner; "information" is the duty to make sure that others, who are part of the general public, and "especially young people and opinion leaders", know about the co-operative enterprise, which is essential, as people cannot appreciate or support what they do not even understand.

There is no doubt that the co-operative movement has a clear and long-standing commitment to education. In this respect, the mandate of the 1995 ICA Statement, which called for the provi-

sion of co-operative funds to be earmarked for the fulfilment of this principle, should be reflected in the legislation and bylaws of co-operatives.

Special emphasis should be placed on co-operative education, training and information, an activity which is often neglected by many co-operatives and which is of great importance for their future development.

6. *Co-operation among co-operatives*: "Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures."

This sixth principle shows the double dimension of the character of co-operatives: The first focuses on the fact that they are economic entities that serve their own members. The second is that they are social entities made up of members that relate in a positive way to other co-operatives in the way they conduct business (MARTÍNEZ CHARTERINA, 2012: 133 ff).

Within the second dimension, a distinction can be made between (1) the economic aspect, whereby co-operatives co-operate with each other in competitive markets by forming co-operative groups, and secondary and further-level co-operatives (in order to achieve co-operative advantages and create common wealth for mutual benefit), and (2) the political aspect of co-operation, which is fulfilled through associations, federations, confederations and interregional and international bodies, the apex being the ICA, founded in 1895 as a representative body worldwide (CANO ORTEGA, 2015: 285 ff).

As aptly noted in the *Guidance Notes to the Co-operative Principles*, the Alliance is the largest democratic membership organisation in the world. The Alliance has had general consultative status to the ILO since the 1940s and consultative status to the UN Economic and Social Council. The Alliance also holds a Memorandum of Understanding with the United Nations Food and Agriculture Organisation. The Alliance's global scope and regional organisations promote and foster friendship and respect between co-operatives in different nations and cultures. Its global organisations and thematic committees enable members to share knowledge and expertise on specific types of co-operative enterprises and strengthen mutual assistance and support, while national, regional and global cross-sectoral support contributes to building the co-operative sector of the global economy. In addition, as an officially recognised global representative organi-

sation, in particular through the provisions of ILO Recommendation 193, the Alliance also has the power to intercede on behalf of co-operative movements in countries where they are threatened by governments that do not understand the principles on which co-operative enterprise is based, a power which the Alliance uses effectively.

From an operational point of view, co-operatives should bear in mind that the strategy for inter-cooperative action should not be the result of a governing board or administration decision, but should be examined and approved by the general assembly of the co-operative's members. It is therefore good practice to include a report on inter-cooperative co-operation and how the sixth principle has been implemented in a co-operative's annual report.

7. *Concern for Community*: "Co-operatives work to achieve the sustainable development of their Co-operatives work for the sustainable development of their communities through policies approved by their members".

In 1966, an objective within the sixth principle of co-operation between co-operatives was "to best serve their members and communities". In 1995, as this objective was given greater importance, *concern for the community* was given the status of a principle.

Co-operatives are organisations that exist for the benefit of their members. However, given the link between co-operatives and their communities (unlike corporations, which can come and go depending on the economic conditions for their development), members cannot ignore their strong social commitment; regardless of the economic conditions, they must direct their work towards improving social well-being, making their approach towards the community a co-operative one. This combination of elements stems from the fact that co-operatives emerge from, and are rooted in, the communities in which they operate. Their success is based on their ability to help those communities to develop economically, socially and environmentally in a sustainable way.

Co-operatives have a clear ability to work individually for the sustainable economic development of the communities in which they conduct their business. As stated in the *Guidance Notes to the Co-operative Principles*, they can do this by applying their ethical values to their trading operations, in the form of ethical supply chain contracts and Fair Trade, diligent payment of

suppliers, Coop2Coop trade and support for other co-operatives, to name but a few ways. Good practice requires that co-operatives report on the impact they have on economic, environmental and social sustainability, and on the actions they take to promote the sustainable development of the communities in which they operate. These should therefore be provided for in their regulations and bylaws.

However, it is also true that co-operatives alone cannot achieve the goal of sustainable development in their communities, so they must enter into partnerships and collaborate with other organisations, including governments. This collaboration is essential, given the vast global challenges of achieving the Sustainable Development Goals. To achieve these Goals, therefore, co-operatives also need to develop partnerships with community organisations, private businesses, volunteer groups, charities and local, regional and national governments.

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