

ISSN 1134-993X (paper)

ISSN 2386-4893 (digital)

DOI: <http://doi.org/10.18543/BAIDC>

Boletín de la Asociación Internacional de Derecho Cooperativo

International Association
of Cooperative Law Journal

www.baidc.deusto.es

index: ESCI (WoS), SCOPUS, Latindex – 17815-E, CSIC, CIRC (B), DICE, DIALNET, DOAJ, MIAR

No. 54/2019

DOI: <http://dx.doi.org/10.18543/baidc-54-2019>

Sumario

Artículos

A study of the statutory background for worker cooperatives in the US: a proposal for a regulatory framework

Sofía Arana Landín

The synergy between employment policies and cooperatives with regard to new forms of work. An overview based on Spanish constitutional law

Santiago Larrazabal Basáñez

Digital cooperatives as channels for digital work in the context of the collaborative economy

Francisco Javier Arrieta Idiakez

Training of cooperative values as a decisive element in new jobs to be created by 21st century cooperatives

Eba Gaminde Egia and Gonzalo Martínez Etxeberria

The promotion of both decent and green jobs through cooperatives

Josune López Rodríguez

Las relaciones entre los sujetos del sector no estatal cubano: el socio-Trabajador por Cuenta Propia en las Cooperativas No Agropecuarias

María del Pilar Mesa Mejías



Boletín de la Asociación Internacional de Derecho Cooperativo

International Association of Cooperative Law Journal

No. 54/2019

DOI: <http://dx.doi.org/10.18543/baidc-54-2019>

El *Boletín de la Asociación Internacional de Derecho Cooperativo* está incluido en:
International Association of Cooperative Law Journal is included in:



SCOPUS

DOAJ DIRECTORY OF OPEN ACCESS JOURNALS

Dialnet

latindex

D I C E

BASE DE DATOS
ISOC

MIAR

EBSCO host

OCLC
WorldCat

Google
Académico

CIRC

Cargos de la Asociación:

Presidente: Dr. Javier Divar

Vicepresidenta: Dra. Eba Gaminde Egia

Secretario General: Dr. Alberto Atxabal

Presidentes de Honor: Dr. Dante Cracogna

Dr. Renato Dabormida

Dr. Tulio Rosembuj

Dr. Alejandro Martínez Charterina

Grupo Internacional de Investigación en Derecho Cooperativo**(adscrito a la Universidad de Deusto):**

Coordinación: Dr. Enrique Gadea, Universidad de Deusto

Dr. Alberto Atxabal, Universidad de Deusto

Dra. Vega María Arnáez Arce, Universidad de Deusto

Dr. Santiago Larrazabal Basáñez, Universidad de Deusto

Dr. Dante Cracogna, Universidad de Buenos Aires

Dra. Roxana Sánchez Boza, Universidad Nacional de San José de Costa Rica

Dr. Siegbert Rippe, Universidad de Montevideo

Dr. Alberto García Müller, Universidad de los Andes, Venezuela

Dra. Martha Izquierdo, Universidad Autónoma del Estado de México

Dr. Lenio Streck, Universidad de Unisinos, Brasil

Dr. José Eduardo Miranda, FMB, Brasil

Dr. Orestes Rodríguez Musa, Universidad de Pinar del Río, Cuba

Dr. Javier Divar, Universidad de Deusto

Dr. Alejandro Martínez Charterina, Universidad de Deusto

Página web de la Asociación:

www.aidc.deusto.es



Boletín de la Asociación Internacional de Derecho Cooperativo

International Association of Cooperative Law
Journal

No. 54/2019

DOI: <http://dx.doi.org/10.18543/baidc-54-2019>

Facultad de Derecho
Universidad de Deusto
Bilbao 2019

Derechos de autor

El *Boletín de la Asociación Internacional de Derecho Cooperativo* es una revista de acceso abierto lo que significa que es de libre acceso en su integridad inmediatamente después de la publicación de cada número. Se permite su lectura, la búsqueda, descarga, distribución y reutilización legal en cualquier tipo de soporte sólo para fines no comerciales y según lo previsto por la ley; sin la previa autorización de la Editorial (Universidad de Deusto) o el autor, siempre que la obra original sea debidamente citada (número, año, páginas y DOI si procede) y cualquier cambio en el original esté claramente indicado.

Copyright

The *International Association of Cooperative Law Journal* is an Open Access journal which means that it is free for full and immediate access, reading, search, download, distribution, and lawful reuse in any medium only for non-commercial purposes, without prior permission from the Publisher or the author; provided the original work is properly cited and any changes to the original are clearly indicated

Dirección postal:

Facultad de Derecho
Universidad de Deusto
Apartado 1 (48080 Bilbao)
Tfno.: 944 139 000 ext. 3011
Fax: 944 139 099

Dirección electrónica:

Página web: www.baidc.deusto.es
e-mail: boletin.aidc@deusto.es

Colabora:

EUSKO JAURLARITZA



GOBIERNO VASCO

LAN ETA JUSTIZIA
SAILA

DEPARTAMENTO DE TRABAJO
Y JUSTICIA

© Publicaciones de la Universidad de Deusto
Apartado 1 - 48080 Bilbao
e-mail: publicaciones@deusto.es

ISSN: 1134-993X

ISSN-e: 2386-4893

Depósito legal: BI - 568-95

Impreso en España/Printed in Spain

Cargos del *Boletín de la Asociación Internacional de Derecho Cooperativo (BAIDC)*:

Director

Alberto Atxabal Rada (UD)

Director adjunto

Enrique Gadea Soler (UD)

Editora

Vega María Arnáez Arce (UD)

Consejo de redacción

Fernando Sacristán Bergia (Universidad Rey Juan Carlos)

Carlos Vargas Vasserot (Universidad de Almería)

Vega María Arnáez Arce (UD)

Martha E. Izquierdo (Universidad Autónoma del Estado de México)

Roxana Sánchez Boza (Universidad Nacional de San José de Costa Rica)

José Eduardo Miranda (FMB, Brasil)

Orisel Hernández Aguilar (Universidad de Pinar del Río, Cuba)

Consejo Asesor Internacional

Dante Cracogna (Universidad de Buenos Aires)

Renato Dabormida (Universidad de Génova)

Tulio Rosembuj (Universidad de Barcelona)

Siegbert Rippe (Universidad de Montevideo)

Alberto García Müller, (Universidad de los Andes)

Lenio Streck (Universidad de Unisinos)

Orestes Rodríguez Musa (Universidad de Pinar del Río)

José Luis Monzón (CIRIEC- España)

Santiago Larrazabal Basáñez (UD)

Francisco Javier Arrieta Idiákez (UD)

Hagen Henry (Universidad de Helsinki)

Aitor Bengoetxea Alkorta (EHU-Universidad del País Vasco)

Deolinda A. Meira (Instituto Politécnico do Porto)

Antonio Fici (Universidad de Molise)

Francisco José Martínez Segovia (Universidad de Castilla-La Mancha)

Alfredo Muñoz García (Universidad Complutense de Madrid)

Gemma Fajardo García (Universidad de Valencia)

Isabel Tur Vilas (Universidad de Barcelona)

Javier Divar Garteiz-aurrecoa (UD)

Alejandro Martínez Charterina (UD)

Saioa Arando Lasagabaster (Universidad de Mondragón)

Mirta Vuotto (Universidad de Buenos Aires, Argentina)

Héctor Ruiz Ramírez (Universidad Autónoma del Estado de México, México)

Rogelio Fernández Sagot (Colegio de Abogados y Abogadas de Costa Rica, Costa Rica)

Leonardo Rafael de Souza (Colegio de Abogados de Santa Catarina, Brasil)

Antonio José Sarmiento Reyes (Pontificia Universidad Javeriana, Colombia)

Carlos Torres Morales (Universidad de Lima, Perú)

Boletín de la Asociación Internacional de Derecho Cooperativo

International Association of Cooperative Law Journal

No. 54/2019

DOI: <http://dx.doi.org/10.18543/baidc-54-2019>

Sumario

- | | |
|--|----|
| I. Presentación de la AIDC | 11 |
| II. Artículos | |
| 1. A study of the statutory background for worker cooperatives in the US: a proposal for a regulatory framework
<i>Estudio del marco jurídico de referencia para las cooperativas de trabajo asociado en los EE.UU.: una propuesta de regulación a nivel federal</i>
Sofía Arana Landín | 19 |
| 2. The synergy between employment policies and cooperatives with regard to new forms of work. An overview based on Spanish constitutional law
<i>La sinergia entre las políticas de empleo y las cooperativas respecto a las nuevas formas de trabajo. Una perspectiva desde el Derecho Constitucional español</i>
Santiago Larrazabal Basáñez | 55 |
| 3. Digital cooperatives as channels for digital work in the context of the collaborative economy
<i>Las cooperativas digitales como canales para el trabajo digital en un contexto de economía colaborativa</i>
Francisco Javier Arrieta Idiakez | 75 |
| 4. Training of cooperative values as a decisive element in new jobs to be created by 21st century cooperatives
<i>La formación en los valores cooperativos como elemento decisivo para los nuevos trabajos que crean las cooperativas del siglo XXI</i>
Eba Gaminde Egia and Gonzalo Martínez Etxebarria | 97 |

5.	The promotion of both decent and green jobs through cooperatives <i>La promoción de empleos verdes y decentes a través de cooperativas</i> Josune López Rodríguez	115
6.	Las relaciones entre los sujetos del sector no estatal cubano: el socio-Trabajador por Cuenta Propia en las Cooperativas No Agropecuarias <i>Relations between the subjects of the non-state Cuban sector: the Self-Employed worker in the Non-Agricultural Cooperatives</i> María del Pilar Mesa Mejías	131
III.	Listado de la Asociación Internacional de Derecho Cooperativo	145
	Normas de publicación	157
	Código ético	158
	Relación de evaluadores	161

I

Presentación de la AIDC

**Asociación Internacional de Derecho Cooperativo (AIDC):
Red de comunicaciones e intercambio de experiencias
entre profesionales y estudiosos del Derecho Cooperativo
de todo el mundo**

Fundada el 28 de febrero de 1989

Sede: Facultad de Derecho
Universidad de Deusto
Apartado 1
E-48080 Bilbao (España)
E-mail: aidc@deusto.es

I. Objetivos

- Promover el progreso de los estudios jurídicos relacionados con las cooperativas.
- Propender al perfeccionamiento de la legislación cooperativa en los diferentes países.
- Difundir los estudios y avances realizados en la materia.
- Servir de nexo para el intercambio de información y experiencias entre los estudiosos de la disciplina.
- Mantener contacto con organismos y organizaciones cooperativas internacionales con miras a apoyar iniciativas vinculadas con el Derecho Cooperativo.

- Brindar apoyo a actividades académicas y de investigación sobre temas de la especialidad.

II. Realizaciones¹

Para el logro de sus objetivos, la AIDC:

- Edita regularmente un boletín de información legislativa, jurisprudencial y doctrinaria de todo el mundo.
- Apoya la constitución de secciones nacionales, las cuales ya existen en diversos países.
- Mantiene relaciones de colaboración y apoyo con la Organización de las Cooperativas de América (OCA) y la Alianza Cooperativa Internacional (ACI).
- En adhesión al Congreso del Centenario de la ACI, publicó un libro colectivo sobre los principios cooperativos y la legislación cooperativa en el mundo.
- Mantiene relaciones con instituciones, universidades y centros de estudio de todo el mundo interesados en el Derecho Cooperativo.

¹ Para el desarrollo de sus actividades, la IDC cuenta con el apoyo de la Dirección de Economía Social del Gobierno Vasco.

**International Association of Cooperative Law (AIDC):
Communications network and exchange
of experiences Among professionals and specialists
in Cooperative Law Around the world**

Founded on 28th of February 1989

Headquarters: Faculty of Law
University of Deusto
Apartado 1
48080 Bilbao (Spain)
E-mail: aidc@deusto.es

I. Objectives

- To promote the progress of legal studies related to cooperatives.
- To tend to the improvement of cooperative legislation in te different countries.
- To spread the studies and advances done in the subject.
- To serve as a link for the exchange of information and experiences among specialists in the subject.
- Keep up contacts with international cooperative bodies and organizations, with the aim of supporting initiatives related to Cooperative Law.
- To offer support to academic and investigation activities on subjects of the speciality.

II. Realizations¹

In order to achieve its objectives, the AIDC:

- Regularly publishes a journal on legislative, jurisprudential and doctrinaire information from the whole world.
- Supports the establishment of national sections, which already exist in various countries.
- Keeps in touch with the American Cooperative Organisation (OCA) and the International Cooperative Alliance (ACI), collaborating with them and supporting them.
- Sticking to the Congress of the ACI Centenary, it publishes a joint book on the cooperative principles and the cooperative legislation in the world.
- Is in touch with institutions, universities and study centers interested in Cooperative Law around the world.

¹ So as to develop its activities, the AIDC relies on the support of the Direction of Social Economy of the Basque Government.

II
Artículos

A study of the statutory background for worker cooperatives in the US: a proposal for a regulatory framework

(Estudio del marco jurídico de referencia para las cooperativas
de trabajo asociado en los EE.UU.: una propuesta
de regulación a nivel federal)

Sofía Arana Landín¹
University of the Basque Country (Spain)

doi: <http://dx.doi.org/10.18543/baidc-54-2019pp19-54>

Recibido: 26.04.2018
Aceptado: 08.04.2019

Summary: 1. Introduction. 2. The concept of worker cooperatives. 3. Workers' cooperatives in the USA, their tax regulation at a federal level: a view through judicial doctrine. 4. Statutory background. 4.1. The Single Tax principle. 4.1.1. The Mississippi Valley Portland Cement v. USA: the substance over form doctrine and a definition of patronage refunds. 4.2. The 50 % rule. 5. The Statutes of incorporation at a State level. 6. A proposed model for unincorporated cooperatives: The Uniform Limited Cooperative Association Act. 7. Conclusions. 8. References.

Sumario: 1. Introducción. 2. El concepto de cooperativas de trabajo. 3. Las cooperativas de trabajadores en los Estados Unidos, su regulación fiscal a nivel federal: una visión a través de la doctrina judicial. 4. Antecedentes legales. 4.1. El principio del impuesto único. 4.1.1. Mississippi Valley Portland Cement v. EE.UU.: la sustancia sobre

¹ Grupo de Investigación GIC 15/0 8 del Sistema Universitario Vasco, Universidad del País Vasco (UPV/ EHU), Visiting Scholar at the CUNY Graduate Center and the Murphy Institute, in New York. Email: sofia.arana@ehu.es.

I hereby thank Dr. John Mollenkopf for his kind invitation and support. I have to give very special thanks to Rebecca Lurie, at CUNY Murphy Institute, Director of the "Worker Ownership Project" who has been the main pillar of it all. Always with an incredible disposition she has introduced me to great people working on cooperativism, like Chris Adams, from the Legal Clinic at CUNY Law, Chris Michael, from ICA, Maggie Marron, at the Urban Justice Center or Carmen Huertas-Noble, Director of the Community and Economic Development Clinic, at CUNY Law School and so many others that I cannot name, but I thank them all. Special thanks to Tiffany Collins for her kind suggestions. I also want to thank the Public Advocate, Letitia James team and Birch Ha Pam for kindly listening to our ideas and looking for ways to put them into practice in New York City and devoting their time and effort to do so.

la doctrina de la forma y una definición de reembolsos de patrocinio. 4.2. La regla del 50%. 5. Los Estatutos de constitución a nivel estatal. 6. Un modelo propuesto para cooperativas no constituidas en sociedad: la Ley de Asociación Cooperativa Limitada. 7. Conclusiones. 8. Referencias.

Abstract: The lack of a clear and comprehensive regulatory framework for worker cooperatives is one of the main causes for their scarcity in the USA, as it causes ignorance and uncertainty even though cooperatives are one of several forms of doing business recognized by the Internal Revenue Code (like sole proprietorships, partnerships, limited liability companies, LLC's, and Subchapter S corporations). Tax laws divide businesses into those categories, each with its own special tax provisions and worker cooperatives try to fit into any of those forms of business while "acting on a cooperative basis", thus, having their own specificities.

Even though at a State level there are regulations for agricultural cooperatives in all States, there are only less than 30 States that have either worker cooperative regulations, general cooperative regulations or consumer regulations which worker cooperatives can use.

However, the situation in the USA now demands for these entities. The fact that a particular attention is being given to worker cooperatives as an aftermath of the recent crisis is not news, as we have seen, historically², cooperatives have traditionally emerged in situations where the public sector was unable to provide the response required by the people, for instance in support for

² Although cooperation as a form of individual and societal behavior can be considered to be intrinsic to every human organization, the history of modern cooperativism can find its roots in the agricultural and industrial revolutions.

These roots can be traced to multiple influences. However, one of the most important ones can be found in the United Kingdom in the nineteenth century. A rejection of the so called "Poor Laws" in 1834 gave way to Friendly Societies which can be said to share common values with cooperatives. At the time, as certain institutions began to routinely distinguish between the 'deserving' and 'undeserving' poor, a movement of Friendly Societies grew throughout Britain based on the principle of mutuality, committed to self-help in the welfare of working people. Friendly Societies established forums through which the philosophy of one-member, one-vote was practiced in organization decision-making. The principles challenged the idea that every person should be an owner of property.

Throughout the second half of the nineteenth century there was a dramatic increase in the number of cooperatives. Friendly Societies and consumer cooperatives became the dominant form of organization amongst working people in industrial societies. From the mid-nineteenth century, mutual organizations also shared these ideas in economic enterprises, educational institutes, financial institutions and industrial enterprises. Their common aim was the principle that an enterprise or association should be owned and controlled by the people it served to, and share any surpluses on the basis of each members' cooperative contribution rather than their financial investment.

financial access, housing, or decent livelihoods. As ZEULI and CROPP³ state it: *“The historical development of cooperative businesses cannot be disconnected from the social and economic forces that shaped them. Co-ops then, as now, were created in times and places of economic stress and social upheaval”*.

Different studies⁴ during the previous recession show how worker cooperatives increase their turnover and number of jobs, while other enterprises shrink, being this the reason why their study at this moment becomes a must.

Thus, there should be a minimum understanding and control of what a worker cooperative is in order to be able to register and act like a real worker cooperative. Quoting GUTNECHT⁵ *“allowing something that is not a cooperative to call itself a cooperative squanders a precious asset – the goodwill and public trust that reposes in the word ‘cooperative’”*.

Thus, the USA is missing a very important instrument in order to fight against unemployment, inequality, income maldistribution and unsustainable development at a time when there is a conscience by a majority of the population in different movements that demand a change. This change is possible if educational, cultural and legal issues are properly addressed, as it has been done in other countries and higher instances⁶, creating a fairer, equitable and more cohesive and sustainable society, thus a better world to live in.

This paper aims to conduct a comparative statutory research on cooperative law for worker cooperatives in the USA, with a view of promoting an increased understanding within the academic and governmental communities, at a national and international level in order to promote worker cooperatives. In the case of New York public policies tackling this issue are already being devised. If this goal is achieved we will all benefit from them.

Keywords: worker cooperatives, taxation, USA, IRC, judicial doctrine

Resumen: La falta de un marco regulatorio claro y completo para las cooperativas de trabajadores es una de las principales causas de su escasez en los Estados Unidos, ya que provoca ignorancia e incertidumbre, aunque las cooperativas son una de las varias formas de hacer negocios reconocidas por el Código de Ingresos Internos (como empresas unipersonales, sociedades, compañías de responsabilidad limitada, LLC y corporaciones del subcapítulo S). Las leyes fiscales dividen a las empresas en esas categorías, cada una con sus propias disposiciones fiscales especiales y las cooperativas de trabajadores tratan

³ ZEULI, K.A. and CROPP, R., (2004), Cooperatives: principles and practices in the 21st century, Uw extension. Madison, p.9.

⁴ For instance, Salvatori's study in the case of Italy *“Cooperatives provide an alternative model for the future of work”*, before the ILO April, the 6th 2017.

⁵ GUTKNECHT, Dave, *“More on New Co-op laws”*, Endcap articles, March 24, 2011.

⁶ For instance, in Europe a European Cooperative Society was adopted by Regulation No 1435/2003 on the Statute for a European Cooperative Society (SCE) in order to help cooperatives act transnationally and grow.

de encajar en cualquiera de esas formas de negocios mientras «actúan sobre una base cooperativa», por lo tanto, tienen sus propias especificidades.

A pesar de que a nivel estatal existen regulaciones para las cooperativas agrícolas en todos los estados, solo hay menos de 30 estados que tienen regulaciones sobre cooperativas de trabajadores, regulaciones generales sobre cooperativas o regulaciones de consumo que las cooperativas de trabajadores pueden usar.

Sin embargo, la situación en los EE.UU. ahora exige una respuesta para estas entidades. El hecho de que se preste especial atención a las cooperativas de trabajadores como consecuencia de la reciente crisis no es una noticia; como hemos visto, históricamente, las cooperativas han surgido tradicionalmente en situaciones en las que el sector público no pudo proporcionar la respuesta requerida por la gente, por ejemplo, en apoyo al acceso financiero, vivienda o medios de vida decentes. Como ZEULI y CROPP afirman: «El desarrollo histórico de las empresas cooperativas no puede desconectarse de las fuerzas sociales y económicas que las conformaron. Las cooperativas entonces, como ahora, fueron creadas en tiempos y lugares de estrés económico y agitación social».

Los diferentes estudios realizados durante la recesión anterior muestran cómo las cooperativas de trabajadores aumentan su volumen de negocios y el número de empleos, mientras que otras empresas se reducen, por lo que su estudio en este momento se convierte en una necesidad.

Por lo tanto, debe haber un mínimo de comprensión y control de lo que es una cooperativa de trabajadores para poder registrarse y actuar como una verdadera cooperativa de trabajadores. Al citar a GUTNECHT «permitir que algo que no es una cooperativa se llame a sí mismo una cooperativa despilfarra un bien precioso —la buena voluntad y la confianza pública que se encuentran en la palabra “cooperativa”—».

Por lo tanto, a los Estados Unidos les falta un instrumento muy importante para luchar contra el desempleo, la desigualdad, la mala distribución de los ingresos y el desarrollo insostenible en un momento en que la mayoría de la población tiene conciencia en diferentes movimientos que exigen un cambio. Este cambio es posible si las cuestiones educativas, culturales y legales se abordan adecuadamente, como se ha hecho en otros países y en instancias superiores, creando una sociedad más justa, equitativa y más cohesionada y sostenible, por lo tanto, un mundo mejor para vivir.

Este documento tiene como objetivo realizar una investigación jurídica comparada sobre el derecho cooperativo para cooperativas de trabajadores en los Estados Unidos, con el fin de promover una mayor comprensión dentro de las comunidades académicas y gubernamentales, a nivel nacional e internacional para promover las cooperativas de trabajadores. En el caso de Nueva York ya se están ideando las políticas públicas que abordan este tema. Si se logra este objetivo, todos nos beneficiaremos de ellas.

Palabras clave: cooperativas de trabajo asociado, tributación, EE.UU, Código tributario, doctrina judicial.

1. Introduction

As Monique F.Lerroux⁷ says: "We need to develop a plural economy. A solid society is composed of three pillars: a democratic government, dynamic companies and in the middle, a very strong co-operative sector, combining business and people. It is about bridging the economy and the society".

Worker cooperatives have a very long tradition in some EU countries, particularly in the UK and Mediterranean countries such as Spain, Italy or Portugal. Moreover, in some of these countries the access of workers to capital is promoted from the highest possible source: their Constitutions⁸.

In the USA cooperative principles have a very long tradition as their historical roots can be traced back to Benjamin Franklin who helped form what is considered the first formal cooperative business in the United States in 1752. It was a mutual fire insurance company⁹.

However, in the USA there is no such constitutional promotion, even though worker cooperatives can be said to be in the spirit of the US constitution, as the first time ever a tax public policy including benefits was adopted in this country was for a democratic profit sharing. In fact, the 1792 Bill for Cod fishers gave a bounty only if vessel owners distributed the profits with fishermen in a proportion of 3 parts for the owners and 5 parts to fishermen.

I find these roots remarkable, as the fact that income derived from the fishermen work and the owner's capital had to be distributed fairly, became so important that a Bill was passed for this purpose. We have to remember that at those times this Bill was considered by some to be doubtfully in the letter of the US Constitution but it fulfilled its spirit, even before the Constitution amendment in order to authorize Congress to adapt the meaning of the General Welfare clause.

With the amendment of Philadelphia these sort of public policies can be taken and are in fact being taken, most particularly for ESOPs. Thus, there is no constitutional obstacle for it.

⁷ LERROUX, M., F., president of the International Cooperative Alliance at the International Seminar on Co-operatives and the Sustainable Development Goals (SDG's) held in Brazil, 03-22-2017.

⁸ In the case of Spain art.129.2 of the Constitution says that access to capital from workers, as in cooperatives is to be promoted.

⁹ INGALSAVE, G. and GROVES, F. (1989), Historical Development, in Cooperatives in agriculture, 106 at 110-11.

However, even though there is no longer such an obstacle we cannot find that too many tax policies have been adopted at a federal level and the ones that have been adopted they may not be the most adequate ones for the real promotion of worker cooperatives.

However, the law of cooperatives already benefits from internationally recognized cooperative principles that have existed, in various forms, for over a century that can set the pillar in which to sustain a possible new framework for US worker cooperatives. Only if a regulatory framework is based in them should cooperatives be called so.

2. The concept of worker cooperatives

First of all, we need to give a definition for the concept of “cooperative”. A possible one is *“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”*¹⁰.

Up to this point both Europeans and Americans would agree on the definition. However, this definition does not include the whole list of values and principles that it comprises and their fulfillment and control may substantially vary. And here lies the main problem: in European countries there is usually a comprehensive regulation regarding the full commitment of cooperatives to their values by means of legal principles. These regulations may vary from country to country and they are usually stricter in the Mediterranean ones, where cooperatives are particularly important, but they all offer a framework for cooperatives to be constituted as such and public policies in order for them to be able to work and grow.

Cooperatives values and principles can be easily recognized as those that still remain today in cooperativism and were taken by the National Liaison Committee for Mutual, Cooperative and Associative Activities¹¹.

This set of co-operative values and principles designed in order to leave behind the excesses of the era were compiled by the Interna-

¹⁰ Definition by the International Co-operative Alliance (1995).

¹¹ The primacy of the individual and the social objective over capital, voluntary and open membership, democratic control by membership, the combination of the interests of members and the general interest, solidarity and responsibility, autonomy, etc.

tional Cooperative Alliance¹² in 1937 and were later revised in 1966 and 1995¹³. This latter revision included not only an update of the 1937 principles, but also an identity statement and two sets of values: basic and ethical. They are widely accepted and can be summarised as follows:

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality and solidarity and in the tradition of their founders, members believe in the ethical values of honesty, openness, social responsibility and caring for the others. These values are behind the principles:

Democracy. Every person has the right to have a say and influence all decisions that affect their lives. Thus in co-operatives control is shared.

Equality. Every person is worthwhile in his/her own right and has the right to have his/her life, dignity and abilities respected and valued equally.

Equity. Each person should be treated fairly and have access to all that is necessary to live a meaningful and productive life.

Self-help and responsibility. People are interdependent and benefit from joining their individual efforts with others to achieve their aspirations and improve their lives, as each of us is responsible for our own actions and the impact of those actions upon others and ourselves.

Solidarity. Shared, coordinated action between individuals and groups is the best way to create a society. Solidarity limits our individual freedom, only to the extent required by a real respect for the dignity of others being equal to our own.

In order to put into practice the afore-mentioned values a set of principles inspire cooperativism and these principles usually have a clear impact in cooperative regulations. They exist in order to help us organize how the co-operative operates and set standards by which we can assess our achievements and make decisions. The co-operative difference has to be based on the core principles rather than the values because other types of entities share similar values. There can be said to be three core principles: member ownership, control and benefit.

¹² Also known as Rochdale's principles of co-operation (1937). The International Cooperative Alliance met in Rochdale, Manchester in order to write down their common principles. They took the principles of the post- industrial revolution used by Friendly Societies and Co-operatives compiled them and take down what they thought was the core of cooperatives. Thus, still nowadays they are still known by the place in which they met, the Rochdale's principles of cooperation.

¹³ See BIRCHALL, Johnston (2005), "Co-operative principles ten years on", ICA.

Voluntary and open membership. Co-operatives are voluntary organizations, open to all persons satisfying certain non-discriminatory conditions and willing to participate. People satisfying those conditions may join in no matter their gender, religion, race, etc. A specific provision to prevent possible discriminations within the cooperatives is to be made in their regulation.

Democratic member control: It is usually known as the “One member, one vote” principle. Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. It is not like the capitalist undertaking where rights depend on the capital investment, in cooperatives all members have equal voting rights.

Member economic participation. Benefits are distributed proportionally according to each member’s level of participation in the cooperative, for instance by good salaries for all workers or by returns on sales or purchases, rather than according to capital invested.

In worker cooperatives this means that the differences in salaries from the lowest earning worker to the highest earning one cannot surpass a certain amount. In Mondragón MCC this ratio is of 4.5, even though the law permits it to be 1:9. Do we know how much this ratio is in a country where 400 people own more wealth than the bottom 61% or 194.000.000 people¹⁴?

Autonomy and Independence. They are self-help organizations controlled by their members. Whenever they make agreements with other organizations or raise capital from operations with non-members they keep their democratic control and maintain their autonomy.

Education and training. Members allocate surpluses for educational purposes¹⁵.

Cooperation among cooperatives. Cooperatives serve their members most effectively and join the cooperative movement by working together through local, national, regional and international structures¹⁶.

Concern for the community. While focusing on members’ needs, co-operatives work for the sustainable development of their commu-

¹⁴ Figures taken from ALPEROVITZ, Gar. (2017), *Principles*.p.16.

¹⁵ In the case of Mondragón MCC, the leading worker cooperative in the world, they have to comply by the Basque Act on Cooperatives with a Compulsory Educational Fund, which is of a 10% of the yearly net surplus. This Fund goes to education, solidarity, projects for the environment or the community.

¹⁶ The inter-solidarity principle in cases like Mondragón Cooperative Group is seen in the fact that it comprises 120 cooperatives that help each other not only with cash needs, but also with the transfer of workers, technology and innovation.

nities through policies accepted by their members. Thus, members can decide where to dedicate the Education and Promotion Funds and they usually reserve an important part for community projects.

If we had to sum it up, we would say that co-operatives are people centered rather than capital centered¹⁷. This is a unique feature that can justify a unique approach to certain aspects of income taxation.

Only if their regulation includes these principles they will not only be constituted as worker cooperatives but keep on being that for the benefit of the community and their own benefit.

However, as we can see, these principles make worker cooperatives constrained to them in order to stay true to their principles. Their returns cannot be compared to the possible dividends capitalist corporations distribute among owners because in order to comply with the principles an important part of the net surplus has to stay in the cooperative and the community.

This is one of the reasons why these funds can be regarded as taxes. The real spirit of any tax is to get resources for community, thus, general interest needs, and that is what cooperatives do. So, among these public policies for cooperatives a different taxation that bears it in mind can be said to be the basis.

Cooperatives do not act like normal corporations, for this reason they have their adapted taxation, which cannot be considered to be a benefit, but an understanding of their differences. I find it important to have a common definition of what worker cooperatives are in order to be able to make them visible and promote them through reasonable tax policies.

3. Workers' cooperatives in the USA, their tax regulation at a federal level: a view through judicial doctrine

Curiously enough, in the USA we cannot find evidence of all the afore-seen principles as written law for Company Law as cooperatives do not exist as a clear and separate legal entity following the mentioned principles, as in the case of EU countries.

What is more, the existing traditional entrepreneurial types may be ill-suited for the cooperative form of business. Thus, any sort of entity "*operating on a cooperative basis*" can consider itself to be a "*coop*"

¹⁷ As stated by J. Birchall (2010) in *People-centred businesses: Co-operatives, Mutuals and the idea of Membership*, p. 6.

and has to try to cope with this particular system, without a proper comprehensive regulation at a federal level. This fact poses a problem of uncertainty and lack of recognition that should be tackled. Entities do not get along with uncertainty and so the number of worker cooperatives in the USA is scarce. This problem is probably enhanced by a very strong capitalistic culture. Thus, a proper and clear legal framework and public awareness and understanding in the matter are a must.

So, in the USA there is no simple and all-encompassing definition to distinguish an organization called a "cooperative" from other forms of business enterprise. As Justice Louis Brandeis¹⁸ once noted, "*No one plan of organization is to be labeled as truly cooperative to the exclusion of others.*"

We can see that with the ERISA Act (1974) in order to legislate about another kind of workers access to capital, a clear legislative framework together with a generous taxation has had the desired effect of making ESOPs boom all over the country, benefiting employees and employers and above all, society, as these structures have also proved to be more resilient than normal corporations during the crisis. The effect has been a less loss of jobs during recessions. As KURTULUS and KRUSE¹⁹ state there are four broad sources of interest in employee ownership: increased economic performance, greater job security and firm survival, more broadly shared prosperity and lower labor-management conflict and higher quality of work life.

Even though there are three federal laws for cooperatives (the Capper Volster Act, the Agricultural Marketing Act of 1929, and the Farm Credit Act of 1971), all three of them are for agricultural and farmers cooperatives only. Thus, worker cooperatives do not have their own substantive regulation at this level.

It is really through judicial doctrine that we can find some answers to what a cooperative is. The Tax Court, in *Puget Sound Plywood v. Commissioner*²⁰, (even though it was a case mainly directed to ascertain the possible application of section 501 of the Internal Revenue Code), described a cooperative as comprised of members who sought "*(1) [f]or themselves to own and manage the [organization], as distinguished from having it owned and managed by outside equity inves-*

¹⁸ Dissenting opinion in *Frost v. Corporation Commission*, 278 U.S. 515, 546 (1929), quoted in *Ford-Iroquois FS, Inc. v. Commissioner*, 74 T.C. 1213, 1217, n.3 (1980).

¹⁹ F.A. KURTULUS and D.L. KRUSE (2017), *How Did Employee Ownership Firms Weather the Last Two Recessions?: Employee Ownership Stability and Firm Survival: 1999-2011*, pp. 1-2.

²⁰ 44 T.C. 305, 307-308 (1965), acq. 1966-1 C.B. 3.

tors; and then (2) to have their [organization] turn back to the members the excess of the receipts from the store sales over the cost of the goods sold and the expenses of operation.”

This description identifies three basic principles or requirements for cooperatives, thus, it helps us identify the principles for worker cooperatives in the USA too:

- (1) democratic control by the members (a cooperative satisfies this by periodically holding democratically conducted meetings, with members, each with one vote, electing officers to operate the organization);
- (2) vesting in and allocating among the members all excess operating revenues over the expenses incurred to generate the revenues (i.e. operating at cost); and
- (3) subordination of capital, as they are oriented to member patrons.

If we bear in mind that the principles sustaining the promotion of ESOPS are, at least, the same ones as the ones for worker cooperatives, we just cannot see a reason why worker cooperatives should not have the same level of protection, starting from a clear regulatory framework and an advantageous taxation adapted to them. Although they do have this adapted taxation, as we will see, maybe the existing measures could be considered to be ill-suited.

4. Statutory background

Several sources contribute to cooperative law. Curiously enough, in the end, we have to extract the meaning of what a cooperative is from taxation, as at a federal level there is no other regulation. Moreover, the Internal Revenue Code has to be complemented with the Internal Revenue Service rulings and above all, judicial doctrine. However, as we will see, most of the regulations were usually intended for agricultural cooperatives and not to worker cooperatives²¹, so they sometimes may be ill-suited for these last ones.

²¹ From NESS, Manning: The Sherman Act in 1890, while containing no specific language on cooperatives, was used by government officials to ban them. As agriculture cooperatives could set a common price, they were accused of practices against competition. The Clayton Act of 1914 sanctioned cooperatives by exempting all “agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for a profit,” from the Sherman Act. While the

Thus, the Internal Revenue Code provides the legislative foundation for cooperatives, as it is not the type of entity to be found elsewhere. In a sense, the concept of cooperative has to be interpreted through the Tax Code, which contains provisions applicable to all businesses, and other language specifically referring to cooperatives, although not to worker cooperatives in particular.

The Internal Revenue Service, through a variety of administrative determinations, interprets the Tax Code and applies it to the situation of each taxpayer. We can find IRS rulings that give their opinion on the interpretation of different aspects of the Tax Code and that have already done so providing useful guidance for cooperatives.

However, we cannot consider these rulings as true sources of law, they can guide us, but it is for the courts of law to interpret the Code and act as final arbiter for any unsettled disputes between the Service and taxpayers over its meaning. We cannot forget that these rulings are just the Internal Revenue Service interpretation or opinion of the Tax Code and these rulings have sometimes proved to be wrong by the judicial doctrine²².

Several references to cooperatives can be found in the Internal Revenue Code, dating back for over a century. However, we cannot find in the IRC any new policies taken during the last decades and now it would be a great time to do so.

At the very beginning, different Acts were passed at a federal level to regulate cooperatives. However, they were specifically restricted to agricultural and farmer cooperatives. It was in 1936, during the Great Depression, that the Administration started regulating other sort of cooperatives like the electricity ones.

Clayton Act legalized non-profit cooperatives that issued no stock, the legal status of other cooperatives remained ambiguous until the 1920s. In 1922, US Congress passed the Capper-Volstead Act, commonly referred to as the “Cooperative Bill of Rights,” allowing farmers to market products without violating antitrust laws. “However, under the new law cooperative members were required to engage in agricultural production and all cooperatives had to follow a one-member-one-vote rule and annual dividends on stock or capital could not exceed eight percent. In addition, non-member business could not exceed 50 percent of the cooperatives total business. A decade later, in 1933, the US Congress extended the rights of cooperatives through passage of the Farm Credit Act that created a network of cooperative lending institutions to provide loans for agriculture and farmers’ cooperatives”.

²² As it was the case of revenue ruling 61-47, 1961-1 C.B. 193, holding that amounts distributed by a workers’ cooperative association to its members on the basis of man-hours worked are not true patronage dividends eligible for deduction at the cooperative level and the case of the so called “50% rule” in Revenue Ruling 93-21, 1993-1 C.B. 188.

In the War Revenue Act (1898) Congress recognized the contributions and importance of cooperatives. Congress provided exemption from federal excise taxes to cooperative companies, not-for profit mutual benefit associations, and agricultural or horticultural, among others.

This long history tells us that cooperatives can be regulated at a federal level, not only by what could be inferred from the Internal Revenue Code, but as entities to be regulated and promoted as there have been different attempts that have done so regarding agricultural, farmers, electricity, and other sorts of cooperatives.

However, the only legal framework at a federal level to be found today for worker cooperatives is in the IRC.

Revenue Act 1916 (IRC 1916) made a clear distinction of the cooperative regime for farmers' cooperatives regulating it on its own, in section 521, mutual or cooperative insurance companies, ditch or irrigation companies, telephone companies and "like organizations", regulating them in section 501.c (12) and all other cooperatives, those of subchapter T, where worker cooperatives can be assigned.

In 1951, Congress passed legislation which, when complemented by Treasury rulings, was thought to ensure that earnings of cooperatives, to the extent they reflected business activity, would be taxable either to the cooperatives or to the patrons, depending on their legal form. However, certain court decisions (Long Poultry Farms v. Commissioner, 249 F. 2d 726 (4th Cir. 1957); Commissioner v. B. A. Carpenter, 219 F. 2d 635 (5th Cir. 1955)) held that non-cash allocations of patronage dividends generally were not taxable to the patron although the allocations were deductible by the cooperatives. Congress determined that further clarification was necessary.

In 1961, revenue ruling 61-47, 1961-1 C.B. 193, was issued holding that amounts distributed by a workers' cooperative association to its members on the basis of man-hours worked are not true patronage dividends eligible for deduction at the cooperative level.

The Service said this holds true even when a State law provides that work performed as a member of a workers cooperative is deemed to be patronage of the cooperative. It concluded that to be deductible as a true patronage dividend, the return had to be "...either an additional consideration due to the patron for goods sold through the association or a reduction in the purchase price of supplies and equipment purchased by the patron through the association." However, Senator Kerr disagreed with this, as he was of the opinion that worker cooperatives were the true form of cooperatives and should exclude patronage refunds, thus designing subchapter T, in the way it lasts till today.

This way, in 1962, Congress added subchapter T to the Code (consisting of IRC sections 1381 through 1388) to address the defects of prior law. It clarifies, in general, that:

- a) A cooperative may exclude, as patronage refunds, amounts allocated in cash or scrip; and
- b) Its patrons are currently taxed on such refunds.

In spite of this clarification, the IRS pursued its objective in litigation, as they did not want worker cooperatives to benefit from subchapter T. However, in *Linnton Plywood Ass'n v. United States*, 236 F. Supp. 227 (D.C. Ore. 1964) the judge gave his opinion contrary to that of the IRS.

Occasionally, when one aims to clarify matters we can make them more complicated, as it is the case. There is an important misuse of cooperative terminology, now even by Congress.

- By this clarification Congress commits several errors: first, because we cannot really speak of a “deduction”, but, in purity, of an exclusion as patronage refunds are not computable as taxable income;
- second, because patronage dividends should not exist, as the outcome of patronage should be a refund and the word dividends is repeated;
- third, because it poses the problem of who can be considered to be a patron, as the IRC does not give a definition of what a patron is. Can members be considered to be patrons? And non members? However, Treasury Regulation § 1.1388-1(e) describes a patron as *“any person with or for whom the cooperative association does business on a cooperative basis, whether a member or a nonmember of the cooperative association....”*. *This way both members and non members can act as patrons.*

In 1965, in the Puget Sound Plywood case the U.S. Tax Court issued a more thorough opinion on essentially the same facts, which referred to the “operating on a cooperative basis” language in Code sec.1381(a)(2), and reached the same conclusion, that worker cooperatives could exclude their patronage refund allocations. This case has not been overruled, so it is clear that the exclusion of patronage refunds when computing a worker cooperative income lasts still today. This rule can be known as the *Single Tax Principle*.

Therefore, the Code says that *“any corporation operating on a cooperative basis”* may receive the tax benefits of subchapter T. The Code does not include any specific definition of *“operating on a coop-*

erative basis". The regulations repeat the Code language and add the phrase *"and allocating amounts to patrons on the basis of the business done with or for such patrons."*

As we can see, this lack of a regulatory definition does not mean that any entity, being or not a corporation can be said to act in a cooperative basis and use the provisions stated in the IRC for its taxation without further proof. Even though there is no clear regulation, judicial doctrine can give some light in the matter. In this sense, some guidelines can be found of what "acting on a cooperative basis" means through history and judicial doctrine.

4.1. *The Single Tax principle*

Cooperatives calculate taxable income like other corporations, but with one main difference based on the distinct way of distributing net margins to its patrons based on use, rather than to investors based on investment.

What cooperatives get is not profits, but income or margins and thus, we can speak of net income, net margins or a net surplus.

A good use of this terminology is important in order to establish the differences with traditional corporations.

This difference is the basis for the Single Tax Principle that applies when business income sources and distribution methods can be considered to be "cooperative" in nature. Earnings from sources other than patronage and margins not distributed in the manner specified by the Code are generally not eligible for single tax treatment.

As the sharing of profits within worker cooperatives is very different from that of a traditional enterprise and being as there no written rules of what that means in the USA, we can find through judicial doctrine this important legal characteristic.

Income distribution in workers cooperatives consists of two elements: the distribution based on the work accomplished by each worker and the creation of 'reserves' which contribute to the consolidation of the firm's financial standing. This profit sharing model explicitly recognizes the value of employee labor and the importance of making the firm sustainable so that it may be handed over to future generations. However, this second part, cannot be found in the USA system and, as we will see, the lack of it weakens worker cooperatives making them extremely vulnerable.

The general principle of cooperative income taxation is that money flows through the cooperative and on to patrons, leaving no margins

to be retained as profit by the cooperative. Thus margins are taxed only once. The tax is ultimately paid by the final recipient (the cooperative patron), although under some circumstances the cooperative pays tax on a temporary basis, then receives a deduction when the money is finally passed on to the patron. The way to do this is by the exemption of patronage refunds.

This constitutes the underlying principle for the exclusion of patronage refunds from taxable income. This practice was already settled a century ago as a 1918 ruling makes the following observation: “*the deduction of patronage dividends was a settled practice in the administration of the income-tax laws*”.

As previously mentioned, Subchapter T cooperatives are governed by I.R.C. sections 1381-1388, which are devoted to cooperatives conducting any kind of business, not being exempt from federal income tax. Depending on their actual legal form, their earnings are taxed at either the cooperative or member-patron level. Thus, if they adopt the form of C Corps the cooperative itself is going to be the taxpayer, whilst if the adopted form is that of an S Corp they can be pass-through, being the members the taxpayers. If they are an LLC they could generally choose to be taxed as corporations or to be pass-through.

The main difference between cooperatives and other corporations is that because of the Single Tax principle they do not incur in double taxation out of patronage source earnings, being taxed only once. Therefore, they can exclude the patronage-source earnings they distribute to its member-patrons from their gross income. Only patronage-source earnings are eligible for exclusion by the cooperative and the conditions for this tax treatment include an agreement by the patron to recognize the full patronage refund for tax purposes even though it is not received in cash or negotiable form (as allocated income).

So one of the main differences in taxation when compared to other sorts of entities is precisely the exclusion from income tax at a corporate level of patronage sourced income when distributed under certain conditions (in cash or what can be considered to be a qualified method of payment), which is only going to pay taxes at a taxpayer level.

However, a subchapter T cooperative must usually pay tax on the patronage source earnings it retains. Thus, when cooperatives have income that they want to keep in order to fortify the cooperative funds, no consideration is given to reserves and they have to pay just as any traditional corporation. This way, the single tax treatment is lost. If the funds are later distributed, the recipients must pay a second income tax at the recipient level.

I find that what has been designed as an incentive for cooperatives can become an important disincentive for their resiliency, as it is the money sent to reserves what makes a cooperative strong and resilient in the long run. If cooperatives are going to be different from other types of corporations they have to look after the cooperatives financial health avoiding their decapitalization. The patronage refund clause looks at enhancing the distribution of refunds back to patrons, penalizing their non distribution. Moreover, this clause can be said to be contrary to the ones we find in most of the very developed countries in relation to cooperatives, where the allocation of margins to reserves is usually compulsory and promoted by law, partly or totally excluding them from taxable income.

The way the US legislator saw it the margins had to pay income once, so if it is refunded to patrons it is excluded from taxation at the cooperative. However, if it stays in the cooperative patrons do not receive their share but the cooperative has to pay for those margins as they can no longer be considered to be distributed patronage refunds. If later, part of those reserves go back to patrons they will pay income tax again. As an example in *Cooperative Oil Ass'n v. Commissioner*, 115 F.2d 666 (9th Cir. 1941), the exclusion of patronage refunds was not permitted where some net margins were not allocated or distributed to patrons but were placed instead in a working capital reserve.

Measures in the IRC in order to promote the cooperative funds can be considered to be a must. So a good incentive would be the exclusion (or a reduced inclusion) from taxable income of margins devoted to reserves. In the end, if these reserves were not used for the cooperative and instead they were distributed to members they would then pay income tax. In this case it would just be a deferral of taxes that could greatly help the allocation of inner resources to these funds making cooperatives undeniably more resilient. If the cooperative ended up not distributing the reserve it would be for the benefit of the cooperative in the long run. This way it would become stronger and resilient. In this case, a partial exclusion of the percentage compulsorily devoted to reserves could be in accordance with what is done in other countries with strong cooperatives.

Last, worker cooperatives cannot qualify to use section 521, as it is devoted to farmers' cooperatives or section 501(c)(12) as it provides federal income tax exemption for benevolent life, insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, electric companies, or "like organizations".

4.1.1. THE MISSISSIPPI VALLEY PORTLAND CEMENT V. USA: THE SUBSTANCE OVER FORM DOCTRINE AND A DEFINITION OF PATRONAGE REFUNDS

The Mississippi Valley Portland Cement v. USA case²³ is a clear precedent of the use of the substance over form doctrine and the true economic reality test as effective methods of unmasking pretended entities “working on a cooperative basis”.

In this case, the taxpayer, a said to be nontax-exempt co-operative incorporated in Mississippi, sought to deduct distributions to its shareholders from its corporate income tax as “patronage dividends.” These payments were made from the corporation’s net profits during the tax years in question. After excluding patronage dividends, the taxpayer reported no taxable income for several years.

The District Court went as follows: *“There is nothing in the method of doing business by the taxpayer in this case that distinguishes it from the average or normal corporation doing business for profit, no matter that the taxpayer is called a cooperative, or that the dividends to stockholders are referred to as patronage rebates. Other characteristics of this taxpayer, akin to that of a corporation for profit is that the dividends were payable only to stockholders of record at the end of each fiscal year, leaving stockholders, who might have sold their shares prior thereto, with no entitlement to a rebate on the basis of earnings during the fiscal year; and the fact that, as stipulated, actually no stockholder used the cement produced. All allocations were assigned to a sales agency or sold by that agency. As further stipulated, any allocations and delivery of cement to a patron were discouraged.”*

“It is the opinion of this Court, after carefully scrutinizing the structure of this taxpayer and its method of doing business, that it was not doing business with its consumer patrons or assigns in the historical sense of a consumer cooperative, but that its stockholders are in no different category from that of any corporation interested in profits, no matter whether the source of that profit be from the production of cement or any other product, and that accordingly the sums paid here are not excludable from taxable income.”

So, in this case, the Court decided that the taxpayers distribution of its net profits could not be categorized as patronage dividends in the sense of Section 1388(a), as added by the Revenue Act of 1962, which provides as follows:

²³ 408 F.2d 827 (1969), n. 2561 US Court of Appeals Fifth Circuit. March 14, 1969.

“(a) Patronage Dividend. — For purposes of this subchapter, the term ‘patronage dividend’ means an amount paid to a patron by an organization to which part I of this subchapter applies —

(1) on the basis of quantity or value of business done with or for such patron.(2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and(3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions.”

Of particular importance to the disposition of this case is the language requiring that the distribution be made out of earnings from “*business done with or for patrons*”. On the one hand, the Commissioner argues that “*with or for*” mean that the patrons must physically handle the products of the cooperative. On the other hand, the taxpayer argues that neither the statute nor the cases have imposed such a physical contact requirement. In previous cases evidence that the patron actually used the product points logically to the conclusion that the business was conducted “*with or for*” such patron. Conversely, the absence of such evidence would support, but not compel, a conclusion to the contrary.

However, the district court, 280 F. Supp. 393, agreeing with the Commissioner, said that notwithstanding the “*cooperative camouflage*”, these payments were in reality no more than dividends paid to the corporation’s shareholders, as the taxpayer’s method of conducting his business was not distinguishable from normal corporations doing business for profit. Moreover, the so called “*patrons*”, were just “*paper patrons*” as they had no actual contact with the cement. Thus, lifting the veil the economic reality was unmasked and it was held that patronage dividends were not deductible.

Notwithstanding, as we have said, the language is not too precise, again, as there seems to be two errors:

- first, we cannot really speak of a deduction, but of an exemption which is easier to prove than deductions, which belong to legislative grace. The so called “*patronage dividends*” should be excluded at the time of computing income not taken into account and later deducted;

— second, it is also imprecise to refer to “*patronage dividends*” as we are speaking of “*patronage refunds*”. The legal nature of dividends from capitalistic entities and refunds from cooperatives is not exactly the same.

Earnings on non-cooperative operations, like those of investor-general corporations, are subject to taxation at both the firm and ownership levels. So, this way, the exclusion of the patronage refund is obviously only for cooperative operations and for all other operations the general regime applies.

Another factor that has been used by the IRS for determining what working on a cooperative basis means is the so called “50% rule”, that will be explained now. However, it should be noted that this rule is no longer applicable to worker cooperatives for the Internal Revenue Code purposes.

4.2. *The 50 % rule*

In general, worker cooperatives can be said to be cooperatives which are primarily owned by their employees as employees hold a majority of capital and voting rights.

This fact is in their nature, as if they were not primarily owned by employees or employees did not have an important amount of voting rights, they would not be worker cooperatives, even if they chose the name.

Within the uncertain US system we cannot find the above mentioned fact as written law in the Internal Revenue Code for worker cooperatives, though we can find it for agricultural and farmers cooperatives. The Internal Revenue Service changed its interpretation of whether “operating on a cooperative basis” required more than 50 percent of the cooperative’s business to be done with members on a patronage basis to qualify for tax treatment in Revenue Ruling 93-21, 1993-1 C.B. 188, it is stated that the 50 percent threshold is not necessary.

The US Supreme Tax Court decided that the 50% requisite was not applicable to worker cooperatives, as it is in a section not applicable to them (farmer cooperatives). This is the reason why the IRS had to change its interpretation and no longer asks for this 50% minimum of business done with members on a patronage basis to qualify for the cooperatives tax treatment. In my opinion, the US Court of law decided what should be decided according to the law, as it is true that the 50% minimum is in another section of the IRC. However, it is the

law that should reasonably be changed in order to ask for this minimum. Otherwise, in the end, the real nature of cooperatives is lost on the way. All cooperatives need to bear in mind the cooperative principles and the principle of mutuality is a pillar for them. Not asking for a minimum gives a chance for other sorts of traditional corporations to pretend to act on a cooperative basis for some of their members, when the vast majority of the business can derive from operations with non members. Bearing in mind that in the end, even though they act on a cooperative basis they are traditional types of business, this can surely happen very often.

Moreover, for other purposes there can be a need to comply with this 50% rule. This could be the case of the Statutes of incorporation at a State level, as incorporation offers advantages over other forms of doing business where a large number of persons may become involved in the venture, facilitating also succession ownership. Incorporation is also important as it limits the personal liability of each member, for losses suffered by the cooperative, to the members' equity in the cooperative and this 50% rule may be applicable in different States.

Even more, the recent bill proposal²⁴ by Sanders, Gillibrand, Leahy and Hassan to provide for the establishment of the United States Employee Ownership Bank, and for other purposes is based on section 1082 where a 51% worker ownership is required, the same applies to 1042 © 2 of the IRC in order to receive the tax benefits applicable for the transfer of a business. These facts should be born in mind.

5. The Statutes of incorporation at a State level

In the USA, corporations are chartered by state law, not federal law, so there are fifty state corporate statutes. The cooperative by-laws could be used in a business corporation in any of the states. However, the fact that different forms of corporations can act as "coops" make matters difficult because it becomes a hard task to determine whether these entities act like true cooperatives or not.

Thus, cooperative tax treatment is available to any organization that comes within the scope of "operating on a cooperative basis" under the Internal Revenue Code. However, there are non-tax statutes that establish cooperative characteristics which are taken into account because taxation is only one external factor.

²⁴ . May 10th 2017,

All States have recognized cooperatives' unique characteristics by enacting statutes specifically designed for incorporating cooperatives. However, even though the 50 States have Statutes of incorporation, most of them are devoted to agricultural cooperatives. Thus, not all States have statutes that can be used by worker cooperatives.

In most of the States where worker cooperatives can incorporate, the Statutes of incorporation are general cooperative Statutes and only some of them are worker cooperative specific statutes. In some others, there are consumer cooperative statutes that worker cooperatives can also use²⁵. The last State to have approved worker cooperative Statutes is the State of Rhode Island in March 24th 2017.

²⁵ In the different States that have either a general cooperative Statute or a worker or consumer cooperative State worker cooperatives can use the legal information can be found in the following:

In Alaska, Alaska Cooperative Corporation Act Statutes (AS 10.15.005 – 10.15.600) <https://www.commerce.alaska.gov/web/portals/5/pub/corporationsstatutesandregulations.pdf>;

For Arkansas, Arkansas AR-AG: Ark. Code. Ann. § 4-30-101 - 4-30-118; California Cooperative Corporation Law §§ 12200 et seq.; <http://www.leginfo.ca.gov/cgi-in/displaycode?section=corp&group=12001-13000&file=12200-12203>;

For Colorado, in Colorado Cooperative Act, 7-56-101 7-56-901, C.R.S. (West 2016), <http://www.lexisnexis.com/hottopics/Colorado/>, under Title 7, Article 56, Associations;

In Florida, FL-AG F.S.A. §s 618.01 to 618.28;

In Georgia GA-Ag. O.C.G.A. Sections 2-10-80 through 2-10-111;

In Illinois, the information can be found in 805 Ill. Comp. Stat. 310/1310/27; <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2295&ChapterID=65>;

In Iowa, it can be found in Iowa Code §499; <https://www.legis.iowa.gov/DOCS/ACOIC/LINC/Chapter.499.pdf>;

In Missouri, MO-Gen-1; Missouri Revised Statutes §§ 357.010 to 357.190, <http://www.moga.mo.gov/mostatutes/ChaptersIndex/chaptIndex357.html>;

in Montana, Mont. Code Ann. (2015); §§ 35-15-101 to 35-15-507; Montana Cooperative Associations http://leg.mt.gov/bills/mca_toc/35_15.htm;

In New York, NY-CC: N.Y. C.C.O. Law § 1-101 et. Seq (Consol. 2015), New York Cooperative Corporations Law: <http://codes.findlaw.com/ny/cooperative-corporations-law/#!tid=ND66BA6417A1046DE84120ED30987B50B>;

In Ohio, OH-Gen Sections 1729.01 to 1729.99 <http://codes.ohio.gov/orc/172>;

In Oregon, OR-Gen, Oregon Revised Statutes Title 7 Corporations and Partnerships Chapter 62 Cooperatives §§ 62.005 to 62.992; <http://www.oregonlaws.org/ors/chapter/62>; in South Dakota, SD-Gen; S.D. Codified Laws §§ 47-15-47-20 (West 2007); http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Statute=47&Type=Statutete;

In Virginia, VA-Gen: Va. Code Ann. § 13.1-301-13.1-311.1 (West 2016); <http://law.lis.virginia.gov/vacode/title13.1/chapter3/>;

In West Virginia, WV-Ag (and more) WV Code §19-4 <http://www.legis.state.wv.us/wv-code/ChapterEntire.cfm?chap=19&art=4>;

In Wisconsin, WI-UA Coop Chapter 193: Wis. Stat. § 193.001-193-971; <http://docs.legis.wisconsin.gov/statutes/statutes/193> and WI-Gen: Wis. Stat. Ann. § 185.97 (West 2016); <http://docs.legis.wisconsin.gov/statutes/statutes/185.pdf>.

In all of them, these statutes create a corporate form that is owned and controlled by its members, and which operates for their benefit. However, Statutes vary in their specificity. In most of them General Corporate law applies as supplemental law. However, in Missouri General Corporate Law does not apply as stated in MO-Gen-1 § 357.010.

The names cooperatives adopt are not the same and in many cases, there is not even a reference to be "coop." in their nicknames. If an entity is truly a cooperative, then it should be clear that it is, by using either the word cooperative or the nickname "coop". The variety of nicknames does not really help identify them.

For instance in Arkansas the nickname they have is "AR-Gen" for Cooperative Associations Generally, in California "CA-Coop" for California Cooperative Corporation Law, in Colorado "CO-Gen" for Colorado Cooperative Act, in Florida "FL-AG" for Florida Cooperative Associations Generally, in Georgia "GA-Ag" for Georgia Cooperative Marketing Act, in Illinois "IL-Gen" for Illinois Cooperative Act, in Iowa "IA-Gen" for Iowa Cooperative Associations Generally, in Missouri "MO-Gen-1" for the Missouri Company Cooperatives Act, in Montana "MT-Assn" for Montana Cooperatives Association, in New York "NY-CC" for New York Cooperative Corporations Law or "NY-BSC" for New York Business Corporation Law, in Ohio "OH-Gen" for Ohio Cooperative Law, in Oregon "OR-Gen" for Oregon's General Cooperative Statutes, in South Dakota "SD-Gen" for South Dakota Cooperatives Association Act, in Virginia "VA-Gen" for Virginia Cooperative Associations, in West Virginia "WV Coop" for West Virginia Cooperative Associations and in Wisconsin "WI-Gen" for Wisconsin Cooperative Act and "WI-UAcoop" for Wisconsin Unincorporated Cooperative Associations Act.

In all of the afore-mentioned States the articles of incorporation require the cooperative's name and the incorporator's signature but for Wisconsin Unincorporated Cooperative Association Act that does not specifically require this. In the case of New York BSC they can also be signed by an attorney, officer or director.

There are several definitions of what a cooperative under their Statutes of incorporation can be, although they are varied as we can see: in California, CA-COOP § 12201 states: *"...(A) corporation may be formed under this part for any lawful purpose provided that it shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the corporation...(s)uch corporations are democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons";* in Colorado, CO-Gen

§7-56-103(6) says when defining a Cooperative: “ (a) *The business is operated at cost by adjusting the prices charged for goods or services or by returning any net margins at the end of a fiscal year on a patronage basis to members and other persons qualified to share in the net margins; (b) Dividends on stock or interest on equity capital is limited, as prescribed in the articles or bylaws; (c) Voting rights limited to members of the cooperative as prescribed in the articles or bylaws; (d) The cooperative’s business carried on for the mutual benefit of its members; and (e) Members not liable for any debt, obligation, or liability of the cooperative*”; In Iowa, IA-Gen §499.2 defines a “cooperative association” as “*one which deals with or functions for its members, which distributes its net earnings among its members in proportion to their dealings with it, and in which each voting member has only one vote*”; In Montana it can be inferred from MO-Gen-1 § 357.010 to 357.190: § 357.090 that provides the following: “*each shareholder has the right to cast only one vote regardless of number of shares held*”, and § 357.100 provides that “*each shareholder has only one vote on issues to be decided directly by shareholders, regardless of number of shares held*” in Wisconsin, WI-UA Coop § 193.005(9) says: “*Cooperative*” means “*an association organized under this chapter conducting business on a cooperative plan as provided under this chapter*”.

Even the nature of the cooperative varies as in some of them they are considered to be non-profit while in some others, they are for profit. For instance in California, Colorado, Iowa, Montana, Oregon, South Dakota, Wisconsin and in New York they are for profit. However, for instance, in New York their primary purpose is to provide services and means for members, which means that as a secondary purpose they can make profits. In other States Statutes cooperatives are considered to have a non-profit nature.

In most of these acts a perpetual duration is stated for the cooperatives formed under them. However, in some of them a fixed period can be stated in the articles of incorporation.

An annual renewal of the organization or the incorporation is required in some of them, as is the case of Illinois and New York. In the case of Ohio it is five years while in most of them this requisite is not stated.

As for the report required it can either be annual, as in the case of California (when there are at least 25 members in a fiscal year) and in all cases in Colorado, Georgia, Illinois, Montana, New York, Oregon, South Dakota, Virginia and Wisconsin or biannual as in the case of Arkansas and Iowa. In Florida and Ohio no annual report is required.

As we can see, the different Statutes of incorporation can be considered to be a step forward but they vary in each State, not really helping a certainty of the law.

6. **A proposed model for unincorporated cooperatives: The Uniform Limited Cooperative Association Act**

As we have seen in the previous cooperative study for the States in which there are Statutes of incorporation that can be used by worker cooperatives, in all of them these statutes create a corporate form that is owned and controlled by its members operating for their benefit. Statutes vary in their specificity and in most of them General Corporate law is applicable.

However, on August 2, 2007, the National Conference of Commissioners on Uniform State Laws adopted a model of Act in order to provide for a pattern for uniformity among the States desiring to adopt similar statutes for the unincorporated form of a cooperative. The act was amended first in 2011 and again in Boston the 12 of July 2013. This last amendment is the one that is going to be commented in the following lines.

This act was born as a modern alternative for the Uniform Agricultural Cooperative Association Act. In fact, its original working title was "Uniform Agricultural and Agricultural Related Cooperatives Act". However, it was changed during the drafting process by "Uniform Cooperative Association Act" so as to open it and not to restrict its application to agricultural associations. The final title reflects the NCCUSL recommendation that the act "*is a free-standing act separate and apart from current cooperative acts and, therefore, is not a statutory replacement of other law*". Thus, in the end the model act contemplates the formation of various types of limited cooperative associations, including marketing, advertising, bargaining, processing, purchasing, real estate, and worker owned cooperatives.

It is obviously only draft law that can be used by the States in order to have a common model as a different way of creating cooperatives, following that model. The idea is excellent, as if it were well conceived, based on the cooperative principles, we could have a proper model to follow and that would greatly contribute to the certainty and the expansion of cooperatives. It would definitely be a very big step towards the introduction not only of a certain uniformization but above all, certainty on what being a cooperative means. This would give this entity the understanding and awareness it deserves, thus, providing the US

with a very good instrument to create quality and stable jobs, equality, sustainability, resiliency, etc.

Notwithstanding, as we will see, it is not going to be the case, due to the fact that the proposed Act does not necessarily base itself in the cooperative principles, even though repeatedly stating to do so.

The Model Act was adopted unanimously and signed by Commissioners by the 50 States. However, until now, it has only been enacted by Utah, Kentucky, Nebraska, DC, Colorado as Bill 11 and in this case, with many modifications from the original and Oklahoma. It can also be found in Vermont, also with changes and by the name of Mutual Benefit Enterprise²⁶. However, the main problem can be that nothing prevents an entity from another State from incorporating itself in any of these States that have enacted the law and call themselves a cooperative, even though in essence, as we will see, in their substance, they do not need to be.

This Act is not designed to replace any of the existing state co-op laws we have seen in the previous point. Rather, it is conceived as another possible legal instrument to be adopted if the States want to do so. Thus, some provisions of the Act differ markedly from the more corporate-like framework of existing traditional cooperative statutes that have been studied before.

Thus, it can be considered to be a model Statute proposed for adoption in the individual States as an alternative to other cooperative unincorporated structures already available under State law. It is a question of choice, if the cooperative is going to have the form of a LLC, then it could choose to have this form instead, if the State enacted it.

It is a governing statute for an organization that is unincorporated but confers limited liability on its participants, like a limited liability company in effect. It permits an entity organized under it (a so called "limited cooperative association" (LCA)) to use the term "cooperative" or "coop." in its organizational name²⁷. As we will see, this

²⁶ Dave Gutknecht or Peter Langrock explicitly embraced the change reflected in the amendment, from Limited Cooperative Association to Mutual Benefit Enterprise, precisely because it is not wise to use the word "cooperative" for these entities.

²⁷ Section 103 (a) (b) as permitted names includes the following: "[a] Use of the term "cooperative" or its abbreviation, the name of a limited cooperative association must contain the phrase "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative" may be abbreviated as "Co-op" or "Coop". "Association" may be abbreviated as "Assoc." or "Assn.". [[A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under this [act].] [or] [A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" [insert cross-reference to other laws of this state].]]"

can become a problem, as the substance of this unincorporated structure does not always coincide with the cooperative form. As we will see now, even though the writing seems to comply with cooperative principles, as general rules, in too many occasions, in the end, there are restrictions and exceptions from these general rules that end up by breaching the cooperative nature.

According to the Act's commentaries *"a limited cooperative association formed under this Act is intended to provide an unincorporated cooperative structure with centralized management but democratic member control as an alternative to a limited liability company"*. This last has been a form of business many have turned to when the traditional cooperative form of business entity has not been receptive to outside investments. Moreover the Uniform Law Commission summary states the following: *"ULCAA builds on traditional law governing cooperatives, but recognizes a growing trend toward the "New Generation Cooperative" (NGC), which can combine features not readily available under traditional law, such as legally binding delivery contracts and the opportunity for outside equity investment"*.

I find that the main problem with this model lays exactly there as it is a great idea that could have greatly contributed to progress in this area but, conceived as it is, this outside equity investment ends up being its centerpiece and a real problem.

As PITMAN²⁸ says: *"Traditionally, a business organized on a cooperative basis subordinates the interests of the capital investor to those of the business user, or patron. Cooperative control is in the hands of its member-patrons and returns on investment capital are limited. Member-patrons are the primary source of equity capital, and net earnings are allocated on the basis of patronage instead of investment"*. That is the reason why I cannot agree with her about this new Act. It is not a question of opposing tradition to modernity, on the contrary is a question of sticking to the principles in order to stay true.

The main basis of the afore mentioned purpose of the proposed modern act is wrong and can be easily challenged, as it is not entirely true that the traditional system does not provide for a solution in terms of equity investment. Whenever a cooperative needs outside investment it can have different choices: the first one would be to use limited preferred stock, the second, it can use inner or outside debt and the third, they can use a separate LLC to acquire and lease to the co-

²⁸ PITMAN, L. (2014), What is a real cooperative? Thinking about structures, principles and politics Grassroots Economic Organizing (GEO) Newsletter, <http://www.geo.coop/story/whats-real-cooperative>.

op any sort of need for its project without changing the cooperatives nature. This simple solution has the advantage of keeping liabilities associated with the project clear and at another entity. Moreover, public policies can be adopted to give further solutions to this possible problem, but this act is not one of them; last, there can be many others as conversions and joint ventures.

Furthermore, when delving into the Act we can see that the main point seems to be precisely (under the cover of modernization) to open a door to outside investors. This can be worrying and a danger because it leads to losing the true cooperative meaning from its very basis (particularly for democratic ownership and democratic member control), as the new State cooperative statutes and the Act provide for an unincorporated entity to be formed with both traditional patron members and investor members²⁹. Thus, its defining feature becomes the interposing of investors into the ownership, governance, and entitlements of a “purported cooperative”. If the substance over form doctrine were to be used here, as seen in the *Mississippi Valley Portland Cement v. USA* case before, it would most probably fail the test³⁰.

Therefore, in the cases where this form is adopted, the exclusion of patronage dividends may reasonably be unaccepted, as this form does not really follow the requirements we have previously seen in the tax

²⁹ In selected ways, “investor members” are similar to limited partners in a limited partnership formed under the Uniform Limited Partnership Act (2001).

³⁰ Remember the following reasoning: “*It is the opinion of this Court, after carefully scrutinizing the structure of this taxpayer and its method of doing business, that it was not doing business with its consumer patrons or assigns in the historical sense of a consumer cooperative, but that its stockholders are in no different category from that of any corporation interested in profits, no matter whether the source of that profit be from the production of cement or any other product, and that accordingly the sums paid here are not excludable from taxable income.*”

So, in this case, the Court decided that the taxpayers distribution of its net profits could not be categorized as patronage dividends in the sense of Section 1388(a), as added by the Revenue Act of 1962, which provides as follows:

“(a) *Patronage Dividend.* — For purposes of this subchapter, the term ‘patronage dividend’ means an amount paid to a patron by an organization to which part I of this subchapter applies —

(1) *on the basis of quantity or value of business done with or for such patron.*(2) *under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and*(3) *which is determined by reference to the net earnings of the organization from business done with or for its patrons.*

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions.”

code to consider that the entity is operating “*in a cooperative basis*”. Remember that at least, the following requirements were needed: “(a) subordination of capital as regards control of the co-op, entitlement to its pecuniary benefits, and limitations on distributions in respect of stock; (b) democratic control by its patrons on a one-member-one-vote basis; and (c) net earnings vested in its patrons and allocated to them in proportion to their patronage”.

This means that real good-will patrons of a cooperative formed following this model could not be able to fulfill their rights and apply the provisions the IRC has for them.

Even though from the very beginning, the Act states that it seeks to provide an alternative which accounts for cooperative principles to a greater extent, with less room for design abuse, and with more transparency to patron members than can be engineered by using a combination of entities to find equity investment, if we carefully delve into it, we cannot reasonably agree with it. On the contrary, the possible use of this framework may lead to “cooperatives on paper” controlled by outside investors that would not reasonably pass the judicial doctrine tests.

It cannot be forgotten that, adopting the cooperative form is a question of principles and this model Act does not really base itself in them as capital investors are accorded ownership status, governance rights and economic entitlements being called “members”.

Even if the definition of what a cooperative is in the US is not that clear, we can, at least, agree on a minimum from what we have seen in previous points in the Internal Revenue Code and judicial doctrine: a cooperative must be owned and democratically controlled by the users of its services, and its benefits in the form of allocations of earnings be provided to the users of its services on the basis of their patronage. The fact that this model proposes investors and their becoming a centerpiece of the entity, even if not that apparent in a first read, does not advocate for the cooperative principles.

For instance, section 103 of the Model Act when regulating the nature of the limited cooperative association states the following: “(a) A limited cooperative association organized under this [act] is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, which permits combining:

- (1) ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and
- (2) *separate investments in the association by members who may receive returns on their investments and a share of control.*”

This second point poses a problem as, even if the first one seems all right, the word “member” is defined by the act as *“a person that is admitted as a patron member or investor member, or both, in a limited cooperative association. The term does not include a person that has dissociated as a member”*.

This subtle change of what a member is, allowing investor members together with the second paragraph of sect.103 makes us reach the following conclusion: there are investor members who are not only going to receive returns on their investments according to equity, as we will see, but also a share of control. If that is done, where is the difference with other sorts of traditional corporations like a traditional LLC?

There are several sections that, taken together, can be disturbing. For instance, the definition of “organizer” in Section 102(21) requires an organizer to be an individual and just one individual is necessary to cope with sect. 301 to organize a cooperative. Moreover, in the commentaries to section 301, it says that *“it permits the organizing of a limited cooperative association without members at the time of organization”*. We can infer from this that members are not necessary in order to organize a cooperative and just one individual can organize it.

Furthermore, section 502 a) states that to form this sort of cooperative it only needs for one member³¹. All these sections come as a surprise as they not only seem to be inconsistent but above all, as the word “Co-operative” etymologically comes from Latin from the union of the prefix co- (which means union) –operari- (which means work) and the suffix -tive (relation). This is to say, the work co-operative means working in union, working in relation with others. Thus, the only possible explanation for it comes from a systematical reading together with section 501 where in order to operate, it asks for two patron members though it still accepts one, here saying that “unless the sole member is a cooperative”.

A literal interpretation of the afore seen sections leads us to the conclusion that to form a cooperative there is just a need for one person, the organizer, who must be an individual whilst to operate you can only have one person if it is not an individual! However, all this can have another possible interpretation as sec.301 allows one investor to be the sole organizer, against all common sense and this may be the reason why these sections may seem unclear.

³¹ Section 401 a: *“If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.*

Under section 302 a) 1) the organizer, who does not need to be even a member and can be an investor may adopt the bylaws and together with sec.302 a) 2) name the initial directors and sec. 303 b) they may accept members (but the concept the Model Act has of member includes investor members). This way investors alone may constitute the entirety of patron and investor members since patron members are not required to conduct any actual patronage under Sec. 102(22). Evidently, all of this goes against the principle of open doors and against the very essence of the meaning of cooperative.

All the afore-seen could be enough not to consider adopting this form. Notwithstanding, there are more cooperative principles that become compromised under this Act.

Cooperatives are a true form of democratic participation of workers where work comes first and capital is instrumental. This is the reason why I find that section 512 goes clearly against the very essence of cooperative principles in a desire to please capital investors. In this section it is said that "the organic rules may allocate voting power among patron members on the basis of one or a combination of the following:(1) one member, one vote;(2) use or patronage;(3) equity; or(4) if a patron member is a cooperative, the number of its patron members. The organic rules may provide for the allocation of patron member voting power by districts or class, or any combination thereof".

As derived from section 512 and even explained in the commentaries, the organic rules could base voting on a percentage of equity in the limited cooperative association or on each dollar of equity in the association. The equity could be paid in capital or retained allocations in the capital accounts of the members that have not been distributed, or a combination of both³².

³² Example extracted from the commentaries of sec.512:"A member has \$1,000 of paid in capital in an association that has a total of \$20,000 in paid in capital from all voting members. In addition, the member has \$15,000 of retained allocations in the member's capital account that have not been distributed. All of the members together have \$100,000 of retained allocations in their capital accounts collectively.

The organic rules of the association could provide that voting power will be based on paid in capital. The member would have 1/20, or 5%, of the total voting power in the association.

The organic rules could provide that voting power will be based on retained allocations. The member would have 15/100, or 15%, of the total voting power.

The organic rules could provide that voting power will be based on total equity in the association, a combination of paid in capital and retained allocations. The member would have a total of \$16,000 in equity (\$1,000 of paid in capital plus \$15,000 of retained allocations). Total equities of the association as a whole would be \$120,000 (\$20,000 of paid in equity plus \$100,000 of retained allocations). The member would have 16/120, or 13.3%, of the total voting power.

This Act clearly permits the organic rules to provide for more than one vote per member in a limited cooperative association. If voting power can be allocated by equity the purported cooperative is, again, no longer one in its essence.

Moreover, section 513³³ leaves an open door for the organic rules to provide an allocation not based in one member, one vote, but by classes, even though at a first glimpse to the section the general rule seems to be the contrary.

Again, section 514, when proposing the voting requirements by members seems to give the majority of patron members the power. However, the same section in its third paragraph leaves an open door for the organic rules to provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter. This way, investors may even have a veto power in voting. It could even be just one investor who has it.

Moreover, following with the democratic control of members, as we have seen, it constitutes one of the main pillars in order to consider that an entity is acting "*on a cooperative basis*", section 402 on the notice and amendment of organic rules allows in 402.a)2) a petition signed by at least 10 percent of the investor members to propose an amendment of the organic rules.

As we have seen before, even in the case of Congress and in jurisprudence there is a serious misuse of some terminology applicable to cooperatives. It seems to be the case here, the terminology seems to me unclear as Section 1004 wrongly deals with allocations of losses and profits³⁴.

As in previous sections, what seems to be in accordance with cooperative principles at a glimpse, when delving into the matter, can end us worrying us for not being like that at all. The purported democratic allocation of earnings does not seem to me in accordance with cooperative principles. To begin with, it would seem that by pro-

³³ Section 513: "If the organic rules provide for investor members, each investor member has one vote, unless the organic rules otherwise provide. The organic rules may provide for the allocation of investor member voting power by class, classes, or any combination of classes".

³⁴ (a) The organic rules may provide for allocating profits of a limited cooperative association among members, among persons that are not members but conduct business with the association, to an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the association must be allocated in the same proportion as profits.

(b) Unless the organic rules otherwise provide, all profits and losses of a limited cooperative association must be allocated to patron members.

viding a minimum of a 50% of allocations of profits or losses to patrons at least patrons are going to obtain that. This way we can infer that another 50% can rest in the investor hands. However, having a closer look at this section together with the following sections and interpretative rules we get to the following in 1004.c) 2: *"amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members"*. Thus, we can derive that the 50% rule of minimum allocation of profits to patron members is not exactly the case, as payments to investors for fixed dividends are not considered to be allocations, so their share of dividends is not included in their 50% of allocations. This fact, together with the absence of a limit for fixed dividends make us understand that the minimum 50% allocation of profits for patrons is not really so. If investors get their fixed dividends first, with no limit, the part to be allocated to patrons has already been diminished in favor of investors and can even be null.

After reading the 287 pages of the Model Act there are no compulsory allocations to reserve funds. The only reference to it is in sec.1004 d) where it says: *"Unless prohibited by the organic rules, in determining the profits for allocation under subsections (a), (b), and (c), the board of directors may first deduct and set aside a part of the profits to create or accumulate:*

- (1) an unallocated capital reserve; and
- (2) reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and

distribution of information concerning principles of cooperation and community responsibility."

Therefore, the possibility of making allocations to reserves is left to the good will of the organic rules which can even forbid them, and even if not forbidden by the organic laws, it is up to the board of directors who just may decide to do so.

I know that under a US cooperative perspective there is absolutely no obligation for cooperatives to make allocations to reserves. However, if we want our cooperatives to get strong and last for future generations allocations to reserve funds become extremely important, as they help cooperatives be resilient and they considerably reduce the need to get outside help. This point should also be dealt with in a proper possible future framework.

7. Conclusions

There is an urgent need for the US to have a clear regulatory framework for worker cooperatives. Up till now, the only references there are at a federal level for these entities are included in the Internal Revenue Code.

The IRC needs to be interpreted together with judicial doctrine, as it is through the cases solved by the US Supreme Tax Court that we can have an objective and binding interpretation of what “operating on a cooperative basis” is. This should be the basis for a development in this area, as only when there is a clear choice for these entities they can become promoted. For this purpose, cooperatives should be clearly identified and strict rules should apply for a minimum based on cooperative principles. If not, there will always be abuses of the cooperative form.

If not having a cooperative clear and separate choice is bad enough for the US system, having a purported Act for them that does not base itself in cooperative principles or even the little reference the tax code makes to them, can be considered to be far worse. The existing model for the Uniform Limited Cooperative Association Act cannot be considered a real option for true cooperatives as, in the end, it does not even follow the minimum established by the IRC and judicial doctrine.

However, it is a precedent, which means that a real regulatory framework is an ideal that could be easily achieved only if the model based itself in cooperative principles, providing them with certainty, understanding and public awareness.

I understand that the exclusion of patronage refunds is promoted and justified by the agent or conduit theory. However, I find that this exclusion together with the penalization of the allocation to reserves play a very negative role in the cooperative resilience in the long term.

A compulsory percentage of returns should not be distributed, but it would be advisable for it to stay in the cooperative for the cooperatives use, allocated to reserves. In other countries in Europe these can only be obtained capitalized when the worker owner retires and in some cases, as the Spanish and Basque cases, where cooperatives become the pillar of the system, some of them not even then. Specific provisions in order to guarantee reserves, could become important in the US system if we want cooperatives not to be mules and last, as reserves make the cooperative stronger, providing it with liquidity and strength towards lenders.

Thus, a compulsory allocation to reserves, as a percentage of the net margin, should be promoted probably by the IRC, in a way that earnings allocated to reserves become, either partly or totally excludable from the taxable base. Only if the allocation of earnings to reserves is promoted and its distribution penalized (just the opposite as the system is) will the cooperatives have enough resources to grow and be resilient in times of crisis.

If reserves are enhanced, there would be no need to look for capital investors, solving this way the problem there is in the very dangerous Uniform Limited Corporation Act who looks for outside investors losing in the way the cooperative nature.

8. References

- ALPEROVITZ, G. 2017. *Principles of a pluralistic Commonwealth*, The Democracy Collaborative, Washington D.C.
- BIRCHALL, J. 2005. "Co-operative principles ten years on ICA", *ICA: review of international cooperation*, vol 98, n 2.
- BIRCHALL, J. 2010. *People-centred businesses: Co-operatives, Mutuals and the idea of Membership*, Palgrave Macmillan.
- GEU, T.E. and DEAN, J.B. 2009. "The new Uniform Limited Cooperative Association Act: A capital idea for principled self-help value added firms, community-based economic development, and Low-profit joint ventures", *Real Property, Trust and Estate Law Journal*.
- GUTNECHT, Dave. 2014. "More on New Co-op laws", *Endcap. Articles*.
- INGALSAVE, Gene and GROVES, Frank. 1989. *Historical Development, in Co-operatives in agriculture*.
- KRUSE, D., FREEMAN, R. and BLASI, J. 2010. *Shared capitalism at Work: Employee ownership, profit and gain sharing, and broad-based stock options*, Chicago, Univ. of Chicago Press.
- KURTULUS, F. A. and KRUSE, D., L. 2017. *How Did Employee Ownership Firms Weather the Last Two Recessions?: Employee Ownership Stability and Firm Survival:1999-2011*.
- PAVLOSKAYA, M. 2016. *Community Economies Research Collective in the United States*, PSC CUNY, New York.
- NESS, I. 2011. *Ours to master and to own: workers control from the commune to present*, New York, ed.Azzelini.
- SECRETARY OF STATE'S OFFICE. 2016. *Kentucky Revised Statutes Annotated*, Lexis Nexis, New York.
- SECRETARY OF STATES'S OFFICE. 2016. *Utah Corporation Law Manual*, ed Lexis Nexis, New York.
- PITMANN, L. 2014. "What's a "Real" Cooperative?: Thinking about Structure, Principles and Politics". *Grassroots Economic Organizing Newsletter*. It can be found on the internet at: <http://www.geo.coop/story/whats-real-cooperative>.

- USDA. 2015. *Income Tax Treatment of Cooperatives, Cooperative Information Report 44*, Washington D.C.
- WOODIN, T. 2015. *Co-operation learning and cooperative values*, Routledge, New York.
- ZEULI, K.A. and CROPP, R. 2004. *Cooperatives: principles and practices in the 21st century*, Uw extension. Madison.

The synergy between employment policies and cooperatives with regard to new forms of work. An overview based on Spanish constitutional law*

(La sinergia entre las políticas de empleo y las cooperativas respecto a las nuevas formas de trabajo. Una perspectiva desde el Derecho Constitucional español)

Santiago Larrazabal Basáñez¹
University of Deusto (Spain)

doi: <http://dx.doi.org/10.18543/baidc-54-2019pp55-73>

Recibido: 01.10.2018
Aceptado: 07.03.2019

Summary: 1. Introduction. 2. The promotion of employment and cooperatives in the Spanish Constitution. 2.1. Fostering employment. 2.2. The promotion of cooperatives. 3. The effects of the crisis on the protection of social rights and the guiding principles of social and economic policy. 4. The promotion of cooperatives as a means to support employment policies under the Spanish legal system. 5. Conclusions. 6. References.

Sumario: 1. Introducción. 2. La promoción del empleo y de las cooperativas en la Constitución española. 2.1. El fomento del empleo. 2.2. La promoción de las cooperativas. 3. Los efectos de la crisis sobre la protección de los derechos sociales y de los principios rectores de política social y económica. 4. La promoción de las cooperativas como vías de apoyo a las políticas de empleo en el ordenamiento jurídico español. 5. Conclusiones. 6. Bibliografía.

Abstract: This text explains how active employment policies and cooperatives are perfectly suited to fulfil the mandates outlined in the 1978 Spanish Constitution in relation to the promotion of cooperatives (Article 129.2), and

* This paper is part of the following research project: 'Cooperatives as an employment policy instrument to address new challenges in the world of work' (CIPERMT) (file number RTI2018-097715-B-I00). This project has been financed by the Spanish Ministry of Science, Innovation and Universities, the State Bureau of Investigation and the European Regional Development Fund within the call for proposals for 2018 on Research and Development Projects to generate knowledge and Research, Development and Innovation Projects about Research Challenges.

¹ Ph.D., Lecturer in Constitutional Law and member of the 'Cooperativism, taxation, promotion, labour relations and social protection' research group. E-mail: santiago.larrazabal@deusto.es

to policies oriented towards full employment (Article 40.1), which fall under the overall protection of social rights. After analysing the provisions contained in these two articles, details are provided as to how the economic crisis and the strict balanced budget policies that ensued have also weakened the constitutional protection of social rights, with the adoption of regressive measures whose compatibility with the Constitution has been accepted by the Spanish Constitutional Court (despite divided opinions among the Court's members). Finally, an analysis is conducted of the options available within the Spanish legal system to protect and encourage cooperative societies. It is then argued that cooperatives can be a very useful instrument to create employment, even within the most innovative and dynamic sectors of the economy. These sectors include, for example, the collaborative economy (which includes the digital economy), the 'white economy', the 'green economy' and the 'circular economy'.

Keywords: Employment policies; Cooperatives; New forms of work; Social rights; Spanish Constitutional Law.

Resumen: El texto pretende explicar cómo las políticas activas de empleo y las cooperativas encajan perfectamente el desarrollo de los mandatos que la Constitución Española de 1978 establece en relación con el fomento de las cooperativas (art. 129.2) y con una política orientada al pleno empleo (art. 40.1), en el marco de la protección de los derechos sociales en general. Tras analizar el contenido de estos dos artículos, se explica cómo, sin embargo, la crisis económica y las severas políticas de equilibrio presupuestario impuestas tras ella, han debilitado también la protección constitucional de los derechos sociales, con la adopción de medidas regresivas cuya compatibilidad con la Constitución ha sido aceptada por el Tribunal Constitucional español (aunque con división en el seno del propio Tribunal). Finalmente, se estudian las posibilidades que el ordenamiento jurídico español ofrece para proteger e impulsar a las sociedades cooperativas y cómo éstas, fieles siempre a sus principios cooperativos, pueden ser un instrumento muy útil para crear empleo, incluso en los sectores más novedosos y dinámicos de la economía como, por ejemplo, la economía colaborativa —y dentro de ella, la economía digital—, la «economía blanca», la «economía verde», «la economía circular».

Palabras clave: Políticas de empleo; Cooperativas; Nuevas formas de trabajo; Derechos sociales; Derecho Constitucional español.

1. Introduction

The synergy between active employment policies² and cooperatives fits perfectly with the mandates outlined in the 1978 Spanish Constitution regarding policies directed towards full employment (Article 40.1) and the promotion of cooperatives (Article 129.2), respectively. Firstly, this paper analyses the legal framework of these two articles, which are part of two different areas of the Constitution. The policies aimed at full employment (Article 40.1) are contained in the section that could broadly be called 'social rights', which also includes the regulation of the so-called 'principles governing social and economic policy'. The promotion of cooperative societies (Article 129.2) belongs to the so-called 'Economic Constitution', regulated mainly by Title VII, relating to Economy and Finance.

Secondly, an explanation is given of how the deep economic crisis experienced in recent years has also weakened the constitutional protection of social rights and, therefore, the principles governing social and economic policy. These principles include employment, to the extent that controversial, clearly regressive measures were adopted in these areas under the shadow of the economic crisis and the severe policies required for a balanced budget. This even led to a reform of Article 135 of the Spanish Constitution in 2011 which was implemented within a very short period of time.³ The constitutionality of these measures was endorsed by the Spanish Constitutional Court.

Thirdly, the paper examines the options provided for in the Spanish legal system to protect and encourage cooperatives. Since cooperatives can be an ideal instrument for creating high-quality employment, their values are perfectly matched with a social model that promotes social rights and helps overcome the painful social cuts caused by the economic crisis and adjustment policies.

² Under Spanish law, active employment policies are defined as 'the package of services and programmes aimed at providing guidance, employment and training for employment seeking to improve employability of unemployed people, on either an employed or a self-employed basis, the maintenance of employment, the professional development of employees and the promotion of entrepreneurship and the social economy' (Article 36.1 of Royal Legislative Decree 3/2015, of 23 October, which approves the Consolidated Text of the Employment Act (published in the Official Gazette, hereinafter, BOE, No. 255, of 24 October).

³ Reform of Article 135 of the Spanish Constitution, of 27 September, 2011 (BOE no. 233, of 27 September, 2011). On this question see, for example, LÓPEZ GARRIDO, D. (Dir.), (2013).

2. The promotion of employment and cooperatives in the Spanish constitution

2.1. *Fostering employment*

Article 40.1 of the Spanish Constitution states that ‘the public authorities shall promote favourable conditions for social and economic progress and for a more equitable distribution of personal and regional income within the framework of a policy of economic stability. They shall devote special attention to carrying out a policy directed towards full employment’.

This article is included in Chapter III of Title I of the Constitution, on the principles governing social and economic policy, and is complementary to Article 35 of the Constitution, which contains the right and duty of Spaniards to work,⁴ although Article 35 is in the second section of Chapter II of Title I of the Constitution.⁵ The relationship between Articles 35 and 40.1 of the 1978 Spanish Constitution was established by the Constitutional Court from early case law (specifically as of Judgment 22/1981, of 2 July),⁶ as the synthesis of both the individual and collective aspects of the same concept.

⁴ The full text of Article 35 of the Constitution reads:

1. ‘All Spaniards have the duty to work and the right to employment, to free choice of profession or trade, to advancement through their work, and to sufficient remuneration for the satisfaction of their needs and those of their families; moreover, under no circumstances may they be discriminated against on account of their gender.

2. The law will regulate a Workers Statute.’

⁵ These types of provisions have precedents in Spanish constitutional history and also in comparative law, in international law and in European Union law. For example, in Article 46 of the Spanish Constitution of the Second Republic of 1931 and in Articles 35 et seq. of the 1947 Italian Constitution and 58 et seq. of the 1976 Portuguese Constitution. For its part, international law must take into account Article 6.2 of the International Covenant on Economic, Social and Cultural Rights, which refers to full and productive employment; Article 1.1 of ILO Convention No. 122, which states that ILO members shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. These provisions have precedents within the scope of European Union law in Article 3.3 of the Treaty on European Union and Article 147 et seq. of the Treaty on the Functioning of the European Union, both of which refer to employment.

⁶ This Judgment states that the right to work is not exhausted in the freedom to work; it also involves the right to a job and, is twofold, as it is both individual and collective, as recognised in Articles 35.1 and 40.1 of the Spanish Constitution, respectively. Its individual aspect is embodied in the equal right of all to a certain job if they are appropriately qualified for it, and in the right to continuity and stability in employment, that is, to remaining employed unless there is just cause for dismissal. In its collective dimension, the right to work also involves a mandate for the public authorities to carry

The problem posed by the provisions in Article 40.1 is that their constitutional guarantees are quite weak. In contrast, the rights provided for in Article 35 are better protected: Title I of the Constitution, under the heading 'Concerning Fundamental rights and duties', clearly differentiates between civil and political rights (which have greater constitutional protection), granted in Chapter II, Section 1, on the one hand; and economic and social rights, mostly contained⁷ in Chapter II, Section 2 (including Article 35, which have a lower degree of protection).⁸ However, Article 40.1 of the Constitution, which refers to full employment, enjoys even less protection than Article 35 and for that reason it does not appear in Chapter II, but in Chapter III of Title I, under the heading 'Principles governing Economic and Social Policy'.⁹

According to the provisions in Article 53.3 of the Constitution, the recognition, respect and protection of these guiding principles will inform positive law, judicial practice and the actions of the public authorities, but they can only be invoked before ordinary Courts under the regulations which develop them. In other words, they require legislative development. As TEROL BECERRA¹⁰ argued, the main problem lies in the difficulty in making them to be enforceable by the authorities.¹¹

out a policy of full employment; otherwise the exercise of the right to work by one part of the population entails the denial of that same right for another part of it (Constitutional Court Judgment —hereinafter, STC— 22/1981, of 2 July, Eighth legal ground. This argument was reiterated in Constitutional Court Judgments 119/2014, of 16 July and 104/2015, of 28 May.

⁷ An exception to this are some social rights which are specially protected and provided not in Section 2 of Chapter II like the rest of the social rights, but in Section 1. These include, for example, the right to education (Article 27), the right to strike and the right to freely join a trade union (Article 28). Given their location, they enjoy the same protection as civil and political rights, that is, the maximum level of protection granted by the Spanish Constitution.

⁸ BONET PÉREZ, J. / ALIJA FERNÁNDEZ, R.A. (2016); ESCOBAR ROCA, G. (2012, 486); GARCÍA SCHWARZ, R. (2011, 81); PISARELLO, G. (2007, 43 and seq.; 2009, 44); MONEREO PÉREZ, J.L. (2017, 706 et seq.); PONCE SOLÉ, J. (2017, 95); TORROJA MA-TEU, H. (2016, 147-148).

⁹ On the guiding principles of social and economic policy, see, for example: BAYLOS GRAU, A. (2003, 13-54); BELORGEY, J.-M. (2016, 263); EMBID IRUJO, A. (2009); GARCÍA HERRERA, M.A. (2003-2004, 292); ESPINOSA DE LOS MONTEROS, J. / ORDÓÑEZ, J. (coord.) (2013); JIMENA QUESADA, L. (2016, 205); NOGUERA FERNÁNDEZ, A. / GUAMÁN HERNÁNDEZ, A. (2014); PÉREZ LUÑO, A.E. (2013, 23-31); PONS CARMENA, M. (2015); PRESNO LINERA, M.A. (2010); TENORIO, P. (2012, 257 et seq.); TEROL BECERRA, M. (2009a, 2011 and 2012); VALDÉS DAL-RÉ, F. (2016, 110).

¹⁰ TEROL BECERRA, M. (2012, 45); TEROL BECERRA, M. / JIMENA QUESADA, L. (2014).

¹¹ ABRAMOVICH, V. / COURTIS, CH. (2004, 128 et seq.); BARRERO ORTEGA, A. (2017, 69-72); CARMONA CUENCA, E. (2017, 1215); CUBERO MARCOS, J.I. (2017, 123-130); JIMENA QUESADA, L. (2014, 13-28); LARRAZABAL BASAÑEZ, S. (2009, 186).

However, other authors are more optimistic, as they believe that they go beyond mere points in a manifesto¹² and that legislators do not have full discretion when carrying them out.¹³

Even the Spanish autonomous Regions have sometimes been more sensitive than the central government in terms of protecting social rights.¹⁴ When their Statutes of Autonomy were reformed in 2006, they included declarations of rights. The Spanish Constitutional Court has accepted the insertion of rights into the new Statutes of Autonomy,¹⁵ notably including those concerning social aspects (for example, those referring to education, housing, health-care, adoption of positive actions for the benefit of disadvantaged groups, freedom of choice of doctor and health centre, right to basic income, etc.).¹⁶

2.2. *The promotion of cooperatives*

The promotion of cooperatives is provided for in Article 129.2 of the Constitution, which is not in Title I (related to fundamental rights and duties), but in Title VII (related to Economy and Finance), which includes most of the provisions of what has been called the 'Economic Constitution'. Article 129.2 reads as follows: 'The public authorities shall efficiently promote the various forms of participation within companies and shall encourage cooperative societies by means of appropriate legislation. They shall also establish means to facilitate access by the workers to ownership of the means of production.'¹⁷

As GADEA, SACRISTÁN and VARGAS¹⁸ noted, the Spanish Constitution incorporated the most modern European trends in European law regarding cooperatives. It placed them in the proper context of participation, unlike other Constitutions such as the Italian Constitution. Article 45 of the Italian Constitution adopted a more classic stance by recognising the social role of cooperatives with a mutual character and

¹² BAYLOS GRAU, A. (2003, 13-54); MONEREO PÉREZ, JL (2016, 95), RUIZ-RUICO RUIZ, G. (2016, 30-37).

¹³ TAJADURA TEJADA, J. (2002, 443 et seq.).

¹⁴ TEROL BECERRA, M. (2009b, 129); TORNOS MÁZ, J. (2017, 45)

¹⁵ Constitutional Court Judgments 247/2007, of 12 December (on the Statute of Autonomy of the Valencian Region) and 31/2010, of 28 June (in relation to the Statute of Autonomy of Catalonia).

¹⁶ BARRERO ORTEGA, A. (2017, 73-74); VALCÁRCEL BUSTOS, M. (2018, 341-372).

¹⁷ PRADOS DE REYES, J. / VIDA SORIA, J. (1998, X, 89-119).

¹⁸ GADEA, E. / SACRISTÁN, F. / VARGAS, C. (2009, 37).

no private speculation purposes.¹⁹ In this regard, the Spanish Constitutional Court has also ‘given its blessing’ —to put it graphically— to legal regulations of cooperatives that tend to overcome a rigidly mutualist conception.²⁰

As DE LUIS ESTEBAN argued,²¹ the Constitution does not seek a neutral legislative scenario for cooperatives, but clearly opts to support them and create a favourable framework for their development. Therefore, the State must not remain passive with regard to the cooperative environment, since it has a constitutional mandate to foster and promote it. As a result, any regulatory developments (from commercial, administrative/fiscal perspectives, etc.) that could be considered regressive in terms of participation in companies or that would might hinder or distort the operation of cooperatives in any way would be unconstitutional.

The legislative development of cooperatives in Spain has taken place, above all, through the laws of the Spanish autonomous regions. Although laws on Cooperatives exist for application throughout Spain,²² the Statutes of Autonomy of the various regions have assumed regulatory jurisdiction over cooperatives and mutual societies not integrated in the Social Security system. While the regions are required to observe the applicable commercial legislation that falls under the jurisdiction of the State, regional laws have a central role in the regulation of cooperativism in Spain.

Practically all the autonomous regions have their own Cooperatives Law. The Basque Country was a pioneer in this respect, given the importance that cooperatives have in its industrial fabric. This regulatory situation on cooperatives in Spain was accepted by the Constitutional Court at a very early stage. In STC 72/1983, of 29 July, the Constitutional Court dismissed an appeal against the alleged unconstitutionality of pioneering Basque Law 1/1982, of 11 February, on cooperatives,

¹⁹ In comparative law, the study by FICI (2015, 78) bears review. This author recalled how cooperatives as institutions have been welcomed in Europe, both within various constitutions and within ordinary legislation. In the constitutional sphere a number of articles of the Italian Constitution are worth noting, namely Articles 43.4, 45, 60.3, 61.2 and 3, 65, 2 d), 80 b) and f), 82.4, 85, 94.2., 97. 1 and 2 d), 136.3 b) and 288 f). In ordinary legislation sphere, the more remarkable examples are Portuguese legislation (Law 30/2013 of 8 May, on the grounds for the social economy) and French legislation (Law no. 387/2014, of 21 July, on the social and solidarity-based economy).

²⁰ STC 155/1993, of 3 May.

²¹ DE LUIS ESTEBAN, JM (1985, 92).

²² Law 27/1999, of 16 July, on cooperatives (BOE —Official Gazette— no. 170, of 17 July, 1999).

and confirmed the jurisdiction authority of the autonomous regions regarding cooperatives.²³

I will now discuss cooperatives as an instrument for the promotion of employment in times of crisis. The recent crisis has resulted in a significant reduction in the protection of social rights and the guiding principles of social and economic policy.

3. The effects of the crisis on the protection of social rights and the guiding principles of social and economic policy

The impact of the global economic crisis that began in 2008 led to severe cuts in the benefits derived from some historically recognised social rights. This caused a strong decline in the levels of protection linked to some of the guiding principles of social and economic policy (as covered by the Spanish constitution regarding employment, health benefits, housing policy, pensions, etc.). The legal doctrine has often considered this regression in the protection of social rights to be a consequence of the crisis and of the 'sacred' principle of a balanced budget.²⁴

Some of the Spanish Constitutional Court's Judgments had already warned that the duty to provide social assistance must be interpreted 'in connection with economic circumstances, the availability at each given time and the needs of the various social groups'.²⁵ Therefore, when cuts and the legislative measures were later applied that overturned some well-established social rights, the Constitutional Court endorsed their constitutionality. JIMENA QUESADA²⁶ described how STC 8/2015 of 22 January endorsed the constitutionality of the labour reform²⁷, which re-

²³ This case law has been maintained over time and was made apparent in STC 291/2005, of 10 November, which compiled the case law of the Court on this matter.

²⁴ ABDELHAMID A. / AGUDO, M. (2018); AGUDO ZAMORA, A. (2016, 33-35); ANSUÁTEGUI ROIG, FJ (2014, 36-40); AÑÓN ROIG, M.J. (2016, 58-60); BALAGUER CALLEJÓN, F. (2013, 449-454); CALVO GARCÍA, M. (2013, 92-93); DONAIRE VILLA, F.J. (2018); GAMBINO, S. (2017); GORDILLO PÉREZ, L.I. (2014, 47; 2015); JIMENA QUESADA, L. (2016, 127; 2017, 25); LANGFORD, M. (2009); MARTÍNEZ DE BRINGAS, A. (2018, 156-162); MONEREO PÉREZ, J.L. (2013, 13-66); PONCE SOLÉ, J. (2013); QUEIROZ, C. (2006); REQUEJO RODRÍGUEZ, P. (2015, 430); RODRIGO, A. (2016, 76); SANZ GÓMEZ, R. (2016, 477-490); SOTO LOSTAL, S. (2013, 55; 2017, 25); TEROL BECERRA, M. (2012); TUSHNET, M. (2008); VALDÉS DAL-RE, F. (2018, 21-49).

²⁵ STC 65/1987, of 21 May, and STC 134/1987, of 21 July.

²⁶ JIMENA QUESADA, L. (2017, 115-116, 123).

²⁷ Law 3/2012, of 6 July, on urgent measures for the reform of the labour market.

ferred to STC 119/2014, of 16 July,²⁸ contained a private vote disagreeing with the position held on this matter by the majority of the Court, subscribed to by three judges: '... STC 119/2014 provided a new reasoning in the doctrine of this Court: a new constitutionality standard, which the judgment of the majority has now accepted and integrated as being normal. This can be succinctly—but not simplistically—expressed by saying that these resolutions, among others, have raised the adverse economic scenario exceptionally experienced by Spanish citizens for years to the category of constitutionality standard. In other words, these judgments have used the economic crisis as a parameter for the assessment on the constitutionality of the limiting measures of the rights provided for in Chapter II of Title I of the Spanish Constitution, not to mention the guiding principles of the social and economic policy of Chapter III.'

Unfortunately, this trend in case law has been confirmed in subsequent judgments. For example, in STC 49/2015, of 5 March,²⁹ the Constitutional Court endorsed by a majority that the upward adjustment of pensions according to the Consumer Price Index should be suspended (four judges voted against and issued a private vote in disagreement). This ruling held that the decision did not violate Article 50 of the Constitution, which provides for the upward adjustment of pensions. And in STC 95/2015, of 14 May, referred to the same provision, the Court again endorsed the suspension. In STC 216/2015, of 22 October 22,³⁰ it gave its blessing to a cessation of measures to promote rental housing and make the rental market more flexible. Along these lines, STC 139/2016, of 21 July,³¹ with three dissenting votes and their corresponding particular votes, also endorsed that irregular migrants be excluded from healthcare.

However, in comparative constitutional case law, other options have been defended that are very different from this highly compre-

²⁸ This STC dismissed another unconstitutionality challenge brought against the Law on the reform of the labour market.

²⁹ This Constitutional Court Judgment ruled by majority that Royal Decree-Law 28/2012, of 30 November, on measures for consolidating and securing the Social Security system, was constitutional.

³⁰ The Constitutional Court (with a dissenting private vote) dismissed the unconstitutionality challenge brought against Additional Provision 2 of Law 4/2013, of 4 June, on measures to promote rental housing and to make the rental market more flexible. Law 4/2013 even eliminated the subsidies that had already been granted.

³¹ This Judgement endorsed the constitutionality of Royal Decree-law 16/2012, of 20 April, on urgent measures to guarantee the sustainability of the National Health System and secure the quality of its benefits. SOBRINO GUIJARRO, I. (2017, 84).

hensive position of the Spanish Constitutional Court regarding the cuts in the protection of rights and social principles in times of economic crisis. This can be illustrated by the position adopted by the Portuguese Constitutional Court in Judgment 352/2012, of 5 July, whereby it accepted an appeal brought against Portuguese Law No. 64-B / 2011, of 30 December, of the General State Budget for the year 2012, whereby holiday and Christmas payments to public officials and pensioners were totally or partially suspended due to the profound economic crisis. The Portuguese Court rendered Articles 21 and 25 unconstitutional for violation of the principle of equality. The fifth legal ground stated: '... it is indisputable that if the challenged measures were to be implemented, the sacrifices to reduce the public deficit would not be shared equally among all citizens, nor would it be applied proportionally to their financial capabilities, since they would not be universal; instead, they would fall solely on those people who receive their salaries and pensions from public funds (...) therefore only some categories of citizens would be asked to make an additional effort for the benefit of the community from some.'³²

It is obvious that employment is one of the aspects that has been most affected by the throes of the global economic crisis. Unemployment has become a serious problem in Spain, and meeting the goal of full employment contained in Article 40.1 of the Constitution seems to be extremely challenging. But Spain cannot 'throw in the towel', so some policies need to be enacted to promote employment. This is where cooperatives have interesting potential, because their values coincide with a social model that enhances social rights and the guiding principles of social and economic policies, including creating high-quality employment, fostering entrepreneurship and offering some channels for the new forms of work that arise within the so-called models of 'collaborative economy' and 'green work'. What follows is a discussion of how the Spanish legal system can help in this regard.

4. The promotion of cooperatives as a means to support employment policies under the Spanish legal system

The Spanish legal system provides several forms of support to ensure that cooperatives can go hand-in-hand with employment poli-

³² On this Judgment of the Portuguese Constitutional Court, see: AYMERICH CANO, C. (2015, 364); PONCE SOLÉ, J. (2015, 21-22); SANZ GÓMEZ, R. (2016, 477-490); SOTO LOSTAL, S. (2017, 127).

cies, a symbiosis that is certainly favourable to both. DIVAR GARTEIZ-AURRECOA³³ has underlined the potential of the 'cooperative alternative' to combat unemployment and poverty. From the point of view of the different legal systems, as pointed out by FICI,³⁴ the specific nature of the substantive regime of cooperatives, compared with other types of undertakings is essential in terms of justifying their specific regime in terms of tax and other areas of law, for example.

The Judgement of the Court of Justice of the European Union (First Chamber) of 8 September, 2011 (joined cases C-78/08 to C-80/08³⁵), considered that the Italian law that taxed cooperatives more favourably than for profit undertakings was not necessarily 'state aid' incompatible with European Union law. Also, in the Spanish constitutional case law, the preferential treatment granted by various regulations to cooperatives vis-à-vis other types of undertakings and companies, pursuant to the constitutional mandate to promote cooperatives (as included in Article 129.2 of the Constitution), was supported from the start. This was not only the case for the fiscal area,³⁶ but in other very different areas, such as regulations concerning credit unions,³⁷ educational regulations,³⁸ marine fish farming, etc.³⁹

Support to cooperatives cannot go far enough. The UN 2030 Agenda for Sustainable Development advocates full employment, but

³³ DIVAR GARTEIZ-AURRECOA, J. (1985).

³⁴ FICI, A. (2015, 80).

³⁵ As Antonio FICI explained, the Judgment stemmed from a preliminary question referred to the Court of Justice of the European Union by the Italian Supreme Court of Cassation, as to whether the tax advantages granted by Italian legislation (specifically by Article 11 of Presidential Decree No. 601/1973) for producers' and workers' cooperatives were compatible with EC law. The Italian Supreme Court of Cassation asked if these tax advantages could be considered State aid, contrary to community law. The Court of Justice of the European Union held that it was for the Court that referred the question to '...determine in particular whether the tax exemptions in question are selective and whether they may be justified by the nature or general scheme of the national tax system of which they form part, by establishing in particular whether the cooperative societies at issue in the main proceedings are in fact in a comparable situation to that of other operators in the form of profit-making legal entities and, if that is indeed the case, whether the more advantageous tax treatment enjoyed by those cooperative societies, first, forms an inherent part of the essential principles of the tax system applicable in the Member State concerned and, second, complies with the principles of consistency and proportionality' (paragraph 82 of the Judgment). On this subject, see also, AGUILAR RUBIO, M. (2017, 60 et seq.)

³⁶ ATXABAL RADA, A. (2008, 71) and ALONSO RODRIGO, E. (2001, 42 et seq.)

³⁷ STC 155/1993, of 3 May and STC 204/1993, of 17 June.

³⁸ STC 77/1985, of 27 June.

³⁹ STC 103/1989, of 8 June.

the prevailing economic policies have prioritised balanced budgets, austerity and social cuts. Consequently, cooperatives need to be supported, as they are called upon to play an important role in promoting employment.

That is why Section 6.a of the United Nations General Assembly Resolution 64/136, of 11 February, 2010,⁴⁰ on cooperatives and social development, urged governments, international organisations and associations that make up this movement to take advantage of and fully develop 'the potential and contribution of cooperatives for the attainment of social development goals, in particular the eradication of poverty, the generation of full and productive employment and the enhancement of social integration'. In a similar vein, the ILO Recommendation No. 193 of 2002 on the promotion of cooperatives⁴¹ recognised the cooperative contribution to the creation of employment, provided that '...the promotion and strengthening of the identity of cooperatives should be encouraged on the basis of: cooperative values of self-help, self-responsibility, democracy, equality, equity and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others.'

Indeed, cooperatives can serve as an instrument for employment policies from various perspectives: for example, by promoting 'self-employment',⁴² helping to fight mass unemployment, precarious employment and the social-labour exclusion of certain groups of the unemployed. They can also take on some of the social functions that the welfare state is 'failing to fulfil', with the creation of cooperatives in the areas of healthcare, care for dependent and disabled people, financial services (given the struggle for credit), education, renewable energies, cultural activities, agriculture, etc. In this regard, in light of the initiative of the ILO Century project focused on the future of work, the International Cooperative Alliance presented a position paper on the Initial Report of the Global Commission called 'Cooperatives and Future of Work', of 30 April, 2018.⁴³ This paper highlighted the importance of co-

⁴⁰ Available at <http://www.un.org/esa/socdev/documents/resolutions/2009/a-res-64-136-sp.pdf> (last consulted, 9 May, 2018).

⁴¹ Available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R193 (last consulted, 9 May, 2018).

⁴² MOLINA NAVARRETE, C. (2014, 56, 65-68, 75). As this author has shown, when there is a such a severe jobs crisis, self-employment, that is, the creation of one's own job through the social economy, especially cooperatives, becomes more important as an option to cover the needs of weakening both of the labour market (labour dimension) and the welfare state (social dimension).

⁴³ <https://ica.coop/sites/default/files/publication-files/icapositiononfowfinal-1168879467.pdf>, pp. 6 and seq. (last seen, 9 May, 2018).

operatives to create employment, even in the most innovative and dynamic sectors of the economy such as, for example, the 'collaborative economy (and within it, the digital economy)', the 'white economy', 'the green economy', 'the circular economy' and the creative industries.

At a time when unemployment continues to threaten our future, we should turn our attention to cooperatives and realise that one of the possible solutions to this challenge has always been readily available, despite not always having been given the attention it deserves. As provided for in the Spanish Constitution, it would be advisable to promote cooperative societies through appropriate legislation (Article 129.2), carrying out policies oriented towards a final goal: full employment (Article 40.1).

5. Conclusions

The Spanish legal system defines active employment policies as 'the set package of services and programmes aimed at providing guidance, employment and vocational training for employment in the workplace programmes seeking to improve the employability of unemployed people, either on an employed or a self-employed basis, the maintenance of employment, the professional development of employees and the promotion of entrepreneurship and the social economy'. Given that cooperatives are part of the core of the social economy, the synergy between cooperatives and active employment policies finds a fertile ground for the development of the mandates that the 1978 Spanish Constitution establishes in relation to the promotion of cooperatives (Article 129.2) and a policy aimed at full employment (Article 40.1).

The problem posed by the provisions in Article 40.1 is that their constitutional guarantees are quite weak, given that they do not appear in Chapter II but in Chapter III of Title I of the Constitution, under the heading 'Principles governing Economic and Social Policy'. According to the provisions in Article 53.3 of the Constitution, the recognition, respect and protection of these guiding principles will inform positive law, judicial practice and the actions of the public authorities, but they can only be invoked before ordinary Courts under the legal provisions which develop them. If the legislator fails to develop them or develops them insufficiently, it will be difficult for them to have a practical legal effect that makes them enforceable by the authorities. In addition, the impact of the global economic crisis has brought serious cuts in the benefits derived from some historically recognised social rights and has led to an obvious decline in their levels of protection, as

a result of the crisis and the 'sacred' principle of balanced budget. And what is worse, the Spanish Constitutional Court (unlike some other Constitutional Courts such as the Portuguese one), has endorsed the constitutionality of these regressive measures.

The promotion of cooperatives is included in Article 129.2 of the Spanish Constitution, which is not contained in Title I (related to fundamental rights and duties), but in Title VII (related to Economy and Finance), which includes most of the provisions of what has been called the 'Economic Constitution'. It is clear that the Spanish Constitution does not intend to have a neutral legislative scenario for cooperatives, but rather clearly opts to support them and create a favourable framework for their development.

As employment is one of the social aspects most severely affected by the global economic crisis, cooperatives provide interesting potential in terms of promoting employment. Recognised by both the UN and the ILO, their values fit a social model that enhances social rights and the guiding principles of social and economic policies, creating high-quality employment, fostering entrepreneurship and self-employment, helping to solve mass unemployment, precarious employment and the social/labour exclusion of certain groups of the unemployed. They even take on some functions that the welfare state no longer covers, with the creation of cooperatives in sectors such as healthcare, care for dependents, education, etc. As stated in the International Cooperative Alliance Report entitled 'Cooperatives and the Future of Work', of 30 April 2018, on the occasion of the ILO Centennial, cooperatives can help to create jobs in the most innovative and dynamic sectors of the economy such as, for example, the 'collaborative economy' (and within it the digital economy), the 'white economy', 'the green economy', 'the circular economy' and creative industries.

6. References

- ABDELHAMID, A. / AYUSO, M. 2018. *Constitución financiera y Constitución social*. Valencia: Tirant lo Blanch.
- ABRAMOVICH, V. / COURTIS, CH. 2004. *Los derechos sociales como derechos exigibles*. Madrid: Trotta.
- AGUDO ZAMORA, A. 2016. *Reforma constitucional y nuevo paradigma del Estado social. De la ordenación contingente a la organización consciente del bienestar*. Seville: Centro de Estudios Andaluces.
- AGUILAR RUBIO, M. 2016. 'El régimen fiscal de las cooperativas y el Derecho de la Unión Europea'. In *Boletín de la Asociación Internacional de Derecho Cooperativo*, 50.

- ALONSO RODRIGO, E. 2001. *Fiscalidad de cooperativas y sociedades laborales*. Barcelona: Institut per la Promoció i la Formació Cooperatives de la Generalitat de Catalunya.
- ANSUÁTEGUI ROIG, F.J. 2014. 'Los derechos sociales en tiempos de crisis. Algunas cuestiones sobre su fundamentación'. In BERNUZ, M.J. AND CALVO, M. (EDS.). *La eficacia de los derechos sociales*. Valencia: Tirant lo Blanch.
- AÑÓN ROIG, M.J. 2016. '¿Hay límites a la regresividad de los derechos sociales? In *Derechos y libertades*'. 34.
- ARNÁEZ ARCE, V.M. 2018. 'La alternativa cooperativa en la prestación de servicios públicos sostenibles'. In *Boletín de la Asociación Internacional de Derecho Cooperativo*, 52, 123-135.
- ATXABAL RADA, A. 2008. 'Una propuesta de fiscalidad especial para las Sociedades Mercantiles de Estatuto Cooperativo'. In *Boletín de la Academia Vasca de Derecho*, 16.
- AYMERICH CANO, C. 2015. 'El control constitucional de las políticas de austeridad. Examen de la jurisprudencia portuguesa y española'. In NOGUEIRA LÓPEZ, A. / LOIS GONZÁLEZ, MARTA / DIZ OTERO, I. (Eds.). *Crisis, derechos sociales e igualdad*. Valencia: Tirant lo Blanch.
- BALAGUER CALLEJÓN, F. 2013. 'Una interpretación constitucional de la crisis económica'. In *Revista de Derecho Constitucional Europeo*, 19.
- BARRERO ORTEGA, A. 2017. 'A vueltas con la exigibilidad de los derechos sociales'. In BARRERO ORTEGA, A. (Ed.) *Derechos sociales. Lecturas jurídicas en tiempos de crisis*. Valencia: Tirant lo Blanch.
- BAYLOS GRAU, A. 2003. 'El derecho al trabajo como derecho constitucional'. In *Cuadernos de Derecho Judicial*, 21.
- BELORGEY, J.M. 2016. 'La garantía de los derechos sociales como factor diferencial de Europa'. In INNERARITY, D. / AYMERICH, I. *Derechos humanos y políticas públicas europeas*. Barcelona: Ed. Paidós.
- BONET PÉREZ, J. / ALIJA FERNÁNDEZ, R.A. (Eds.). 2016. *La exigibilidad de los derechos económicos y sociales y culturales en la sociedad internacional del siglo XXI: una aproximación jurídica desde el derecho internacional*. Madrid: Marcial Pons.
- CALVO GARCÍA, M. 2013. 'Crisis económica y efectividad de los derechos sociales'. In MARÍA JOSÉ BERNUZ BENEITEZ (ED. LIT.), MANUEL CALVO GARCÍA (ED. LIT.),. *La eficacia de los derechos sociales*. Valencia: Tirant lo Blanch.
- CARMONA CUENCA, E. 2017. 'Derechos sociales de prestación y obligaciones positivas del Estado en la jurisprudencia del Tribunal Europeo de Derechos Humanos'. *Revista de Derecho Político*. 100.
- CUBERO MARCOS, J.I. 2017. 'La vis expansiva de los derechos fundamentales y su incidencia en la configuración y exigibilidad de los derechos sociales'. In *Revista Española de Derecho Constitucional*. 110.
- DE LUIS ESTEBAN, J.M. 1985. 'Presente y futuro de la fiscalidad de las cooperativas'. In *Hacienda Pública Española*, 93.
- DIVAR GARTEIZ-AURRECOA, J. 1985. *La alternativa cooperativa*. Barcelona: CEAC.

- DONAIRE VILLA, F.J. 2018. '¿Los derechos en serio en la Eurozona? Los recorres, las condicionalidades, la Carta y el Tribunal de Justicia'. In *Revista de Derecho Constitucional Europeo*. 29.
- EMBIID IRUJO, A. 2009. *Derechos económicos y sociales*. Madrid: Ed. Iustel.
- ESCOBAR ROCA, G. 2012. 'Los derechos fundamentales sociales de prestación (doctrina general)'. In ESCOBAR ROCA, G. (Dir.). *Derechos sociales y tutela antidiscriminatoria*. Cizur Menor. Ed. Thomson Reuters / Aranzadi.
- ESPINOSA DE LOS MONTEROS, J. / ORDÓÑEZ, J. (Eds.). 2013. *Los derechos sociales en el Estado Constitucional*. Valencia: Tirant lo Blanch.
- FICI, A. 2015. 'La función social de las cooperativas: notas de derechos comparado'. In *REVESCO. Revista de Estudios Cooperativos*. 117.
- GADEA, E. / SACRISTÁN, F. / VARGAS VASSEROT, C. 2009. *Régimen jurídico de la Sociedad Cooperativa del siglo XXI. Realidad actual y propuestas de reforma*. Madrid: Ed. Dykinson.
- GAMBINO, S. 2017. 'Estado social y crisis económica. Los nuevos desafíos del constitucionalismo contemporáneo'. In *Revista de Derecho Constitucional Europeo*. 28.
- GARCÍA HERRERA, M.A. 2003-2004. 'Veinticinco años de derechos sociales en la experiencia constitucional española'. In *Revista de Derecho Político*, 58-59.
- GARCÍA SCHWARZ, R. 2011. *Derechos sociales: imprescindibilidad y garantías*. Cizur Menor: Ed. Thomson Reuters.
- GORDILLO PÉREZ, L.I. 2014. 'Derechos sociales y austeridad'. *Lex Social. Revista Jurídica de los Derechos Sociales*. 1.
- GORDILLO PÉREZ, L.I. 2015. 'Consideraciones sobre los derechos sociales y sus garantías'. In Zúñiga, V. / Córdoba del Valle, Ed. (Dir.). *Derechos sociales. Políticas públicas, exigibilidad, justiciabilidad*. Valencia: Tirant lo Blanch.
- JIMENA QUESADA, L. 2014. 'La protección internacional de los derechos sociales y laborales'. In *Revista de Derecho Social*. 65
- JIMENA QUESADA, L. 2016. 'Vectores y pilares básicos del modelo social europeo'. In INNERARITY, D. / AYMERICH, I. *Derechos humanos y políticas públicas europeas*. Barcelona: Ed. Paidós.
- JIMENA QUESADA, L. 2017. *Devaluación y blindaje del Estado social y democrático de Derecho*. Valencia: Tirant lo Blanch.
- LANGFORD, M. (Ed.) 2009. *Social Rights Jurisprudence. Emerging Trends in International and Comparative Law*. Cambridge: Cambridge University Press.
- LARRAZABAL BASAÑEZ, S. 2009. 'Constitución económica, democracia social, innovación y cultura económica del cooperativismo vasco'. In *Boletín de la Asociación Internacional de Derecho Cooperativo*, 43.
- LÓPEZ GARRIDO, D. (Dir.). 2013. *Reforma constitucional y estabilidad presupuestaria. El artículo 135 de la Constitución española*. Madrid: Centro de Estudios Políticos y Constitucionales.
- MARTÍNEZ DE BRINGAS, A. 2018. 'Los derechos sociales ante la vulnerabilidad social. Retos y problemáticas en un marco de flexibilidad y desregulación de los derechos'. In *Revista Vasca de Administración Pública*. 111.

- MOLINA NAVARRETE, C. 2014. 'Las cooperativas como forma alternativa de creación de puestos de trabajo: el empleo cooperativo entre mitos y realidades'. In *Revista General del Derecho del Trabajo y de la Seguridad Social*. 37.
- MONEREO PÉREZ, J.L. 2013. 'Crisis económica y reforma laboral en la larga duración histórica'. In *Teoría y Derecho: Revista de pensamiento jurídico*, 13.
- MONEREO PÉREZ, J.L. 2016. 'Las políticas activas de empleo, derecho al trabajo y políticas activas de empleo en el marco de la política de empleo'. In MONEREO PÉREZ, J.L. / FERNÁNDEZ BERNAT, J.A. (Eds.) *Las políticas activas de empleo: configuración y estudio de su regulación jurídica e institucional*. Cizur Menor: Thomson Reuters Aranzadi.
- MONEREO PÉREZ, J.L. 2017. 'Por una teoría general de los derechos sociales fundamentales que garantice su plena efectividad'. In *Derecho de las Relaciones Laborales*, 8
- NOGUERA FERNÁNDEZ, A. / GUAMÁN HERNÁNDEZ, A. 2014. *Lecciones sobre Estado Social y Derechos Sociales*. Valencia: Tirant lo Blanch.
- PÉREZ LUÑO, A.E. 2013. 'Aproximación al análisis conceptual de los derechos sociales'. In MARÍA JOSÉ BERNUZ BENEITEZ (ED. LIT.), MANUEL CALVO GARCÍA (ED. LIT.), *La eficacia de los derechos sociales*. Valencia: Tirant lo Blanch.
- PISARELLO, G. 2007. *Los derechos sociales y sus garantías. Elementos para una reconstrucción*. Madrid: Trotta.
- PISARELLO, G. 2009. 'La justiciabilidad de los derechos sociales en el sistema constitucional español'. In PISARELLO, G. / GARCÍA MORALES, A. / OLIVAS DÍAZ, A. (eds.) *Los derechos sociales como derechos justiciables: potencialidades y límites*. Albacete: Ed. Bomarzo.
- PONCE SOLÉ, J. 2013. *El derecho y la (ir)reversibilidad limitada de los derechos sociales de los ciudadanos. Las líneas rojas constitucionales a los recortes y la sostenibilidad social*. Madrid: Instituto Nacional de Administración Pública.
- PONCE SOLÉ, J. 2015. 'Aproximación al análisis conceptual de los derechos sociales'. In *Revista de Derecho Constitucional Europeo*, 23.
- PONCE SOLÉ, J. 2017. 'Reforma constitucional y derechos sociales: la necesidad de un nuevo paradigma en el Derecho Público español'. *Revista Española de Derecho Constitucional*. 111.
- PONS CARMENA, M. 2015. *Modelo social europeo y protección de los derechos sociales fundamentales*. Madrid: Ed. Reus.
- PRADOS DE REYES, J. / VIDA SORIA, J. 1998. 'Comentario al artículo 129 de la Constitución'. In ALZAGA VILLAAMIL, O. (Dir.) *Comentarios a la Constitución Española de 1978*. Madrid: Cortes Generales / Editoriales de Derecho Reunidas (EDERSA), X.
- PRESNO LINERA, M.A. (Ed.). 2010. *Los derechos sociales como instrumento de emancipación*. Pamplona: Ed. Aranzadi.
- QUEIROZ, C. 2006. *O Princípio de nao Reversibilidade dos Direitos Fundamentais Sociais. Princípios Dogmáticos e Prática Jurisprudencial*. Coimbra: Coimbra Editora.

- REQUEJO RODRÍGUEZ, P. 2015. 'El papel de la crisis económica en la argumentación del Tribunal Constitucional. Comentario a la STC 119/2014'. In *Teoría y Realidad Constitucional*, 36.
- RODRIGO, A. 2016. 'Los derechos sociales en tiempos de crisis económica y el desarrollo sostenible'. In ABAD, M./ LLAMAZARES, M.C. / RODRÍGUEZ, E. (Dir.). *Políticas económicas y derechos sociales*. Madrid: Dykinson
- RUIZ-RICO RUIZ, G. 2016. *Los derechos sociales en el Estado Constitucional*. México: Ed. Porrúa.
- SANZ GÓMEZ, R. 2016. 'Límites constitucionales a los ajustes presupuestarios: las reducciones en los salarios del sector público. A propósito de la Sentencia del Tribunal Constitucional portugués 431/2014'. In *Crónica Jurídica Hispalense*, 13.
- SANZ GÓMEZ, R. 2017. 'Los derechos sociales ante la crisis de las finanzas públicas: asimetrías normativas'. In BARRERO ORTEGA, A. (Ed.) *Derechos sociales. Lecturas jurídicas en tiempos de crisis*. Valencia: Tirant lo Blanch.
- SOBRINO GUIJARRO, I. 2017. 'Contenido constitucional del derecho a la protección de la salud a la luz de la STC 139/2016'. In *Ius et Scientia*, 1.
- SOTO LOSTAL, S. 2013. 'Regresividad, derechos constitucionales y Estado social'. In *Revista de Derechos Sociales*, 3-2.
- SOTO LOSTAL, S. 2017. 'La exigibilidad de los derechos sociales frente a su restricción regresiva'. In BARRERO ORTEGA, A. (Ed.) *Derechos sociales. Lecturas jurídicas en tiempos de crisis*. Valencia: Tirant lo Blanch.
- TAJADURA TEJADA, J. 2002. 'La inconstitucionalidad por omisión y los derechos sociales'. In CORCUERA ATIENZA, F.J. *La protección de los derechos fundamentales en la Unión Europea*. Madrid: Dykinson.
- TENORIO, P. 2012. 'El Tribunal Constitucional, la cláusula del Estado social, los derechos sociales y el derecho a un mínimo vital digno'. In AUTORES VARIOS (2012). *Derechos sociales y principios rectores*. Valencia: Tirant lo Blanch.
- TEROL BECERRA, M. 2009a. *Los derechos sociales en el siglo XXI*. Valencia: Tirant lo Blanch.
- TEROL BECERRA, M. 2009b. 'La España de los derechos sociales en las Europeas vista desde las reformas estatutarias'. In *Revista Europea de Derechos Fundamentales*, 13.
- TEROL BECERRA, M. / JIMENA QUESADA, L. 2011. 'Reflexiones sobre la constitucionalización de los derechos sociales'. In *Teoría y Derecho: Revista de Pensamiento Jurídico*, 9.
- TEROL BECERRA, M. 2012. 'Treinta años de desarrollo constitucional y legislativo de los derechos sociales: derechos ciudadanos y principios rectores'. In CASCAJO CASTRO, J.L. "et al.". *Derechos sociales y principios rectores. Actas del IX Congreso de la Asociación de Constitucionalistas de España*. Valencia: Tirant lo Blanch.
- TEROL BECERRA, M. / JIMENA QUESADA, L. (Dir). 2014. *Tratado sobre protección de Derechos sociales*. Valencia: Ed. Tirant lo Blanch.
- TORNOS MÁZ, J. 2017. 'Derechos sociales, Comunidades Autónomas y crisis económica. Las políticas autonómicas en materia de vivienda'. *Revista Valenciana d'estudis autonòmics*. 62.

- TORROJA MATEU, H. 2016. 'El control internacional universal cuasi contencioso de los derechos económicos, sociales y culturales: comentarios a la comunicación nº 2/2014 ante el Comité de Derechos Económicos, Sociales y Culturales sobre el incumplimiento por el Estado español del derecho a una vivienda digna'. In BONET PÉREZ, J. / ALIJA FERNÁNDEZ, R.A. (Eds.) (2016), *La exigibilidad de los derechos económicos y sociales y culturales en la sociedad internacional del siglo XXI: una aproximación jurídica desde el derecho internacional*. Madrid: Marcial Pons.
- TUSHNET, M. 2008. *Weak Courts. Strong Rights. Judicial Review and Social Welfare Rights in Comparative Constitutional Law*. Princeton: Princeton University Press.
- VALCÁRCEL BUSTOS, M.T. 2018. 'Competencias y reconocimiento de las personas vulnerables: sanidad, vivienda y derechos fundamentales. In *Revista Vasca de Administración Pública*, 111.
- VALDÉS DAL-RÉ, F. 2016. *El constitucionalismo laboral europeo y la protección multinivel de los derechos laborales fundamentales: luces y sombras*. Albacete: Ed. Bomarzo.
- VALDÉS DAL-RÉ, F. 2018. 'Constitucionalismo laboral europeo'. In Lefebvre. F (Ed.). *Derecho social de la Unión Europea. Aplicación por el Tribunal de Justicia*. Madrid: Francis Lefebvre.

Digital cooperatives as channels for digital work in the context of the collaborative economy*

Las cooperativas digitales como canales para el trabajo digital en un contexto de economía colaborativa

Francisco Javier Arrieta Idiakez¹
University of Deusto (Spain)

doi: <http://dx.doi.org/10.18543/baidc-54-2019pp75-96>

Recibido: 27.11.2018
Aceptado: 07.03.2019

Summary: 1. An approach to conceptualising the collaborative economy. 2. Identifying and characterising new forms of digital work and how they fit under the umbrella of the collaborative economy. 3. Digital cooperatives: the most suitable means to enable the new forms of digital work within the scope of the collaborative economy. 4. Conclusions. 5. Bibliography.

Sumario: 1. Una aproximación al concepto de economía colaborativa. 2. Identificación y caracterización de nuevas formas de trabajo digital y su incardinación bajo el paraguas de la economía colaborativa. 3. Las cooperativas digitales: el medio más adecuado para acoger las nuevas formas de trabajo digital en el ámbito de la economía colaborativa. 4. Conclusiones. 5. Bibliografía.

Abstract: At present different bodies, associations, platforms etc. vary greatly in their definitions of the collaborative economy. This is because there are many differences between models and platforms within the term 'collaborative economy'. Taking this diversity into account, this study will focus on the platforms dedicated to the provision of services. The first major issue will be the need to delimit and establish links between a multitude of concepts that emerge within the so-called collaborative economy, such as the *Gig economy*

* This paper is part of the following research project: 'Cooperatives as an employment policy instrument to address new challenges in the world of work' (CIPERMT) (file number RTI2018-097715-B-I00). This project has been financed by the Spanish Ministry of Science, Innovation and Universities, the State Bureau of Investigation and the European Regional Development Fund within the call for proposals for 2018 on Research and Development Projects to generate knowledge and Research, Development and Innovation Projects about Research Challenges.

¹ Professor of Labour Law and Social Security and member of the 'Cooperativism, taxation, promotion, labour relations and social protection' research group. Email: javier.arrieta@deusto.es

and the *On-demand economy*. The ultimate purpose is to limit the concept of collaborative economy for the purposes of the research carried out here. It was not for nothing that the European Commission recommended that legislators and courts should review professional regimes in the context of the new economy, while expressing its clear support for collaborative economy platforms in its report 'A European agenda for the collaborative economy' (2016). There is therefore a need to address the modality of platform-based work (also called digital work), with the aim of ensuring that standards are upheld regarding the working conditions and social protection of people who provide their services under this modality. This study, then, analyses the challenges, and positive and negative aspects of this new situation. The main conclusion is that cooperatives are the best means to channel the collaborative economy, under the modalities of platform-based or digital work. This will require studying and analysing the new models of cooperatives, and advocating digital cooperatives, outside the so-called cooperatives of self-employed workers, the true cooperative character of which is often doubtful. The conceptual delimitation of digital cooperatives and their differentiation from 'classic' cooperatives will also be discussed, which will involve providing some insights into the characteristic features of digital cooperatives.

This research uses the descriptive, comparative and propositional legal methods. The descriptive method is used to define the concept of collaborative economy and the sub-concepts that it includes in terms of the provision of services; and to identify new forms of platform-based or digital work, and delimit the field of action of digital cooperatives, as the most appropriate means to channel these new forms of work. The comparative method will be useful to analyse the various existing professional regimes that can accommodate the new forms of work available within the collaborative economy. Finally, the propositional method will argue that digital cooperatives are the best solution to shape work within the collaborative economy.

Keywords: Collaborative economy; cooperatives; work in platforms; digital work; labour conditions.

Resumen: En la actualidad son muchos los órganos, asociaciones, plataformas etc. que ofrecen definiciones muy diversas sobre la economía colaborativa. Precisamente, ello es así porque dentro del término economía colaborativa existen muchas diferencias entre modelos y plataformas. Así, partiendo de dicha diversidad, en el presente trabajo se centrará la atención en las plataformas dedicadas a la provisión de servicios. En concreto, se tratará como primera gran cuestión la necesidad de acotar y poner en relación una multitud de conceptos que afloran en el seno de la denominada economía colaborativa, como pueden ser la *Gig economy* y la *On demand economy*. La finalidad última en ese sentido es acotar el concepto de economía colaborativa a los efectos de la investigación aquí realizada. No en vano, la Comisión Europea, en su informe "A European agenda for the collaborative economy" (2016) recomienda que el legislador y los tribunales revisen los regímenes profesionales en el contexto de la nueva economía, al tiempo que manifiesta su claro apoyo a las platafor-

mas de economía colaborativa. Surge así la necesidad de abordar la modalidad de trabajo en plataforma o también denominado trabajo digital, con el objetivo de velar por las condiciones de trabajo y la protección social de las personas que prestan sus servicios bajo dicha modalidad. En último término, se trata de analizar los desafíos que plantea esta nueva realidad, con sus aspectos positivos y negativos. En ese contexto, la principal conclusión a la que se pretende llegar es que las cooperativas constituyen la mejor forma de encauzar la economía colaborativa, bajo las modalidades de trabajo en plataforma o digital. Y para ello se requerirá el estudio y análisis de los nuevos modelos de cooperativas, para apostar por las cooperativas digitales, al margen de las denominadas cooperativas de trabajadores autónomos, que, con frecuencia suscitan muchas dudas sobre su verdadero carácter cooperativo. Por consiguiente, se tratará también la cuestión relativa a la delimitación conceptual de las cooperativas digitales y su diferenciación con las cooperativas que pueden denominarse ya como clásicas, para lo que será necesario ahondar en los rasgos característicos de las cooperativas digitales.

Para llevar a cabo esta investigación se seguirán los métodos jurídicos descriptivo, comparativo y propositivo. Así, el método descriptivo se utilizará para definir el concepto de economía colaborativa y los subconceptos que incluye, en cuanto a la prestación de servicios; para identificar las nuevas formas de trabajo en plataforma o digital y para delimitar el campo de actuación de las cooperativas digitales, como forma más adecuada para encauzar esas nuevas formas de trabajo. Por su parte, el método comparativo valdrá para analizar los diversos regímenes profesionales existentes que pueden dar cabida a las nuevas formas de trabajo que ofrece la economía colaborativa. Y, finalmente, el método propositivo argumentará la defensa de las cooperativas digitales como la mejor solución para encauzar el trabajo en la economía colaborativa.

Palabras clave: Economía colaborativa; cooperativas; trabajo en plataformas; trabajo digital; condiciones laborales.

1. An approach to conceptualising the collaborative economy

The so-called 'collaborative economy' has important commercial, legal and institutional implications. Its dynamic nature means that it is difficult to treat it as a closed concept. The collaborative economy can be organised according to models focused on both market and social logics. From a social logic perspective, some local collaborative economy initiatives may consist in the common use or management of physical assets (for example, joint work spaces and urban public utility goods).²

Nevertheless, the European Commission has made several attempts to define the collaborative economy. Firstly, in its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 28 October 2015, 'Upgrading the Single Market: more opportunities for people and business',³ it defined the collaborative economy as 'a complex ecosystem of on-demand services and temporary use of assets based on exchanges via online platforms'. Based on this definition, the European Commission made the following declaration: 'The collaborative economy leads to greater choice and lower prices for consumers and provides growth opportunities for innovative start-ups and existing European companies, both in their home country and across borders. It also increases employment and benefits employees by allowing for more flexible schedules, from non-professional micro jobs to part-time entrepreneurship. Resources can be used more efficiently thereby increasing productivity and sustainability'.

Secondly, the European Commission, in its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 2 June 2016, 'A European agenda for the collaborative economy',⁴ provided additional details and stated that the term 'collaborative economy' refers to 'business models in which activities are facilitated through collaborative business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. The collaborative economy involves three categories of actors: (i) service providers who share assets, resources, time and/or skills — these can be private individuals offering services on an occasional basis ("peers") or service

² Cf. Opinion of the European Committee of the Regions of 4 December 2015: The local and regional dimension of the collaborative economy (OJEU of 10 February, 2016, C-51), section 1.

³ COM (2015) 550 final.

⁴ COM (2016) 356 final.

providers acting in their professional capacity (“professional services providers”); (ii) users of these; and (iii) intermediaries that connect — via an online platform — providers with users and that facilitate transactions between them (“collaborative platforms”). Collaborative economy transactions generally do not involve a change of ownership and can be carried out for profit or not-for-profit’.

However, the Committee of the Regions was critical of this definition, by arguing that it focused on the commercial and consumer aspects of the collaborative economy, while leaving aside the non-commercial approaches based on a social logic.⁵

Therefore, the challenge is to bring the commercial aspects of the collaborative economy closer to the social aspects, so as to connect the market logic and the social logic.

The Committee of the Regions considered that ‘the Sharing Economy could give rise to a new economic identity where an individual, unwilling to act alone, would, instead of pursuing the quest to maximise their own material interests, associate their economic behaviour with a commitment to the community, act in the public — social, economic, political — arena and place themselves in relation to others in order to take care of the general, common interest’.⁶ In addition, this relates to the category of collaborative economy that it called the ‘pooling economy’, and, more specifically, to the form that the European Committee of the Regions called ‘the commoning economy’ for sharing economy initiatives that are collectively owned or managed.⁷ In this way, the focus is on sharing the value created among all the peer-to-peer collaborators that have helped generate it.⁸ From this perspective, the collaborative economy would consist in creating meeting spaces where people with common needs or interests exchange value and/or collaborate towards a common objective,⁹ with a clear differen-

⁵ Cf. Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 1.

⁶ Cf. Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 6.

⁷ Cf. Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 9.

⁸ See also PLAZA ANGULO, JJ, PATIÑO-RODRÍGUEZ, D. and GÓMEZ-ÁLVAREZ DÍAZ, R. (2018, p.41).

⁹ PATIÑO RODRÍGUEZ, D., GÓMEZ-ÁLVEZ DÍAZ, R. and PLAZA-ANGULO, JJ (2017, pp. 58-59).

tiation between the specific contribution that each of them makes to the value created and/or the common objective; a contribution without which it would be impossible to create value and achieve the common goal sought.¹⁰ The sum of each specific, distinct contributions, therefore, is what makes it possible for different people to form a shared economy venture in a broad sense. This is also consistent with the intersection between the second meaning that of the noun 'economy' and the meaning of the adjective 'collaborative' in Spanish. According to the Dictionary of the Spanish language, 'economy' means the 'set of goods and activities that make up the wealth of an individual or a group', and the adjective 'collaborative' denotes that such wealth has been 'produced on a collaborative basis', that is, it is the result of the action of 'working with another or with others'. This is in line with the notion of 'non-reciprocal prosocial behaviour' that the European Economic and Social Committee wants the European Commission to incorporate into the concept of collaborative economy, 'which clearly differentiates not-for-profit shared use and provides a space to interact for the purpose of consumption, production, financing and knowledge sharing'.¹¹ The European Economic and Social Committee understands 'non-reciprocal prosocial behaviour' as 'an act and process of distributing what is ours to others for their use as well as the act and the process of receiving something from others for our use'.¹² That is, everything seems to suggest that the idea of non-reciprocity has an impact on the common goal sought by the interacting parties, whereby their personal aims become subordinated to it, as this is the only way to create value.

In particular, these last considerations imply that, within the market logic or sphere presented by the collaborative economy, ventures can ensure a balance between the economic and the social, and, therefore, be encompassed within the concept of collaborative

¹⁰ In this sense, it has been pointed out that 'a new structure of economic relations is seemingly in the process of being created that is not based on the accumulation of possessions, but rather is supported by the specialisation and/or minimisation of the individual's assets, making them available to other users via an exchange, whether monetary or not' [NAVIO, J., SATELLA, J., PORTILLA, JA and MARTÍN, J. (2016, p.7)].

¹¹ Opinion of the Economic and Social Committee of 15 December 2016 on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A European Agenda for the collaborative economy' (OJEU of March 10, 2017, C-75), section 3.4.

¹² Opinion of 25 May, 2016, on the topic 'The sharing economy and self-regulation' (OJEU of August 19, 2016, C-303), section 1.4.

economy seemingly designed by the European Committee of the Regions. This would supersede the conceptualisation made by the European Commission around the collaborative economy, as well as other conceptualisations which, despite having been widely accepted, do not seem to meet the needs arising from the prevailing reality.¹³ Unless a broader concept of the collaborative economy is accepted, there is a double risk. On the one hand, an opportunity would be missed to identify the companies regarded to be exemplary and worth being promoted (given the positive aspects in the societies where they are located) by the European Committee of the Regions, as they fit the conceptualisation of the collaborative economy advocated by the Committee. On the other hand, and as a consequence of the above, a confusion would be perpetuated between the companies that do fit the specific conceptualisation of the collaborative economy proposed by the European Committee of the Regions, and those other companies that are removed from it, and make an inappropriate, self-interested use of the term collaborative economy.

The Committee of the Regions holds that the collaborative economy can improve the quality of life, foster growth (particularly in local economies), reduce environmental effects and generate new, good quality jobs, among other positive aspects.¹⁴ But, at the same time, it is also aware of the challenges and threats that may result from a poorly managed collaborative economy which, in reality, is hardly collaborative at all. Hence its emphasis on the conditions of employment of workers in the collaborative economy. Not in vain does it say that 'the shared economy could give birth to a new social class, the collaborative class, that needs social and economic safeguards'.¹⁵ The European Economic and Social Committee also argued along these lines

¹³ This is the case of the definition given by Botsman & Rogers, according to which the collaborative economy is 'economic system based on sharing underused assets or services, for free or for a fee, directly from individuals'. This definition was adopted by the European Economic and Social Committee in its Opinion of May 25, 2016 on the topic 'The sharing economy and self-regulation'. However, it was qualified by saying that such shared use must be carried out 'through online platforms', and it was recognised that 'a more precise analytical distinction concerning the concept of "sharing", should be established' (see section 6.4). For a more detailed definition by the aforementioned authors, see BOTSMAN R. and ROGERS, R. (2010, 279 pp.).

¹⁴ Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 13.

¹⁵ Opinion of the European Committee of the Regions of 4 December 2015: The Local and Regional Dimension of the Sharing Economy (OJEU of 10 February, 2016, C-51), section 17.

that it 'advocated a more in-depth analysis of those work patterns of the collaborative economy that are related to non-reciprocal pro-social behaviour'.¹⁶

The Committee of the Regions' recommendations on the concept of collaborative economy make it necessary to analyse those forms of work that operate under this umbrella term, in order to conclude whether they genuinely belong to it or whether they must be specifically excluded from it. In particular, this is the case of so-called platform-based work or digital work, since the development of information and communication technologies has meant that most of the initiatives that are considered part of the collaborative economy operate through them. In addition, it should be remembered that the European Commission expressly includes online platforms into the category of the collaborative economy, as an instrumental element to be able to carry it out. This, however, does not mean that a company can automatically be assumed to be part of the collaborative economy merely because it operates in the market through virtual platforms. It is necessary to identify and characterise the new forms of digital work in order to be able to conclude if, in fact, they fit into the concept of collaborative economy under consideration here. The following section will discuss this further.

2. Identifying and charactering new forms of digital work and how they fit under the umbrella of the collaborative economy

It should be noted from the outset that the characteristics of the new forms of digital work are not specific enough to provide a seamless, closed definition of them; however, two broad models of service provision can be identified that operate under the parameters of the so-called *gig economy* and *on-demand economy*. While the *gig economy* is based on initiatives based on sporadic jobs carried out through the digital market,¹⁷ the *on-demand economy* is a business model where the new online technologies allow virtual platforms to have

¹⁶ Opinion of the Economic and Social Committee of 15 December 2016 on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A European agenda for the collaborative economy' (OJEU of 10 March, 2017, C-75), section 4.4.5

¹⁷ ÁLVAREZ CUESTA, H. (2017, p. 171).

large groups of service providers waiting for a consumer to request a service through an app or online.¹⁸

Within the two major models of service provision that operate in this way, a differentiation needs to be made between *crowdwork* and work via mobile applications (apps).¹⁹

Crowdwork is the work carried out through online platforms that bring together an indefinite number of organisations, companies and individuals.²⁰ When the work is done via an online platform through the Internet (virtually), both customers and workers can operate from anywhere in the world, leading to offshore work worldwide. The most paradigmatic example would be Amazon Mechanical Turk, in the market of the so-called Human Intelligent Tasks (HITs). These are very simple jobs that cannot be performed by a machine because they require a certain level of human intelligence, such as for example, data processing, image description, data verification, information gathering and text translation.²¹

In contrast, app-based work involves carrying out activities related to traditional jobs, in person, in a specific place, with the peculiarity that the supply and demand of activities must be channelled through mobile applications.²² Some paradigmatic examples of this form of digital work include Uber and Lift (transport), Taskrabbit (domestic tasks) and Myfixpert (repair of electrical appliances).

Both models present a very similar structure as regards the way in which the services are provided. They have three aspects in common, which are always found. First, 'requesters' or clients, which are companies or individuals that require that a service be provided for them; second, workers who provide the services; and, third, the virtual platforms that use information technologies to connect supply and demand, which receive a percentage for each service provided.²³

In order to determine whether these new forms of digital work are included within the concept of the collaborative economy, the key issue is to analyse the legal nature of the link between the service providers and the owners of the online platforms and apps. When the online platforms or apps merely fulfil an intermediary role, limited to connecting service providers with customers, they are in a similar po-

¹⁸ CAVAS MARTÍNEZ, F. (2017, p. 43).

¹⁹ DE STEFANO, V. (2016, p.151). For more, see, ÁLVAREZ CUESTA, H. (2017, pp. 53 et seq.).

²⁰ DE STEFANO, V. (2016, p. 152).

²¹ GINÉS I FABRELLAS, A. (2016, pp. 10-11).

²² DE STEFANO, V. (2016, p. 152).

²³ TODOLÍ SIGNES, A. (2017, p. 22).

sition to private employment agencies, so such intermediation work should be free of charge for service providers, as a general rule.²⁴

Having made this qualification, when, the owners of online platforms or apps in one way or another affect the provision of services, going beyond being mere intermediaries, attention should be focused on the legal nature of the link between the service providers and the owners of the online platforms or apps. However, in practice, this is not so easy to determine. In most cases, the professional status of service providers is unclear, since their self-employed or employed worker status is disputed.²⁵ Such service providers have been considered to play an intermediary role since, on the one hand, they have some of the features of an employment relationship, but on the other, they also contain elements of self-employment, without being fully identified with either of them. This due to the specific intrinsic nature of this type of service provision, with features such as having a flexible work schedule, variable remuneration depending on the number of hours worked and the use of certain work tools or equipment provided by the workers, who assume part of the expenses associated with those tools or equipment.²⁶ In any case, regardless of the interesting debate in scholarly research, which can even rely on the abundant case law in comparative law,²⁷ the actual debate is focused on the need to adopt a position as to whether each of the professional statuses described above fits within the concept of collaborative economy advocated earlier. Whether service providers are considered to be employees, or whether they are seen to be self-employed, it must be concluded that this does not fit into the concept of collaborative economy proposed. The reason is that both work contracts, which govern work conditions for employ-

²⁴ See Article 7 of Convention 181 of the International Labour Organization (ILO) of 19 June 1997 on private employment agencies; Article 29 of the Charter of Fundamental Rights of the European Union; and Article 3.1 of the European Social Charter. This is the situation of many professional social networks that are not limited to operating as vehicles that facilitate and pass knowledge between the parties, but also manage it and put them in contact through any available means of communication, including, among others, their own websites, email, Whatsapp and text messages [AGUILAR DEL CASTILLO, MC (2018, p. 518)]. Another issue, no less important, but one that goes beyond the scope of this study, is the absence of regulation of these new forms of digital mediation, above all, due to the consequences that derive from this absence.

²⁵ For a more in-depth analysis, see GINÉS I FABRELLAS, A. and GÁLVEZ DURAN, S. (2016, pp. 1-44). Of interest is, *The Social Protection of Workers in the Platform Economy* (2017, pp. 67-98).

²⁶ CUBO MAYO, A., GIL VILLANUEVA, M., LÓPEZ ORTEGA, M.J., MONTES RIVAS, J.M. and RODRÍGUEZ ALBA, C. (2016, p. 459).

²⁷ In this regard, see OTERO GURRUCHAGA, C. (2018, pp. 61-74).

ees, and business and services agreements, which govern the terms for services provided on a self-employed basis, are based on an obligation to work in exchange for income.²⁸ There is certainly a synallagmatic relationship between the person who provides the service or executes the work and the person who receives it, so both parties, with their respective and reciprocal rights and obligations, seek to benefit from the transaction. But this benefit is based on the individual interest of each party, and the common interest and objective inherent to the collaborative economy are lacking. There is no collaboration between the parties and there is no 'non-reciprocal prosocial behaviour', since their personal aims are not subject to any common objective, nor do they tend to generate a common value which benefits both parties.

It seems advisable to seek the cooperative model, in particular taking into account the legal insecurity concerning the discussion on the legal nature of the link between service providers and owners of online platforms or apps.²⁹ Such legal insecurity³⁰ may cause the violation of service providers' rights; it often constitutes a fraudulent departure from employment law,³¹ due to the *modus operandi* of the relationship between the parties³² (in an increasingly flexible context of economic exchange³³), or to an inappropriate categorisation of the relationship between them, which is too focused on the legal term used by the parties to refer to the relationship between them. In fact, it is worth remembering that several European institutions have linked cooperatives

²⁸ BARREIRO GONZÁLEZ, G. (2004, p. 73).

²⁹ Regarding this legal uncertainty see VALLECILLO GÁMEZ, M.R. (2017, pp. 463-468).

³⁰ In this regard, the European Committee of the Regions noted that, the fact that 'many forms of work in the collaborative economy appear to lie mid-way between salaried employment and freelance work' results in 'a situation which raises important questions related to working conditions, health and safety, health care coverage, paid sick leave, unemployment benefits and retirement pensions.' This situation could give rise to a new category of workers with precarious jobs (paragraph 28). In the same way, it pointed out that 'some collaborative economy business models have produced strong negative social and employment-related externalities, in particular by abusing the concept of "self-employment", and rely on social disparities between workers depending on the national legislation that applies in the country where the service is provided'(paragraph 29), which clearly translates into social dumping [cf. Opinion of the European Committee of the Regions of 7 December 2016: Collaborative economy and online platforms: a shared view of cities and regions (OJEU of 9 June, 2017, C-185)].

³¹ In this regard, see TRIGUERO MARTÍNEZ, L.A. (2017, p. 263).

³² For a detailed description of this *modus operandi*, see MERCADER UGUINA, J.R. (2017, pp. 88-98).

³³ On the process of massive outsourcing and decentralisation with specific features that occur as a manifestation of this flexibility and its consequences, see TRILLO, F. (2017, pp. 433-434).

to the collaborative economy. Firstly, the European Economic and Social Committee, in its Opinion, of 21 January 2014, on 'Collaborative or participatory consumption, a sustainability model for the 21st century', proposed cooperativism as one of the lines of action that should form part of a strategy for the sound development of collaborative or participatory consumption (section 5.2.i). Specifically, it states that 'cooperatives can become the main ally of collaborative or participatory consumption, because they combine and share principles and values'. And it is considered that 'the cooperative movement can strengthen initiatives, proactively and reactively, also harbouring networks of collaborative or participative consumption that are symbiotic for their respective objectives in their fabric'.³⁴ Consumer cooperatives and zero kilometre cooperatives are provided as prime examples of this.³⁵ Subsequently, in its Opinion of 25 May, 2016, on the topic 'Sharing economy and self-regulation', the European Economic and Social Committee seemingly contradicted itself, by excluding cooperatives from the concept of the collaborative economy (section 6.7.a). However, this exclusion should be properly understood, because whereas one thing is considering that cooperativism and the collaborative economy have points in common in terms of principles and values, and another, simply considering all cooperatives in themselves as practices within the collaborative economy.³⁶

For its part, the European Committee of the Regions, in its opinion of 4 December, 2015, 'The local and regional dimension of the sharing economy', after establishing that a part of the collaborative economy belongs to the social economy (section 2, *in fine*), in which the cooperatives are located, 'encourages the European Commission and Member States to establish incentives for collaborative economy to support and implement the principles of the social economy (in particular with regard to the principles of solidarity, democracy and participation, and cooperation with the local community)' (section 23). In this vein, in its Opinion of 7 December, 2016, 'Collaborative economy and online platforms: a shared vision of cities and regions', it 'asks the Member States, local and regional authorities and the Commission to encourage innovative solutions to the social and employment challenges raised by the collaborative economy'; in particular, uses a cooperative as an ex-

³⁴ SALCEDO AZNAL, A. (2011, pp. 65-68).

³⁵ Zero kilometre cooperatives are cooperatives providing products or activities related to the local economy that lessen the impact caused by long-distance transport and delivery.

³⁶ In that sense, see ALFONSO SÁCHEZ, R. (2016, p. 247).

ample of an organisation that gives workers access to a wide range of social protection measures (section 30).

In principle, cooperatives seem to meet the criteria to be included within the umbrella term of collaborative economy that has been advocated here, based on the considerations of the European Committee of the Regions. In particular, cooperatives are a suitable instrument for the creation of meeting spaces where people with common needs or interests exchange value and/or collaborate to achieve a common goal. This is also consistent with the 'non-reciprocal prosocial behaviour' mentioned by the European Economic and Social Committee, in the sense that cooperatives have a common objective, sought by the members, which subordinates their individual goals to it. Ultimately, cooperatives share in the idea of the partnership contract, in which there is an associational purpose, in contrast to the work contract, executed merely on an exchange basis and service agreements, which lacks *afectio societatis*.³⁷ This associational nature or purpose means that member contributions are directed to a common goal. As a consequence of this associational purpose, there is a partnership in terms of management and risks, both positive and negative.³⁸ The synallagmatic relationship occurs between the members and the cooperative, and therefore there is reciprocity of rights and obligations between the cooperative and each of the members.

There are a number of prerequisites in order for digital forms of work to take the form of cooperatives, and for them also to be part of the collaborative economy. These will be discussed in the last section of this study.

3. Digital cooperatives: the most suitable means to enable the new forms of digital work within the scope of the collaborative economy

The different forms of digital work can be channelled through digital cooperatives; but it is necessary to define the meaning and scope of the concept of the 'digital cooperative'. Digital cooperatives are entities that carry out their economic activity legally and solely online, and they operate according to the principles and values of the social economy; that is, they lack physical headquarters to conduct their day-to-day ac-

³⁷ See MARTÍN BLANCO, J. (1957, pp. 77-91).

³⁸ BARREIRO GONZÁLEZ, G. (2004, p. 73).

tivity, and instead they have an online meeting point where members and customers interact.³⁹ As a general rule, these cooperatives do not have a physical space to interact with their members and clients. But if the activity they carry out partly requires a physical venue (for example, for the distribution of fruit and vegetables), this activity does not cease to be virtual. In order for it to be fully carried out, the activity requires these two aspects, that is, one conducted online and one that takes place physically.⁴⁰

However, taking into account the definition provided, special attention should be paid to compliance with the principles and values of the social economy by digital cooperatives. Regardless of the generic legal term used ('cooperative') and of the legal form under which the parties operate in the market, their principles and values (both regarding the internal rules and the daily operation of the cooperative) must be in compliance with the applicable laws.⁴¹ These principles and values include the cooperative principles established in the Manchester Congress of 1995, through the Declaration of the International Cooperative Alliance on Co-operative Identity.⁴² In fact, this is a concern among cooperatives; while the business pluralism in the cooperative system (as opposed to cooperativist fundamentalism) has meant that it has been enhanced and universalised, there is also a danger of it being subsumed by the capitalist system and engaging in practices that have little or nothing to do with cooperativism.⁴³ Therefore, not all types of digital cooperatives should not be allowed to call themselves cooperatives, or even to be established according to the legal requirements set forth by cooperative laws if, in reality, such cooperatives fail to incorporate into their business concept all the values and principles that inform the cooperative movement. This is the case of the so-called billing cooperatives, which are *de facto* configured as online cooperatives.

³⁹ GUTIÉRREZ BENGOCHEA, M. and SÁNCHEZ-ARCHIDONA HIDALGO, G. (2016, pp. 34-35). In the specific case of Spain, the principles and values of the Social Economy are provided for in Law 5/2011, of 29 March, on the Social Economy (Official Gazette, (hereafter BOE, for its initials in Spanish) of 30 March, 2011, No. 76). The standard to which the activities carried out by digital cooperatives must submit is Law 32/2002, of 11 July, on services of the information society and electronic commerce (BOE of 12 July, 2002, No. 166).

⁴⁰ GUTIÉRREZ BENGOCHEA, M. and SÁNCHEZ-ARCHIDONA HIDALGO, G. (2016, pp. 34-35).

⁴¹ ARRIETA IDIAKEZ, F.J. (2014, p. 40).

⁴² MACPHERSON, I. (1995, 69 pp.).

⁴³ In this sense, it should always be based on the maxim 'to adapt intelligently to circumstances is not to conform to them' [DIVAR GARTEIZ-AURRECOA, J. (2011, p.131)].

They seek to attract all kinds of professionals in order to 'sell' them a tax scheme for billing services, and particularly, a form of Social Security affiliation that may be beneficial to them.⁴⁴ Hence, these cooperatives are considered to 'operate as mere commission agents'.⁴⁵ This type of cooperatives do not meet the criteria of work cooperatives, due to the following 'impurities':⁴⁶ they do not provide their members with jobs, through their personal and direct effort and through the organisation of the common production of goods or services for third parties; the supposed member/worker mainly receives remuneration from their own individual clients, and not through monthly partnership advance payments (payments on account of surplus) or revenue from cooperative activity; the intermittent and transient contacts between the apparent worker/member and the cooperative (which occur only when said worker/member provides a service and bills the customer) are not aligned with true democratic control by its members. As a result, since they act in contravention of the law, these cooperatives should be disqualified, and therefore, dissolved, as happened in Spain, with Cooperativa Fidelis Factu, S. Coop. (Valencia), owner of the Factoo brand⁴⁷.

These entities are different from those cooperatives that do have a specific regulation, and that could be valid means for digital work. This is the case of French activity and employment cooperatives⁴⁸ and of cooperatives for entrepreneurship and business development and of entrepreneurs' cooperatives, regulated in some Spanish autonomous regions (Andalusia⁴⁹, Cantabria⁵⁰ and Catalonia⁵¹), obviously setting aside the differences between them. In French activity and employment cooperatives, members are provided with entrepreneur/employee status under a permanent contract,⁵² which gives members

⁴⁴ For further information, see ALTÉS TÁRREGA, JA (2018, pp. 45-50); HERNÁNDEZ BEJARANO, M. (2017, pp. 173-181); LÓPEZ GANDÍA, J. (2017, p.33).

⁴⁵ LOZANO LOZANO, A. (2017, p. 719).

⁴⁶ LACOMBA PÉREZ, FR (2017, pp. 282-284).

⁴⁷ The Spanish Ministry of Employment and Social Security decided to disqualify it on 17 August, 2017. See <http://prensa.empleo.gob.es/WebPrensa/noticias/laboral/detalle/3111>.

⁴⁸ Cf. Articles 47 and 48 of French LOI no. 2014-856 of 31 July, 2014 on the Economic and Social Economy (French Official Gazette of 1 August, 2014, No. 0176).

⁴⁹ See Article 93 of Law 14/2011, of 23 December, on Andalusian Cooperative Societies (BOE of 20 January, 2012, No. 17).

⁵⁰ Cf. Article 130 of Law 6/2013, of 6 November, on Cooperatives of Cantabria (BOE of 27 November, 2013, No. 284).

⁵¹ Cf. Third Additional Provision of Law 12/2015, of 9 July, on cooperatives, of Catalonia (BOE of 14 August, 2015, No. 194).

⁵² AUVERGNON, P. (2016, p.12).

employment stability and complies with cooperative principles, in particular, with the principle of democratic management by members. In contrast, cooperatives for entrepreneurship and business development and entrepreneurs' cooperatives are more difficult to characterise. In essence, these cooperatives have a double corporate purpose. On the one hand, its activity must focus on promoting entrepreneurship, by offering help, advice, training and mentoring to entrepreneurs. On the other hand, its activity must provide a mutualised instrumental structure that allows them to engage in a professional practice. However, the main activity should be the former. Precisely for this reason, it seems that the link between the members and this type of cooperatives should have a fixed term, since the *raison d'être* of these cooperatives means that once the business activity or project is established, the member should become independent from the cooperative and operate in the market autonomously, or create another cooperative⁵³ together with other partners. If only the second corporate purpose is fulfilled, the risk would be that such cooperatives might become closer to billing cooperatives.⁵⁴ Therefore, to avoid any doubt about compliance with cooperative principles, this type of cooperatives must operate as a meeting point between workers who share needs, where they not only pursue economic and instrumental objectives, but also generate projects, support activities and provide material and means of production, acting in accordance with the principle of mutuality.⁵⁵ They must also comply with the principle of democratic management, whereby the political power in the cooperative should be shared among the members of the structure and the user members, in order to balance the interests of both groups of members.⁵⁶

Having made these qualifications as to how digital cooperatives fit within the concept of the collaborative economy, it is clear that a true cooperative enables its members to obtain value additional to the individual conduct of the activity by each of the members. But if it is accepted that platforms and apps are essential in digital work, because the workers need them to provide their services, the cooperative option serves a twofold purpose: on the one hand, providing a service to the members, consisting in managing the platforms and apps; on the other hand, providing stable and quality employment to the members who

⁵³ ALTÉS TÁRREGA, JA (2018, pp.51-52 and 58).

⁵⁴ ALTÉS TÁRREGA, JA (2018, p. 59).

⁵⁵ LOZANO LOZANO, A. (2017, p. 719).

⁵⁶ LOZANO LOZANO, A. (2017, pp. 725-726).

carry out their work thanks to the platforms and apps.⁵⁷ This alternative is particularly attractive taking into account that work is a scarce commodity.⁵⁸ The hybrid nature of digital cooperatives, which places them half-way between service cooperatives and worker cooperatives, is what makes possible to include them as part of the collaborative economy.⁵⁹ In fact, it is that combination that allows the creation of a value shared by all members as a common goal. In other words, the combination of the service-value and work-value seeks a higher value, namely to generate common good to the benefit of all its members.

4. Conclusions

1. The dynamic and diffuse nature of the concept of collaborative economy, which is not legally regulated at present, makes it possible to develop a broad concept that incorporates a new economic identity within the market logic or aspect presented by the collaborative economy, according to the considerations made by the European Committee of the Regions. Those undertakings that ensure the balance between the economic and the social can be included within the umbrella term of collaborative economy. To do so, these companies need to create meeting spaces where people with a common interest contribute to the creation of common value, from which they all benefit. Ultimately, it is a question of bringing into effect what the European Economic and Social Committee has called 'non-reciprocal prosocial behaviour', namely subjecting personal goals to the common objective sought by all parties involved in the undertaking, to the extent only by doing so can the desired common value be created.

⁵⁷ On how cooperatives may incorporate new elements of the collaborative economy without neglecting the principles and values inherent to them, see COMO, E, MATIS, A, TOGNETTI, M. and RAPISARDI, A. (2016, 35 pp).

⁵⁸ This alternative is starting to be successful in Spain. As an example, some former distributors from Deliveroo, Glovo, Stuart, Uber Eats and Shargo have come together under the Ridersxderechos platform, with the aim of creating a cooperative called Mensakas. They plan to launch a mobile application for online shopping and home delivery to promote decent work and responsible consumption and closeness to restaurants and shops in Barcelona. In this regard see: <http://m.deia.eus/2018/05/20/economia/exrepartidores-de-deliveroo-y-glovo-crean-una-cooperativa>; and <https://www.goteo.org/project/mensakas--app-de-menjar-a-domicil-responsable>.

⁵⁹ On the value of digital cooperatives, emphasising their collective ownership and their virtues in terms of the rights of members in terms of social protection, see SCHOLZ, T. (2016, pp. 18-21).

2. A broad concept of the collaborative economy is more in line with reality. This makes it possible to identify those companies that are worthy of being considered as models due to the positive aspects they bring to the societies in which they are located, in line with the conceptualisation of the collaborative economy outlined by the European Committee of the Regions. In addition, these companies can be differentiated from those that currently make an inappropriate, self-interested use of the term collaborative economy, with devastating consequences in terms of workers' labour and employment conditions.

3. The collaborative economy manifests itself mainly through different forms of digital work that generally operate under the parameters of the gig economy and the on-demand economy. The two major models of service provision under such parameters, namely *crowd-work* and work via apps, should not be considered as part of the collaborative economy. Such inclusion is prevented by the legal nature of the link between service providers and owners of online platforms and apps, regardless of whether that link is based on a work contract or a business and services agreement. Both professional statuses are based on an exchange whereby the benefit obtained by each party is in their individual interest. Thus, the interest and the common objective inherent to the collaborative economy are lacking.

4. The legal uncertainty produced by the discussion on the legal nature of the link between service providers and owners of online platforms and apps, and its disastrous consequences for service providers, make it advisable to choose the cooperative model, especially taking into account that various European institutions have linked cooperatives and the collaborative economy.

5. Cooperatives as such comply with the criteria of the collaborative economy based on the European Committee of the Regions' recommendations. In particular, cooperatives are a suitable instrument for the creation of meeting spaces where people with common needs or interests engage in an exchange of value and/or collaborate to achieve a common goal. They are also consistent with the 'non-reciprocal prosocial behaviour' mentioned by the European Economic and Social Committee, in the sense that cooperatives have a common objective, sought by their members, which subordinates their individual aims to the common goal. The associational purpose inherent to the partnership contracts that govern cooperatives ultimately means that the contributions of the members are directed to achieve a common objective.

6. Digital cooperatives are those entities that carry out their economic activity legally and only or mainly, online, under the principles and values of the social economy. Consequently, all types of digital cooperatives should not be allowed to call themselves, or even be legally established as cooperatives under the legal requirements set forth by the cooperative laws. On the contrary, digital cooperatives must also incorporate all the values and principles that inform the cooperative movement into their business concept, thus implementing the values and principles of the social economy.

7. Billing cooperatives should not be allowed to channel digital work because they do not fulfil the criteria of work cooperatives by which they are formally inspired and protected. Quite the contrary, they must be disqualified and dissolved.

8. French activity and employment cooperatives provide their members with an entrepreneur/employee statute under a permanent contract, which provides employment stability for the members and compliance with cooperative principles, in particular, with the principle of democratic management by members.

9. The operation of entrepreneurship and business promotion cooperatives and entrepreneurs' cooperatives, which have been regulated in Spain, is limited to the first stage of their members' venture, in which they try to start up their business project. The main purpose of these cooperatives lies in promoting entrepreneurship, by giving help, advice, training and mentoring to their entrepreneurial members. Provided that this purpose is fulfilled, it is indifferent whether these cooperatives also act as an instrumental structure that allows their members to carry out their professional activity, in the style of billing cooperatives. Ultimately, in order to abide by cooperative essential principles, this type of cooperatives must operate as a meeting point between workers who share needs, by generating projects, supporting activities and lending material and means of production. Likewise, the democratic principle must be complied with, so that the political power in the cooperative can be exercised both by the structural members and by the user members.

10. Digital cooperatives, as long as they are true cooperatives (by implementing cooperative principles and values), fit into the concept of collaborative economy. This results from the combination of a service-value (through the management of digital platforms and apps) and a work-value (realised through stable and quality employment enjoyed by members) that is generated to seek a higher value: generating common good to the benefit of all its members.

5. Bibliography

- AGUILAR DEL CASTILLO, M.C. 2018. 'Las pistas de la información digital, ruta hacia una nueva intermediación laboral'. In TODOLÍ SIGNES, A. and HERNÁNDEZ BEJARANO, M. (Dirs.). *Trabajo en Plataformas Digitales: innovación, Derecho y mercado*. Cizur Menor: Aranzadi – Thomson Reuters.
- ALFONSO SÁNCHEZ, R. 2016. 'Economía colaborativa: un nuevo mercado para la economía social'. In *CIRIEC-España, Revista de Economía Pública, Social y Comparada*, 88.
- ALTÉS TÁRREGA, J.A. 2018. *Nuevas manifestaciones de cooperativismo asociado: los autónomos esporádicos*. Valencia: Tirant lo Blanch.
- ÁLVAREZ CUESTA, H. 2017. *El futuro del trabajo vs. el trabajo del futuro. Implicaciones laborales de la industria 4.0*. A Coruña: Colex.
- ARRIETA IDIAKEZ, F.J. 2014. 'Concreción de las entidades de la economía social'. In *REVESCO*, 116.
- AUVERGNON, P. 2016. 'Angustias de uberización y retos que planea el trabajo digital al Derecho laboral'. In *Revista de Derecho Social y Empresa*, 6.
- BARREIRO GONZÁLEZ, G. 2004. 'El contrato de trabajo y su diferenciación de otras figuras contractuales de servicios en el Derecho español'. In *Estudios de Deusto: revista de la Universidad de Deusto*, 52, 2.
- BOTSMAN R. AND ROGERS, R. 2010. *What's mine is yours: the rise of collaborative consumption*. New York: Harper Business.
- CAVAS MARTÍNEZ, F. 2017. 'Las prestaciones de servicios a través de las plataformas informáticas de consumo colaborativo: un nuevo desafío para el Derecho del Trabajo'. In *CEF: Revista de Trabajo y Seguridad Social*, 406.
- CHAVES, R. & MONZÓN, J.L. 2018. "La economía social ante los paradigmas económicos emergentes: innovación social, economía colaborativa, economía circular, responsabilidad social empresarial, economía del bien común, empresa social y economía solidaria", *CIRIEC-España, Revista de Economía Pública, Social y Cooperativa*, 93, 5-50, DOI: 10.7203/CIRIEC-E.93.12901
- COMO, E, MATHIS, A, TOGNETTI, M. and RAPISARDI, A. 2016. 'Cooperative platforms in European landscape: an exploratory study'. ISIRC Conference, Glasgow, September. Available at https://coopseurope.coop/sites/default/files/Paper_Cooperatives%20Collab%20Economy__0.pdf.
- CUBO MAYO, A., GIL VILLANUEVA, M., LÓPEZ ORTEGA, M.J., MONTES RIVAS, J.M. and RODRÍGUEZ ALBA, C. 2016. *Situaciones Jurídicas Fronterizas con la Relación Laboral*. Cizur Menor: Aranzadi – Thomson Reuters.
- DE STEFANO, V. 2016. 'La *gig economy* y los cambios en el empleo y la protección social'. In *Gaceta sindical*, 27.
- DIVAR GARTEIZ-AURRECOA, J. 2011. *Las cooperativas: una alternativa económica*. Madrid: Dykinson.
- GINÉS I FABRELLAS, A. 2016. 'Crowdsourcing sites y nuevas formas de trabajo. El caso de Amazon Mechanical Turk'. In *Revista Derecho Social y Empresa*, 6.
- GINÉS I FABRELLAS, A. and GÁLVEZ DURAN, S. 2016. 'Sharing economy vs. Uber economy y las fronteras del Derecho del Trabajo: la (des)protección

- de los trabajadores en el nuevo entorno digital. In *InDret: Revista para el análisis del Derecho*, 1.
- GUTIÉRREZ BENGOCHEA, M. and SÁNCHEZ-ARCHIDONA HIDALGO, G. 2016. *Aspectos tributarios de las cooperativas y sociedades laborales*. Granada: Comares.
- HERNÁNDEZ BEJARANO, M. 2017. In Rodríguez-Piñero Royo, M.C. and Hernández Bejarano, M. (Dir.). *Economía colaborativa y trabajo en plataforma: realidades y desafíos*. Albacete: Bomarzo.
- LACOMBA PÉREZ, F.R. 2017. 'El dudoso fenómeno de las cooperativas 'online' de trabajo asociado o cooperativas de facturación'. In *Lex Social*, 7,2.
- LÓPEZ GANDÍA, J. 2017. *Cooperativas y Seguridad Social*. Albacete: Bomarzo.
- LOZANO LOZANO, A. 2017. 'Cooperativas de trabajadores autónomos-cooperativistas de impuso empresarial'. In Fajardo García, G. (Dir.). *Cooperativa de trabajo asociado y estatuto jurídico de sus socios trabajadores*. Valencia: Tirant lo Blanch.
- MACPHERSON, I. 1995. *Co-operative principles for the 21st century*. Geneva: International Co-operative Alliance.
- MARTÍN BLANCO, J. 1957. *El contrato de trabajo*. Madrid: Editorial Revista de Derecho Privado.
- MERCADER UGUINA, J.R. 2017. *El futuro del trabajo en la era de la digitalización y la robótica*. Valencia: Tirant lo Blanch.
- NAVIO, J., SATAELLA, J., PORTILLA, J.A. and MARTÍN, J. 2016. Informe sobre economía colaborativa. Available at: https://www.aeit.es/sites/default/files/migrate/content/downloads/20160608_informe_economia_colaborativa_9720405c.pdf.
- OTERO GURRUCHAGA, C. 2018. 'El complicado encaje de los trabajadores de la economía colaborativa en el Derecho Laboral: Nuevos retos para las fronteras de la laboralidad'. In *Derecho de las Relaciones Laborales*, 1.
- PATIÑO RODRÍGUEZ, D., GÓMEZ-ÁLVEZ DÍAZ, R. and PLAZA-ANGULO, J.J. 2017. 'Caracterización económica y cuantificación de la economía colaborativa'. In Rodríguez-Piñero Royo, M.C. and Hernández Bejarano, M. (Dir.). *Economía colaborativa y trabajo en plataforma: realidades y desafíos*. Albacete: Bomarzo.
- PLAZA ANGULO, J.J., PATIÑO-RODRÍGUEZ, D. and GÓMEZ-ÁLVARÉZ DÍAZ, R. 2018. 'Nuevo contexto para el trabajo: economía de plataformas y liberalismo económico'. In TODOLÍ SIGNÉS, A. and HERNÁNDEZ BEJARANO, M. (Dir.). *Trabajo en Plataformas Digitales: innovación, Derecho y mercado*. Cizur Menor: Aranzadi – Thomson Reuters.
- SALCEDO AZNAL, A. 2011. 'Cooperativismo 3.0'. In *100 años de cooperativismo de consumidores. Preparando el futuro: consumidores 3.0*. UNCCUE.
- SCHOLZ, T. 2016. *Platform cooperativism. Challenging the Corporate Sharing Economy*. New York: Rosa Luxemburg Stiftung.
- The Social Protection of Workers in the Platform Economy 2017*. Study for the EMPL Committee. Available at [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2017\)614184](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)614184).

- TODOLÍ SIGNES, A. 2017. *El trabajo en la era de la economía colaborativa*. Valencia: Tirant lo Blanch.
- TRIGUERO MARTÍNEZ, L.A. 2017. 'Repensando la regulación de las relaciones laborales: a propósito del *crowdworking*'. In Monsalve Cuéllar, M.E. (Coord.). *El futuro del trabajo. Análisis jurídico y socioeconómico*. Cuenca: Alderabán.
- TRILLO, F. 2017. 'Trabajo decente y economía digitalizada'. In Conferencia Nacional Tripartita. *El futuro del trabajo que queremos*, vol. II. Madrid: Ministerio de Empleo y Seguridad Social.
- VALLECILLO GÁMEZ, M.R. 2017. 'Economía colaborativa y laboralidad: los cabos sueltos entre el vacío legal y la dudosa legalidad'. In Conferencia Nacional Tripartita. *El futuro del trabajo que queremos*, vol. II. Madrid: Ministerio de Empleo y Seguridad Social.

Training of cooperative values as a decisive element in new jobs to be created by 21st century cooperatives*

(La formación en los valores cooperativos como elemento decisivo para los nuevos trabajos que crean las cooperativas del siglo XXI)

Eba Gaminde Egia¹
Gonzalo Martínez Etxeberria²
University of Deusto (Spain)

doi: <http://dx.doi.org/10.18543/baidc-54-2019pp97-114>

Recibido: 04.10.2018
Aceptado: 07.03.2019

Summary: 1. Cooperative DNA: origins and the current situation regarding cooperative principles and values. 1.1. Origins and meaning of cooperative principles. 1.2. The current situation regarding cooperative values and principles. 2. The cooperative value and principle of education as a core element of job placement in cooperatives. 2.1 The importance of education in cooperative values within the cooperative and its milieu. 2.2 A critical reflection on the transfer of cooperative values in the case of the Basque cooperative movement: the Mondragon experience. 3. Conclusions. 4. Bibliography.

Sumario: 1. El ADN cooperativo: orígenes y situación actual con respecto a los principios y valores cooperativos. 1.1. Orígenes y significado de los principios cooperativos. 1.2. La situación actual de los valores y principios cooperativos. 2. El valor cooperativo y el principio de la educación como un elemento central de la colocación de trabajos en cooperativas. 2.1 La importancia de la educación en los valores cooperativos dentro de la cooperativa y su entorno. 2.2 Una reflexión crítica sobre la transferencia de valores cooperativos en el caso del

* This paper is part of the following research project: 'Cooperatives as an employment policy instrument to address new challenges in the world of work' (CIPERMT) (file number RTI2018-097715-B-I00). This project has been financed by the Spanish Ministry of Science, Innovation and Universities, the State Bureau of Investigation and the European Regional Development Fund within the call for proposals for 2018 on Research and Development Projects to generate knowledge and Research, Development and Innovation Projects about Research Challenges.

¹ Lecturer of Law and member of the 'Cooperativism, taxation, promotion, labour relations and social protection' research group. E-mail: eba.gaminde@deusto.es

² Lecturer of Law and member of the 'Cooperativism, taxation, promotion, labour relations and social protection' research group. E-mail: Gonzalo.metxerberria@deusto.es

movimiento cooperativo vasco: la experiencia de Mondragón. 3. Conclusiones. 4. Bibliografía

Abstract: Some principles and values exist in cooperative organisations and enterprises that constitute distinguishing aspects. However, the complex situation in which modern cooperative trading companies operate tends to doubt about the adherence to cooperative principles, and may play down the cooperative values. Consequently, this can lead to what it really means for a cooperative to become distorted. Education, training and information are absolutely necessary to avoid that not wanted result. The training of those who want to join cooperatives must be done with an increase in cooperative education for the rest of society in which cooperatives act.

Keywords: training, cooperative principles and values, new jobs.

Resumen: Existen algunos principios y valores en las organizaciones y empresas cooperativas que constituyen aspectos distintivos. Sin embargo, la situación compleja en la que operan las empresas cooperativas modernas nos ofrece dudas acerca de la adhesión de los nuevos socios a los principios cooperativos, y puede minusvalorar los valores cooperativos. En consecuencia, esto puede conllevar que realmente una cooperativa se distorsione. La educación, la formación y la información son absolutamente necesarias para evitar ese resultado no deseado. La capacitación de aquellos que desean unirse a las cooperativas debe realizarse junto con un afianzamiento de la educación cooperativa para el resto de la sociedad en la que las cooperativas actúan.

Palabras clave: formación, principios y valores cooperativos, nuevos trabajos.

1. Cooperative DNA: origins and the current situation regarding cooperative principles and values

1.1. *Origins and meaning of cooperative principles*

Defining cooperative DNA is a complex task. As Professor CIURANA³ pointed out a long time ago «attempting to determine the essence of cooperation does not entail a safe norm that can be resolved in terms of the orthodoxy of a cooperative; yet it does involve pinpointing the essential features or basic ideas that help to structure it».

Among these “features or basic ideas” we can state without fear of contradiction that a series of principles and values exist in the case of cooperative organisations and enterprises that constitute distinguishing aspects. These have steadily evolved and incorporated new details with a view to better interpreting the circumstances of any given time while always remaining under the watchful eye of the International Cooperative Alliance⁴ (ICA). As suitably pointed out by Professor MARTÍNEZ CHARTERINA⁵, «cooperative principles, which constitute the heirs to the cooperative tradition based on the Rochdale experience and subsequently administered by the ICA, have been identifying aspects of cooperatives that have helped to define them, their being distinguished from other social or business entities over time». GADEA, SACRISTÁN and VARGAS⁶ refer to the regulatory value of such principles and their unquestionable validity, pointing out that «cooperatives, as enterprises in which cooperative principles predominate, constitute an objective reality». These same authors, however, point to the fact that two opposing phenomena exist in practice: the «false cooperatives», which are companies whose legal status is a cooperative, which, nonetheless, differ in terms of their defining features, and «de facto, but not de jure cooperatives», which are entities that voluntarily adhere to cooperative principles but which, for different reasons (legal system, tax system, etc.) have preferred to be established as

³ CIURANA FERNÁNDEZ, J. M. (1965, 53)

⁴ ICA: an independent non-governmental organisation founded in London in 1895, which brings together, represents and serves cooperative organisations. One of its key objectives is to «*promote and defend cooperative values and principles*», as set out in section 2 b) of its Articles of Association, approved by General Assembly on 6th June 2008, applicable as of 1st January 2009 and revised by General Assembly on 20th November 2009.

(http://www.aciamericas.coop/IMG/pdf/aci_estatutos.pdf; last consulted: 23-04-2018).

⁵ MARTÍNEZ CHARTERINA, A. (1995, 35).

⁶ GADEA E., SACRISTÁN F., VARGAS C. (2009, 42).

a different type of legal entity. Still, they conclude by saying that «the business model sponsored by cooperatives, despite its faults, nonetheless works – above all at times like the current international crisis, when companies driven by values and with a different set of ethics are needed more than ever».

In any event, if we wish to start mentioning the origins of cooperative DNA, we need to refer to the *Rochdale Principles*. The so-called *Rochdale Society of Equitable Pioneers* has been traditionally acknowledged as the pioneer of the modern cooperative movement⁷. Its founders were able to take advantage of the results of previous experiences and reflect on the ideas put forward by their contemporaries, although their chief merit lies in having selected and systematized the basic rules that have since then been adopted and put into practice by cooperatives.

Seven key principles were regulated in the original statutes: mutual assistance between cooperatives, democratic control, unpaid posts, open membership, cash trading, limited interest on capital and equitable distribution of cooperative returns. These statutes were modified the following year as a result of three amendments regarding operative limitation of participants per establishment to democratic control by assembly (one person, one vote) and to the interest rate on capital (5%). There was also a further modification in 1854 of great significance in terms of the policy regarding surpluses (non-members were allowed benefits, a fund for social work was established and the social nature of surplus funds was also determined in the event the company were to dissolve).

Those principles have been subsequently revised and updated by the ICA, who also provides the notion of “cooperative” values in addition to previously-identified principles. In the first official ICA documents, however, there was no mention of cooperative values – not because this was deemed irrelevant or there was a desire to overlook the

⁷ The Rochdale pioneers are acknowledged in many manuals, papers and monographic studies as being the “producers of the cooperative movement”. Among others, these include MÖLLER E. (1986, 23); KAPLAN DE DRIMER, A. and DRIMER B. (1981, 227); MLADENATZ, G. (1969, 68); URIBE GARZÓN, C. (2001, 68). However, there are also opposing opinions. CARRASCO, for instance, specifies that «it should be made clear that the Rochdale Pioneers was not the first associative experience in history and that its pioneering nature refers more to the experience in itself, to the drawing up of their own statutes by those that promoted it». CARRASCO CARRASCO, M. (1991, 2). Along the same lines, MIRANDA points out that «the cooperative movement did not come into being in 1844: rather, it was the result of a multi-secular process that first got underway in the form of primary cooperation». MIRANDA, J. E. de (2012, 140).

matter, given that the doctrine has been continually working on them. Rather, this was because to shape them required the relevant maturing process⁸.

Currently, the Statement on Cooperative Identity, adopted by the 2nd General ICA Assembly in September 1995 in Manchester on the occasion of the ICA's centenary, includes a new definition of cooperative and a review of the system of principles that had been in operation for over a century and a half, drawing an express distinction about cooperative values and principles.

This Statement consists of two parts: the first, titled «ICA Statement on Cooperative Identity», provides a definition of the cooperative, the list of values, grouped together into basic values (*self-help, self-responsibility, democracy, equality, equity and solidarity*), and ethical values (*honesty, openness, social responsibility and caring for others*), in addition to a definition and list of cooperative principles: «*cooperative principles are guidelines by which cooperatives put their values into practice*», of which there are seven: *voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training an information; cooperation among cooperatives; and concern for community*⁹.

⁸ At the 13th ICA Congress (Vienna, 1930) a definition of cooperative principles was considered that failed to mention values. Subsequently, the 15th Congress (Paris, 1937) approved a report that proclaimed cooperative principles, divided into four primary principles deemed essential to ensure an entity could be considered cooperative (free membership, democratic control, distribution of surpluses based on transactions made and limited interest on capital), plus three additional ones, deemed advisable but not essential (political and religious neutrality, cash trading and promotion of education), although there were still no values. Once some time had elapsed, possible modification of cooperative principles was once again studied, and this was approved by the 23rd Congress (Vienna, 1966), insofar as six principles that had been in force until the Manchester Congress at the time were approved (free membership, democratic control, limited interest on capital, distribution of surpluses in proportion to transactions made, education and cooperation among cooperatives). However, the issue of values had been under consideration for a long time. Thus, at the 29th Congress (Stockholm, 1988) the report on *Cooperatives and basic values* was submitted, which called for cooperative identity: cooperatives should make a special effort to focus on their values and be able to play a major role in favour of the community, given the adverse circumstances of the time. A climate of interest and doctrinal participation evolved, albeit without providing a final response. Despite this, it became evident that values constituted the basis of principles, whereby the ICA decided to focus first on values and in light of this draw up reforms for those principles – a decision that was taken at the 2nd General ICA Assembly held in Manchester in 1995.

⁹ *ICA Statement on Cooperative Identity*, pp. 16-19.

The second, titled, «Report on ICA Statement on Cooperative Identity», explains, provides more detailed information about and clarifies the previous content. We coincide with the appraisal made by MARTÍNEZ CHARTERINA in which he states that the extent of reforms made in Manchester, the explicit inclusion of values into the study and approved document, reassesses cooperative principles and fills them with pragmatic meaning»¹⁰.

Yet what does this management model provide now in the 21st century? What sense can we make of those cooperative values and principles nowadays, within such a different context to the one in which they were first formulated and then updated? Doesn't moral discourse lose its effectiveness in view of the lack of basic material needs like work and its collateral effects (lack of liquidity, evictions, etc.)?

1.2. *The current situation regarding cooperative principles and values*

We understand the best way of responding to the debate about the potentiality of cooperative principles and values at the present time to be to cite a real, practical example that clearly demonstrates that a humanist and competitive type of leadership is possible and that the ethical/moral discourse is – far from being ineffective and outdated – gaining increasing relevance. We are referring to *Mondragon Corporation*, whose current figures show that it remains a worldwide reference point: with a total income of around 12,033 million Euros, 268 entities, 73,635 individuals and 15 technology centres¹¹, it is the leading Basque business group and ranked tenth in Spain, and is also ranked among the 300 most important cooperatives in the world, maintaining a major international presence¹².

As such, this major economic agent systematized its principles and values at the 2nd Congress of the Mondragon Cooperative Group held on 2nd and 3rd October 1987. Under the title «*Basic Principles of the Mondragon Cooperative*» ten principles were proclaimed that gave shape to the ideas originally put forward by the movement's

¹⁰ MARTÍNEZ CHARTERINA, A. (1995, 45).

¹¹ (<http://www.mondragon-corporation.com/>, last consulted: 23-04-2018).

¹² Opening of new production plants in 2016, with 140 external subsidiaries, employing over 12,000 individuals overseas (<https://www.mondragon-corporation.com/wp-content/uploads/2017/MONDRAGON-CAS.pdf>., page 33; last consulted: 23-04-2018).

founder, José M.^a Arizmendiarieta, and these principles have been gradually put into practice via the Group's cooperatives for over thirty years now.

These ten basic principles appear today on the group's corporate website¹³ as follows: free membership; democratic organisation; sovereignty over work; instrumental and subordinate nature of capital; participation in management; wage solidarity; inter-cooperation; social transformation; universal nature and, lastly, education. As set out in the proclamation, these are principles that «assume and combine the Universal Cooperative Principles updated by the ICA. In them are gathered the experience gained over more than half a century in cooperative practices that has been the MONDRAGON Experience. The open, dynamic nature of these principles means they can be considered as open guidelines for the future».

These are of course principles whose roots lie in those postulated by the ICA although, as ORMAETXEA points out, «in terms of their practical definition and scope, they go beyond the strict limits established by concepts or by the norm, with criteria emerging such as those expressed in 6) *Wage Solidarity* and 8) *Social Transformation* above all, in which their own potentialities unfold that have been brought to life over a specific time and in a specific country, which the Mondragon cooperative experience attempts to satisfy and serve»¹⁴.

However, there is currently a risk of ending up forgetting the initial spirit that first encouraged the cooperative project, in order to ensure a position of strength in purely effective strategies in view of pressing needs. Yet we should recall the fact that the cooperative movement as put forward by Arizmendiarieta is above all a type of thought, a human and social attitude – the recognition of certain principles and ideals that need to be kept alive.

The potentiality of the cooperative model has been defended for a long time now as a suitable formula for facing up to the crisis, although problems experienced by FAGOR Electrodomésticos have proved to be a tough salutary lesson, marking a turning point in the history and trajectory of the Mondragon Cooperative Experience (MCE). In the wake of the worldwide financial crisis which from 2009 onwards also affected the Basque and Spanish economies, this statement in favour of the cooperative company remained an alter-

¹³ <http://www.mondragon-corporation.com/sobre-nosotros/gobernanza/mision-vision-valores/>; last consulted: 23-04-2018.

¹⁴ ORMAETXEA, J. M. (1994, 3).

native way of emerging from it¹⁵. In 2013, however, all the alarm bells went off as a result of the FAGOR episode and the cooperative model was highly questioned, although arguments in its favour were also heard, as has already been seen. Despite this, it is clear that even though it retained its validity, major aspects needed to be modified such as that mentioned by SOTIL, who was President of Mondragon Corporation, when he stated that cooperative world values «have lent us great support in recent years», but has also meant that «they also need to be brought up-to-date and innovated, as new generations do not start off with the same values as 60 years ago».

Therefore, the key may have been to proceed with such a renewal or updating, which had already got underway by 2005 via working meetings with social bodies and management staff from all the cooperatives belonging to the group. Three main areas of debate were proposed accordingly: education, cooperation/participation and social transformation. Today, however, from our modest standpoint the key perhaps lies in stressing values that have a clearer Christian orientation: solidarity, cooperation, concern for the community – all of these combined of course with new means for seeking new funding solutions for the future. It is difficult to refer to values when the most basic of all aspects is missing, but it is precisely the fact of turning to values such as solidarity and their multiplying effect that may provide the solution.

¹⁵ There are numerous testimonies in this respect. For instance, the message conveyed by the ICA for the International Cooperatives Day in 2009 was devoted to the crisis and the cooperative model as a suitable response for overcoming this negative situation. Along the same lines, JUAN MANUEL SINDE, member of the Arizmendiarieta Lagunak Association and prominent member of Caja Laboral, wrote two articles in 2009 about MCC and the crisis, highlighting on the one hand the advantages of the cooperative model over other types of business in order to deal with the crisis (responsibility and working capacity of members, in addition to better relations between the managerial team and workers; («Cooperative strengths I», in *Euskonews*, 534 zk.; <http://www.euskonews.com/0534zkb/gaia53403es.html>, last consulted: 23-04-2018) and, on the other, drawing attention to MCC's strong points due to the fact of its being a group: inter-cooperative solidarity mechanisms, support from corporate central services and support from Caja Laboral («Cooperative strengths II», in *Euskonews*, 535. zk.; <http://www.euskonews.com/0535zkb/gaia53503es.html>, last consulted: 23-04-2018). Lastly, numerous articles about the crisis were published in the journal *TU Lankide* in this regard between August 2008 and May 2009, perfectly brought together by ECHÁNIZ, ENCISO, MUGARRA AND PAGOLA in their paper «The transfer of solidarity value in public opinion: the case of Mondragón Corporación Cooperativa (MCC)», published in *COOPERATIVISMO & DESARROLLO*, No. 96, pp. 73-75, <http://dialnet.unirioja.es/servlet/articulo?codigo=3660128>; last consulted: 23-04-2018).

Along these lines, the Mondragon General Congress held in November 2014 submitted the document *"MONDRAGON of the future"*, which reaffirmed the conviction of the strength and validity of the cooperative model and of the principles and values that support it. SOTIL stressed the validity of the Cooperative Experience and insisted on the need to do *"cooperative business"* by reviving cooperative values, and *"competitive business"* by competing in the world, backed up by common inter-cooperation and solidarity tools. As regards the most significant changes proposed in the document, it referred to the *"Transforming demanding solidarity"*, which entails a greater leading role on the part of Divisions in envisaging problems with competitiveness in cooperatives and greater demands and rigour on the part of the corporate bodies that allocate these funds.

And what would this management model contribute in the 21st century?

- Firstly, the chance for our youth to embark on their career within a different milieu.
- The thrill of working in an organisation in which one actively takes part in decision-making, in turn being responsible for a shared project.
- The satisfaction of putting principles into practice such as those already mentioned, namely solidarity, democracy and responsibility – now more necessary than ever.

2. **The cooperative value and principle of education as a core element of job placement in cooperatives**

Regardless of any discussions about doctrine as to whether education and training in cooperative values needs to be absorbed into the category of cooperative principles or values, what is clear is the need for suitable training of members who make up cooperatives. However, this is perhaps even more necessary in the case of individuals who aspire to join a cooperative, irrespective of the strategic sector in which they pursue their activities and not only from the standpoint of the technical skills that may be demanded, but also the increasingly necessary demand for skills in cooperative values on the part of those individuals who aspire to complete the structures of modern cooperatives in the 21st century.

2.1. *The importance of education in cooperative values within the cooperative and its milieu*

The determining factors that have accompanied the modern cooperative movement since the outset in actually shaping it as a movement, as well as in building its cooperative identity, are aspects that revolve around certain values that are made specific in the form of principles for acting and operating. These have been repeatedly analysed and studied by the ICA, as explained in the first part, with one of its main aims being to act as a guide to modern cooperatives who strive to be recognised as such along recognisable lines. Nonetheless, it should be stated that these principles for acting and operating, which are inspired by certain higher values that one aspires to attain not in the form of unchanging principles for modern cooperatives, but rather, the opposite – as we said before, are principles that evolve and even change, with the ultimate goal of facilitating cooperatives' adaptation to new times and the realities facing the markets on which they compete with other types of company.

Although it can be observed that such principles vary, and this is demonstrated by the conclusions drawn by numerous congresses organised by the ICA starting with the original ICA Congress held in London in 1895, it is no less certain to say that in terms of the same cooperative principles – the ultimate goal of which is to attain and adhere to a series of values¹⁶ to which to aspire – it should under no circumstances be forgotten that adherence to such principles and pursuing such values too often ends up being at the mercy of a short-term vision from the business and productive standpoint of cooperative trading companies, irrespective of the sector in which they may conduct their activity.

Put in another way, the complex reality of the situation in which modern cooperative trading companies operate tends to result on many occasions in such companies either putting to one side or reducing the level demanded in terms of adherence to cooperative principles that may assist them from a legal or statutory standpoint, and may play down the cooperative values they aspire to. Conse-

¹⁶ More than varying what occurs with cooperative values, the fact of the matter is that new values are being added to the traditional ones that have been hitherto studied, in accordance with the times in which we are living. These likewise need to be worked on and studied with a view to becoming consolidated over time as values of an identical nature to those we have been referring to throughout this research work as traditional cooperative values.

quently, this can lead to what it really means for a cooperative to become distorted.

Being aware of this situation and with the clear will to ensure that adherence to the principles that give meaning to cooperatives and the movement to which they belong are not just an ideal requirement but, rather, should constitute their day-to-day *raison d'être*, the cooperative movement has on many occasions deliberated on how to proceed in these matters. Thus, one of the main ways – if not the only one (regardless of the transfer of any cooperative legacy that may be handed down from one generation to the next within families or specific cooperatives, such as in the case of the previously-mentioned Mondragon, and which is becoming an increasingly less common issue in modern societies) – by which an attempt is made to maintain awareness of such cooperative principles first and adherence to them later, are training and education in these principles and values on the part of cooperative members and any individuals who in some way may be linked to cooperative environments. Only in this way will it be possible, in my opinion, to ensure that cooperative members be committed to their cooperatives and to the movement as a whole.

Nonetheless, educational and training work in cooperative principles and values not only needs to be confined to cooperative members and workers (although these should be the first to be trained in such matters), but also developed within the closest social milieu in which they act, and insofar as their level of influence be deemed significant with a view to taking a social stance via their virtues and their faults.

Likewise, the cooperative movement might also take into consideration the fact that such a *cooperative milieu* could educate its members in the specific nature of the movement¹⁷, although this option is not exclusively in the hands of the cooperative movement, which shouldn't necessarily prevent under any circumstances the fact that, within the possibilities available to it, a major pressure group could be established to apply pressure on public administrative bodies to encourage them to enhance the specific nature of the movement. Moreover, the demands of the cooperative movement in this sense in the specific case of Spain and the Basque Country are covered constitutionally by section 129.2 of the 1978 Spanish Constitution¹⁸, which states that «public authorities shall effectively promote the different

¹⁷ INGLADA, M.E, SASTRE CENTENO, J.M. and VILLARROYA LEQUERICAONANIN-DIA, M. B., (2015).

¹⁸ 1978 Spanish Constitution, passed by referendum dated 6th December and published in Official Gazette No. 311 dated 29th December 1978.

forms of participation in companies and shall foster the creation of cooperatives via suitable legislation. The means shall also be established for facilitating access on the part of workers to ownership of the means of production».

I understand that a broad interpretation of the constitutional concept of *fostering* via suitable legislation needs to be completed by providing a type of general training while at the same time specifying what the cooperative movement is and what it means, in addition to the values by which it is inspired. The type of values to which priority needs to be given are those pertaining to democracy, inter-cooperation and solidarity, etc., by which modern-day societies should also be inspired. Although this matter of training societies in cooperative values in which the cooperative movement maintains a presence remains an inspiration (unlike in the case of the cooperative movement itself, for which it is deemed mandatory), it is no less true to say that if the movement strives to be ideologically reinforced in the present and more successfully face the future, it needs to focus more in depth on this, as it otherwise may run the risk of becoming distorted.

To this end, in my opinion, the different cooperative realities co-existing in the current globalised world require different perspectives about cooperative training and education¹⁹, which need to be adapted according to the different requirements deriving from each case of decisive matters – such as location, level of development in which cooperatives pursue their objectives, and the extent of social development of the nearest milieu in which they develop their respective social aims, etc.²⁰

However, in the case of the Spanish cooperative movement and, more specifically, in the case of the Basque cooperative movement, specifically the Mondragon experience, its evolution as a cooperative movement since the late forties/early fifties up until the present time has developed in different stages. In my view, we find one of these now, in which the transfer of cooperative values has proved to be of vital importance, even though this has been able to develop through channels other than those required at the present time.

¹⁹ It is worth reading LÓPEZ RODRÍGUEZ, J. (2017) for more about this.

²⁰ The texts I list below are worth reading, as they provide different views with regard to education and training in values, in this case in Latin America, with experiences gained in Cuba and Brazil – two countries which have had diverse cooperative experiences that differ from each other.

MARIN, I., LABRADOR, O. and MIRABAL, Y., (2013).

MIRANDA, J. E. and CORREA LIMA, A., (2017).

2.2. *A critical reflection on the transfer of cooperative values in the case of the Basque cooperative movement: the Mondragon experience*

It was in Mondragon and the municipalities making up the region of Debagoiena or Alto Deba in the forties (post-war times of hardship and repression) when what has been referred to throughout this work as the Mondragon experience, as put forward by Jose María Arizmendiarieta, first started to gestate. This is the person who started to develop his pastoral activities by being interested in, among other issues, training young people from his local parish, as he saw at the time there were limited options available for this to such an extent that, if the situation were not reversed, it would result in further social exclusion of these individuals. These problems, alongside others, would lead Arizmendiarieta to set up the ULGOR cooperative in 1956 – the seed for what many years later would end up becoming the FAGOR cooperative, forming part of the Mondragon cooperative group.

It is within this context of poverty that the cooperative fabric took root early in the Basque Country, mainly in Gipuzkoa, owing to certain special factors in its favour such as a very long-standing tradition of cooperative work that was deep-seated in society (known as *auzolan*), that certain socio-economic conditions that would favour the establishment of the cooperative model, and above all certain social values inherent among its people, intertwined with traditional cooperative values such as cooperation and solidarity.

My perception about those times is that those first cooperative members were more than just cooperative worker-members who performed their professional duties in the cooperative – they were individuals who lived the cooperative experience. They had been professionally trained in the best case scenario via the limited formative means available at the time, yet they were well-versed in certain intrinsic values within their view of the world which they put forward in the cooperative as they built it.

The reality of the situation is that, despite the difficulties, the cooperative experience pursued its path and became larger and larger, incorporating new cooperative members (who would make up the second generation), conquering new markets and steadily improving the working and living conditions of the cooperative members and workers in their milieu in which they conducted their activities. This second generation of cooperative members who would continue to build the cooperative experience beyond the late sixties and into the 21st century were perfectly aware of the scope and meaning of what it meant to be one, without hardly having been trained in it.

Lastly, as far as the third generation of cooperative members is concerned – i.e. those following on from the last-mentioned ones – this is the generation that has been working over the past few years within the cooperative group and has borne witness to the huge, very rapid changes that have taken place in the digital revolution. This has, among other things, conditioned the way in which human, social and business relations, etc. are structured, in which individualism as a philosophy has taken root in many cultures traditionally opposed to it. Within this context, some of these cooperative members are experiencing the paradigm of “working in the cooperative”, with many of them being mistakenly assimilated as what might be considered salaried workers in a capitalist enterprise, with all the usual clichés.

The illustrative example of this assertion would be made evident around the end of 2012, when FAGOR member-workers publicly demonstrated in different places to ask third parties and public authorities for solutions to problems affecting their cooperative – those they identified as being responsible for a situation for which they themselves would ultimately bear responsibility as member-participants.

The thoughts I came to have at that time that would go beyond the specific problem of a cooperative that was unable to cope with the crisis was that the real problem facing cooperatives – and hence the case of FAGOR within the Basque cooperative movement proved to be a pragmatic one – was to try and foresee not only the economic crises that both cooperatives and other capitalist enterprises had to face on a cyclical basis. Rather, it was the need to consolidate certain ideological-distinguishing foundations of the cooperative movement that would enable them to become stronger than other such capitalist enterprises in terms of potential stakes there might be as a result of cyclical economic crises generated by capitalism.

In this respect, ALUSTIZA KAPANAGA²¹ reached the conclusion that: «from everything that has been analysed, the conclusion can be drawn that it is true that the MCC cooperative model in recent years has moved away from the purely cooperative model, compelled to do so to a large extent by the logic of markets and the economy, and the need to compete with other enterprises. And we should not overlook the fact that the cooperatives belonging to MCC are, when all is said and done, enterprises, and as such need to seek their means for survival to ensure the values on which the cooperative movement is founded and maintained. This fact, combined with mistaken strategic decisions and the devastat-

²¹ ALUSTIZA KAPANAGA, A., (2015, pp. 336-337).

ing economic crisis that the country is still enduring today – also in the rest of Europe and indeed the whole world – led FAGOR to bankruptcy, thus making a situation visible where public opinion would start to question the cooperative model that had been forged years earlier. This situation led the Basque cooperative movement (and, it might be said, to a certain extent Basque society as a whole) to a situation of initial uncertainty from which it has gradually recovered, although there has yet to be a full recovery from the major impact caused by the FAGOR crisis within the cooperative milieu and within society as a whole. Once that initial uncertainty had passed, the FAGOR case then needed to be seen as a chance to reflect on the corporation model that MCC should pursue, properly identify the mistakes made and learn from them if the Basque cooperative movement were to remain standing».

In sharing with the author the fact that a crisis provides perhaps the best moment for reflection²², and identifying the current times as being suitable ones for such reflection, in which a way out of the economic crisis becomes an increasingly plausible option, cooperative education in values needs to be viewed as the key for action within the cooperative movement – it should be seen as the ultimate goal of such education to lay the foundations for enabling the cooperative movement to be reinforced and to continue with the successes achieved since long ago.

The freeing of ideological considerations and demobilisation of cooperative members is one of the dangers threatening the cooperative movement that needs to be avoided, since as soon as the cooperative values to be pursued and the principles to be applied among members who make up the cooperatives start to fade, the very survival of the cooperative as such will be in jeopardy – irrespective of any positive results that cooperatives may attain from a financial perspective. The need to promote the training of cooperative members has become apparent, not just from a technical standpoint, and solutions exist to remedy this that focus on the use and way in which legally-envisaged educational and promotional resources need to be utilised, both in accordance with Basque²³ and Spanish²⁴ regulations.

²² GAMINDE EGIA, E. (2017, 259): «The crisis has provided us with an unrepeatable chance to distinguish and put forward a new business model. It is possible to find a sustainable way out via the ethical revival required in the current economic system».

²³ Act 4/1993 dated 24th June governing Cooperatives in Euskadi, published in Official Basque Country Gazette No. 135, dated 19th June 1993.

Act 6/2008 dated 25th June governing Small Cooperatives in Euskadi, published in Official Basque Country Gazette No. 127, dated 4th July 2008.

²⁴ Act 27/1999 dated 16th July governing Cooperatives, published, published in Official Gazette No. 170, dated 19th July 1999.

3. Conclusions

Nowadays, the crisis has promoted a type of undertaking and administering that tends to be rather unusual during boom periods: cooperative organisation, with its particular idiosyncrasies and know-how. However, cooperatives are currently running the risk of losing what makes them unique, given that, as in the case of other forms of enterprise, they need to be able to adapt permanently in view of changes in context – at times blurring their true essence: the principles and values that make up their DNA.

Given how fast time flies by and the extremely important changes that have taken place in recent years, doubts are being raised about their operative nature and effectiveness at the present time. Are those principles and values really valid within the current milieu?

We have responded to this question in the affirmative, offering the Mondragon Cooperative Experience as objective data. After pursuing a long path to be able to express themselves in terms of viable material management, it has become both a national and International benchmark, which proves that a modern, competitive and efficient form of management is possible based on cooperative values and principles

Training and education in these cooperative values since the outset of the Mondragon experience did not require any specific corporate educational or formative policy in this sphere of activity, as it was the cooperative members themselves who transferred their own life's values which, possibly without being aware of it, happened to be cooperative values such as cooperation, solidarity and democracy, etc. This situation within which they embarked on their Mondragon journey as a cooperative experience has radically changed in recent years. Among many other reasons for this, the digital revolution that modern societies are experiencing has led to a change in collective thinking in terms of the social values that we assume in our most advanced societies, economically speaking – including Basque society.

Owing to this change in paradigm, what in years gone by would have been unthinkable – i.e. training cooperative members and their milieu in values – today proves to be a necessity that is needed in order to complete the technical training of individuals who aspire to join cooperatives, enabling them to be in a better position to access employment in such cooperatives in the event of attaining the required skills.

Regardless of the specific determining factors in the different areas of training that those aspiring to join cooperatives need to give prominence to – that of training in the cooperative spirit included – an increase in cooperative education for the rest of society in which coopera-

tives pursue their activities would be highly desirable, although this does not only depend on the willingness of the cooperative movement. If the issue of education and training in cooperative values is not addressed with due seriousness, the risk of the cooperative movement becoming distorted will override any new, consolidated cooperative values – above all in the most economically advanced states, as the least developed countries remain the ones where cooperative values maintain the greatest presence in their societies without the need to specifically resort to them, despite their greater needs from the economic standpoint.

4. Bibliography

- ALUSTIZA KAPANAGA, A. 2015. «El impacto de la crisis de FAGOR en el cooperativismo vasco», *Boletín de la Asociación Internacional de Derecho cooperativo*, no. 49.
- ARAGÓN AMONARRIZ, C., ITURRIOZ LANDART, C. and NARVAIZA CANTIN, L. 2017. «Cooperatives' proactive social responsibility in crisis time: how to behave?», *REVESCO, Revista de Estudios Cooperativos*, no. 123.
- ARNÁEZ ARCE, V. 2014. «Educación, Formación e Información. El compromiso cooperativo con la juventud», in *Difusión de los valores y principios cooperativos entre la juventud*. Madrid: Dykinson S.L.
- ARNÁEZ ARCE, V.M. 2018. 'La alternativa cooperativa en la prestación de servicios públicos sostenibles'. In *Boletín de la Asociación Internacional de Derecho Cooperativo*, 52, 123-135.
- ATXABAL RADA, A. 2016. 'La identidad cooperativa como justificación de un tratamiento fiscal diferenciado', *Boletín de la Asociación Internacional de Derecho Cooperativo*, 50, 285-307.
- CARRASCO CARRASCO, M. 1991. «La Empresa Cooperativa actual: ni mutualidad ni ausencia del lucro. La justificación de una protección fiscal», in *CIRIEC-España, Revista de Economía Pública, Social y Cooperativa*, no. 14.
- CARRASCO MONTEAGUDO, I. 2009. *Diccionario de Economía Social*, volume 6. Madrid: Ecobook-Editorial del economista.
- CIURANA FERNÁNDEZ, J. M. 1965. «La esencia de la cooperación», 53-58.
- GADEA E., SACRISTÁN F., VARGAS C. 2009. *Régimen jurídico de la sociedad cooperativa del siglo XXI: realidad actual y propuestas de reforma*. Madrid: Dykinson.
- GAMINDE EGIA, E. 2017. *La doctrina social cristiana y el cooperativismo vasco. Una alternativa para el cambio*. Madrid: Dykinson.
- GARCÍA PEDRAZA, L. GARCÍA RUIZ, J.G. and FIGUERAS MATOS, D. 2018. «Importancia de la educación cooperativa. Una experiencia cubana», *REVESCO, Revista de Estudios Cooperativos*, no. 129.
- INGLADA, M. E., SASTRE CENTENO., J. M. & VILLAROYA LEQUERICAONAIN-DIA, M. B. 2015. «El cooperativismo en la educación», *REVESCO, Revista de Estudios Cooperativos*, no. 118.

- JAIME CUADROS, M. P. 2007. *Plan Nacional Decenal de Educación para el Sector de la Economía Solidaria. 2006-2016. «Solidaridad con educación. Estrategia hacia la competitividad»*. Bogotá: Universidad Cooperativa de Colombia.
- KAPLAN DE DRIMER, A. & DRIMER B. 1981. *Las cooperativas. Fundamentos, Historia-Doctrina*. Buenos Aires: Intercoop (3rd edition).
- KRUEGER, G. 2018. "A cooperativa sem degredados: uma esquizoanálise da sua promessa de felicidade", *Boletín de la Asociación Internacional de Derecho Cooperativo*, no. 53, pp. 225-250.
- LÓPEZ RODRÍGUEZ, J. 2017. «La promoción del emprendimiento social mediante metodologías innovadoras: hacia un nuevo paradigma educativo», *Lan Harremanak, Revista de relaciones laborales*, EHU-UPV, no. 37 extra.
- MARÍN, I, LABRADOR, O, MIRABAL, Y. 2013. «La educación cooperativa como eje central para la formación integral del sector cooperativo», *Cooperativismo y Desarrollo*, Cuba.
- MARTÍNEZ CHARTERINA, A. 1995. «Los valores y los principios cooperativos», in *REVESCO, Revista de Estudios Cooperativos*, no. 61.
- MARTÍNEZ ETXEBERRIA, G. 2014. «La juventud como valor corporativo en las sociedades mercantiles cooperativas del siglo XXI», in *Difusión de los valores y principios cooperativos entre la juventud*. Madrid: Dykinson S.L.
- MIRANDA, J. E. de. 2012. *De la crisis de identidad al rescate de la génesis del cooperativismo*. Madrid: Dykinson.
- MIRANDA, J. E. & CORREA LIMA, A. 2017. «Educación, formación humana y valores cooperativos: una propuesta de revitalización de las prácticas educativas brasileñas para el rescate del hombre social y fraterno», *Revista de Estudios Cooperativos Deusto*, no. 9, Bilbao, 2017.
- MLADENATZ, G. 1969. *Historia de las doctrinas cooperativas*, Buenos Aires: Intercoop.
- MÖLLER, E. 1986. *El cooperativismo como proceso de cambio. Doctrina histórica del cooperativismo*. Bolivia: Editorial Los Amigos del Libro.
- MORENO FONTELA, J.L. 2017. «Las relaciones entre los valores y principios cooperativos y los principios de la normativa cooperativa», *REVESCO, Revista de Estudios Cooperativos*, no. 124.
- ORMAETXEA, J. M. 1994. «Los principios cooperativos de la Experiencia», in *Textos básicos de Otalora*. Área de Educación y difusión cooperativa, vol. 5., Mondragón: Ed. Azatza (Otalora).
- URIBE GARZÓN, C. 2001. *Bases del cooperativismo*, Colombia: Editorial Guadalupe Ltda.

The promotion of both decent and green jobs through cooperatives*

(La promoción de empleos verdes y decentes a través de cooperativas)

Josune López Rodríguez¹
University of Deusto (Spain)

doi: <http://dx.doi.org/10.18543/baidc-54-2019pp115-129>

Recibido: 29.11.2018
Aceptado: 07.03.2019

Summary: I. Introduction. II. Green and decent jobs: towards sustainable development. 2.1. Green jobs. 2.2. Decent work. 2.3. Synergy needed between green jobs and decent work. III. A conceptual approach to cooperatives, particularly, to cooperative values and principles. IV. Cooperatives as suitable organisations for the promotion of green and decent jobs. V. Conclusions. VI. Bibliography.

Sumario: I. Introducción. II. Empleos verdes y decentes: hacia un desarrollo sostenible. 2.1. Empleos verdes. 2.2. Empleos decentes. 2.3. La sinergia necesaria entre empleos verdes y empleos decentes. III. Una aproximación conceptual hacia las cooperativas, y en particular, hacia los valores y principios cooperativos. IV. Las cooperativas como organizaciones apropiadas para la promoción de empleos verdes y decentes. V. Conclusiones. VI. Bibliografía.

Abstract: Nowadays, it is undeniable that continuous environmental degradation and climate change threaten the sustainability of the planet. As a consequence, there is an urgent need to face these menaces and to promote sustainable development. From this starting point, this paper aims to show how cooperatives can be a useful channel to promote green and decent jobs. In order to achieve this objective, first of all, we will analyse the conceptual scope of green and decent jobs. Secondly, we will highlight the

* This paper is part of the following research project: 'Cooperatives as an employment policy instrument to address new challenges in the world of work' (CIPERMT) (file number RTI2018-097715-B-I00). This project has been financed by the Spanish Ministry of Science, Innovation and Universities, the State Bureau of Investigation and the European Regional Development Fund within the call for proposals for 2018 on Research and Development Projects to generate knowledge and Research, Development and Innovation Projects about Research Challenges.

¹ Lecturer of Law and member of the 'Cooperativism, taxation, promotion, labour relations and social protection' research group. E-mail: josunelopezrodriguez@deusto.es

meaning of cooperatives, paying special attention to cooperative values and principles. Thirdly, we will proceed to explain how cooperatives can contribute to encourage green and decent jobs. And, lastly, we will enumerate the main conclusions.

Keywords: Green jobs; decent work; cooperatives; sustainable development.

Resumen: En la actualidad, resulta innegable que la constante degradación medioambiental y el cambio climático amenazan la sostenibilidad del planeta. Como consecuencia, existe una necesidad urgente de afrontar estas amenazas y de promover el desarrollo sostenible. A partir de estas premisas, el presente artículo tiene por objeto mostrar cómo las cooperativas pueden ser una vía útil para promover los empleos verdes y decentes. Para lograr este objetivo, en primer lugar, se analizará el alcance conceptual de los empleos verdes y decentes. En segundo lugar, se resaltarán el concepto de las cooperativas, prestando especial atención a los valores y principios cooperativos. En tercer lugar, se procederá a explicar cómo pueden las cooperativas contribuir a la promoción de empleos verdes y decentes. En último lugar, se enumerarán las principales conclusiones.

Palabras clave: Empleo verde; trabajo decente; cooperativas; desarrollo sostenible.

'La historia, como el trigo, ha llenado con sus acontecimientos los trojes de la memoria.

Es hora de hacer el pan para alimentar el futuro'

'History, like wheat, has filled the granaries of memory with its events.

It is time to make bread to feed the future'

(José Antonio Marina and María de la Válgoma, *La lucha por la dignidad*. Barcelona: Editorial Anagrama, 2008, page 293)

I. Introduction

According to the International Labour Organisation, two of the most important challenges of the 21st century, namely preserving the environment and turning decent work into a reality, must be addressed jointly given their close relationship.² The incessant environmental degradation and the global deficit of decent jobs are incontestable facts that seriously threaten the sustainability of the planet.

Spain is no stranger to these global challenges. It has been clearly shown that the effects of climate change are not only limited to the environment but also influence the social and economic spheres. In addition, the precariousness that currently characterises the Spanish job market only aggravates social inequalities and increases poverty.

This alarming scenario requires the adoption and implementation of effective strategies aimed at ensuring sustainable development 'that meets the needs of the present without compromising the ability of future generations to meet their own needs.'³ Specifically, sustainable development must be based on three mutually interdependent pillars, namely environmental protection, social development and economic growth.

Both international and European organisations have highlighted the urgent need to foster a transition towards socially just, green economies, focused on meeting social needs and preserving the environment. In this transition, it has been acknowledged that there is a duty

² INTERNATIONAL LABOUR ORGANISATION (2013, page 1).

³ Report from the World Commission on Environment and Development: Our Common Future, adopted by the General Assembly of the United Nations on 4 August, 1987 (Chapter II, paragraph 1).

to promote green and decent jobs that contribute to effective sustainable development in its triple environmental, social and economic dimensions. This challenge necessarily involves a duty to coordinate employment and environmental policies.

Starting from these premises, this study's objective is to verify whether cooperatives, as part of the Social Economy, are suitable and useful organisations for the promotion of green and decent jobs. To this end, first, the meaning of green employment and decent work will be examined and the correlation between both concepts will be addressed. This will be followed by a definition of cooperatives, emphasising their cooperative values and principles. Once this conceptual framework has been established, the role of cooperatives as promoters of green and decent jobs will be analysed and assessed. This analysis will be based on the relevant international and European regulations and subsequently, reference will be made to Spanish regulations. Finally, the main conclusions of the study will be presented.

II. Green and decent jobs: towards sustainable development

Employment is an essential factor in supporting the transition towards fair and green economies.⁴ However, this statement needs qualifying, since not all employment is optimal for ensuring sustainable development. According to international bodies, green and decent jobs can effectively contribute to achieving sustainability, so it is necessary to gain further insight into their meaning.

2.1. *Green jobs*

Broadly speaking, the United Nations Environment Programme, the International Labour Organisation, the International Trade Union Confederation and the International Organisation of Employers all define green jobs as jobs that 'reduce the environmental impact of enterprises and economic sectors, ultimately to levels that are sustainable'.⁵

More specifically, international organisations explain that green jobs, which can be found in different sectors of the economy, 'play a crucial role in reducing the environmental footprint of economic

⁴ *Vid.* GIL, GIL, JL (2017, page 31) and MOLINA NAVARRETE, C. (2013, page 277).

⁵ UNEP, ILO, IOE and ITUC (2008, page 5).

activity'.⁶ Specifically, but not exclusively, this includes jobs that 'help to cut the consumption of energy, raw materials and water through high-efficiency strategies, to de-carbonize the economy and reduce greenhouse gas emissions, to minimize or avoid altogether all forms of waste and pollution, to protect and restore ecosystems and biodiversity'.⁷ However, international organisations have noted that the decrease of the environmental impact is progressive, so jobs can contribute in different ways to the reduction of the environmental footprint depending on the specific nature of each job. Therefore, it has been recognised that the notion of green job does not have an absolute or categorical character, but rather it is a concept that is continually being constructed and that will evolve over time. In view of the incipient nature of the concept, international bodies maintain that it contains different 'shades'⁸ of green.

It should be noted, however, that this notion does not objectively identify the specific requirements for a job to qualify as 'green'; instead, it specifies the scope of this type of job based on the external appearance adopted by it.⁹ It seems that this concept, rather than defining green work as such, refers to what a 'green company', that is, a non-polluting company, is.¹⁰

2.2. Decent work

The term 'decent work'¹¹ was defined for the first time in the Report of the Director-General of the ILO to the 87th Session of the International Labour Conference in 1999. In general terms, it refers to 'productive work in conditions of freedom, equity, security and dignity, in which rights are protected and which has adequate remuneration and social protection'.¹²

The constitutional mandate of the International Labour Organisation is fundamentally based on the concept of decent work. It essentially includes the promotion of employment, the protection of rights at work, the extension of social protection, the promotion of social di-

⁶ *Ibidem.*

⁷ *Ibidem.*

⁸ *Ibidem.*

⁹ ARIAS DOMÍNGUEZ, Á. (2013, page 124).

¹⁰ CAHALE CARRILLO, D.T. (2017, page 6).

¹¹ For more *vid.* ARELLANO ORTÍZ, P.A. (2014, pages 2065-2067).

¹² BAYLOS GRAU, A.P. (2016, page 307) and GHAI, D. (2003, page 125).

alogue, and respect for equal opportunities and treatment for women and men.¹³

2.3. *Synergy needed between green jobs and decent work.*

On the basis of the above, it should be noted that a job classified as 'green' does not *per se* constitute decent work, and that decent work is not automatically a green job.¹⁴ In effect, a job can be green and decent at the same time, but a green job may not be regarded as being decent. Moreover, a decent work may not be green, and a job may be neither green nor decent.

In light of these assumptions, it can be inferred that green jobs that contravene decent work standards and decent jobs that do not encompass environmental criteria are not suitable for achieving sustainable development.¹⁵ In order to guarantee truly sustainable development, it is essential to combine the notions of green jobs and decent work.

In this way, green employment and decent work should not be conceived as independent concepts but as inseparable notions. Their meaning needs to be reformulated and merged in such a way that green and decent work is understood as any provision of services carried out in decent conditions and has environmental sustainability as a principle of action.¹⁶ The aspiration should therefore be for all jobs to be both green and decent.¹⁷

III. **A conceptual approach to cooperatives, particularly to cooperative values and principles**

Broadly speaking, the literature has considered cooperatives to be 'the epitome of companies and employers in the Social Economy'¹⁸ and, even, as the 'main exponent of the Social Economy'.¹⁹

¹³ GIL AND GIL, J.L. (2017, page 3)

¹⁴ ÁLVAREZ CUESTA, H. (2016, page 26).

¹⁵ On this question, see PÉREZ AMORÓS, F. (2010, page 111).

¹⁶ ÁLVAREZ CUESTA, H. (2017, page 275).

¹⁷ *Ibidem*.

¹⁸ PANIAGUA ZURERA, M. (2011, page 167).

¹⁹ MORGADO PANADERO, P. (2006, page 40). For other similar descriptions, see ARRIETA IDIAKEZ, FJ (2014, page 43) and BAREA, J. and MONZÓN, JL (1995, page 141).

In particular, the Declaration of the International Cooperative Alliance on Cooperative Identity, adopted in 1995, defines a cooperative as 'an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise'. In the Spanish legal sphere, Law 27/1999, of 16 July, on Cooperatives,²⁰ establishes that a cooperative is 'an undertaking composed of people who become associated on the basis of free and voluntary membership and departure, to carry out business activities aimed at meeting their needs and economic and social aspirations, with a democratic structure and way of operating' (see Article 1.1.). These organisations are therefore characterised by the fact 'that a group of people share one or several needs and decide to satisfy them directly by themselves, regardless of the various opportunities that the environment in which they live may provide them, through an economic undertaking'.²¹

In addition, the Declaration of the International Cooperative Alliance establishes a series of operational and ethical values that should govern the actions of cooperatives and their members.²² Specifically, 'cooperatives are based on the values of self-help, personal responsibility, democracy, equality, equity and solidarity' and 'the partners who are members of the cooperative believe in the ethical values of honesty, transparency, social responsibility and concern for others'.

To put these values into practice, cooperatives must necessarily comply with the seven principles included in the Declaration on Cooperative Identity, namely: (1) voluntary and open membership; (2) democratic member control; (3) member economic participation; (4) autonomy and independence; (5) education, training and information; (6) cooperation among cooperatives; and (7) concern for the community.²³ The principles listed cannot be considered independently, but must be interrelated and interpreted comprehensively.²⁴

In short, the daily work of cooperatives must be based on respect for and compliance with cooperative values and principles.²⁵

²⁰ Spanish Official Gazette (BOE) of 17 July, 1999, no. 170.

²¹ MARTÍNEZ CHARTERINA, A. (2015, page 107).

²² For more on this topic, see CENDÓN TORRES, R. (2014, page 437) and MARTÍNEZ CHARTERINA, A. (1995, pages 43-45).

²³ In this regard see, *vid.* MORGADO PANADERO, P. (2006, pages 43-45).

²⁴ In line with this question, see GADEA, E., SACRISTAN, F. and VARGAS VASSEROT, C. (2009, page 43).

²⁵ ATXABAL RADA, A. (2015, page 168).

IV. Cooperatives as suitable organisations for the promotion of green and decent jobs

At the international level, the International Labour Organisation Declaration on Social Justice for a Fair Globalisation, adopted on 10 June, 2008, established that a solid Social Economy is essential for the promotion of economic development and sustainable job opportunities. Similarly, the Global Jobs Pact, adopted by the International Labour Conference on 19 June, 2009, underlined the importance of cooperation in supporting the shift to an environmentally-friendly economy and to make decent work a reality (see paragraph 21.3). Likewise, Recommendation No. 193 of the International Labour Organisation on the promotion of cooperatives of 20 June, 2002, highlighted the importance of cooperatives in the creation of jobs and the promotion of sustainable development. For its part, the Resolution adopted by the General Assembly of the United Nations on 27 July, 2012, on 'The future we want', which emphasised the need to promote an economic, social and environmentally sustainable future, stressed the significant contribution of cooperatives combatting social inclusion and reducing poverty (see paragraph 70). The 2030 Agenda for Sustainable Development, approved by the Resolution of the General Assembly of the United Nations on 25 September, 2015, which similarly included 17 objectives for achieving sustainable development based on the harmonisation of social justice, environmental sustainability and economic progress, expressly recognised the work of cooperatives in achieving those objectives (see paragraph 41).²⁶

In the context of the European Union, the Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December 2007,²⁷ mentions the promotion of sustainable development as a specific purpose of the European Union. Similarly, Article 37 of the European Union's Charter of Fundamental Rights²⁸ provides that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union. In this vein, the so-called 'Europe 2020: A European Strategy for smart, sustainable and inclusive growth' adopted in the Communication issued by the European Commission on 3 March, 2010,²⁹ emphasised the need to foster the tran-

²⁶ INTERNATIONAL LABOUR ORGANISATION (2018, page 1)

²⁷ OJEU of 17 December, 2007, C 306.

²⁸ OJEU 7 June, 2016, C 202.

²⁹ COM (2010) 2020 final.

sition towards greener, fairer and more inclusive economies. To help achieve the aims set out in the Strategy, on the one hand, Council Decision 2010/707/EU of 21 October 2010, on guidelines for the employment policies of the Member States,³⁰ urged the Union and the Member States to stimulate the creation of green jobs; and, on the other hand, the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled 'Green Employment Initiative: Tapping into the job creation potential of the green economy', adopted on 2 July, 2014,³¹ highlighted the important role of the labour market in achieving sustainable development and, more specifically, recognised the potential of the Social Economy and social enterprises. Likewise, in the European Parliament Resolution of 8 July 2015 on the 'Green Employment Initiative: making the most of the job creation potential of the green economy', the Commission was encouraged to stimulate new business models to increase the efficiency of production and distribution processes, explicitly referring to cooperative enterprises (see paragraph 84). Recently, the Opinion of the European Economic and Social Committee on 'The transition towards a more sustainable European future: a strategy for 2050', adopted on 17 October, 2017,³² reaffirmed the need to strengthen the links between economic development, environmental protection and social policies, and referred to cooperatism as an appropriate business concept for confronting three fundamental challenges, namely, the depletion of the earth's natural resources, social inequalities and public loss of trust in government (see section 4.1). However, it is paradoxical that the recently proclaimed 'European Pillar of Social Rights', on the basis of Commission Recommendation (EU) 2017/761, of 26 April 2017, merely briefly mentions the Union's objective to act in favour of sustainable development and does not contemplate any provision on the transition to fairer and greener economies and the promotion of green and decent work.³³

As far as the Spanish legal system is concerned, the Spanish Constitution³⁴ stipulates the duty of public authorities to ensure the rational use of all natural resources, in order to protect and improve the quality of life and protect and restore the environment, relying on collective solidarity (see Article 45.2). Article 129.2 of the Spanish Constitution

³⁰ OJEU 24 November, 2010, L 308.

³¹ COM (2014) 446 final.

³² OJEU March 2, 2018, C 81.

³³ For more on this topic, see OLMO GASCÓN, AM (2017, pages 60-64).

³⁴ BOE 29 December, 1978, no. 311

requires that the public authorities promote cooperative undertakings. In connection with these constitutional mandates, Law 5/2011, of 29 March, on Social Economy,³⁵ established that Social Economy is a precursor of, and is committed to, the threefold economic model of sustainable development, which covers economic, social and environmental aspects. Under Law 5/2011, cooperatives, like the other organisations in the Social Economy, must comply with a number of guiding principles, notably including the commitment to local development and the generation of stable and high-quality employment (see Article 4). Spain's Activation for Employment Strategy 2017-2020, approved by Royal Decree 1032/2017, of 15 December,³⁶ also has the promotion of the Social Economy as a model of collective entrepreneurship among its structural objectives.

These declarations lead to the conclusion that the Social Economy in general, and cooperatives in particular, are suitable means to face the challenges concerning the preservation of the environment and turning decent work into a reality, ultimately fostering sustainable development.³⁷

The defence and the application of the principles of solidarity and responsibility, and the use of surpluses for the achievement of sustainable development are the main defining features of the Social Economy. They make it a suitable model to meet the challenges of the global society, the environment and the economy, including the need to promote a just transition towards a sustainable economy and sustainable forms of employment.³⁸

In the context of the Social Economy, cooperative values and principles show that sustainability is part of a cooperative's identity.³⁹ In effect, these values and principles lead cooperatives 'to have a constant concern and care for their surroundings, both for the people and for the environment where they are located and work'.⁴⁰ As they are based on cooperative values and principles, cooperatives are considered to be appropriate and useful undertakings for the promotion of sustainable development through the creation of green and decent

³⁵ BOE 30 March, 2011, no. 76

³⁶ BOE 16 December, 2017, no. 305

³⁷ HIEZ, D. (2008, page 380); PUENTES POYATOS, R. and VELASCO GÁMEZ, M.M. (2009, page 111); and ROCHA SÁNCHEZ, F. (2014, page 794).

³⁸ MOLINA NAVARRETE, C. (2013, page 287). Also *vid.* MORGADO PANADERO, P. (2006, page 38).

³⁹ For further information, see DE MIRANDA, J.E. et al. (2010, pages 25-27) and GARCÍA, J., VÍA, J. and XIRINACS, LM (2006, pages 210-211).

⁴⁰ MARTÍNEZ CHARTERINA, A. (2013, page 196).

jobs. In order to achieve this, the second cooperative principle (which concerns the democratic control by the members), and the seventh cooperative principle (having a concern for the community), are particularly important.

Accordance to the second cooperative principle, cooperatives are organisations that are democratically managed by their members, who actively participate in setting their policies and in decision-making. Specifically, this principle recognises the right of the members to be involved in the design of policies and decision making, which are essential assumptions in supporting initiatives aimed at creating green and decent jobs.

As stated in the seventh cooperative principle, cooperatives work to achieve the sustainable development of their communities through policies approved by their members. In reality, this principle reflects the responsibility that cooperatives have for the community where they are based, for the workers, and for the environment.⁴¹ In other words, this characteristic feature of cooperatives reveals their 'ecosocial awareness'⁴², that is, their concern for local development, social cohesion and sustainability.⁴³ Moreover, the commitment that cooperatives make to the community not only has effects at a local level, but also has global impact.⁴⁴

The combination of both cooperative principles simultaneously establishes a right/duty of cooperative members which is of specially importance in the creation of green and decent jobs. Members have the obligation to adopt policies aimed at fostering environmental development, generating green and decent jobs and preserving the environment.⁴⁵

In view of the above, it must be concluded that cooperatives, as part of the Social Economy, are suitable organisations to promote green and decent work. However, this conclusion should be qualified, as cooperatives 'are not, by themselves, a panacea'.⁴⁶ There are different factors that can hinder and prevent the effective achievement of these objectives and must be taken into account when designing policies or strategies. These may include scarce resources, financing diffi-

⁴¹ CARRASCO, I. (2007, p.459); FICI, A. (2013, page 45); and MORILLAS JARRILLO, MJ (2013, page 131).

⁴² GARCÍA, J., VÍA, J. and XIRINACS, LM (2006, page 151).

⁴³ ÁLVAREZ CUESTA, H. (2016, page 82).

⁴⁴ PUENTES POYATOS, R. and VELASCO GÁMEZ, MM (2009, pages 111-112).

⁴⁵ GARCÍA, J., VÍA, J. and XIRINACS, L.M. (2006, page 152).

⁴⁶ MOLINA NAVARRETE, C. (2013, page 287).

culties, deficit in management, decisional difficulty, atomisation, mimicking of conventional business, lack of the self-esteem among the members, lack of visibility of social aspects and lack of adequate communication, among others.⁴⁷

V. Conclusions

The main conclusions of this study are:

1. The two main challenges of the 21st century, that is, protecting the environment and turning decent work into a reality, demand the adoption of policies and strategies that jointly address environmental and socio-labour issues. Ultimately, these measures should be aimed at guaranteeing sustainable development regarding three aspects: environmental, social and economic.
2. Achieving sustainable development requires rethinking and reformulating the current economic model and promoting a transition towards socially just and green economies.
3. Green and decent work, that is, environmentally sustainable employment that respect the standards of decent work, is fundamental in fostering the transition to fair and green economies.
4. Within the Social Economy model, cooperative values and principles reveal the commitment of cooperatives to the community, to workers and to the environment, which makes them ideal undertakings for the creation of green and decent jobs and the promotion of sustainable development.
5. The extent to which cooperatives manage to achieve these objectives depends on the involvement of their members. Therefore, their active participation in the policy design and decision-making on the matter is essential.
6. The daily problems faced by cooperatives may hinder their contribution to sustainable development. This may ultimately lead to questioning their work as agents of change. Consequently, it is necessary to pay attention to the specific problems concerning cooperatives.

⁴⁷ GARCÍA, J., VÍA, J. and XIRINACS, L.M. (2006, pages 152-163) and MOLINA NAVARRETE, C. (2013, page 287).

VI. Bibliography

- ÁLVAREZ CUESTA, H. 2017. 'El papel de los sindicatos en la promoción del empleo verde'. In MELLA MÉNDEZ, L. (Dir.) and MAGGI-GERMAIN, N. (Coord.). *Los actuales cambios sociales y laborales: nuevos retos para el mundo del trabajo. Cambios en las relaciones colectivas y nuevos retos para la representación de los trabajadores (Francia, España, Bélgica, Portugal, Argentina)*. Bern: Peter Lang.
- 2016. *Empleos verdes: una aproximación desde el Derecho del Trabajo*. Albacete: Bomarzo.
- ARELLANO ORTÍZ, P.A. 2014. 'Trabajo decente'. In CASAS BAAMONDE, M.A. (Pr.) and BAYLOS GRAU, A.P., FLORENCIO THOMÉ, C. and GARCÍA SCHWARZ, R. (Coords.), *Diccionario internacional de Derecho del Trabajo y de la Seguridad Social*. Valencia: Tirant lo Blanch.
- ARIAS DOMÍNGUEZ, Á. 2013. '¿A qué queremos referirnos cuando hablamos de empleos verdes?'. In ARIAS DOMÍNGUEZ, Á. (Coord.). *Cuestiones laborales de actualidad. Estudios jurídicos en homenaje al Profesor Dr. Feliciano González Pérez*. Madrid: Dykinson.
- ARRIETA IDIAKEZ, F.J. 2014. 'Concreción de las Entidades de la Economía Social'. In *REVESCO: Revista de Estudios Cooperativos*, 116.
- ATXABAL RADA, A. 2015. 'Las cooperativas, empresas democráticas para los jóvenes'. In ARNÁEZ ARCE, V.M. (Coord.). *Difusión de los valores y principios cooperativos entre la juventud*. Madrid: Dykinson.
- BAREA, J. and MONZÓN, J.L. 1995. 'La economía social desde una perspectiva española'. In *Ekonomia: Revista vasca de economía*, 33.
- BAYLOS GRAU, A. P. 2016. 'Sobre el trabajo decente: la formación del concepto'. In MONEREO PÉREZ, J.L. and MÁRQUEZ PRIETO, A. (Dirs.). *La política y el derecho del empleo en la nueva sociedad de trabajo. Liber amicorum en honor de la profesora Rosa Quesada Segura*. Seville: Consejo Andaluz de Relaciones Laborales.
- CAHALE CARRILLO, D.T. 2017. 'Las medidas para implementar los empleos verdes en España'. In *Revista internacional y comparada de Relaciones Laborales y Derecho del Empleo*, 1-5.
- CARRASCO, I. 2007. 'Corporate Social Responsibility, Values and Cooperation'. In *International Advances in Economic Research*, 4-13.
- CENDÓN TORRES, R. 2014. 'Cooperativas'. In CASAS BAAMONDE, M.A. (Pr.) and BAYLOS GRAU, A.P., FLORENCIO THOMÉ, C. and GARCÍA SCHWARZ, R. (Coords.), *Diccionario internacional de Derecho del Trabajo y de la Seguridad Social*. Valencia: Tirant lo Blanch.
- DE MIRANDA, J.E. et al. 2010. 'Meio ambiente e cooperação: os valores cooperativos como pressuposto de sustentabilidade'. In *Boletín de la Asociación Internacional de Derecho Cooperativo*, 44.
- FICI, A. 2013. 'An Introduction to Cooperative Law'. In CRACOGNA, D., FICI, A. and HENRÏ, H. (Eds.). *International Handbook of Cooperative Law*. New York: Springer.

- GADEA, E., SACRISTÁN, F. and VARGAS VASSEROT, C. 2009. *Régimen jurídico de la sociedad cooperativa del Siglo XXI. Realidad actual y propuestas de reforma*. Madrid: Dykinson.
- GARCÍA, J., VÍA, J. and XIRINACS, L.M. 2006. *La dimensión cooperativa. Economía solidaria y transformación social*. Barcelona: Icaria Editorial.
- GHALI, D. 2003. 'Trabajo decente. Concepto e indicadores'. In *Revista Internacional del Trabajo*, 2-122.
- GIL AND GIL, J.L. 2017. 'Trabajo decente y reformas laborales'. In *Revista Derecho Social y Empresa*, 2017, 7.
- HIEZ, D. 2008. 'La propriété commune de la coopérative, un modèle pour le droit du développement durable'. In DRAPERI, J.F. (Coord.). *Défis coopératifs. Alimentation, crédit, démocratie, développement*. Paris: L'Harmattan.
- MARTÍNEZ CHARTERINA, A. 1995. 'Los valores y los principios cooperativos'. In *REVESCO: Revista de Estudios Cooperativos*, 61.
- MARTÍNEZ CHARTERINA, A. 2013. 'Cooperativismo y economía del bien común'. In *Boletín de la Asociación Internacional de Derecho Cooperativo*, 47.
- MARTÍNEZ CHARTERINA, A. 2015. 'La cooperativa: empresa democrática y social'. In *Revista de Derecho, Empresa y Sociedad*, 7.
- MOLINA NAVARRETE, C. 2013. 'Ecosistema socio-jurídico y políticas regeneradoras de los mercados de trabajo: oportunidades, incentivos y experiencias de 'autoempleos verdes''. In RIVAS VALLEJO, P. (Dir.) and GARCÍA VALVERDE, M.D. (Coord.). *Aspectos medioambientales de las relaciones laborales. Participación, salud laboral y empleo*. Murcia: Laborum.
- MORGADO PANADERO, P. 2006. 'La Economía Social y su marco legal'. In MORGADO PANADERO, P. (Dir.) and BURGOS ROSADO, L. (Coord.). *Economía Social y Cooperativismo*. Valladolid: Lex Nova.
- MORILLAS JARRILLO, M.J. 2013. 'Concepto y clases de cooperativas'. In PEINADO GRACIA, J.I. (Dir.) and VÁZQUEZ RUANO, T. (Coord.). *Tratado de Derecho de Cooperativas. Tomo I*. Valencia: Tirant lo Blanch.
- OLMO GASCÓN, A.M. 2017. 'Tratamiento del empleo verde'. In CABELLO DE ALBA, L.M. and Rodríguez FERNÁNDEZ, M.L. (Coords.). *El futuro del trabajo que queremos*. Albacete: Bomarzo.
- INTERNATIONAL LABOUR ORGANISATION 2018. *El trabajo decente para el desarrollo sostenible*. Geneva: International Labour Organisation.
- (2013). *EL DESARROLLO SOSTENIBLE, El trabajo decente y los empleos verdes*. Geneva: International Labour Organisation.
- PANIAGUA ZURERA, M. 2011. *Las empresas de la economía social. Más allá del comentario a la Ley 5/2011, de la economía social*. Barcelona: Marcial Pons.
- PÉREZ AMORÓS, F. 2010. 'Derecho del trabajo y medio ambiente: unas notas introductorias'. In *Revista Gaceta Laboral*, 2010, 1-16.
- PLAZA-ANGULO, J.J. & CIRUELA-LORENZO, A.M. 2017. 'El pago único de la prestación por desempleo como medio de financiación inicial de las empresas de Economía Social en España', *CIRIEC-España, Revista de Economía Pública, Social y Cooperativa*, 91, 85-113.
- PUNTES POYATOS, R. and VELASCO GÁMEZ, M.M. 2009. 'Importancia de las sociedades cooperativas como medio para contribuir al desarrollo econó-

- mico, social y medioambiental, de forma sostenible y responsable'. In *RE-DESCO: Revista de Estudios Cooperativos*, 99.
- ROCHA SÁNCHEZ, F. 2014. 'Economía Social'. In CASAS BAAMONDE, M.A. (Pr.) and BAYLOS GRAU, A.P., FLORENCIO THOMÉ, C. and GARCÍA SCHWARZ, R. (Coords.), *Diccionario internacional de Derecho del Trabajo y de la Seguridad Social*. Valencia: Tirant lo Blanch.
- UNEP, ILO, IOE and ITUC. 2008. *Green Jobs: Towards decent work in a sustainable, low-carbon world*. Available on http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_158733.pdf (last consulted: 9 May, 2018).
- YORG, J.A. and RAMÍREZ ZARZA, A.M. 2018. "Interrelación entre el derecho laboral, derecho de incidencia colectiva y el derecho cooperativo. Estudio de caso", *Boletín de la Asociación Internacional de Derecho Cooperativo*, no. 53, pp. 275-288.

Las relaciones entre los sujetos del sector no estatal cubano: el socio-Trabajador por Cuenta Propia en las Cooperativas No Agropecuarias

(Relations between the subjects of the non-state Cuban sector: the Self-Employed worker in the Non-Agricultural Cooperatives)

María del Pilar Mesa Mejías¹
Universidad de Pinar del Río (Cuba)

doi: <http://dx.doi.org/10.18543/baidc-54-2019pp131-144>

Recibido: 11.06.2018
Aceptado: 09.04.2019

Sumario: 1. Introducción. 2. El pluriempleo del socio cooperativista como trabajador autónomo. 3. Bibliografía.

Summary: 1. Introduction. 2. The multiple employment of the cooperative member as a self-employed worker. 3. Bibliography.

Resumen: Los gobiernos están obligados a responder a los crecientes problemas sociales que afectan sus sistemas, a través de sus ordenamientos jurídicos, introduciendo figuras como el Pluriempleo y la Pluriactividad, para evitar la paralización del desarrollo del país y garantizar la protección de los derechos de sus ciudadanos. Cuba se encuentra inmersa en un trascendental proceso de actualización del modelo económico, a raíz del 6to Congreso del Partido Comunista, que responde a la necesidad de enfrentar la crisis económica desatada a partir del llamado «Período Especial», consecuencia directa de la influencia de las situaciones que se generaron en el ámbito internacional. Como corolario de dicho proceso, el gobierno cubano determinó fomentar el desarrollo de proyectos negociales particulares o privados, individuales o colectivos, integrados en el sector no estatal de la economía. Aquí encontramos a los Trabajadores por Cuenta Propia y a las Cooperativas No Agropecuarias. Estas dos formas de gestión tienen sus regulaciones propias, donde se establecen las reglas de su funcionamiento. La legislación que regula el sector de las Cooperativas No Agropecuarias, prevé la posibilidad de que se mezclen estas dos, surgiendo relaciones especiales, las que constituyen el centro de investigación del presente trabajo: el socio-Trabajador por Cuenta Propia.

Palabras clave: cooperativa no agropecuaria; trabajador autónomo; Cuba

¹ E-mail: marymesa93@gmail.com

Abstract: Governments are obliged to respond to the growing social problems affecting their systems, through their legal systems, introducing figures such as multiple employment and multiple activity, to avoid the paralysis of the country's development and guarantee the protection of the rights of its citizens. Cuba is immersed in a transcendental process of updating the economic model, following the 6th Congress of the Communist Party, which responds to the need to face the economic crisis unleashed from the so-called «Special Period», a direct consequence of the influence of the situations that were generated in the international arena. As a corollary to this process, the Cuban government decided to encourage the development of private business or projects, individual or collective, integrated into the non-state sector of the economy. Here we find the Self-Employed Workers and the Non-Agricultural Cooperatives. These two forms of management have their own regulations, where the rules of their operation are established. The legislation that regulates the sector of Non-Agricultural Cooperatives, provides for the possibility of mixing these two, emerging special relationships, which constitute the aim of the present paper: the member, Self-Employed Worker.

Keywords: Self-Employed Workers; the Non-Agricultural Cooperatives; Cuba.

1. Introducción

Diversos factores como el crecimiento demográfico, la comercialización a escala planetaria, la industrialización creciente y las crisis económicas, contribuyen en la actualidad al establecimiento de políticas tendentes a conseguir un nivel aceptable de empleo, en aras de mejorar las condiciones de vida de las personas, así como de garantizar el continuo desarrollo del país.

Así, un único trabajo asalariado como fuente de ingresos es más propio de economías asentadas, donde los salarios son altos o llegan con holgura a cubrir las necesidades. Al ser mucho más elevados y precisar un horario laboral regulado, no se necesitan ingresos extras para acumular el mínimo necesario de las familias para subsistir. Luego, en el otro extremo tenemos el desempeño simultáneo de varios empleos, que ha supuesto un añadido esencial en los ingresos de aquellos que viven en condiciones más estrictas de supervivencia, donde la principal aspiración es cubrir las necesidades primarias del hogar, y eventualmente poder aspirar a un ascenso en la escala social.

Esta situación constituye un reto para los sistemas jurídicos de los países, en tanto deben procurar la eficiencia económica de sus instituciones a fin de dar una respuesta válida a los problemas sociales y a los nuevos modelos organizativos de la producción, lo que exige vincular la Economía y el Derecho, poniendo la teoría jurídica en función de las exigencias del sistema económico, aunque sin olvidar los principios de equidad social, ni mucho menos los valores constitucionalmente institucionalizados.

En el Derecho del Trabajo, este fenómeno aparece vinculado al resurgimiento de esquemas negociales individuales dentro de la desregulación y reestructuración flexible del mercado de trabajo. Por esto, la mayoría de los ordenamientos jurídicos prevén figuras favorecedoras de los derechos de los trabajadores, entre estas podemos hacer mención al Pluriempleo y la Pluriactividad, conceptos que se relacionan directamente con el panorama socioeconómico de las naciones.

Cuando hablamos de Pluriempleo y Pluriactividad nos estamos refiriendo a distintas situaciones a las que se hallarán sometidos los trabajadores, tomando como punto de referencia la realización simultánea en el tiempo de varias actividades profesionales por una misma persona.

Ante la situación de crisis por la que atraviesa el mundo en la contemporaneidad, y que afecta directamente a la clase trabajadora, el gobierno cubano comenzó a dar muestras de disposición de evitar lo que en otros países se convierte en un crítico e inminente problema: el desempleo, introduciendo modificaciones en el régimen laboral cubano,

de lo que constituye un importantísimo ejemplo la entrada en vigor el Decreto Ley 268 «Modificativo del Régimen Laboral», de fecha 29 de junio del 2009, emitido por el Consejo de Estado.

Esta disposición normativa introduce en el Derecho Laboral cubano la figura del Pluriempleo, en aras de estimular las fuerzas productivas, posibilitar la elevación de los ingresos, así como contribuir a que el trabajo constituya la fuente principal de satisfacción de las necesidades materiales y espirituales, con independencia de que el Estado mantenga la protección a quienes lo necesiten.

Paulatinamente se ha generado en el panorama socioeconómico actual un creciente impulso de los proyectos negociales particulares o privados, individuales o colectivos, a los que nosotros preferimos llamar no estatales, en vista de que aquellos son conceptos propios del capitalismo, generado por el proceso de actualización del modelo económico, a raíz del 6to Congreso del Partido Comunista de Cuba, que responde a la necesidad de hacer frente a la crisis económica desencadenada en la década de los años 90, y cuyo resultado principal fue la aprobación de los Lineamientos de la Política Económica y Social del Partido y la Revolución², donde fueron enunciados todos los cambios que se han producido o se efectuarán gradualmente. Uno de ellos consiste en la introducción en la economía de formas de gestión no estatal, y pronto nos hallamos hablando de Trabajadores por Cuenta Propia y Cooperativas No Agropecuarias. En consecuencia, se emitieron las correspondientes regulaciones: para el Trabajo por Cuenta Propia fue la Resolución No. 32 de 7 de octubre de 2010 del Comité Ejecutivo del Consejo de Ministros de Cuba, que fuera derogada y puesta en vigor en la Resolución No. 33 del año 2011. Por otro lado, se implementó la extensión del fenómeno cooperativo a otros sectores de la economía mediante el Decreto Ley 305³ «De las Cooperativas No Agropecuarias» y el Decreto 309⁴ «Reglamento de las Cooperativas No Agropecuarias de primer grado».

² Lineamientos de la Política Económica y Social del Partido y la Revolución. Aprobados el 18 de abril de 2011. Sexto Congreso del Partido Comunista de Cuba. p. 10: «(...) Los Lineamientos de la Política Económica y Social son la expresión de la voluntad del pueblo, contenida en la política del Partido, el Estado y el Gobierno de la República de Cuba, de actualizar el modelo económico cubano con el objetivo de garantizar la continuidad e irreversibilidad del socialismo, el desarrollo económico del país y la elevación del nivel de vida de la población, conjugado con la necesaria formación de valores éticos y políticos de nuestros ciudadanos(...)».

³ Gaceta Oficial de la República de Cuba No. 053 Extraordinaria, de 11 de diciembre de 2012.

⁴ Ídem.

Según estas regulaciones el trabajo por cuenta propia es aquel que no se encuentra subordinado a la administración de una entidad laboral, sino que asume los riesgos de la actividad que autopractica en la forma que estime conveniente y apropiada, con los elementos y materia prima necesarios para su desempeño; mientras que el artículo 2.1 del Decreto-Ley No. 305⁵ el legislador nos plantea un concepto de cooperativa en el cual reza:

«La cooperativa es una organización con fines económicos y sociales, que se constituye voluntariamente sobre la base del aporte de bienes y derechos y se sustenta en el trabajo de sus socios, cuyo objetivo general es la producción de bienes y la prestación de servicios mediante la gestión colectiva, para la satisfacción del interés social y el de los socios.»

Sucede que estas formas de gestión no estatal pueden entremezclarse, en tanto un Trabajador por Cuenta Propia puede ser a su vez socio de una Cooperativa No Agropecuaria, y este constituye el eje de nuestra investigación: la generación de una situación de Pluriactividad, no reconocida expresamente por la legislación cubana, lo que dificulta su tratamiento y aplicación adecuados, en tanto existen imprecisiones y contradicciones en la legislación que conllevan a la incorrecta implementación de sus propias disposiciones.

Por esto nuestra investigación va encaminada a determinar cuáles son las imprecisiones e incoherencias, así como las lagunas, que presenta la legislación, las que entorpecen su interpretación y aplicación, resultando útil y necesario su desarrollo para futuras modificaciones de la legislación vigente en materia de cooperativas no agropecuarias, con el objetivo de contar con un régimen legal cooperativo armónico.

2. El pluriempleo del socio cooperativista como trabajador autónomo

Según la doctrina⁶ cuando hablamos de Pluriempleo nos estamos refiriendo a la situación del trabajador por cuenta ajena que preste sus servicios profesionales a dos o más empresarios distintos y en actividades que den lugar a su alta obligatoria en un mismo Régimen de la Se-

⁵ Ídem.

⁶ Alarte Mayordomo, Carmen María. 2007. «Pluriempleo y Pluriactividad en el sector privado español». Tesis Doctoral. Universidad de Murcia. España.

guridad Social; mientras que la Pluriactividad hace alusión a la situación del trabajador por cuenta propia y/o ajena cuyas actividades den lugar a su alta obligatoria en dos o más Regímenes distintos del Sistema de la Seguridad Social. Esta última puede ser simultánea, cuando se desarrollan al unísono dos o más actividades profesionales que dan lugar al encuadramiento también simultáneo en dos o más regímenes de la Seguridad Social, o sucesiva cuando estas múltiples actividades no se superponen o solapan en el tiempo.

Las argumentaciones hechas entorno del Pluriempleo han sido mucho más intensas, teniendo en cuenta que la Pluriactividad es una situación más moderna, como explicábamos introductoriamente, generada por las circunstancias actuales a nivel mundial. Para ello ha sido tomado como punto de partida el concepto de la relación jurídico laboral, como aquel vínculo que se establece entre un trabajador y una entidad laboral, según el cual, una parte (el trabajador) se obliga después que se incorpora al colectivo de trabajo correspondiente, a realizar determinado tipo de trabajo, subordinándose al orden laboral interno de la entidad. En tanto que la otra parte (entidad laboral) está obligada a retribuirle su trabajo en correspondencia con su calidad y cantidad, a crear las condiciones de trabajo favorables para su salud y para lograr una alta productividad de trabajo, así como interesarse por sus necesidades materiales y culturales. Podemos concluir que constituye una situación que establece el desempeño de varios cargos, empleos, oficios, etc., por la misma persona, significando una vía de acceso a diferentes entidades mediante la concertación de contratos con cada una, existiendo un contrato principal y uno accesorio.

Partiendo de esta fundamentación podemos establecer entonces que el Pluriempleo es una situación jurídica que solo se refiere a trabajadores por cuenta ajena, que son aquellos cuyas relaciones de trabajo se establecen de manera dependiente con un empleador a cambio de un salario, mientras que la Pluriactividad se aplica tanto a trabajadores por cuenta ajena como a trabajadores por cuenta propia, que en este caso son los que laboran para sí o que pueden tener a su cargo trabajadores contratados, pero son los dueños propios de las ganancias que genera su trabajo. Pueden combinarse una actividad por cuenta propia con una actividad por cuenta ajena, o bien confluir dos actividades por cuenta propia.

Estas situaciones son analizadas fundamentalmente desde la óptica de la contribución a la Seguridad Social. En este sentido, la doctrina española⁷ plantea que es el socio el responsable de elegir el Régimen al

⁷ Ídem.

cual se va a afiliar, ya sea el establecido para la cooperativa, o el de trabajadores autónomos o por cuenta propia, haciéndose constar en los Estatutos esta elección. En caso de elegir la primera opción, corresponde a la cooperativa de forma obligatoria la afiliación, alta, baja y comunicación de variaciones, resultando responsable del ingreso efectivo de la totalidad de las cotizaciones, tanto de su parte como persona jurídica como de la de los socios; mientras que, de elegir la segunda opción, la cooperativa, sin embargo, responderá solidariamente del cumplimiento de la obligación de cotizar que les asiste a los socios, así como de forma subsidiaria por la obligación de afiliación, alta, baja y comunicación de las variaciones de la que responde personalmente el socio.

Lo primordial en este tema es determinar, en principio, si la actividad del socio es una actividad por cuenta propia o ajena. Las proyecciones en torno a este tópico, por un lado esbozan que la actividad que realiza el socio es por cuenta propia en tanto está representando sus propios intereses dado su doble condición de socio-trabajador. Esta relación de mutualidad implica que el socio, como dueño de la cooperativa, deberá apoyar su progreso y vigilar que los otros cumplan con sus obligaciones y responsabilidades, y con las que le asisten a sí mismo dentro de la colectividad; y que como usuario, tiene derecho a todos los servicios y beneficios que la cooperativa implemente, pues la actividad que tiene esta como objeto social estará direccionada justamente hacia ello. Por otro lado, es considerada como una actividad por cuenta ajena teniendo en cuenta que la cooperativa se constituye como una persona jurídica independiente. En relación con este último criterio no existe un consenso en la doctrina respecto a este tema, puesto que depende en gran medida de la naturaleza jurídica que se le reconozca a la institución cooperativa. En este sentido, unos la acogen en sus ordenamientos como sociedad, otros como asociación y otros como una entidad autónoma.

Asimismo, para determinar la ajenidad de la actividad que realiza la persona, se han tenido en cuenta una serie de factores como la «ajenidad de riesgo», fundamentada en que la obligación de asumir los riesgos de la empresa correrá por cuenta del empleador; la relación de dependencia que se establece con respecto a este; y la retribución que recibe el empleado bajo la denominación de salario, definido por el empleador.

Nosotros apoyamos el primer criterio, en tanto el concepto de cooperativa que establece la legislación⁸ deja bien claro que esta se crea

⁸ Vid. p. 4.

por voluntad propia de sus socios, sobre la base de aportaciones de bienes y derechos, para la satisfacción de sus intereses, así como de la sociedad, pero sobre la base del trabajo de los mismos, resultando este último el argumento más importante para identificar, en primer lugar, la mutualidad, y en segundo lugar, el carácter propio de la actividad que desempeña.

Adentrándonos en el panorama cubano, podemos apreciar la institucionalidad del Pluriempleo, a través del Decreto Ley No.268 «Modificativo del Régimen Laboral», destinado exclusivamente al sector estatal. En este queda estipulado que la situación jurídica del Pluriempleo es aquella en la que «(...) los trabajadores, después de cumplir los deberes del cargo, ocupación o empleo que desempeñan, puedan concertar más de un contrato de trabajo y percibir los salarios que les correspondan por los resultados de la labor realizada.» (Artículo 1 del Decreto Ley No. 268/09 «Modificativo del Régimen Laboral»).

Enmarcando nuestro trabajo investigativo en el sector no estatal, el primer fundamento es puntualizar que las cooperativas no agropecuarias pertenecen junto a los Trabajadores por Cuenta Propia al sector no estatal de la economía, que a nuestra apreciación es la manera socialista de nombrar al sector privado, puesto que este concepto es propio del sistema capitalista: Entraremos entonces a analizar las relaciones internas que se establecen entre los sujetos del mismo sector, o sea, de los Trabajadores por Cuenta Propia con las Cooperativas No Agropecuarias.

Al amparo de la Disposición Especial Primera del Decreto 309⁹, las Cooperativas No Agropecuarias pueden asociar a Trabajadores por Cuenta Propia. Pretendemos precisar dos momentos en este análisis, uno es el relativo a la afiliación al Régimen de Seguridad Social, como se alude anteriormente, en aras de establecer una comparación con el análisis doctrinal hecho, y un segundo momento para examinar la incidencia de esta relación en la naturaleza y el funcionamiento de la institución Cooperativa.

A partir de esta relación especial, podemos intuir el reconocimiento de la Pluriactividad en nuestro ordenamiento jurídico, que si bien no está instituida de manera expresa, puede apreciarse su presencia al examinar las regulaciones relativas al aporte a la Seguridad Social en las Cooperativas No Agropecuarias. En este sentido, en el artículo 14 del Decreto

⁹ Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 270. « PRIMERA: En las Cooperativas que se constituyan en la modalidad que autoriza el artículo 6, inciso b), del Decreto-Ley, los socios que sean trabajadores por cuenta propia mantendrán debidamente actualizada su respectiva licencia y cumplirán las obligaciones tributarias que como tales les correspondan.»

Ley 306 «Del Régimen Especial de la Seguridad Social de los socios de las Cooperativas No Agropecuarias», está estipulado de forma precisa que el cooperativista que ejerce simultáneamente una labor comprendida en otro régimen especial de Seguridad Social, puede optar por acogerse a dicho régimen o al que establece el Decreto Ley en cuestión, dirigido a los cooperativistas. En este caso se configura un supuesto de Pluriactividad, si bien no propiamente dicho, pudiera entenderse como tal, pues a pesar de que la legislación obliga a los cooperativistas a afiliarse a su Régimen Especial, exceptúa de este mandato imperativo a los socios- Trabajadores por Cuenta Propia, por cuanto, prevé la posibilidad de que escojan el Régimen al cual se van a acoger, como sucede en la práctica internacional.

Luego, consideramos necesario, esclarecer otras dudas que nos asaltaron al pretender interpretar la legislación. La primera cuestión en la que la normativa es omisa con respecto a si la actividad que está autorizado a realizar ese trabajador por cuenta propia es a fin o no al objeto social de la cooperativa, pues la Disposición Especial Primera del Decreto 309, antes aludida, sólo se refiere a la obligación de mantener debidamente actualizada la licencia que lo ampara a realizar la misma y no incumplir los respectivos deberes tributarios, por lo que al no quedar regulado de manera expresa pudiera entenderse que no necesariamente tiene que ser así, o sea, que puede no corresponderse con el objeto social de la cooperativa de la cual es socio, por cuanto las normas que regulan el Trabajo por Cuenta Propia¹⁰ permiten obtener más de una licencia, constituyéndose un supuesto de Pluriactividad.

El problema surge en el momento que el socio-Trabajador por Cuenta Propia ejecuta un trabajo para la Cooperativa que sí es afín con el objeto social de esta. ¿Realmente esto constituye una aportación de trabajo, a la que está obligado imperativamente por la legislación, o está rentando su servicio a la Cooperativa? El análisis aquí debe partir del artículo 6 b) del Decreto Ley 305¹¹, el que permite a los asociados

¹⁰ Como parte del actual proceso de cambios o «actualización» del modelo económico cubano, consecuentemente con los *Lineamientos de la Política Económico y Social del Partido y la Revolución*, aprobados en el VI Congreso del PCC en abril de 2011, en octubre de 2010, se publica en la Gaceta Oficial de la República de Cuba en sus números extraordinarios 11 y 12, un conjunto de decretos leyes y resoluciones relacionadas con el trabajo por cuenta propia y el arrendamiento de habitaciones o viviendas particulares.

¹¹ Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 250. ARTÍCULO 6.- «Las cooperativas de primer grado pueden formarse:

b) Por personas naturales que decidan voluntaria-mente asociarse entre sí, solo con la finalidad de adquirir conjuntamente insumos y servicios, comercializar productos y servicios, o emprender otras actividades económicas, conservando los socios la propiedad sobre sus bienes.»

en Cooperativas No Agropecuarias de Primer Grado bajo esta modalidad conservar la propiedad de sus bienes. Luego, si la principal aportación del socio a la Cooperativa lo constituye su trabajo, y esta debe pagarle al socio-Trabajador por Cuenta Propia sólo por el uso de sus bienes destinados a la realización de esa actividad a la cual se dedica, bajo un concepto que tampoco queda definido, pero que en este caso el más razonable sería el arrendamiento, debe ser a través de la licencia por la cual está autorizado a brindar el servicio, entonces, de qué manera se ve aquí la aportación de trabajo a la que está obligado como socio y en la que se sustenta la Cooperativa, si tendrá que ser a través del servicio completo que podrá ofertarle a la cooperativa el uso y disfrute de sus bienes, al ser su titular y por ende conservar el derecho de disposición sobre los mismos.

En este sentido, surgen nebulosas en cuanto a la relación del socio-Trabajador por Cuenta Propia con la Cooperativa, ya que existen contradicciones en la legislación al enarbolarse como principio la máxima de que todos los socios están en la obligación de aportar su trabajo, independientemente de cualquier otro aporte que realicen a la Cooperativa No Agropecuaria, en el artículo 4. e) del Decreto Ley 305, que establece el principio de disciplina cooperativista¹²; así como lo dispone expresamente en su artículo 23, al estipular que: «Los socios de la Cooperativa, con independencia de cualquier otro aporte que hagan, están en la obligación de participar con su trabajo.», mientras que en el Decreto 309, se reconoce como un deber de los socios en el artículo 29 b)¹³.

Este planteamiento se ve reforzado por lo establecido en el artículo 65 del Decreto 309¹⁴, donde aun cuando se refiere a la contratación de los trabajadores por cuenta propia ajenos a la cooperativa, especifica que el fundamento del contrato está en el servicio que brinda aquel. Así mismo, la Resolución 486/2016 del Ministerio de Finanzas y Precios, la cual modifica el Resuelto Séptimo de la Resolución No.

¹² Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 252. Artículo 4. e): «Disciplina cooperativista: Todos los socios aportan su trabajo en la cooperativa; conocen, cumplen y acatan conscientemente las disposiciones que regulan su actividad, así como los acuerdos de sus órganos de dirección y administración, y demás regulaciones que sean de aplicación a la cooperativa.»

¹³ Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 264.

ARTÍCULO 29.- Además de los que se fijen en los estatutos, los socios de la cooperativa tienen los deberes siguientes:

b) aportar su trabajo a la Cooperativa;

¹⁴ Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 269. ARTÍCULO 65.- «El órgano de administración de la Cooperativa pactará los montos a pagar a los trabajadores por cuenta propia por los servicios que se requieran.»

124 /2016, emitida por el mismo organismo, cuyo Resuelvo Único establece: «Los gastos por la contratación de servicios a los trabajadores por cuenta propia, a las cooperativas no agropecuarias y a otras formas de gestión no estatal se considerarán deducibles hasta el límite del 50% de los gastos totales en los que incurra la cooperativa.» Aun y cuando estos preceptos se refieren expresamente a los Trabajadores por Cuenta Propia contratados, y no a los que ostentan la condición de socios, es posible interpretar que el Trabajador por Cuenta Propia está relacionado directamente con un servicio externo, dejando abierta la brecha para cuestionarnos si realmente aporta su trabajo a la Cooperativa.

Es evidente la contradicción existente en la propia normativa, en tanto por un lado obliga al socio a contribuir principalmente con su trabajo, y por otro le permite continuar ofertando su servicio como Trabajador por Cuenta Propia, sin distinguir de ninguna manera el sujeto al que le puede brindar el mismo una vez asociado a una Cooperativa No Agropecuaria, lo que nos lleva a interpretar que, efectivamente, pudiera cobrarle a la Cooperativa el servicio, y por ende, no realizar ninguna aportación de trabajo, constituyendo una violación del principio de disciplina cooperativista¹⁵ enunciado en la misma, como vimos anteriormente.

Esta contradicción se evidencia en la práctica cooperativa actual toda vez que algunas cooperativas, fundamentalmente las de la construcción, que es un sector contratista por naturaleza dadas la amplitud y dinamicidad del mismo, requiere una fuerza de trabajo considerable, que se ve limitada por las disposiciones normativas vigentes, en tanto no pueden contratar más del 10% del fondo de jornadas- socios¹⁶, así como no pueden exceder el pago a los Trabajadores por Cuenta Propia en un 50% de los gastos totales en que incurra la Cooperativa, como ya vimos.

Desde la óptica de la contratación de fuerza de trabajo por la Cooperativa, incluso pudiera pensarse que de alguna manera la legislación puede estar encaminada, en relación con lo anterior, a completar

¹⁵ Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 250. Artículo 4. e): «Disciplina cooperativista: Todos los socios aportan su trabajo en la cooperativa; conocen, cumplen y acatan conscientemente las disposiciones que regulan su actividad, así como los acuerdos de sus órganos de dirección y administración, y demás regulaciones que sean de aplicación a la cooperativa.»

¹⁶ Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012. p. 252. Artículo 26.2 del Decreto Ley 305: «La contratación a que se refiere el apartado anterior no excederá el 10 % del total de las jornadas-socios del período fiscal, conforme establece el Reglamento del presente Decreto-Ley.»

la fuerza de trabajo necesaria a través de los socios-Trabajadores por Cuenta Propia, por cuanto estos tienen la posibilidad de subcontratar trabajadores, en dependencia de la licencia que lo autoriza a realizar la actividad a la que se dedica, por supuesto; sin embargo, sigue constituyendo una limitación considerable en el sector de la construcción, pues no llega a cubrir las necesidades reales en la ejecución de los trabajos, por la envergadura de los mismos, partiendo de que la licencia de constructor que emite el correspondiente Registro, está en función de determinados objetivos, dígame obras de arquitectura, viviendas hasta cinco niveles, obras industriales y de ingeniería, que por naturaleza requieren un volumen de fuerza de trabajo significativo en la mayoría de los casos, teniendo en cuenta el deterioro de las edificaciones a nivel nacional precisamente por la escasez de recursos y la pésima calidad del trabajo realizado por las entidades constructoras estatales, el mismo que ha propiciado el fortalecimiento de las Cooperativas No Agropecuarias en este sector, caracterizadas por la celeridad, calidad y garantía de los servicios que ofrecen.

A manera de conclusión, consideramos que el sistema tributario está bien proyectado, en función de contribuir al presupuesto del Estado, para cubrir aquellos gastos que generan las actividades improductivas que son de su responsabilidad, en tanto se grava a la Cooperativa como persona jurídica a través del Impuesto sobre las Utilidades y por otro lado, al Trabajador por Cuenta Propia, mediante el Impuesto sobre los Ingresos Personales. La problemática entonces, está centrada en el desarrollo de las relaciones que se entablan en el seno de la Cooperativa entre esta y el Trabajador por Cuenta Propia que ostenta a su vez la condición de socio.

Tomando como base el análisis anterior y todos los argumentos expuestos oportunamente en la presente investigación, entendemos necesario ratificar la necesidad imperiosa de modificar el por ciento establecido para la contratación de fuerza de trabajo a que tiene acceso la Cooperativa No Agropecuaria, pues conocemos que este tema ya ha sido objeto de debate en inmensurables ocasiones, así como hacer un análisis exhaustivo, que pudiera basarse en una comparación con el reconocido Trabajador Autónomo que menciona la doctrina y acogen las legislaciones foráneas, de la relación que se establece entre el socio-Trabajador por Cuenta Propia y la Cooperativa, toda vez que constituye intención expresa del legislador que la misma se sustente en el trabajo de sus socios, en consonancia con el enfoque internacional hacia esta figura, a fin de que se regulen de forma precisa los pormenores relativos a esta relación, propiciando claridad y seguridad jurídicas.

3. Bibliografía

Textos

- ALARTE MAYORDOMO, Carmen María. 2007. «Pluriempleo y Pluriactividad en el sector privado español». Tesis Doctoral. Universidad de Murcia. España.
- ÁLVAREZ ALCOLEA, Manuel. (s.f). *La condición jurídico-laboral de los socios en las cooperativas de producción*. (s.l). (s.edit). p. 95- p. 114.
- COLECTIVO DE AUTORES, Rivera-Rodríguez, Claudio Alberto. (Comp.). 2009. «Retos y perspectivas del cooperativismo, como real alternativa de desarrollo ante la globalización neoliberal.» *Revista Científica Avances*, CI-GET. Vol. 11 No. 1.
- DESDENTADO BONETE, Aurelio y Desdentado Daroca, Elena. (s.f). «En los límites del contrato de trabajo: administradores y socios». *Revista del Ministerio de Trabajo e Inmigración* 83. (s.l). (s.edit). p. 25- p. 35.
- DÍAZ FERNÁNDEZ, Ileana; Pastori, Héctor y Piñeiro Harnecker, Camila. 2012. «El trabajo por cuenta propia en Cuba: lecciones de la experiencia uruguaya.» *Boletín cuatrimestral, Economía y gerencia en Cuba: avances de investigación*. (Centro de Estudios de la Economía Cubana. Universidad de La Habana). p. 2- p. 7.
- ENDARA, Sebastián. «El cooperativismo: Una vía práctica hacia el Buen Vivir». Recuperado en: http://www2.scielo.org.ve/scielo.php?script=sci_arttext&pid=S1317-57342008000100001&lng=es&nrm=i.
- ESPAÑOL MARTÍ, Vicente. «La doble condición de socio y trabajador en las cooperativas de trabajo asociado.» Recuperado en: <http://cederul.unizar.es/noticias/sicoderxi/08.htm>.
- «¿Es posible trabajar a la vez por cuenta ajena y por cuenta propia?» Recuperado en: <http://www.ventanillaempresarial.org/opencms/opencms/es/DudasFrecuentes/Laboral/Laboral>.
- GUERRA, Pablo. (s.f) «La discusión salarial en el cooperativismo». Uruguay. (s.edit). p. 1- p. 7.
- Lineamientos de la Política Económica y Social del Partido y la Revolución. Aprobado el 18 de abril de 2011. Sexto Congreso del Partido Comunista de Cuba.
- LÓPEZ I MORA, Frederic. 1999. «Problemática laboral de los socios trabajadores de las empresas de Economía Social: ¿socios o trabajadores?». CIRIEC-España. *Revista de Economía Pública, Social y Cooperativa*, nº 31, p. 9-46.
- MARÍN HITA, Luis. 2014. «Las cooperativas no agropecuarias en Cuba». RE-VESCO, *Revista de Estudios Cooperativos*, Nº 115, p. 120-140.
- MOLINA, Nuria. 2015. Se puede ser autónomo y trabajador por cuenta ajena a la vez? Publicado el 18 de agosto de 2015. Recuperado en: <http://infoautonomos.economista.es/blog/ser-autonomo-y-trabajador-por-cuenta-ajena/>.

- RODRÍGUEZ MUSA, Orestes y Hernández Aguilar, Orisel. 2017. «Apuntes críticos sobre la implementación jurídica del principio cooperativo de «adhesión voluntaria y abierta» en Cuba», *Boletín de la Asociación Internacional de Derecho Cooperativo*, Núm. 51, pp. 79-98.
- TRUJILLO DÍEZ, Iván Jesús. 2002. «Tutela judicial efectiva de los socios trabajadores de cooperativas de producción. A propósito de la STC 86/2002, de 22 de abril». *Derecho Privado y Constitución*. Núm. 16, p. 393- p. 430.
- VUOTTO, Mirta. 2016. Las cooperativas no agropecuarias y la transformación económica en cuba: políticas, procesos y estrategias. REVESCO. Revista de Estudios Cooperativos, núm. 120, p. 149-181.

Legislación

- Gaceta Oficial No. 053 Extraordinaria de 11 de diciembre de 2012: Decreto-Ley 305 «De las Cooperativas No Agropecuarias»; Decreto-Ley 306 «Del Régimen Especial de Seguridad Social de las Cooperativas No Agropecuarias» y Decreto 309 «Reglamento de las Cooperativas No Agropecuarias de Primer Grado».
- Decreto Ley No. 268/09 «Modificativo del Régimen Laboral».
- Gaceta Oficial No. 027 Extraordinaria, de 26 de septiembre de 2013. Resoluciones 41 y 42 del Ministerio de Trabajo y Seguridad Social.
- Resolución No. 124 /2016 del Ministerio de Finanzas y Precios.
- Resolución 486/2016 del Ministerio de Finanzas y Precios.

III

Listado de la Asociación Internacional de Derecho Cooperativo

Lista de asociados por países

EUROPA

ESPAÑA

1. AFANADOR BELLIDO, JOSE
2. ALONSO RODRIGO, EVA
3. ALONSO SOTO, FRANCISCO
4. ANCHIA ESCOBAR, AITOR
5. ARDANZA VILLALABEITIA, JOSEBA
6. ARNAEZ ARCE, VEGA M.^a
7. ARREGUI, ZORIONE
8. ARRIETA IDIAKEZ, FCO. JAVIER
9. ARRIETA, JUAN LUIS
10. ATXABAL RADA, ALBERTO
11. ÁVILA ORIVE, JOSÉ LUIS
12. BARAHONA, ALEJANDRO
13. BLANCO LÓPEZ, JORGE
14. BUITRÓN ANDRADE, PABLO
15. CABRERIZO GARCÍA, OLIVIA
16. CAO FERNÁNDEZ , MANUEL ANTONIO
17. CELAYA ULIBARRI, ADRIÁN
18. COLOMER VIADEL, ANTONIO
19. DIEZ ÁCIMAS , LUIS ÁNGEL
20. DIVAR GARTEIZAUURRECOA, JAVIER
21. EMBID IRUJO, JOSE MIGUEL
22. ENCISO SANTOCILDES, MARTA
23. FAJARDO GARCIA, GEMMA
24. FIOL RUIZ, JUAN ANTONIO
25. FRESNILLO MARTÍN, JOSE ANTONIO
26. GADEA SOLER, ENRIQUE
27. GALLASTEGI ORMAETXEA, ITXASO
28. GÁLVEZ VEGA, JOSÉ
29. GAMINDE EGIA, EVA
30. GARAY UGALDE, ENRIQUE ANTONIO
31. GARCÍA ÁLVAREZ, BELÉN
32. GETE CASTRILLO, PEDRO
33. GÓMEZ URQUIJO, LAURA
34. GONDRA ELGEZABAL, GOTZON
35. GUTIÉRREZ DE ÁLAMO MAHOU, JOAQUÍN
36. HERNÁNDEZ SANTIAGO, SANTIAGO
37. HIGUERA, CARLOS DE LA
38. ILMA. SRA. DECANA DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD DE DEUSTO,
39. ISPIZUA ZUAZUA, ALFREDO
40. LAMPREABE MARTÍNEZ, JAVIER
41. LARRAZABAL BASAÑEZ, SANTIAGO
42. LASIERRA RIGAL, CARLOS MANUEL
43. LLAMOSAS TRÁPAGA, AÍDA
44. LLARENA ALBEAR, M.^a BEGOÑA
45. LLEDO YAGÜE, FRANCISCO
46. LÓPEZ ALONSO, FERNANDO
47. LÓPEZ GARDE, PABLO

48. LÓPEZ RODRÍGUEZ, JOSUNE
49. LUNA FERNÁNDEZ, FERNANDO
50. MACIA Y GONZÁLEZ, JOSE M.^a
51. MARTIN ANDRES, JESÚS
52. MARTÍN SEGOVIA, FRANCISCO
53. MARTINEZ CHARTERINA, ALEJANDRO
54. MARTINEZ ETXEBERRIA, GONZALO
55. MARTINEZ ORDORICA, JUAN LUIS
56. MARTINEZ SAENZ, ÓSCAR
57. MENDIOLA GOROSPE, AGUSTÍN
58. MERINO ANTIGÜEDAD, JOSÉ M.^a
59. MERINO HERNÁNDEZ, SANTIAGO
60. MERINO ORTIZ DE ZARATE, YOLANDA
61. MONTERO SIMO, MARTA
62. MONTOLIO HERNÁNDEZ, JOSE M.^a
63. MUGARZA YENES, JUAN MARTÍN
64. MUÑOZ GARCÍA, ALFREDO
65. NAGORE APARICIO, ÍÑIGO
66. ORAÁ ORAÁ, JAIME
67. PABLO-ROMERO GIL-DELGADO, M.^a CONCEPCIÓN
68. PANIAGUA ZURERA, MANUEL
69. PAZ CANALEJO, NARCISO
70. PÉREZ GINER, FRANCISCO
71. PONT GOIRICELAYA, RAFAEL
72. PRIETO JUAREZ, JOSE ANTONIO
73. PUY FERNANDEZ, GLORIA, GLORIA
74. REAL FLORES, MIREN JOSUNE
75. RIERA OLIVE, SANTIAGO
76. RODRÍGUEZ GONZÁLEZ, AMALIA
77. ROSEMBUJ, TULIO
78. RUEDA VIVANCO, JESÚS
79. SACRISTÁN BERGIA, FERNANDO
80. SAEZ GABICAGOGEASCOA, JAVIER
81. SALVADO, MANUEL
82. SAMANIEGO RUIZ DE INFANTE, JOSU
83. SAN JOSE MARTINEZ, FERNANDO
84. SANZ JARQUE, JUAN JOSÉ
85. SANZ SANTAOLALLA, FCO. JAVIER
86. SUÁREZ-ALBA AZANZA, M.^aEUGENIA
87. SUSO VIDAL, JOSE M.^a
88. TOSCANO, FERNANDO
89. VARGAS VASEROT, CARLOS
90. ZULUETA SAN NICOLÁS, JOSU

ITALIA

1. AFFERNI, VITORIO
2. BASSI, AMEDEO
3. BIAGI, MARCO
4. BONFANTE, GUIDO
5. CABRAS, GIOVANNI
6. COLANTONIO, GIULIANA
7. DABORMIDA, RENATO
8. FERRETI, GIAN ALBERTO
9. FICI, ANTONIO
10. GALGANO, FRANCESCO
11. GATTI, SERAFINO
12. GIACCARDI MARMO, LUCIA
13. GROSSO, PATRICIA
14. MICELA, VINCENZO
15. PAOLUCCI, LUIGI F.
16. PEZZINI, ENZO
17. RACUGNO, GABRIELE
18. SANTANGELO, PATRIZIA
19. SIMONETTO, ERNESTO
20. SPATOLA, GIUSEPPE

RESTO EUROPA

ALEMANIA

1. MANTLER, DIANA
2. MUNKNER, HANS H.

REINO UNIDO

1. SNAITH, IAN
2. SWINNEY, IAN

PORTUGAL

1. MEIRA APARICIO, DEOLINDA
2. NAMORADO, RUI
3. RODRIGUES, JOSE ANTONIO

FINLANDIA

1. HENRY, HAGEN

AMÉRICA

ARGENTINA

1. ACUÑA, MONICA
2. ALEGRE, ANTONIA JOSEFA
3. ALEGRE, NELIDA MARIA
4. ALEM, CARLOS ROBERTO
5. ALTHAUS, ALFREDO
6. ALZARI, FRANCISCO JOSE
7. ANTON, JUAN PEDRO
8. ARACAMA, NORA GABRIELA DE
9. BALESTRA, RENE H.
10. BARBEITO DE COUZO, BEATRIZ
11. BARRIENTOS, JORGE
12. BASAÑES, JUAN CARLOS
13. BOGLINO, GLADIS
14. BRUNO, MARIA DE LAS MERCEDES
15. CAFFARATTI, ROBERTO DANIEL
16. CAFFARATTI, SERGIO
17. CALLEJO, ALFREDO V.
18. CARAMANICO, JORGE GUSTAVO
19. CARDOSO, NORBERTO NICOLAS
20. CARELLO, LUIS ARMANDO
21. CASA, ANTONIO LUIS DE
22. CASTAGNINO, ENRIQUE F.,
23. CLARK, HORACIO ERNESTO
24. CMET, JUAN D.
25. CORDARA, ALBERTO E.
26. CORVALAN, ALFREDO R.
27. CRACOGNA, DANTE
28. CUESTA, ELSA
29. DALLA FONTANA, ELVIO N.
30. DE BIASI, ROMINA
31. DE LORENZI, ESTEBAN MARIO
32. DE NIRO, NICOLAS HUMBERTO
33. DEBIAGGI, CARLOS ALBERTO
34. DELLEPIANE
35. DOMINGUEZ, ELENA
36. DONETA, WALKER
37. EWAN, C.
38. FARIAS, CARLOS ALBERTO
39. FERRARIO, PATRICIO
40. FORNARI, OSWALDO CARLOS
41. GALEAZZI, ALBERTO NICOLAS
42. GARCIA ARROUY, JULIO
43. GARCIA ARROUY, OSVALDO
44. GAUNA, VICTOR ALBERTO
45. GIGENA, EDGAR R.
46. GOMEZ LUNA, STELLA MARIS
47. GUGLIELMONE, RICARDO LUIS
48. IAÑEZ, EMILIO ADELIO
49. IBERLUCIA, MIGUEL
50. JENSEN, PABLO ANDRES
51. JUNG, ROLANDO VICTOR
52. JUSTO, LIA
53. KESSELMAN, JULIO
54. KESSELMAN, SILVIA
55. KLUG, RICARDO MIGUEL
56. LACREU, ALDO SANTIAGO
57. LENTI, RUBEN JORGE
58. LORENZO, NORBERTO
59. LUNA, ERNESTO GASPAR FRANCISCO
60. MARTIN, CARLOS ALBERTO
61. MATUSEVICH, ELVA M. ENCINAS DE
62. MATZKIN, ENRIQUE
63. MEILIJ, GUSTAVO RAUL
64. MOIRANO, ARMANDO ALFREDO
65. MORIENA, HUGO JUAN BARTOLO
66. OMARINI, CESAR JUAN ARIEL
67. ORELLANO, RICARDO
68. PAROLA, AGUSTIN
69. PASCUAL, EDUARDO TOMAS
70. PERALTA REYES, VICTOR
71. PEREZ COLMAN, MARIA SUSANA
72. POGGI, JORGE DANIEL
73. PUGLIESE, SANTIAGO A.
74. QUESTA, JOSE MANUEL
75. RATTENBACH, BEATRIZ SUSANA
76. REZZONICO, ALBERTO EDMUNDO
77. RISSO, MARCELO ROBERTO
78. ROSANO, OBDULIO L. H.
79. ROSELL, RAUL HECTOR
80. ROSSI, LUIS MARIA
81. ROSSINI, REYNALDO LUIS
82. RUESGA, MARIANO EUSEBIO
83. RUESGA, MARIANO (FEDECOOBA)

84. SANTOS, MARÍA SOLEDAD
85. SCHMIDT BENDER, HORACIO F.
86. SCHMIDT, SERGIO FERNANDO
87. SEPERTINO, SUSANA MARÍA
88. SOMOZA, RICARDO FRANCISCO
89. STANISLAVSKY, MARIO WALTER
90. TORVISO, FERNANDO M.B.
91. URIBE, JANI
92. VALLATI, JORGE ARMANDO
93. VERLY, HERNAN
94. VESCO, CARLOS ALBERTO
95. VIGLIZZO, ALFREDO JORGE
96. VIGLIZZO, MONICA ELIDA

BRASIL

1. ANDRADE RAMOS RODRIGUES, ANA PAULA
2. BATISTA CAPETTINI, HAYNNER
3. BELLATO KALUF, MARCO AURÉLIO
4. BITARELLO, MÁRCIA ELISA
5. BORBA DE AZEVEDO, MARIA OTILIA
6. CALLEGARI, ANDRÉ
7. CHAVES GAUDIO, RONALDO
8. CRISTO, PE. AMÉRICO
9. DA CONTO, MARIO
10. DA SILVA GALHARDO, JOSÉ HENRIQUE
11. DA SILVA SILVEIRA, FELIPE
12. DE MIRANDA SOUZA, JOSÉ EDUARDO
13. GIBELLO PASTORE, JOSÉ EDUARDO
14. GONÇALVES LINS VIEIRA, PAULO
15. KRUEGER, GUILHERME
16. MIRANDA OLIVEIRA, ALEXANDRE
17. NAGAO MENEZES, DANIEL FRANCISCO
18. NASSER FEITOZA, JAMED ABDUL
19. OLIVEIRA REZENDE MARTINS, ANNE SHIRLEY DE
20. PEREIRA SALOMÃO, BRASIL DO PINHAL
21. PERIUS, VERGILIO
22. POZZA, PEDRO LUIZ
23. RONISE DE MAGALHÃES FIGUEIREDO
24. STRECK, LENIO

PARAGUAY

1. ASOCIACIÓN PARAGUAYA DE DERECHO COOPERATIVO. COOPERATIVA YBAPOBO LTDA.
2. BERNI, MIGUEL ANGEL
3. BOBADILLA, ALCIDES
4. DRELICHMAN, SAMUEL
5. FRANCO, RICARDO
6. GAUTO VIELMAN, RIGOBERTO
7. GAMARRA DOLDAN,, PEDRO
8. GONZALEZ PALUMBO, PARIS
9. INSFARAN, RAMÓN ADALBERTO
10. MARTÍNEZ RUIZ DIAZ, NELSON MA-
NUEL
11. MARTYNIUK, SERGIO
12. MODICA, JUAN O
13. MORAN, HUGO HERAN
14. MORLAS CANDIA, MARIO
15. POLETTI, GREGORIO
16. RAMIREZ RAMOS, ANTONIO
17. RIVAROLA, MIGUEL ANGEL
18. SOLER, JUAN JOSE
19. SOLJANCIC MORA,, JOSE
20. SACCO, CARLOS A.
21. TROCHE DE CABRAL, MARIA ISABEL
22. VALIENTE LARA, PEDRO RAFAEL
23. VINCI, JUAN MANUEL

PERÚ

1. FERNANDEZ DAVILA, ANTONIO
2. HUERTAS, NELLY
3. LIRA LINARES, ARTURO
4. LIRA LINARES, JORGE
5. MARTINEZ GUERRERO, LUIS
6. MORALES, ALONSO
7. REYES, DANIEL
8. ROSALES AGUIRRE, JORGE
9. TASSARA DE MUÑIZ, M.ª TERESA
10. TORRES MORALES, CARLOS
11. ZELAYARAN, MAURO

VENEZUELA

1. ESTELLER ORTEGA, DAVID
2. GARCIA MULLER, ALBERTO
3. HERRERA, JOSEFINA DEL CARMEN
4. MOLINA CAMACHO, CARLOS

RESTO AMÉRICA

BOLIVIA

1. TECEROS BANZER, ADALBERTO

COLOMBIA

1. GUARIN TORRES, BELISARIO
2. MEJÍA PALACIO, LUZ PATRICIA
3. RODRÍGUEZ BARRERA, WILSON DARIO

CUBA

1. CÁNDANO PÉREZ, MABEL
2. HERNÁNDEZ AGUILAR, ORISEL
3. MARTÍNEZ MONTENEGRO, ISNEL
4. MESA MEJIAS, MARIA DEL PILAR
5. MESA TEJEDA, NATACHA TERESA
6. RODRÍGUEZ MUSA, ORESTES
7. ROJAS JIMÉNEZ, ANDY
8. SOTO ALEMÁN, LIEN

ECUADOR

1. ESPINOZA, M.^a LORENA
2. NARANJO MENA, CARLOS

MÉXICO

1. ESPINOZA BELLO, CARLOS FROYLAN
2. GONZALEZ PALACIOS, SERGIO

3. HERNÁNDEZ CORDERO, ROBERTO CARLOS
4. IZQUIERDO MUCIÑO, MARTHA ELBA

REPÚBLICA DOMINICANA

1. MÉNDEZ PÉREZ, JORGE ELIGIO

URUGUAY

1. REYES LAVEGA, HÉCTOR SERGIO
2. RIPPE, SISGBERT

PUERTO RICO

1. COLÓN MORALES, RUBÉN A.

COSTA RICA

1. ABELLAN CISNEROS, ALEJANDRO
2. AGUILAR SANTAMARIA, ROXANA
3. BARRANTES CESPEDES, MARIO EDUARDO
4. BARRANTES, ROLANDO
5. CASTRO HERNÁNDEZ, LUIS PAULO
6. CEDENIL MONGE, GUSTAVO ADOLFO
7. CHACON SANTORESI, CARLOS MI-GUEL
8. ELIZONDO VARGAS, MARTA MARIA
9. ESPINOZA, ROLANDO
10. JACOBO ZELAYA, CARLOS JOSÉ
11. LAO MENDEZ, ROSANA
12. LEON DIAZ, EDGAR EMILIO
13. LOPEZ, ORLANDO
14. MONTERO, ALEXANDER Y STEVE
15. MORALES, FRANCISCO
16. PERAZO SEGURA, CARMEN MARIA
17. PEREZ SANCHEZ, YAMILEH
18. PIZARRO MATARRITA, EDGAR
19. QUIROS MONTOYA, ANA LUCRECIA

20. RAMOS, RENE
21. RODRIGUEZ GONZALEZ, RAFAEL MAURICIO
22. ROJAS HERRERA, OSCAR MIGUEL
23. SANCHEZ BOZA, ROXANA
24. SOLANO MURILLO, ADOLFO
25. SUBIRÓS BARRANTES, SILVIA
26. VARDERLUCH LEAL, ANTONIO
27. VARGAS ALFARO, ALEJANDRO
28. VARGAS CHAVARRIA, JEREMIAS
29. VILLALOBOS, KARLOS

RESSEAU AFRICAN DE DROIT COOPERAFIT

1. MAHAMAT, ADOUDOU
2. MIDAGON, ERNEST
3. PAPA, BAL

JORDANIA

1. ELSAYYED, ABDELHAKHEEM

Lista de asociados por orden alfabético

1. ABELLAN CISNEROS, ALEJANDRO
2. ACUÑA, MONICA
3. AFANADOR BELLIDO, JOSE
4. AFFERNI, VITORIO
5. AGUILAR SANTAMARIA, ROXANA
6. ALEGRE, ANTONIA JOSEFA
7. ALEGRE, NELIDA MARIA
8. ALEM, CARLOS ROBERTO
9. ALONSO RODRIGO, EVA
10. ALONSO SOTO, FRANCISCO
11. ALTHAUS, ALFREDO
12. ALZARI, FRANCISCO JOSE
13. ANCHIA ESCOBAR, AITOR
14. ANDRADE RAMOS RODRIGUES, ANA PAULA
15. ANTON, JUAN PEDRO
16. ARACAMA, NORA GABRIELA DE
17. ARDANZA VILLALABEITIA, JOSEBA
18. ARNAEZ ARCE, VEGA MARÍA
19. ARREGUI, ZORIONE
20. ARRIETA IDIAKEZ, FRANCISCO JAVIER
21. ARRIETA, JUAN LUIS
22. ASOCIACIÓN PARAGUAYA DE DERECHO COOPERATIVO. COOPERATIVA YBAPOBO LTDA.
23. ATXABAL RADA, ALBERTO
24. AVILA ORIVE, JOSÉ LUIS
25. BALESTRA, RENE H.
26. BARAHONA, ALEJANDRO
27. BARBEITO DE COUZO, BEATRIZ
28. BARRANTES CESPEDES, MARIO EDUARDO
29. BARRANTES, ROLANDO
30. BARRIENTOS, JORGE
31. BASAÑES, JUAN CARLOS
32. BASSI, AMEDEO
33. BATISTA CAPETTINI, HAYNNER
34. BELLATO KALUF, MARCO AURÉLIO
35. BIAGI, MARCO
36. BITARELLO, MÁRCIA ELISA
37. BLANCO LÓPEZ, JORGE
38. BOGLINO, GLADIS
39. BONFANTE, GUIDO
40. BORBA DE AZEVEDO, MARÍA OTILIA
41. BRUNO, MARIA DE LAS MERCEDES
42. BUITRÓN ANDRADE, PABLO
43. CABRAS, GIOVANNI
44. CABRERIZO GARCÍA, OLIVIA
45. CAFFARATTI, ROBERTO DANIEL
46. CAFFARATTI, SERGIO
47. CALLEGARI, ANDRÉ
48. CALLEJO, ALFREDO V.
49. CÁNDANO PÉREZ, MÁBEL
50. CAO FERNÁNDEZ, MANUEL ANTONIO

51. CARAMANICO, JORGE GUSTAVO
52. CARDOSO, NORBERTO NICOLAS
53. CARELLO, LUIS ARMANDO
54. CASA, ANTONIO LUIS DE
55. CASTAGNINO, ENRIQUE F.,
56. CASTRO HDEZ, LUIS PAULO
57. CASTRO HERNÁNDEZ, LUIS PAULO
58. CEDENIL MONGE, GUSTAVO ADOLFO
59. CELAYA ULIBARRI, ADRIAN
60. CHACON SANTORES, CARLOS MIGUEL
61. CHAVES GAUDIO, RONALDO
62. CLARK, HORACIO ERNESTO
63. CMET, JUAN D.
64. COLANTONIO, GIULIANA
65. COLOMER VIADEL, ANTONIO
66. COLÓN MORALES, RUBÉN A.
67. CORDARA, ALBERTO E.
68. CORVALAN, ALFREDO R.
69. CRACOGNA, DANTE
70. CRISTO, PE. AMÉRICO
71. CUESTA, ELSA
72. DA SILVA GALHARDO, JOSÉ HENRIQUE
73. DA SILVA SILVEIRA, FELIPE
74. DABORMIDA, RENATO
75. DALLA FONTANA, ELVIO N.
76. DE BIASI, ROMINA
77. DE LORENZI, ESTEBAN MARIO
78. DE CONTO, MARIO
79. DE MIRANDA SOUZA, JOSÉ EDUARDO
80. DE NIRO, NICOLAS HUMBERTO
81. DEBIAGGI, CARLOS ALBERTO
82. DECANA DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD DE DEUSTO
83. DELLEPIANE
84. DÍAZ DE SANTOS, S.A. (0007617-000734/05)
85. DIEZ ÁCIMAS, LUIS ÁNGEL
86. DIVAR GARTEIZURRECOA, JAVIER
87. DOMINGUEZ, ELENA
88. DONETA, WALKER
89. ELIZONDO VARGAS, MARTA MARIA
90. ELSAYYED, ABDELHAKHEEM
91. EMBID IRUJO, JOSE MIGUEL
92. ENCISO SANTOCILDES, MARTA
93. ESPINOZA BELLO, CARLOS FROYLAN
94. ESPINOZA, MARÍA LORENA
95. ESPINOZA, ROLANDO
96. ESTELLER ORTEGA, DAVID
97. EWAN, C.
98. FAJARDO GARCIA, GEMMA
99. FARIAS, CARLOS ALBERTO
100. FERRARIO, PATRICIO
101. FERRETI, GIAN ALBERTO
102. FICI, ANTONIO
103. FIOLE RUIZ, JUAN ANTONIO
104. FORNARI, OSWALDO CARLOS
105. FRANCISCO LUNA, ERNESTO GASPAS
106. FRESNILLO MARTIN, JOSE ANTONIO
107. GADEA SOLER, ENRIQUE
108. GALEAZZI, ALBERTO NICOLAS
109. GALGANO, FRANCESCO
110. GALLASTEGUI ORMAETXEA, ITXASO
111. GALVEZ VEGA, JOSÉ
112. GAMINDE EGIA, EBA
113. GARAY UGALDE, ENRIQUE ANTONIO
114. GARCÍA ÁLVAREZ, BELÉN
115. GARCIA ARROUY, JULIO
116. GARCIA ARROUY, OSVALDO
117. GARCIA MULLER, ALBERTO
118. GATTI, SERAFINO
119. GAUNA, VICTOR ALBERTO
120. GETE CASTRILLO, PEDRO
121. GIACCARDI MARMO, LUCIA
122. GIBELLO PASTORE, JOSÉ EDUARDO
123. GIGENA, EDGAR R.
124. GOMEZ LUNA, STELLA MARIS
125. GOMEZ URQUIJO, LAURA
126. GONÇALVES LINS VIEIRA, PAULO
127. GONDRA ELGEZABAL, GOTZON
128. GONZÁLEZ PALACIOS, SERGIO
129. GROSSO, PATRICIA
130. GUARIN TORRES, BELISARIO
131. GUGLIELMONE, RICARDO LUIS
132. GUTIÉRREZ DE ÁLAMO MAHOU, JOAQUIN
133. HDEZ CORDERO, ROBERTO CARLOS
134. HENRY, HAGEN
135. HERNÁNDEZ AGUILAR, ORISEL
136. HERNANDEZ SANTIAGO, SANTIAGO
137. HERRERA, JOSEFINA DEL CARMEN
138. HIGUERA, CARLOS DE LA
139. IAÑEZ, EMILIO ADELIO

- 140.** IBERLUCIA, MIGUEL
141. INSTITUTO ARGENTINO DE INVESTIGACIONES DE ECONOMÍA SOCIAL (IAIES)
142. ISPIZUA, ALFREDO
143. IZQUIERDO MUCIÑO, MARTHA ELBA
144. JACOBO ZELAYA, CARLOS JOSÉ
145. JAMED ABDUL NASSER, FEITOZA
146. JENSEN, PABLO ANDRES
147. JOSÉ EDUARDO GIBELLO PASTORE, EDUARDO PASTORE
148. JUNG, ROLANDO VICTOR
149. JUSTO, LIA
150. KALUF BELLATO, MARCO AURÉLIO
151. KESSELMAN, JULIO
152. KESSELMAN, SILVIA
153. KLUG, RICARDO MIGUEL
154. KRUEGER, GUILHERME
155. LACREU, ALDO SANTIAGO
156. LAMPREABE MARTÍNEZ, JAVIER
157. LAO MENDEZ, ROSANA
158. LARRAZABAL BASAÑEZ, SANTIAGO
159. LASIERRA RIGAL, CARLOS MANUEL
160. LENTI, RUBEN JORGE
161. LEON DIAZ, EDGAR EMILIO
162. LLAMOSAS TRÁPAGA, AIDA
163. LLARENA ALBEAR, MARIA BEGOÑA
164. LLEDO YAGÜE, FRANCISCO
165. LÓPEZ ALONSO, FERNANDO
166. LOPEZ GARDE, PABLO
167. LOPEZ, ORLANDO
168. LÓPEZ RODRÍGUEZ, JOSUNE
169. LORENZO, NORBERTO
170. LUNA FERNÁNDEZ, FERNANDO
171. LUNA, ERNESTO GASPAR FRANCISCO
172. MACIA Y GONZALEZ, JOSE MARIA
173. MAHAMAT, ADOUDOU
174. MANTLER, DIANA
175. MARTIN ANDRES, JESUS
176. MARTÍN SEGOVIA, FRANCISCO
177. MARTIN, CARLOS ALBERTO
178. MARTINEZ CHARTERINA, ALEJANDRO
179. MARTÍNEZ ETXEBERRIA, GONZALO
180. MARTÍNEZ MONTENEGRO, ISNEL
181. MARTINEZ ORDORICA, JUAN LUIS
182. MARTÍNEZ RUIZ DIAZ, NELSÓN MANUEL
183. MARTINEZ SAENZ, OSCAR
184. MATUSEVICH, ELVA M. ENCINAS DE
185. MATZKIN, ENRIQUE
186. MEILIJ, GUSTAVO RAUL
187. MEIRA APARÍCIO, DEOLINDA
188. MEJÍA PALACIO, LUZ PATRICIA
189. MÉNDEZ PÉREZ, JORGE ELIGIO
190. MENDIOLA GOROSPE, AGUSTIN
191. MERINO ANTIGÜEDAD, JOSÉ MARIA
192. MERINO HERNÁNDEZ, SANTIAGO
193. MERINO ORTIZ DE ZARATE, YOLANDA
194. MESA MEJIAS, MARIA DEL PILAR
195. MESA TEJEDA, NATACHA TERESA
196. MICELA, VINCENZO
197. MIDAGON, ERNEST
198. MIRANDA OLIVEIRA, ALEXANDRE
199. MOIRANO, ARMANDO ALFREDO
200. MOLINA CAMACHO, CARLOS
201. MONTERO SIMO, MARTA
202. MONTERO, ALEXANDER Y STEVE
203. MONTOLIO HERNANDEZ, JOSE MARIA
204. MORIENA, HUGO JUAN BARTOLO
205. MUGARZA YENES, JUAN MARTIN
206. MUNKNER, HANS H.
207. MUÑOZ GARCÍA, ALFREDO
208. NAGAO MENEZES, DANIEL FRANCISCO
209. NAGORE APARICIO, IÑIGO
210. NAMORADO, RUI
211. NARANJO MENA, CARLOS
212. NASSER FEITOZA, JAMED ABDUL
213. OLIVEIRA REZENDE MARTINS, ANNE SHIRLEY DE
214. OMARINI, CESAR JUAN ARIEL
215. ORELLANO, RICARDO
216. PABLO-ROMERO GIL-DELGADO, MARIA CONCEPCIÓN
217. PALACIOS GONZALEZ, SERGIO
218. PANIAGUA ZURERA, MANUEL
219. PAOLUCCI, LUIGI F.
220. PAPA, BAL
221. PAROLA, AGUSTIN
222. PASCUAL, EDUARDO TOMAS
223. PAZ CANALEJO, NARCISO
224. PERALTA REYES, VICTOR
225. PERAZO SEGURA, CARMEN MARIA
226. PEREIRA SALOMÃO, BRASIL DO PINHAL
227. PEREZ COLMAN, MARIA SUSANA

- 228.** PEREZ GINER, FRANCISCO
229. PEREZ SANCHEZ, YAMILEH
230. PERIUS, VERGILIO
231. PEZZINI, ENZO
232. PIZARRO MATARRITA, EDGAR
233. POGGI, JORGE DANIEL
234. PONT GOIRICELAYA, RAFAEL
235. POZZA, PEDRO LUIZ
236. PRIETO JUAREZ, JOSE ANTONIO
237. PUGLIESE, SANTIAGO A.
238. PUVILL LIBROS S.A.
239. PUY FERNANDEZ, GLORIA
240. QUESTA, JOSE MANUEL
241. QUIROS MONTOYA, ANA LUCRECIA
242. RACUGNO, GABRIELE
243. RAMOS, RENE
244. RATTENBACH, BEATRIZ SUSANA
245. REAL FLORES, MIREN JOSUNE
246. REYES LAVEGA, HÉCTOR SERGIO
247. REZZONICO, ALBERTO EDMUNDO
248. RIERA OLIVE, SANTIAGO
249. RIPPE, SISGBERT
250. RISSO, MARCELO ROBERTO
251. RODRIGUES ANDRADE RAMOS, ANA PAULA
252. RODRIGUES, JOSE ANTONIO
253. RODRÍGUEZ BARRERA, WILSON DARIO
254. RODRÍGUEZ GONZÁLEZ, AMALIA
255. RODRIGUEZ GONZALEZ, RAFAEL MAURICIO
256. RODRÍGUEZ MUSA, ORESTES
257. ROJAS HERRERA, OSCAR MIGUEL
258. ROJAS JIMÉNEZ, ANDY
259. RONISE DE MAGALHÃES FIGUEIREDO
260. ROSANO, OBDULIO L. H.
261. ROSELL, RAUL HECTOR
262. ROSEMBUJ, TULIO
263. ROSSI, LUIS MARIA
264. ROSSINI, REYNALDO LUIS
265. RUEDA VIVANCO, JESÚS
266. RUESGA, MARIANO (FEDECOOBA)
267. RUESGA, MARIANO EUSEBIO
268. RUIZ DIAZ MARTÍNEZ, NELSON MANUEL
269. SACRISTÁN BERGIA, FERNANDO
270. SAEZ GABICAGOGEOASCOA, JAVIER
271. SALVADO, MANUEL
272. SAMANIEGO RUIZ DE INFANTE, JOSU
273. SAN JOSE MARTINEZ, FERNANDO
274. SANCHEZ BOZA, ROXANA
275. SANTANGELO, PATRIZIA
276. SANTOS, MARÍA SOLEDAD
277. SANZ JARQUE, JUAN JOSE
278. SANZ SANTAOLALLA, FRANCISCO JAVIER
279. SCHMIDT BENDER, HORACIO F.
280. SCHMIDT, SERGIO FERNANDO
281. SECCIÓN NACIONAL PERUANA
282. SEPERTINO, SUSANA MARÍA
283. SIMONETTO, ERNESTO
284. SNAITH, IAN
285. SOLANO MURILLO, ADOLFO
286. SOMOZA, RICARDO FRANCISCO
287. SOTO ALEMÁN, LIEN
288. SPATOLA, GIUSEPPE
289. STANISLAVSKY, MARIO WALTER
290. STRECK, LENIO
291. SUÁREZ-ALBA AZANZA, M.ª EUGENIA
292. SUBIRÓS BARRANTES, SILVIA
293. SUSO VIDAL, JOSE MARIA
294. SWINNEY, IAN
295. TASSARA DE MUÑIZ, M.ª TERESA
296. TECEROS BANZER, ADALBERTO
297. TORRES MORALES, CARLOS
298. TORVISO, FERNANDO M.B.
299. TOSCANO, FERNANDO
300. URIBE, JANI
301. VALLATI, JORGE ARMANDO
302. VARDERLUCH LEAL, ANTONIO
303. VARGAS ALFARO, ALEJANDRO
304. VARGAS CHAVARRIA, JEREMIAS
305. VARGAS VASEROT, CARLOS
306. VERLY, HERNAN
307. VESCO, CARLOS ALBERTO
308. VIGLIZZO, ALFREDO JORGE
309. VIGLIZZO, MONICA ELIDA
310. VILLALOBOS, KARLOS
311. VINCI, JUAN MANUEL
312. ZULUETA SAN NICOLAS, JOSU

Boletín de la Asociación Internacional de Derecho Cooperativo (BAIDC)

Normas de publicación

1. **Contenido.** El BAIDC publica, con carácter semestral a partir de 2018, trabajos de investigación sobre Cooperativismo y Economía social.
2. **Envío de originales.** Los originales han de ser inéditos y deberán ser enviados en línea en la dirección: <http://baidc.revistas.deusto.es/about/submissions#authorGuidelines>.
3. **Formato.** En la primera página se incluirá el título, el nombre del autor y su filiación académica. La segunda página recogerá dos resúmenes, en castellano e inglés, de unas 120 palabras cada uno, y las palabras clave del trabajo (entre 3 y 5 palabras), tanto en castellano como en inglés. Asimismo, el título y el sumario del artículo se enviarán en castellano e inglés.
4. **Normas de edición.** Las citas bibliográficas y las referencias a otras fuentes documentales se harán siguiendo el sistema 'Autor-Fecha' del manual de estilo de Chicago (http://www.deusto-publicaciones.es/deusto/content/openbooks/manual_breve/manual_breve_chicago_deusto.html). El artículo debe incluir las referencias bibliográficas completas en la última página. Los trabajos presentados podrán tener una extensión entre 15 y 35 páginas.

Ejemplos:

a) Libros

- Última página: Duch, Lluís. 1998. *Mito, interpretación y cultura*. Barcelona: Herder.
- Cita en el texto: (Duch 1998, 99-100).

b) Capítulos de libro

- Última página: Gómez Mendoza, Josefina. 2009. «Ecología urbana y paisaje de la ciudad». En *La ciudad del futuro*, editado por Antonio Bonet Correa, 177-217. Madrid: Instituto de España.
- Cita en el texto: (Gómez Mendoza 2009).

c) Artículos de revista

- Última página: Hernández Guerrero, María José. 2011. «Presencia y utilización de la traducción en la prensa española». *Meta* 56, n.º 1: 101-118.
- Cita en el texto: (Hernández Guerrero 2011, 115).

5. **Proceso de publicación.** El Director y la Editora del Boletín con la participación del Consejo de redacción y del Consejo asesor decidirán la publicación de los trabajos basándose en una evaluación externa independiente. El proceso de evaluación de los trabajos será una revisión ciega por pares, siguiendo el código ético del Boletín. Los autores podrán realizar la corrección de pruebas de imprenta y, si en el plazo de 10 días no se recibiese su corrección, se entenderá que el autor está conforme con la impresión recibida.
6. **Tasas.** No se cobran costos de envío, procesamiento ni publicación de los artículos.
7. **Copyright.** Los autores de los trabajos inéditos publicados en esta revista podrán reproducirlos en otro lugar con la debida anotación de su publicación original en el BAIDC.

Código ético

Con el fin de mejorar la transparencia y la información sobre el proceso de publicación del Boletín de la Asociación Internacional de Derecho Cooperativo (en adelante, la Revista) se han elaborado y adoptado los compromisos que se exponen a continuación:

1. Obligaciones generales del director de la Revista

El director de la Revista deberá:

Velar por la continua mejora de la Revista;

Asegurar la calidad de los artículos que se publican;

Mantener la integridad académica del contenido de la Revista;

Respetar la libertad de expresión;

Estar dispuestos a publicar las correcciones, retractaciones, y las disculpas que en su caso sean necesarias.

2. Obligaciones en relación con los autores

2.1. Promoción de conductas éticas

Los miembros de la Revista deberán asegurarse de adoptar las medidas oportunas para asegurar la calidad del material publicado, y evitar en la medida de lo posible la publicación de plagios o de trabajos no originales, salvo que en este último caso se permita de forma extraordinaria y justificadamente por parte de la dirección de la revista y se haga constar explícitamente en el artículo correspondiente dicha característica del trabajo publicado.

2.2. Normas de publicación para los autores

Se publicará y se mantendrá debidamente actualizado el proceso de publicación en la Revista con el fin de que los autores puedan tener toda la información que necesiten al respecto, y que solamente por causas debidamente justificadas y explicadas se podrá alterar. En particular, se publicará el funcionamiento del proceso de revisión por pares de los artículos recibidos.

2.3. Proceso de revisión por pares

Se publicará y se mantendrá actualizada una lista de evaluadores, que no será completamente cerrada, ya que a juicio del director de la Revista en función del tema y de otras circunstancias debidamente justificadas podrá someterse un artículo a la revisión de un experto que no se encuentre incluido en la lista de evaluadores publicada.

Los evaluadores deberán emitir juicios y evaluaciones claras y precisas, suficientemente argumentadas e imparciales. Igualmente, se evitarán los conflictos de intereses del tipo que fuere (personales, académicos, comerciales, etc.).

En cualquier caso, el proceso de evaluación quedará sujeto a estrictas condiciones de confidencialidad. Ni los revisores ni los autores conocerán sus respectivas identidades, evitando de esta forma los conflictos de intereses que se pudiesen producir. Al respecto, el director de la Revista ostentará un estricto deber de confidencialidad.

Los artículos serán revisados por dos evaluadores, recurriéndose a la opinión de un tercer evaluador en caso de que haya discrepancias sobre la publicación del artículo entre las dos evaluaciones realizadas.

2.4. Decisiones respecto a la publicación

Las decisiones relativas a la aceptación o al rechazo de un artículo para su publicación deberán basarse únicamente en la calidad del artículo, esto es, en su claridad, originalidad, importancia y en su adecuación a los objetivos y al ámbito de la Revista.

En ningún caso, se rechazarán artículos debido a las críticas u opiniones divergentes de posturas mayoritarias y/o manifestadas por miembros de la Revista, siempre que se trate de artículos de calidad que justifiquen sus posturas sin caer en la descalificación.

Igualmente, la decisión, bien de aceptación, bien de rechazo, se comunicará siempre al autor en el tiempo indicado en las normas de publicación, y deberá ser motivada, especialmente en caso de rechazo. Esta decisión no deberá modificarse posteriormente, salvo que se hayan producido serios problemas en el proceso de publicación que deberán justificarse.

En cualquier caso, los cambios en la estructura de la Revista no afectarán a las decisiones adoptadas previamente en cuanto a la aceptación o al rechazo de los artículos enviados para su publicación.

Relación de evaluadores

- Marina Aguilar Rubio (Universidad de Almería)
- Eva Alonso Rodrigo (Universidad de Barcelona)
- Vega María Arnáez Arce (Universidad de Deusto)
- Francisco Javier Arrieta Idiákez (Universidad de Deusto)
- Baleren Bakaikoa Azurmendi (EHU-Universidad del País Vasco)
- Aitor Bengoetxea Alkorta (EHU-Universidad del País Vasco)
- Dante Cracogna (Universidad de Buenos Aires)
- Renato Dabormida (Universidad de Génova)
- Javier Divar Garteiz-aurrecoa (Universidad de Deusto)
- Marta Enciso Santolcides (Universidad de Deusto)
- Antonio Fici (Universidad de Molise)
- Enrique Gadea Soler (Universidad de Deusto)
- Eba Gaminde Egia (Universidad de Deusto)
- Belén García Álvarez (Universidad de Deusto)
- Alberto García Müller, (Universidad de los Andes)
- Gotzon Gondra Elguezabal (abogado)
- Orisel Hernández Aguilar (Universidad de Pinar del Río)
- Martha E. Izquierdo (Universidad Autónoma del Estado de México)
- Javier Larena Beldarrain (Universidad de Deusto)
- Santiago Larrazabal Basáñez (Universidad de Deusto)
- Aida Llamosas Trápaga (Universidad de Deusto)
- Josune López Rodríguez (Universidad de Deusto)
- Alejandro Martínez Charterina (Universidad de Deusto)
- Gonzalo Martínez Etxeberria (Universidad de Deusto)
- Francisco José Martínez Segovia (Universidad de Castilla-La Mancha)
- Deolinda A. Meira (Instituto Politécnico de Porto)
- Natacha Teresa Mesa Tejeda (Universidad de La Habana)
- José Eduardo Miranda (FMB)
- Marta Montero Simó (Universidad Loyola Andalucía)
- Alfredo Muñoz García (Universidad Complutense de Madrid)
- Iñigo Nagore Aparicio (abogado)
- Miren Josune Real Flores (Universidad de Deusto)
- Siegbert Rippe (Universidad de Montevideo)
- Orestes Rodríguez Musa (Universidad de Pinar del Río)
- Tulio Rosembuj (Universidad de Barcelona)
- Fernando Sacristán Bergia (Universidad Rey Juan Carlos)
- Roxana Sánchez Boza (Universidad Nacional de San José de Costa Rica)
- Francisco Javier Sanz Santaolalla (abogado)
- Lenio Streck (Universidad de Unisinos)
- Isabel Tur Vilas (Universidad de Barcelona)
- Carlos Vargas Vasserot (Universidad de Almería)

Boletines de la AIDC correspondientes a 2019

Por decisión de la Asamblea General Ordinaria de la Asociación Internacional de Derecho Cooperativo, del pasado día 27 de julio de 2018, se acordó:

- Establecer como tema monográfico de investigación para los Boletines de la AIDC correspondientes al año 2019 el de «**El principio de autonomía e independencia. Consecuencias jurídicas y económicas derivadas de su aplicación práctica**».

Se invita a los miembros de la Asociación Internacional de Derecho Cooperativo a que realicen sus aportaciones sobre esta materia para los dos próximos Boletines, sin perjuicio de que sean admitidos trabajos sobre otros temas que se estimen de interés.

Les recordamos que la fecha final de recepción de trabajos el **31 de mayo de 2019** para el número 55 del Boletín de 2019.

La Dirección del Boletín de la AIDC

Derechos de autor

El *Boletín de la Asociación Internacional de Derecho Cooperativo* es una revista de acceso abierto lo que significa que es de libre acceso en su integridad inmediatamente después de la publicación de cada número. Se permite su lectura, la búsqueda, descarga, distribución y reutilización legal en cualquier tipo de soporte sólo para fines no comerciales y según lo previsto por la ley; sin la previa autorización de la Editorial (Universidad de Deusto) o el autor, siempre que la obra original sea debidamente citada (número, año, páginas y DOI si procede) y cualquier cambio en el original esté claramente indicado.

Copyright

The *International Association of Cooperative Law Journal* is an Open Access journal which means that it is free for full and immediate access, reading, search, download, distribution, and lawful reuse in any medium only for non-commercial purposes, without prior permission from the Publisher or the author; provided the original work is properly cited and any changes to the original are clearly indicated.

Boletín de la Asociación Internacional de Derecho Cooperativo

International Association
of Cooperative Law Journal



Deusto

Publicaciones
Universidad de Deusto