LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: SPAIN

ICA-EU PARTNERSHIP

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International Co-operative Alliance

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I. Introduction

The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

-provide general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organizations, notably the for-profit shareholder corporation (the *sociedad anónima lucrativa* in Spanish; the *société anonyme à but lucratif* in French).

-to evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore "cooperative friendly" or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).

-to provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of "cooperative friendliness", which is to say, to make the legislation more favourable to cooperatives, also in consideration of their specific identity.

This report presents the main results of the research to examine and analyse cooperative law in Spain, its general context and main elements, including how adequate it may be for cooperatives. Finally, conclusions and recommendations for the improvement of the legal framework are considered.

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Legal Journal. She is a Member of SGECOL, AIDCMESS, and has participated in the drafting of several cooperative laws including Madrid, Valencia, and Asturias. She is the Director of the Master of Social Economy at the University of Valencia, and of the Legal Bulletin of the Spanish Observatory of Social Economy. For the preparation of the current report, support and input was provided by staff from Cooperatives Europe and the ICA.

i. General Context

Cooperatives in Spain were not regulated as commercial companies in the Commercial Code (1885), due to the mutualist nature of their relationships and the lack of profitmaking intent of their purposes (art. 124 and recital of grounds for the Code). Until 1931, cooperatives were recognised (art. 1 of the Associations Law of 1987) but not regulated, so they were constituted as associations, civil or commercial societies, according to the circumstances. In 1931, the first General Law of Cooperatives was approved, applicable to all cooperatives regardless of their headquarters and activity, with general provisions and specific rules for the various types. This situation was maintained in successive laws until the approval of the current Constitution in 1978.

The approval of the **Spanish Constitution of 1978** entailed: an explicit recognition of the duty of public authorities to promote cooperatives and a new organisation of the State that affected cooperatives, in particular the jurisdiction over their regulation, which passed from the State to the Autonomous Communities:

a) According to art. 129.2 of the Constitution (CE hereinafter): "*Public authorities will effectively promote the various forms of participation in the company and will promote, through appropriate legislation, cooperative societies*". The duty to **promote cooperatives** has been attributed in the cooperative laws to the Ministry or Department of Labour.

b) According to art. 149 CE, the State has exclusive jurisdiction over certain matters (commercial, civil, labour and procedural legislation, etc.), without alluding to cooperatives. In our law, cooperatives are not considered civil or commercial corporations, which is why the Autonomous Communities have been able to assume exclusive jurisdiction to regulate them. **All Autonomous Communities have assumed exclusive jurisdiction in the field of cooperatives** and all, except the Autonomous Community of the Canary Islands, have approved their respective cooperative law (Table 1). The autonomous legislation applies to cooperatives that carry out most of their activity with their members in said Community (art. 2 of Law 27/1999 on Cooperatives approved by the State (LC hereinafter).

The Ministry of Labour periodically publishes statistical information on cooperatives, based on data from Social Security, the Tax Agency and the Registers of Cooperatives in Spain. According to the latest published information[1], the Autonomous Communities with the greatest presence of cooperatives, members and workers in Spain are, in alphabetical order: Andalusia, the Basque Country, Catalonia, and the Valencian

[1] http://www.mitramiss.gob.es/ficheros/ministerio/estadisticas/anuarios/2018/COO/COO.pdf

Community; consequently, we will focus this study on these laws, as they are the most applicable. We will also focus on state law, because it provides supplementary application in the event of a legislative gap (art. 149.3 CE) and to serve as a reference to other laws enacted in matters of State jurisdiction, such as tax or accounting standards, that are applicable to cooperatives.

Most cooperative laws usually make explicit and, in any case, implicit, reference to the cooperative principles of the International Cooperative Alliance (ICA hereinafter), but not all of them give it the same relevance. For example, the Valencian Law (LCCV hereinafter) and the Catalan law (LCCat hereinafter) recognise regulatory and interpretive value in the cooperative principles of the ICA (Morillas, 2002, 89), while in the LC and Basque law (LCE hereinafter), that regulatory value is weakened because they are subordinated to what the Law states (Trujillo, 2000, 1345).

According to the LCCV, Valencian cooperatives should be inspired by the cooperative values and principles declared by the ICA, expressly citing them and concluding that said values and principles "*will serve as a guide for the interpretation and application of this law and its rules for development*" (art. 3 LCCV); while for the LCCat, the cooperative principles of the ICA must be applied to the organisation and operation of cooperatives, it has interpretative value for said law and is integrated into the sources of Catalan cooperative law as general principles (art. 1.2 LCCat).

Academics usually considers the cooperative principles of the ICA, at least, as cooperative-type model principles (Trujillo, 2002: 1342-1343 or Senent, 2003:131-132) and **Supreme Court Jurisprudence** has on some occasions resorted to cooperative principles to interpret whether a cooperative agreement or a statutory rule was in keeping with the law: SC judgments of January 26, 1983 (RA 389); March 20, 1986 (RA 1273) or May 10, 1987 (RA 3734).

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

Spanish cooperative laws usually define cooperatives quite well. As an example, we will cite the most recently approved law, the LCE, for which "*The cooperative is a society that an enterprise develops, the priority objective of which is the promotion of its members' economic and social activities and the satisfaction of their needs with their active participation, observing the principles of cooperativism and serving the community around them*" (art. 1.1). The definitions of cooperative usually refer to the associative or societal nature of the cooperative, to the performance of business activities, to its purposes or objectives of a mutualist nature and to cooperative principles as characteristic traits of its identity.

Capital companies are characterised by the profit-making aim of both the company and its shareholders. Thus, these companies develop economic activities in their own interest (to obtain profits therefrom) and not in the direct interest of their members, as with cooperatives; and in turn, the members seek to profit from the invested capital, not to

obtain any service from the company (such as workers, customers or suppliers). A cooperative is also differentiated from a corporation because the transfer of shares is free in the corporation and shareholder rights are measured in proportion to the contributed capital, while in the cooperative, all members have the same voting rights. The main difference between a cooperative and a limited liability company is the closed nature of the company, which prevents free access by new members.

Cooperative laws usually reflect the objective of the cooperative in their definition, referring to the satisfaction of the social and economic needs and aspirations of the members (art. 1 LC; art. 1.1 LCCat and art. 1.1. LCE).

The rules that regulate the different types of cooperatives also consider the objectives thereof. Thus, for example, the objective of the associate worker cooperative is to:

> "…*provide its members with jobs, through their personal and direct efforts, part-time or full-time, through the common organisation of the production of goods or services for third parties*" (art. 80 LC) and that of consumer cooperatives is "*the supply of goods and services acquired from third parties or produced thereby, for the use or consumption of the members and those who live with them, as well as education*..." (art. 88 LC).

To achieve that objective, the cooperative must carry out one or several business activities in which its members "participate" by *doing their job, satisfying their consumption or using its services* (art. 2.1 LCAnd). This business activity or "cooperative activity", as stated by the Law, is defined as that which *"consists of the set of services and provisions that, without a profit-making aim, the cooperative carries out with the members in compliance with the purpose of the cooperative*" (LCCV 2.2). This should be the main activity of the cooperative and is characterised by being developed in the interest of its members, who act as consumers, workers, or suppliers in the cooperative.

Cooperative activity must be regulated in the bylaws, internal regulations, and corporate agreements (art. 64.1 LCCV). The bylaws must state the following in accordance with the law:

a) The activity or activities that will be carried out by the cooperative for the fulfilment of its corporate purposes (art. 11 a, LCAnd; art. 10.2 LCCV).

b) The rights and duties assumed by the members and in particular the commitment to the minimum participation expected of them in the activities of the cooperative (art. 16 e LCAnd; art. 10.2 h LCCV; art. 16.1 e LCCat; art. 13.1 g LCE). The main right and duty that the member has in the cooperative is to participate in the cooperative activity without any discrimination and under the terms provided for in the bylaws (art. 15 and 16 LC; art. 19.1 and 20 LCAnd; art. 25 and 27 LCCV; art. 38 and 41 LCCat. and art. 22 and 23 LCE); furthermore, the bylaws may establish the principle of exclusivity, i.e., the commitment of the member to contribute all of their production to the cooperative (art. 104.2 LCAnd; art. 87.4 LCCV; art. 112.1 LCE) and the Governing Council may release from this commitment in certain cases.

c) Disciplinary rules, offences, and sanctions. The penalty of suspending the rights of a member may only be applied in serious cases, as in the event that the member does

not participate in the cooperative activities under the terms established in the bylaws (art. 18.4 LC; art. 21 LCAnd; art. 23 LCCV). Likewise, failure to comply with the duty to participate in the cooperative activity under the terms provided for in the bylaws is considered a very serious offence and may result in excluding the member from the cooperative (art. 89.6 LCCV). As we can see, participating in cooperative activity is a right and duty of the member, compliance with which can be legally compelled and non-compliance with which has consequences, as shown by case law (Fajardo, 1997:78-79).

It is also possible to conduct cooperative activity with persons outside the cooperative (non-members) if this has been provided for in the bylaws (art. 4 LC; art. 65 LCCV). Other laws allow these transactions with third parties even if they are not provided for in the bylaws (art. 7 LCAnd; art. 5 LCCat and art. 5 LCE). In any case, it is common to find some limits and conditions for that external activity in cooperative legislation.

The limits usually depend on the type of cooperative, for example:

a) in associate worker cooperatives, the number of hours/year undertaken by workers with third-party employment contracts cannot exceed a certain percentage of the total hours/year undertaken by working members. This percentage can be 10% (art. 89.4 LCCV), 30% (art. 80 LC; art. 131 LCCat; art. 103.4 LCE) or 50% (art. 90 LCAnd), but it does not include those workers who explicitly refused to be members, those who provide their services in accessory or subordinate workplaces, interns or employees in training, those hired by virtue of any regulation for the promotion of the employment of disabled persons, etc.

b) in consumer cooperatives, third-party transactions may represent up to 50% of the transactions made with the members (art. 65.1 and 90 LCCV) or without any limit (art. 88 LC; art. 96 LCAnd).

c) credit cooperatives may undertake transactions with third parties but must give preferential attention to the financial needs of their members, in such a way that all active transactions with third parties do not reach 50% of the entity's total resources (art. 4.1 and 2 LCCred).

The fundamental condition that cooperatives must fulfil when carrying out transactions with non-member third parties is to account for such transactions separately. This allows for the distribution of profits from their cooperative activity to the members and allocates the positive and negative results of transactions with third parties to reserves (arts. 57 to 59 LC; art. 65 and 67 to 69 LCCV; art. 79 to 82 LCCat). This accounting distinction also facilitates more advantageous taxation for the surpluses obtained from transactions with members, such as that provided for in Law 20/1990 on the cooperative tax regime (LRFC hereinafter).

Undertaking transactions with non-member third parties without respecting the limits and conditions established by law is grounds for loss of the tax-protected status of the cooperative (art. 13.10 LRFC). However, Basque tax legislation on cooperatives does not require this accounting differentiation to enjoy the maximum tax advantages.

Those laws that limit transactions with third parties also usually establish extraordinary measures when, due to exceptional circumstances not attributable to the cooperative, the economic viability of the latter requires undertaking or increasing transactions with third parties. In these cases, the cooperative may, upon request, be authorised by the competent Ministry or Council to carry out these transactions with third parties, for the term and amount established in the authorisation, depending on the set of circumstances (art. 4.2 LC; art. 65.1 LCCV; Art. 5.2 LCE).

The laws occasionally recognise the possibility of carrying out activities in a generalised manner that do not directly pursue the interests of the members, but rather the interests of the cooperative itself or the general or collective interest.

The regulation of agricultural cooperatives usually includes both possibilities. On the one hand, these cooperatives may have the objective of carrying out all types of activities and operations aimed at making the best use of the efforts of their members and the cooperative; but also, activities aimed at improving the agrarian population and rural development or any other purpose or service inherent to activities involving agriculture, livestock, forestry, or related activities (art. 93 LC; art. 103 LCAnd; art. 110 LCCat; Item 87 LRFC; art. 112.1 LCE). The regulation of consumer cooperatives also provides for both objectives; on the one hand, the supply of goods and services for the use and consumption of their members and those who live with them; and on the other hand, the education, training and defence of the rights of their members in particular and "consumers and users in general", for which they must allocate at least a part of their Cooperative Training and Education Fund (art. 88.1 LC; art. 96 LCAnd; art. 115 LCCat; art. 90.1 LCCV and 108.1 LCE).

But there are also specific types of cooperatives that pursue, in addition to the promotion of the members, general or community interest purposes, such as the **Rural Cooperative**, which can undertake activities to promote the efforts of members as well as promotion of the rural environment (art. 136.1 LCCat or art. 9 Law 4/2017 of Extremadura); or **social integration cooperatives** regulated by the LCE. These cooperatives, constituted mostly by persons affected by physical, psychological and/or sensory disability and people in a situation of social exclusion, can be dedicated both to the marketing of what is produced by their members, such as providing goods and services to general or specific consumers; but they may also enter into third-party contracts with people from these groups, above the limits established for transactions with non-member third parties (art. 134.2 LCE).

Administrative certification of social initiative can be requested by cooperatives of any kind, provided that they are intended for either the provision of healthcare services, through healthcare, educational, cultural or other activities of a social nature; or, the development of any economic activity aimed at the labour integration of persons who suffer any kind of social exclusion and, in general, the satisfaction of social needs not met by the market; and which meet certain requirements (no distribution of surpluses, not paying out capital stock for more than the legal interest, free positions and limitation of the remuneration of its workers to 150% of what is established by agreement) (art. 106 LC; art. 143 LCCat; art. 94 LCAnd; Art. 156.3 LCE). At the same time, social initiative cooperatives are governed by the regulations that correspond to them in response to

their class, with the limits that, as we saw, relate to operations with non-member third parties. Likewise, multi-stakeholder cooperatives ("cooperativa integral"), which fulfil the social functions of various cooperative classes, must respect the regulations established for the various types of cooperatives they comprise (art. 105 LC; art. 99 LCAnd; art. 136 LCCat; art. 86.3 LCCV); therefore, it cannot be said that social initiative or multi-stakeholder cooperatives do not primarily pursue the interests of their members, unlike the cooperatives above.

Cooperative legislation widely recognises that any lawful economic activity can be organised and developed through a cooperative society (art. 1.2 LC; art. 1.3 LCCat; art. 2 LCCV; art. 1.3 LCE) and the rules on free competition (Laws 17/2009 **and** 25/2009) establish freedom of access to service activities and the free exercise thereof throughout the Spanish territory and regulate in which cases restrictions may be imposed, provided that they are not discriminatory, are justified on the grounds of imperative general interest and are provided for by law. But despite these declarations, there are still cases of discrimination for cooperatives in sectors such as the distribution and marketing of electricity, gasoline and gas, pharmacies, travel agencies or insurance. In the **hydrocarbons sector**, because the law only provides for permitting commercial companies to carry out research or exploitation activities (art. 8 Hydrocarbons Law 34/1998); in the **electricity sector** because a single entity cannot carry out energy distribution and marketing activities (art. 6 Law 24/2013), which has forced electrical cooperatives to have to incorporate sole proprietorship companies in order to continue providing the service to their members; **travel agencies** have had to be incorporated as commercial companies (art. 1.1 Order 14 April 1988) and although that standard has been modified, this discrimination has not yet been corrected in all of the Autonomous Communities. In the **credit and insurance sector**, cooperatives can be incorporated, as we have seen, but they must be exclusively for consumers (arts. 1 and 4 Law 13/1989 and arts. 9.4 and 2b Legislative RD [Royal Decree] 6/2004). Finally, the General Health Law 14/1986 declares that only pharmacists (natural persons) may be owners and titleholders of **pharmacy offices** open to the public (art. 103.4).

b) Establishment, cooperative membership and governance

For their incorporation, cooperatives require formalisation of the agreement in a notarised public deed and inscription in the corresponding **Register of Cooperatives**. With this inscription, the cooperative acquires legal personality. Some cooperatives, due to their activity, must also be registered in the Commercial Registry: insurance, credit, and professional cooperatives (art. 16 C. of c.) and large cooperatives dedicated to trading (Add. Prov. 4, Law 7/1996 on Retail Trade).

The minimum number of members required to establish a cooperative depends on whether it is a primary or secondary cooperative. To incorporate a primary cooperative, it is necessary to have at least two cooperative members (art. 10 LCAnd; art. 12 LCCat;) three members (art. 8 LC; art. 19.1 LCE) or five members (art. 9.3 LCCV); but there are exceptions that reduce the minimum to two members in associate worker cooperatives (art. 89.1 LCCV) or increase it to ten (who must be natural persons) in the case of consumer and user cooperatives (art. 12.1 LCCat). To incorporate a secondary

cooperative, at least two cooperative members are required (art. 8 LC; art. 10 LCAnd; art. 9.3 LCCV; art. 19.1 LCE) or two legal entities, one of which is a cooperative (art. 12.3 LCCat).

If a cooperative sees the number of members reduced below the legal minimum, it is grounds for dissolution of the cooperative, if this minimum is not restored within one year.

A cooperative can have different classes of members: cooperative (or users), workers or collaborators[2], inter alia; but this report will focus on the first, i.e., on those who undertake cooperative activity.

To be a cooperative member, the requirements established by the bylaws must be fulfilled and **admission must be requested** in writing from the Governing Council, which must respond "with a reasoning" within 3 months. The reasoning must be related to the existence of justified grounds as provided for in the bylaws; in a regulatory provision; or deriving from the economic-financial organisational or technological conditions of the entity (art. 18 LCAnd; art. 29.4. LCCat). According to the LCCV, any person who meets the requirements to be a member and is interested in using the services of the cooperative "has the right to join as a member unless they are prevented by a just cause deriving from the activity or social objective of the cooperative" (art. 20.1).

As a particular feature, in **associate worker cooperatives**, when the maximum number of non-members permitted by Law is exceeded, workers with indefinite employment contracts and with more than two years of seniority, who so request, must be admitted as a working member, without the need to fulfil the cooperative trial period and provided they meet the other statutory requirements (art. 80.8 LC). The law does not limit the maximum number of non-member workers, but rather the hours worked thereby in relation to the hours worked by the worker-members, and it sets the limit at 30% of the total hours (art. 80.7 LC, art. 131 LCCat, art. 103.4 LCE), except in Andalusia, which is 50% (art. 90.1 LCAnd).

The bylaws must also establish the applicable regime in case of **voluntary or compulsory withdrawal** from the cooperative. At first, the law recognises that the member may voluntarily withdraw from the cooperative, at any time, with it being sufficient to notify the Board of Directors. However, the bylaws may establish the obligation to report the termination with prior notice, the term of which may not exceed one year (art. 17.2 LC), six months (Art. 23 LCAnd; art. 31.2 LCCat) or three months (art. 26.1 LCE). The bylaws may also require the member's commitment not to leave voluntarily without just cause until the end of the ongoing financial year or until a period that may not exceed five years has elapsed since their admission (art. 17 LC; art. 23 LCAnd; art. 26.3 LCE). This period is usually extended in the case of community-based land-use cooperatives, which can reach up to 15 years (art. 96.1 LC; art. 125.3 LCE), 25 years and even 40 if forest exploitation rights are provided (art. 88.8 LCCV). The member causes mandatory termination when he/she fails to fulfil the membership requirements, in accordance with the law or the cooperative's bylaws. Mandatory termination will be agreed upon by the Board of Directors, ex officio, at the request of any other member or the affected party.

[2]As we will see later, these are characterised by not participating in the cooperative activity.

The member can also be **excluded** from the cooperative. The bylaws will establish the classification of offences and sanctions, as well as the sanction procedure, but exclusion is only possible by the commission of an offence classified as very serious. The legislation occasionally establishes which offences will be considered very serious (art. 23.2 and art. 89.6 LCCV).

In any case, the Board of Directors must give a hearing to the interested party and its decision must be reasoned and adopted within a maximum period established by law, which if not respected, will generate the presumption that the decision is favourable to the interested party. The agreement, once adopted and communicated, can be appealed by the interested party before the Appeals Committee or failing that, before the General Assembly at the first meeting it holds. The agreements adopted by these bodies are in turn appealable, both by the members and by interested third parties, before the ordinary civil courts (articles 18 and 31 LC and a rt. 249.1 Civil Prosecution Act) or may be subject to cooperative arbitration (art. 158 LCCat; arts. 20.2 and 123 LCCV).

The general rule in the cooperative is that each member has a vote, but exceptions are allowed, depending on the type of member or cooperative class.

The bylaws may establish weighted plural voting rights in proportion to the volume of cooperative activity for members who are **cooperatives, companies controlled thereby or public entities**, but a member may not have more than one third of the corporate votes (art. 26.2 LC; Item 37.2 LCE). In other cases, the weighted plural vote is possible in any type of cooperative that is not a worker or consumer cooperative, if the bylaws so establish and provided that a member does not have more than 20% of the votes (art. 48 LCCat). If there are different **types of members** in a cooperative, a plural or fractional vote can be assigned, if necessary, to maintain the proportions between these types (art. 26.3 LC). This is the case, for example, in **community-based land-use** cooperatives, which have two types of members: workers and assignors of land use or of other assets. The former will have one vote each and the assignors may have a plural or fractional vote based on the valuation of the assets assigned, without quintupling the vote of another assignor member. Finally, collaborating members, i.e., those who do not participate in the cooperative activity, cannot represent more than 30% of the votes in the governing bodies of the cooperative (art. 14 LC); 49% of the governing votes (art. 31.3 LCAnd) or 40% of the votes, provided that these do not reach 50% of the votes present or represented in each meeting (art. 48.3 LCCat).

On the other hand, in secondary cooperatives, it is permitted for the votes of the members to be proportional to their participation in the cooperative activity or to the number of associates that each member has, but in no case can a member have more than one third of the governing votes; 40% if there are three members and if there are two members, they must adopt agreements unanimously (art. 26.6 LC). In other laws, the limit is set at 50% of the votes (art. 48.5 LCCat) and at 75% in cases with two members (art. 31.2 LCAnd). Members who are not cooperatives may not have more than one third of the governing votes (art. 149.1 LCE), 40% of the governing votes (art. 26.6 LC) or the majority of the votes (art. 48.5 LCCat). In primary cooperatives, it is also possible to alter the “one-member-one-vote” rule, in the case of agricultural cooperatives and other service cooperatives. Their bylaws may provide for weighted plural votes in

proportion to the volume of cooperative activity, without a member being able to have more than five votes or more than one third of the total votes (art. 26.4 LC); more than seven votes (art. 102.1 LCAnd) or more than 3 votes (arts. 87.1 and 95.4 LCCV). In credit unions, although in principle it is established that each member will have one vote, the bylaws are permitted to provide for votes in proportion to the capital contributions made by the members (art. 92 LCCred). In any case, no member that is a legal entity may have more than 20% of the voting rights, nor one natural person more than 2.5% (art. 7.3 LCCred). Finally, the law requires that bylaws regulate the cases in which equal voting will be imperative (art. 26.7 LC).

The administration, representation and supervision of directors corresponds to the Board of Directors; however, in cooperatives with **less than 10 members**, they may alternatively establish in their bylaws the existence of a sole administrator, who is a member (art. 32.1 LC; art. 43.1 LCE) or two or more administrators of joint or several operations (art. 36 LCAnd; art. 41.2 LCCV). In Catalonia, if the cooperative has two or three members, these will constitute at the same time the Board of Directors and the General Meeting (art. 55.4 LCCat).

The General Meeting is the body that gathers all the members to deliberate and reach agreements on the matters within their competence. The bylaws may provide for both the constitution of delegated committees of the meeting to deal with certain matters and the holding of delegate meetings when circumstances do not permit the meeting of all members. Cooperative legislation usually regulates the general meetings of delegates (art. 30 LC, art. 50 LCC, art. 40 LCE, art. 39 LCCV, art. 34 LCAnd), as well as the remote meetings (art. 46.5 LCC, art. 36.1 LCE, art. 36.8 LCCV, art. 30.4 LCAnd).

Administrators must **account** for their management annually before the ordinary General Meeting. Management accounts, memoranda or reports and other documentation must have been previously verified by independent experts or, in their absence, by account auditors (art. 39 LC).

The members attending a meeting not only have the capacity to approve or not approve the management of the administrators, but they can **dismiss them** without the need for just cause and even if it is not provided for in the meeting agenda.

Likewise, members at a meeting or individually may **challenge the agreements** of the Board of Directors (art. 37.2 LC; art. 61 LCCat; art. 52.3 LCE) and may require **liability** for damages caused (art. 43 LC; art. 51 LCAnd; art. 60 LCCat; art. 51.3 LCE).

Finally, among the principal rights that all members have, under the law, is the right to participate in debates, formulate proposals or receive the **information** necessary for the exercise of their rights and the fulfilment of their obligations (art. 16.2 and 3 LC; Arts. 39 and 40 LCCat). In addition, under Valencian law, members are recognised as having the right to be notified (within a period of 15 days) of agreements adopted in their absence that involve seriously onerous obligations or responsibilities not provided for in the bylaws (art. 26.2 g LCCV).

As a general rule, administrators **must be members** of the cooperative (art. 42.2 LCCV); but it is increasingly common for the laws to recognise the possibility that the bylaws permit the appointment as board members of qualified and expert persons who do not

have the status of members, in a number that does not exceed one third of the total (or 25%, art. 55.1 LCCat) and that in no case occupy the positions of Chair or Vice-Chair (art. 34.2 LC; art. 38.2 LCAnd; art. 43.2 LCE). In addition, in some laws, it is recognised that when the cooperative has more than fifty **workers** with indefinite term contracts, one of them will form part of the Board of Directors at the election of the Works Council (art. 33 LC; art. 38.2 LCAnd).

The Administrative Body is subject to the law, the Bylaws and the **general policy established by the General Meeting** (art. 32.1 LC; art. 37.1 LCAnd; art. 53 LCCat). Cooperative legislation establishes the duty of communication and abstention of administrators in the event of a **conflict of interest** with the cooperative (art. 42 LC; art. 52 LCAnd; art. 64 LCCat; art. 49 LCCV; art. 49.4 LCE) and the duty to exercise their position with diligence and loyalty (art. 43 LC; art. 50 LCAnd; art. 59 LCCat; art. 49.1 and 2 LCE). In addition to this, Valencian Law requires that administrators exercise their position “respecting cooperative principles” (art. 47.1 LCCV).

c) Cooperative financial structure and taxation

Most laws usually require a minimum capital of **3,000 Euro** to incorporate a cooperative, the same amount required to incorporate a limited liability company (art. 70.1 LCCat; art. 55.2 LCCV; art. 4 LCE). In the case of **credit cooperatives**, their minimum capital is set by the Bank of Spain, in view of their territorial scope of action and the total number of inhabitants in the aforementioned territory (art. 6.1 LCCred).

The bylaws must establish the **minimum mandatory capital contribution** to be a member. This contribution must be equal for all or proportional to the commitment or potential use that each one assumes in the cooperative activity (art. 46.1 LC; art. 56.1 LCCV). It may also differ depending on the type of member or their status as a natural person or legal entity (art. 55.4 LCAnd; art. 71.1 LCCat; art. 61.1 LCE). The contribution of each member to the capital may vary if they participate in capital increases or acquire shares from other members. In addition, the General Meeting may at any time agree to **new mandatory contributions** for members (art. 46.2 LC; art. 55.3 LCAnd; art. 71.3 LCCat; art. 56.2 LCCV; art. 61.4 LCE); as well as determine the capital contribution of new members. The latter contribution will have the following as maximum limits: the mandatory contribution enforceable at that time it is updated according to the market price index (art. 56.3 LCCV); the updated value according to the general consumer price index of all mandatory contributions made by the senior member of the cooperative (art. 46.7 LC; art. 72.1 LCCat); or the “equity or fair value of the company” (art. 58.2 LCAnd); or it will not have a legal limit for its determination (art. 61.4 LCE).

In addition, members can make **voluntary contributions**. The methods for these (disbursement, remuneration, reimbursement, transfer) shall be determined in the agreement of the meeting (or, where appropriate, of the Board of Directors) that established the creation thereof (art. 47 LC; art. 56 LCAnd; art. 73 LCCat; art. 57.1 LCCV), although some laws appear to set remuneration limits above that provided for mandatory contributions (art. 62.2 LCE).

On occasion, the law establishes the **maximum contribution** that a single member can make. This contribution cannot exceed a third of the capital unless the member is a cooperative, a non-profit organisation or a company that is mainly owned by cooperatives (art. 45.6 LC; art. 60.5 LCE). In Andalusia, the maximum contribution to first-degree cooperatives is 45% (as in the LCCV, art. 55.3), except in cases of a public entity, where it is increased to 50% or a cooperative of two members, where it may not exceed 65% (art. 54 LCAnd). In **credit cooperatives**, members who are natural persons may not hold more than 2.5% of the share capital and legal entities may hold no more than 20% unless a guarantee fund must be integrated into the cooperative due to the application of a remediation plan (art. 7.3 and 5 LCCred).

Capital contributed by members is **reimbursable** upon liquidation (according to the updated balance sheet) after the **dissolution** of the cooperative, as well as when the member leaves the cooperative, excepting contributions for which reimbursement in cases of withdrawal can be unconditionally refused by the Board of Directors (art. 45.1 LC). In the latter case, the law usually incentivises reimbursement and facilitates the transfer of capital contributions from members who have left the cooperative (arts. 45.1, 48.4, 51.6 and 7 and 75.3 LC; arts. 60 and 61 LCAnd; art. 70.7 and 8 or 72.2 LCCat; art. 55.1 LCCV; arts. 63.4, 65.1 and 98.3 LCE).

Cooperative legislation, with the exception of the LCE, differentiates between revenue obtained from transactions with members or from cooperative activity (cooperative revenue, such as *surpluses*) and those obtained from other sources (non-cooperative revenue), although it usually allows the bylaws to **opt not to differentiate them** (art. 57.4 LC; art. 67 LCAnd). The LCCV allows for non-differentiation of revenues even when operating with non-member third parties if all revenues are allocated to non-distributable equity (art. 65.3). In turn, tax legislation differentiates the taxation of one result from the other, allocating extra-cooperative revenue to the profits of the capital companies.

But in practice, this differentiation is not so clear, because the laws tend to significantly expand the scope of cooperative activities, as well as the concept of surplus, which allows for the achievement of greater available revenue and less taxation. Thus, for example, some laws consider any positive revenue obtained by the cooperative to be surplus (LCE) or deal with cooperative activity, including that developed with non-member third parties, especially in the case of associate worker cooperatives (art. 79.2 d LCCat; art. 10 LCNavarra, art. 78.2 d LCMurcia).

Until the 1990s, cooperatives only distributed the surpluses generated and not allocated to reserves (returns) to their members, while the benefits were used entirely to strengthen non-distributable reserves and the cooperative training and education fund. That is the cooperative model still reflected in Tax Regime Law 20/1990, while, in the Basque Country, which has its own tax legislation, they do not need to differentiate between activities with members or third parties to enjoy favourable tax treatment for all revenue obtained (called “surpluses”), also being able to distribute these surpluses among the members once the mandatory allocations have been made to the legal reserve and to the education and promotion fund.

Except for the LCE, the other laws establish, as we have said, two types of revenue, which in addition to being taxed differently, will have different allocations. On the one hand, **surpluses** must be allocated as follows: a) a minimum of 20% to a non-distributable reserve, for an indefinite period of time or until the reserve reaches a certain amount, for example, the total capital (art. 68.2 LCCV) or 50% thereof (art. 68.2 LCAnd; art. 70.3 LCE); b) 5% or 10%, according to the law, to the cooperative education and promotion fund for an indefinite period; c) the rest may be allocated, at the decision of the meeting, to returns, to distributable reserves, to increase the previous accounts or to other uses. On the other hand, **earnings** obtained outside the cooperative activity, which previously had to be allocated entirely to non-distributable reserves or funds, are now partially distributable. Thus, most laws only require that 50% of said earnings be allocated to the non-distributable reserve or to the reserve and to the training fund (art. 68.2 b LCAnd; art. 68.4 LCCV); the cooperative may allocate the remainder to voluntary reserves; to "returns", or to other uses.

The legislation not only extends the concept of surplus, but sometimes refers to any revenue distributed to the members as "**return**" when it comes from surpluses or earnings (art. 58.2 LC; art. 68.4 LCAnd; art. 81.4 LCCat; art. 70.2 LCE). The return is credited to the members in proportion to their participation in the cooperative activity and can be paid in cash or can be applied to share capital or a paid-in return fund (art. 68.5 LCAnd; art. 68.3 LCCV).

The legislation regulating **credit cooperatives** does not require the differentiation of results between members and third parties, as stated: *The creditor balance in the income statement shall constitute the net surplus for the fiscal year* (art. 8.3 LCCred). However, non-differentiation will be grounds for the loss of fiscally protected cooperative status (art. 40 LCTR).

In addition to the above, members may also earn rewards for their capital contributions. On the one hand, they may receive a remuneration (called **interest**) that may be different depending on whether the capital contribution is mandatory or voluntary. The cooperative's bylaws must establish whether mandatory capital contributions will generate "interest" (art. 11.1.i LC; art. 16.1g LCCat). The criteria for determining that interest must be set by the bylaws or the General Meeting (art. 21.2d LC; art. 74 LCCat; art. 58 LCCV; art. 63.1 LCE). Remuneration of voluntary contributions or the procedure for the determination thereof will be indicated instead in the admission agreement adopted by the General Meeting or the Board of Directors if the bylaws so provide (art. 47 LC; art. 74 LCCat; art. 58 LCCV; art. 63.1 LCE).

The amount of this remuneration may not exceed the positive result for the financial year (art. 48.2 LC; art. 74 LCCat) unless there are reserves available for this purpose (art. 58.2 LCCV; art. 63.3 LCE), nor exceed 6 points above the legal interest on cash (art. 48.2 LC). The legal interest on cash is currently 3%. The LCAnd allows for greater remuneration for contributions from non-cooperative or investor members: 8 points above the legal interest (art. 57.1). If there are capital contributions pending reimbursement, their remuneration will be preferred (art. 47 LC; art. 57.2 LCAnd; art. 74 LCCat; art. 58 LCCV; art. 63.4 LCE).

On the other hand, members may receive compensation by **updating their capital contribution**. Traditionally, this update could not be greater than the General Consumer Price Index published by the National Statistical Institute for that year (art. 77 GLC1987) and this is still maintained in some laws (art. 59 LCCV). However, starting from the Basque Law of 1993, followed by the national law of 1999, that limitation has disappeared (art. 49 LC; art. 59.2 LCAnd; art. 78.2 LCCat; art. 64.1 LCE).

Since the 1990s, the existence of members who do not participate in cooperative activity, but contribute capital, began to be recognised in cooperative legislation. These members are called "**associates**" (art. 39 GLC1987 or art. 28 LCCV) or "**investors**" (art. 25 LCAnd). Later, the figure of the "**collaborating member**" is created, who, in addition to contributing capital, can collaborate with the cooperative in other ways. The bylaws may provide for the existence of these members, who may be natural persons or legal entities. The law limits the maximum capital contribution of these members (45% in art. 14 LC; while the LCAnd differentiates a maximum of 20% for collaborating members and less than 50% for investors in arts. 17.3 and 25.3); their voting rights in the General Meeting (40% of the votes according to art. 48.3 LCCat; 30% according to art. 14 LC; one third according to art. 19.5 LCE; 25% according to art. 28.2.d LCCV or 20% according to art. 17.2 LCAnd); and in directorial positions (30% in art. 14 LC; one third according to art. 28.2e LCCV; and 19.5 LCE or one representative in art. 17.2 LCAnd).

With regard to remuneration for the capital contributions of these members, some laws empower the General Meeting to set the criteria for "weighted" participation of these members in the socioeconomic rights and obligations of the cooperative (art. 14 LC; art. 26.2 LCCat), while other laws empower the bylaws (art. 17 LCAnd for collaborating members) and it can even be as agreed between the parties (art. 19.5 LCE). Other laws further specify the form of remuneration for this capital contribution, allowing it to be remunerated with interest as if it was a voluntary contribution to capital or through a share of revenue (surpluses or losses) not to exceed 45% of the total revenue once the mandatory funds have been allocated (art. 26.9 and 10 LCCat; art. 28.2 f LCCV; and art. 25.3 and 4 LCAnd, for investor members).

Another means of financing the cooperative's capital is the **mixed cooperative**. This arose for the first time in the Basque Law of 1993 and was subsequently incorporated into other laws. A mixed cooperative is one in which there are members whose voting rights are determined based on the contributed capital, such as among collaborating members. The difference is that their share in the capital is represented by securities or accounting annotations subject to legislation on the securities market. Such equity share voting members hold a maximum of 49% of the cooperative's votes, participate in revenues in the same proportion and may freely transfer their securities on the market, without prejudice to the statutory recognition of a right of preferential acquisition in favour of the members of the cooperative (art. 107 LC and art. 155 LCE).

In the 1990s, as in other regulations in our field, new specific financial instruments were created for cooperatives, such as participatory securities and special participations, which, once approved by the General Meeting, allow for the acquisition of resources from members and third parties, are freely transferable and are subject to the regulations of the securities market. **Participatory securities** may be considered transferable shares

and they grant the right to the remuneration established at the time of issuance and must be based on the development of the cooperative's activity and may also include fixed interest. The issuance agreement, which will specify the amortisation period and other applicable rules, may establish the right of attendance of its holders at the General Meeting, with a voice and without a vote (art. 54.2 LC) and their representation in the Administrative Body (art. 62.5 LCAnd; art. 77.3 LCCat; art. 62.4 LCCV). **Special securities** are subordinated loans and have a minimum maturity of five years. When their maturity does not occur until approval of the liquidation of the cooperative, they will be considered share capital (art. 53 LC; art. 63 LCAnd; art. 77.2 LCCat). Their remuneration will be conditional upon the revenue of the cooperative and at least 50% of their issuance must be offered, preferentially, in favour of members and workers of the cooperative (art. 67.1 and 4 LCE).

Cooperative legislation also contemplates other financing possibilities for cooperatives, such as **bonds**, **participating accounts** or financial promissory notes (art. 54.3 LC; art. 62 LCAnd; art. 76.4 LCCat; art. 62.3 LCCV; art. 68 LCE).

In cooperatives, both the capital and, sometimes, voluntary reserves, can be distributed to members when they leave the cooperative. In **Andalusia,** in addition, if the bylaws so establish, up to 50% of the mandatory reserve fund may be distributed to members who have been with the cooperative for at least five years and leave the cooperative (art. 60.5 LCAnd).

Once the **dissolution** of the cooperative has been agreed upon, it will have to be **liquidated** and once all corporate debts have been paid (or their amount has been allocated in favour of the creditors), distributions will be awarded as follows, as established in art. 75 LC (and in similar terms in art. 106 LCCat; art. 82 LCCV):

1. The **education and promotion fund** must be made available to the corresponding cooperative association and, failing that, to the confederation of cooperatives or to the Public Treasury (or corresponding public entity in each Autonomous Community), for allocation to the promotion of cooperativism.

2. **Capital contributions**, once paid out and updated, if applicable, are reimbursed to the members, giving preference to voluntary contributions over mandatory contributions and to those made by collaborating members over the cooperative members.

3. **Distributable voluntary reserve funds** are distributed in accordance with the provisions of the bylaws and, failing that, in proportion to seniority and the cooperative activity developed by the member in the last five years.

4. **Surplus cash**, if any, shall be made available to the cooperative or cooperative association listed in the bylaws or agreed upon by the meeting; in the first case, it shall be integrated into the mandatory reserve and in the second it shall be allocated to support investment projects promoted by cooperatives. Notwithstanding the above, a member of a cooperative in liquidation who intends to join another cooperative may request their share of the assets for allocation to the mandatory reserve fund of the said cooperative.

In the case of **Andalusia**, the Training Fund and 30% of the Mandatory Reserve Fund must be made available to the Andalusian Government to be allocated to the promotion of cooperatives and the rest will be distributed among the members in proportion to their seniority and participation in the cooperative activity (art. 82 LCAnd). In the case of the **Basque Country**, both the education fund and excess liquidity must be made available to the Superior Cooperativism Council, which will allocate it to education and promotion of cooperativism (art. 97 LCE).

If the General Meeting agrees to the **transformation** of the cooperative into another type of entity, the balances of the mandatory reserve funds, the education fund and any other non-distributable fund or reserve among the members will be allocated in the same way as previously provided for the case of liquidation of the cooperative, as established in art. 69.6 LC (and in similar terms in art. 100 LCCat). In the case of **Andalusia**, the Training Fund and 50% of the Mandatory Reserve Fund or any other non-distributable fund must be made available to the Andalusian Government to be allocated to the promotion of cooperatives (art. 78 LCAnd). In **Catalonia**, if the cooperative transforms into a public interest non-profit entity for similar purposes, the full equity of the cooperative may be transferred to the new entity, if agreed by the General Meeting, by a majority of two-thirds of the votes present (art. 100.10 LCCat). In **Valencia**, non-distributable reserves are not made available to the beneficiary persons as in the previous cases, but to the new entity, but a credit right is recognised in favour of those persons for their amounts, for a period of five years and with a remuneration of three points above the legal interest on cash (art. 79.5 LCCV). In the case of the **Basque Country**, as we saw earlier, both the mandatory reserve and the non-distributable voluntary reserves will be made available to the Superior Cooperativism Council (art. 89.4 LCE).

Cooperatives in Spain are subject to a specific tax regime contained in Law 20/1990, of December 19 (LRFC). This law contains, on the one hand, **technical standards** and on the other, **incentivising regulations**.

All cooperatives, given the tailoring of their operations to cooperative legislation, are **tax-protected**. A cooperative may lose tax protection status for breach of any of the grounds provided for in art. 13 LRFC (exceeding the legal limits on transactions with non-members; breach of regulations on the separation and allocation of results for the fiscal year; distribution of non-distributable funds; etc.). In that case, the cooperative would fall under governance by the general tax regime applicable to corporations (art. 6 and 37 of the LRFC).

Some cooperatives are also **specially protected**. These are associate worker, agricultural, community land- and sea-use and consumer and user cooperatives, which, by meeting certain requirements related to the lower economic capacity of their members and the greater approach to the mutualist principle (few operations with third parties), enjoy additional benefits.

The principal **tax incentives** applicable to **protected cooperatives** are:

a) Under corporate tax law, the taxable base consists of cooperative results and extra-cooperative results. 50% of the results of each type that are mandatorily allocated to the Mandatory Reserve Fund are deductible from the Taxable Base.

b) In the same tax, the part of the taxable base that corresponds to cooperative results is taxed at 20% and the part that corresponds to extra-cooperative results is taxed at the general rate (25%).

c) Cooperatives enjoy freedom from amortisation of new fixed-asset items acquired within a period of three years from their enrolment in the Register of Cooperatives.

The most significant **additional tax incentives** enjoyed by **specially protected cooperatives** are:

a) On a general basis, a 50% discount on the previously reduced gross tax payable, if any, for negative taxes payable pending compensation from previous fiscal years.

b) For associate worker cooperatives that meet certain requirements, a discount of 90% on gross taxes payable over five years.

c) For priority associative agricultural operations: 80% discount on gross taxes payable.

In terms of **returns**, the LRFC regulates, in the first place, how these should be determined. The value of the activity carried out by the member (at market value), mandatory amounts allocated to the Cooperative Education and Promotion Fund and the interest accrued by members and associates for their capital contributions shall be deducted from cooperative income from the cooperative activity. Returns (the part of the surplus distributed to members in proportion to their participation in the cooperative activity) are classified by the LRFC as dividends and are taxed as a return on transferable capital unless these returns are incorporated into capital or applied to offset losses from previous years (art. 28 and 29).

iii.Other specific features

Oversight of cooperatives is a task entrusted by law to public administration, exercised principally through Labour and Social Security Inspection (art. 108.2 LC; art. 120 LCAnd; art. 149 LCCat; art. 116 LCCV; art. 158 LCE). As a result of this inspection, the cooperative can be sanctioned and even disqualified (art. 116 LC; art. 126 LCAnd; art. 153 LCCat; art. 121 LCCV; art. 161 LCE). The legislation generally regulates infractions and the sanctions that may apply to cooperatives or their officials for a breach of cooperative legislation (art. 38 Royal Legislative Decree 5/2000 of August 4; Law on infractions and sanctions in Corporate Organisation; arts. 123 to 126 LCAnd; arts. 150 to 152 LCCat; arts. 117 to 120 LCCV; arts. 159 and 160 LCE) and even for acting against cooperative principles (art. 123.4g LCAnd; art. 117.4a LCCV; art. 159.2d LCE) or against the cooperative nature and purpose (art. 150.3e LCCat).

The legislation does not provide for or promote self-monitoring by the cooperative movement, beyond oversight tasks that may be carried out by the General Meeting of members or the auditors of the cooperative.

The legislation recognises, regulates, and promotes various economic and representative integration structures for cooperatives (art. 108.1 LC; art. 115 LCAnd; art. 155.3 LCCat, art. 108 LCCV; art. 157.2a LCE) and in particular:

a) The incorporation of **second-degree cooperatives** that allow for the promotion, coordination, and development of common economic purposes, as well as reinforcement and integration of the economic activity of the members (art. 77 LC; art. 108 LCAnd; arts. 137-140 LCCat; art. 101 LCCV; art. 146-151 LCE) and **cooperative groups** (art. 78 LC; art. 109 LCAnd; art. 103 LCCV; art. 154 LCE). Among other measures, cooperative revenues are considered to be those obtained from the second-degree cooperative, regardless of the circumstances (art. 108.6 LCAnd; art. 139.3 LCCat) and in the event of their liquidation, the entire value thereof is distributable among the member cooperatives (and not among other members), in proportion to their participation in the cooperative activity (art. 77.4 LC; art. 101.6 LCCV; art. 150 LCE). There are also specific regulations that promote and encourage cooperative integration in specific sectors, such as agriculture (Law 13/2013 of August 2, to promote the integration of cooperatives and other associative agri-food entities) or credit (Royal Decree-Law 9/2009 of June 26, on bank restructuring and reinforcement of the resources of credit institutions), but it must be recognised that these processes favour mergers between cooperatives more than the various collaboration structures between cooperatives.

b) The legislation also recognises and promotes the establishment of **inter-cooperation relationships**, by virtue of which the cooperative and its members may undertake supply operations, deliveries of products or services to the other cooperative signing the agreement, with these relationships being recognised in the same way as cooperative operations with the members themselves (art. 79.3 LC; art. 110.3 LCAnd; art. 141 LCCat; art. 102.3 LCCV; art. 153 LCCat).

c) **Cooperative associationism usually constitutes a chapter in all cooperative laws.** The legislation declares that cooperative companies can freely and voluntarily associate themselves for the defence and promotion of their interests and regulates the various associative structures (unions, federations, confederations) and their functions (art. 117 to 120 LC; arts. 111 to 113 LCAnd; arts. 145-148 LCCat; arts. 104-107 LCCV; arts. 163-164 LCE). The legislation also promotes the associationism of cooperatives through an important budgetary item annually transferred by the National Government to all Autonomous Communities (Order 29 December 1998). Likewise, a share is provided to the various representative organisations for cooperatives in different public institutions and bodies, such as the Superior Cooperativism Council, the Social Economy Council or the Economic and Social Committee, etc.

II. Degree of "cooperative friendliness" of the national legislation

There are some legal barriers that hinder the incorporation of cooperatives in some economic sectors, as well as a tax legislation applicable to non-profit entities that does not include cooperatives which are classified as such. In addition, the **plurality of cooperative laws** and, above all, the jurisdiction of the Autonomous Communities to make their legal regimes more flexible, puts the cooperative identity at risk.

On the other hand, there are tendencies that are gradually **emptying cooperative law of its content**, such as: submitting cooperative activity relationships to civil legislation (consumption, housing, agriculture), commercial legislation (commerce) or labour legislation (associate worker) or applying accounting or tax rules for capital companies to cooperatives.

Further, the **lack of oversight** regarding compliance with the corporate purpose of cooperatives by external, public or private institutions, does not favour cooperativism.

As best legislative practices, we could cite the constitutional recognition and mandate for promoting cooperatives; the existence of specific tax and accounting rules for cooperatives; providing the option to cooperative members to admit non-member third parties to their activity in a limited and conditional manner; the accounting and tax distinctions for revenue obtained by members as a sign of transparency and encouragement to improve cooperative activity; the weighted plural vote in specific cases to improve the representation of members; the guarantees available to the member in the face of the cooperative's non-admission or exclusion agreements; the regulation and promotion of cooperative associationism or the "single payment" as a measure to promote cooperative employment, which allows unemployed workers access to all of the benefits to which they are entitled due to unemployment, for use in incorporating or joining an associate worker cooperative.

In terms of **public procurement**, it is also worth highlighting some measures that may be favourable for cooperatives. **Law 9/2017, of November 8**, on Public Sector Contracts, which transposes Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, provides that procurement bodies should not solely take into account the criterion of the most economically advantageous offer. On the contrary, its clauses must include other qualitative, environmental, social, and innovative aspects. They must also facilitate access to public procurement for small and medium enterprises, as well as "*social economy enterprises*" (art. 1.3). The Law imposes the obligation on the procurement body to establish in the specifications at least one of the special implementation conditions of an environmental, social, or employment-related nature. Cited among these social considerations is the hiring of people with disabilities or people in a situation or at risk of social exclusion through Special Employment Centres or Work Integration Social Enterprises, which are social economy enterprises that in many cases are incorporated as cooperatives. In addition, the Law provides that percentages of participation in procedures for awarding certain contracts may be reserved for Special Employment

Centres and to Work Integration Social Enterprise. As a novelty, the right to participate in bidding procedures for certain social, cultural and healthcare service contracts may be reserved in favour of organisations that meet certain conditions that are specific to cooperatives, such as: having a public service mission; reinvesting profits or distributing them according to participation criteria; having management or property structures based on employee ownership or participation principles or which require the active participation of employees, users or interested parties (Additional Provision 48). Finally, it must be taken into account that public authorities continue to be free to organise certain services (social, health or educational services) without entering into public contracts, through the simple financing of the services or the granting of licenses or authorisations to all economic operators that meet the conditions set by the awarding power (art. 11.6). This management formula for social services outside of public sector procurement legislation, which is called "**Concierto**", is of special interest to healthcare, educational or social initiative cooperatives.

Therefore, in the view of the national expert, it could be said that the Spanish legislation discussed throughout the report is fairly friendly towards cooperatives.

The regulation of Italian cooperative associationism could inspire the creation of a Spanish confederation of cooperatives, which does not exist and provide it with functions for the oversight and promotion of cooperatives, with institutions that have been effective in that country, such as "*mutual funds for the promotion and development of the cooperations"* (Fici, 2017: 405-408).

German cooperative legislation could also inspire the need to audit cooperatives not only financially, but also regarding the fulfilment of their corporate purpose and adjustment to cooperative principles (Münkner, 2017: 319-327). There is no internal or external oversight in Spain. Moreover, the values and principles of cooperatives are occasionally confused with corporate social responsibility. Oversight in terms of fulfilment of the corporate purpose of cooperatives and the satisfaction of members would help to better understand cooperatives, to assess their particularities, and to improve their operation.

III. Recommendations for the improvement of the national legal framework

The national expert believes that a **simplification of the legal framework** for cooperatives would be beneficial for the cooperative, in addition to **harmonisation of its basic characteristics**, at both the Spanish and European levels and based on the cooperative principles of the ICA.

Further, **better developed associationism**, with greater autonomy and more competencies and integration at the state level, which does not yet exist, would contribute to improving the oversight and promotion of cooperatives.

Spain has previously had **public institutions** that have played an important role in training, cooperative education, and the promotion of cooperativism, which have disappeared over time, such as the General Directorate of Cooperatives; the Institute for

Cooperative Training and Promotion; or the Superior Cooperativism Council; or which have expanded their purposes to the entire social economy. It would be important for cooperativism to have public institutions once again at the state level dedicated to the dissemination and promotion thereof, as well as to have a representative organisation for all cooperatives at the national level to guarantee their interests.

The plurality of cooperative laws is generating a wide variety of increasingly distant cooperative models and with this, great legal uncertainty about what a cooperative is and how it should be regulated. This plurality of criteria can be seen even between doctrines, which do not agree on issues as basic as whether cooperative principles are the hallmark of cooperatives, whether they are capital companies or whether they should prioritise their activity with their members or not. This situation, along with the absence of institutions dedicated to dissemination and training and educating members, directors and the public, results in a great lack of knowledge about cooperatives, and we already know that what is unknown or not understood cannot be appreciated.

Therefore, the national expert believes that it is essential to agree on a basic and common legal framework for cooperatives, without submitting to the temptation to copy the legislation for capital companies, with some particularities, as has been proposed on occasion.

This is a complicated but not impossible task since, despite this legislative plurality and its incessant distancing, all of the laws derive from the same common cooperative legislation that was in force in Spain until the 1980s, which justified the promotion of the cooperative in the Spanish Constitution of 1978 and the favourable tax regulation in 1990 that is still in force. One could opt for a protected cooperative model or another more commercialised one, or, as in Italy, differentiate between cooperatives with or without a predominant mutuality, so that the legal regime is better suited to the two cooperative models that coexist in the Spanish reality.

On the one hand, as already mentioned, cooperatives classified as **non-profit entities** (such as social initiative cooperatives) should benefit from the same tax treatment as other non-profit entities, which are incorporated as associations or foundations, because they share the same purposes and characteristics required by tax legislation to be considered as beneficiaries, otherwise it is a clear case of inadmissible discrimination.

On the other hand, Spanish cooperative legislation recognises **multi-stakeholder cooperatives** (“cooperativas integrals”) which incorporate two or more social purposes, with a diversity of cooperative members, but there is a lack of sufficient regulation for these cooperatives.

IV. Conclusions

Finally, and in complement to the above, the national expert highlights that the Spanish legal system not only regulates cooperatives, but since 1931 has provided a legal form for them, which implements cooperative principles in its regulations. For this reason, the cooperative does not need to resort to other legal models for its incorporation (association, civil society or capital company); nor does it need to resort to contractual instruments to organise the economic activity developed between the cooperative and its members (cooperative activity).

The cooperative is regulated in Spain as an entity with a primarily mutualist purpose. However, a dual tension can be seen in practice, towards capital companies and towards non-profit general interest companies. These tensions contribute to a blurring of their differences compared to other organisational models. The question that we are asking ourselves is: should they be legally recognised as cooperative models? The national expert believes that they should be admitted if they at least share essential characteristics of the cooperative, but rather as cases of hybridisation and not as typical cooperative models.

Finally, the national expert also believes that if the cooperative ceases to be used, it is because its legal regime has become very extensive and complicated, and because it is not sufficiently understood. Therefore, everything that contributes to simplifying its regime and disseminating the model will be beneficial for its development.

V. Annex

Table 1. Cooperative laws in Spain

JURISDICTION Subject	Name	Link. Last Updated
SPANISH STATE		
Cooperatives	Law 27/1999 of July 16, on Cooperatives	https://www.boe.es/buscar/act.php?id=BOE-A-1999-15681 (28/04/2015)
European Cooperative Society	Law 3/2011, of March 4, regulating the European Cooperative Society, domiciled in Spain.	https://www.boe.es/boe/dias/2011/03/08/pdfs/BOE-A-2011-4288.pdf
European Cooperative Society	Law 31/2006, of October 18, on the involvement of the workers of the European Cooperative Society	https://www.boe.es/boe/dias/2006/10/19/pdfs/A36302-36317.pdf (04/04/2009)
Credit Cooperatives	Law 13/1989, of May 26, on Credit Cooperatives	https://www.boe.es/buscar/pdf/1989/BOE-A-1989-12296-consolidado.pdf (24/06/2017)
Credit Cooperatives	Regulation. Royal Decree 84/1993, of January 22, on Credit Cooperatives.	https://www.boe.es/boe/dias/1993/02/19/pdfs/A05295-05310.pdf (14/02/2015)
Insurance Cooperatives	Law 20/2015, of June 14, on the Regulation, Supervision and Solvency of Insurance Entities	https://www.boe.es/buscar/pdf/2015/BOE-A-2015-7897-consolidado.pdf (07/05/2020)
Insurance Cooperatives	Regulation of Law 20/2015. Royal Decree 1060/2015, of November 20, on the Regulation, Supervision and Solvency of Insurance Entities	https://www.boe.es/boe/dias/2015/12/02/pdfs/BOE-A-2015-13057.pdf (05/02/2020)
Cooperative tax rules	Law 20/1990, of December 19, on the Cooperative Tax Regime	https://www.boe.es/boe/dias/1990/12/20/pdfs/A37970-37977.pdf (03/12/2016)
Tax rules for cooperative company groups	Royal Decree 1345/1992, of November 6, which issues regulations for the adoption of the provisions regulating taxation on consolidated profit for cooperative company groups	https://www.boe.es/buscar/pdf/1992/BOE-A-1992-27136-consolidado.pdf
Accounting standards for Cooperatives	Order EHA/3360/2010 of December 21, approving the regulations on accounting aspects of cooperative companies	https://www.boe.es/boe/dias/2010/12/29/pdfs/BOE-A-2010-20034.pdf (03/02/2011)
ANDALUSIA		
Cooperatives	Andalusia Cooperatives Law 14/2011, of December 23	https://www.boe.es/boe/dias/2012/01/20/pdfs/BOE-A-2012-877.pdf (30/07/2018)

Cooperatives	Regulation. Decree 123/2014, of September 2.	https://www.juntadeandalucia.es/boja/2014/186/BOJA14-186-00089-15515-01_00054871.pdf (23/09/2014)
ARAGON		
Cooperatives	Legislative Decree 2/2014, of August 29. Consolidated Text of the Aragon Cooperatives Law	https://www.boe.es/buscar/pdf/2014/BOA-d-2014-90375-consolidado.pdf (12/09/2010)
Cooperatives	Regulation. Decree 208/2019, of October 22.	http://www.boa.aragon.es/cgi-bin/EBOA/BRSCGI?CMD=VEROBJ&MLKOB=1093307022626 (30/10/2019)
ASTURIAS		
Cooperatives	Law 4/2010, of June 29, on Cooperatives of the Autonomous Community of the Principality of Asturias	https://www.boe.es/buscar/pdf/2010/BOE-A-2010-14628-consolidado.pdf (24/09/2010)
BALEARIC ISLANDS		
Cooperatives	Law 1/2003, of March 20, on cooperatives of the Balearic Islands	https://www.boe.es/boe/dias/2003/04/16/pdfs/A15043-15080.pdf (19/04/2019)
Micro-cooperatives	Law 4/2019, of January 31, on Micro-cooperatives of the Balearic Islands	https://www.boe.es/boe/dias/2019/03/19/pdfs/BOE-A-2019-3912.pdf (19/03/2019)
CANTABRIA		
Cooperatives	Law 6/2013, of November 6, on Cooperatives of Cantabria.	https://www.boe.es/boe/dias/2013/11/27/pdfs/BOE-A-2013-12424.pdf (27/01/2015)
CASTILLA-LA MANCHA		
Cooperatives	Law 11/2010, of November 4, on Cooperatives of Castilla-La Mancha.	https://www.boe.es/boe/dias/2011/02/12/pdfs/BOE-A-2011-2707.pdf (26/01/2018)
Micro-cooperatives and Rural Cooperatives	Law 4/2017, of November 30, on Cooperative Microenterprises and Rural Cooperatives	https://www.boe.es/buscar/pdf/2018/BOE-A-2018-986-consolidado.pdf (26/01/2018)
CASTILE AND LEÓN		
Cooperatives	Law 4/2002, of April 11, on Cooperatives of the Community of Castile and León.	https://www.boe.es/buscar/pdf/2002/BOE-A-2002-9331-consolidado.pdf (05/07/2018)
CATALONIA		
Cooperatives	Law 12/2015, of July 19, on Cooperatives	https://www.boe.es/boe/dias/2015/08/14/pdfs/BOE-A-2015-9140.pdf (06/07/2017)

Cooperatives (credit sections)	Law 7/2017, of June 2, on the regime of credit sections of cooperatives.	https://www.boe.es/boe/dias/2017/07/06/pdfs/BOE-A-2017-7816.pdf (06/07/2017)
VALENCIAN COMMUNITY		
Cooperatives	Legislative Decree 2/2015, of May 15. Consolidated Text of the Valencian Community Cooperatives Law.	https://www.boe.es/buscar/pdf/2015/DOCV-r-2015-90416-consolidado.pdf (09/02/2017)
Cooperatives (credit sections)	Legislative Decree 1/2015, of April 10, Consolidated Text of the Law regulating the financial actions of cooperatives with a credit section	https://boe.es/buscar/pdf/2015/DOCV-r-2015-90387-consolidado.pdf (15/04/2015)
EXTREMADURA		
Cooperatives	Extremadura Cooperatives Law 9/2018, of October 30.	https://boe.es/buscar/pdf/2018/BOE-A-2018-16345-consolidado.pdf (30/11/2018)
Special cooperatives	Law 8/2006, of December 23, on Special Cooperative Companies	https://www.boe.es/buscar/pdf/2007/BOE-A-2007-1724-consolidado.pdf (27/01/2007)
Cooperatives (credit sections)	Law 5/2001, of March 10, on Credit Cooperatives	https://www.boe.es/buscar/pdf/2001/BOE-A-2001-13275-consolidado.pdf (10/07/2001)
GALICIA		
Cooperatives	Law 5/1998, of December 18, on Cooperatives of Galicia.	https://www.boe.es/boe/dias/1999/03/25/pdfs/A11568-11606.pdf (10/11/2017)
LA RIOJA		
Cooperatives	Law 4/2001, of July 2, on Cooperatives of La Rioja.	https://www.boe.es/boe/dias/2001/07/19/pdfs/A26098-26135.pdf (14/03/2019)
MADRID COMMUNITY		
Cooperatives	Law 4/1999, of March 30, on Cooperatives of the Community of Madrid.	https://www.boe.es/boe/dias/1999/06/02/pdfs/A20841-20881.pdf (12/05/2016)
NAVARRE		
Cooperatives	Navarre Cooperatives Law 14/2006, of December 11.	https://www.boe.es/boe/dias/2007/01/04/pdfs/A00562-00583.pdf
Associate Worker Micro-Cooperatives	Regional Law 2/2015, of January 22, on associate worker micro-cooperatives.	https://www.boe.es/buscar/pdf/2015/BOE-A-2015-1412-consolidado.pdf (13/02/2015)

Taxation of Cooperatives	Regional Law 9/1994, of June 21, on the Tax Regime for Cooperatives of Navarre	https://www.boe.es/buscar/pdf/1994/BOE-A-1994-19853-consolidado.pdf (14/01/2020)
MURCIA		
Cooperatives	Law 8/2006, of November 16, on Cooperative Companies of the Region of Murcia.	https://www.boe.es/boe/dias/2007/05/09/pdfs/A19906-19946.pdf (14/01/2019)

BASQUE COUNTRY		
Cooperatives	Basque Country Cooperatives Law 11/2019, of December 20.	https://www.boe.es/boe/dias/2020/01/16/pdfs/BOE-A-2020-615.pdf (16/01/2020)
Taxation of Cooperatives	Regional Regulation 6/2018, of December 12, from Biscay	https://www.bizkaia.eus/Ogasuna/Zerga_Arautegia/Indarreko_arautegia/pdf/ca_6_2018.pdf?hash=6d8353790c8f33a7fa6c5cb036984f57&idioma=CA (28/12/2018)
Taxation of Cooperatives	Regional Regulation 2/1997, of May 22, from Gipuzkoa	https://www.gipuzkoa.eus/documents/2456431/2842933/NF-2-1997--2014-2.pdf.pdf/ef7fa3cd-3540-6558-59a7-868df21169fa (31/12/2014)
Taxation of Cooperatives	Regional Regulation 16/1997, of June 9, from Alava	https://www.araba.eus/renta/pdf/2016/Normativa/NF16(2004)-2016.pdf (21/07/2004)

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