LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: FRANCE

ICA-EU PARTNERSHIP

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I. Introduction

This 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 organisations, 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.

In this report we focus our analysis on the French legal landscape, which presents a mosaic of a general cooperative law that co-exists with around thirty special cooperative laws. Emphasis is given on the general cooperative law, as it establishes provisions applicable in principle to all cooperative types, but, when deemed necessary, reference is also made to special cooperative laws, in order to present whether and how they diverge from the general framework. The report concludes with a number of recommendations as a basis for discussion on the legislation's improvement and ends with some final conclusions.

The report was written by Dr. Ifigeneia Douvitsa[1], working as a regional expert for the Legal Framework Analysis research for the European region, with the guidance of Dr. David Hiez, Professor of Private Law at Luxemburg University, whose expertise and insight has been of great value for the completion of the report. In addition, the report benefited from the support of John Emerson of Cooperatives Europe and Jeffrey Moxom of the ICA, whose ideas, insight and comments were incorporated in the final version.

i. General Context

The French Constitution[2] makes no explicit reference to cooperatives under its provisions. In addition, the Constitutional Council, which is the highest constitutional authority of the country, has not ruled for the integration of cooperatives in the constitutional order, in which the constitution is included as well as other laws of constitutional value (Hiez, 2013, p. 411; Hiez, 2018, p. 37; Douvitsa, 2018).

When it comes to the ordinary legislation, the basis for cooperative legislation is the general law on cooperatives: n. 47-1975 of 10 September 1947 (*loi portant statut de la coopération*) (hereinafter 'the General Law'). The above law was strongly influenced by consumer cooperatives, which at the time of its drafting, had a dominant position in the economic life of the country and had a solid, cooperative ideal, (Hiez, 2013, p. 394).

By the time the General Law was enacted, a high number of special cooperative laws were already in existence; these special laws had been implemented three to five decades prior to the promulgation of the General Law (Hiez, 2013, p. 394). Nowadays, there are around thirty different cooperative legal forms regulated by special laws or special provisions on general codes (Hiez, 2017, p. 166), indicatively:

- agricultural cooperatives subject to the Rural and Maritime Code, arts L. 5521-1 to L. 529-6, R. 521-1 to R. 529-2,
- workers' cooperatives subject to Law no. 78-763 of 13th of July 1978,
- collective interest cooperatives subject to Law no. 47-1275 of 10th of September 1947, arts 19quinquies to 19quindecies[3].

It is worth noting that the initial wording of art. 2 of L. 1947[4] strived to establish the General Law's prevalence over special laws, contrary to the classical legal principle of the prevalence of special laws over general laws (Hiez, 2017, p. 165). In practice, this provision had a limited effect, as the General Law's provisions were in many instances

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[2] For a non-official translation of the French constitution: https://www.constituteproject.org/constitution/France_2008?lang=en
[3] For a list of the special cooperative laws: https://www.entreprises.coop/lois-particulieres-des-cooperatives
[4] Art. 2 of Law no. 47-1975 of 10 September 1947: "*Cooperatives shall be governed by this law and by laws specific to each category of cooperatives, insofar as these laws do not contradict it*".

vague and generalised, making the drafting of statutes (or by laws) a difficult task. On the other hand, the special laws had a strong presence in cooperative legislation. They have evolved and been modernised and renewed over the years, while the General Law in many instances enabled them to derogate from its provisions (Hiez, 2017, p. 165-166; Hiez, 2018, p. 37).

As a result, under the French legal landscape, the special laws remained a continuous and dynamic phenomenon, whereas the General Law did not substitute them but in practice added some common principles (Hiez, 2013, p. 394). The above reality is also reflected in art. 2 of the General Law, which stipulates, since its amendment in 1992, that the General Law is applicable to all cooperatives without prejudice to special cooperative laws in force, acknowledging, in this manner, the special laws subordination over the General Law.

One other goal of the general cooperative law that has not been achieved was the codification of the cooperative legislation. In fact, art. 30 stipulates that "*A codification of the legislative texts concerning cooperation shall be carried out. The present law will form, under the title "Cooperatives in general", the first book of this code*". It is evident by the above provision that the promulgation of a general cooperative law was considered as a first step for the cooperative legislation codification. Although art. 30 is still in force, in practice it has a become a "*lettre mort*", (Hiez, 2017, p. 165). In fact, codification took a rather different course, as the provisions for several cooperative types have been integrated in general, sector-specific codes, such as the case of:

- mutual banks being part of the Monetary and Financial Code,
- merchant cooperatives being part of the Commercial Code,
- housing cooperatives being part of the Construction Code,
- agricultural cooperatives being part of the Rural and Maritime Code (SCE, p. 530).

Apart from the General Law and special laws, there are also provisions for companies with a variable capital on the Commercial Code, which are only applied to cooperatives, although their wording seems to be broader (art. 231-1 to L. 231-8 of the Commercial Code), (Hiez, 2013, p. 396).

Regarding whether the ICA cooperative principles are included in the French cooperative legislation, it is noted that most of them are included. They are stipulated under art. 1 of the general law. More specifically, according to the above article: *"[the cooperative] […] respects the following principles: voluntary and open membership, democratic governance, economic participation of its members, training of members and cooperation with other cooperatives*". However, the seventh cooperative principle of concern for the community, apart from the collective interest cooperative which is its main objective, seems neglected by the legislator, (Hiez, 2013, p. 397).

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

The general cooperative law defines cooperatives in its first article as "*a company formed by several persons voluntarily united aiming at satisfying their economic or social needs by their joint efforts and the creation of the necessary means*".

One key component of this definition is the qualification of the cooperative as a company.[5] The initial version of the article introduced the qualification of cooperatives as companies, which remained intact in the following reforms of the definition in 1992 and 2014 (Table 1, pg. 7).

The choice of the legislator to qualify cooperatives as companies instead of associations was driven by practical reasons. Prior to the General Law's promulgation, cooperatives tended to choose the company structure, as company law introduced provisions on the organisation and management of the entity, which guided the drafting, whereas the association law remained silent on the matter. The special laws of the 20th century, following the cooperatives' preferences, chose the company form for the cooperative type that they regulated and made references to company law. The above preference became applicable to all cooperatives with the enactment of the General Law, which defined all cooperatives as companies, despite opposition by doctrine due to the fundamental differences between companies and cooperatives, and an important case in which the Court of Cassation qualified a cooperative bank as an association ("caisse rurale de Manigod").[6] Apart from the theoretical implications of that choice, there are also practical consequences to be considered, as the above qualification means that company law is applicable for all matters not regulated by cooperative legislation, as long as they do not contradict it. In practice, however, whether there is a contradiction or not is identified by the competent courts, which often have a limited knowledge of cooperative legislation and thus opt for company law solutions, despite them being in some instances inadequate for cooperatives (Hiez, 2013, p. 395-396; Hiez, 2017, p. 168-169).

[5] According to Hiez, 2017, p. 396, footnote 10: "the French version uses the term "*société*", which means company.
[6] Cass.reun., 11 mars 1914, S. 1918.1.103 – D. 1914.1.259 – J. Soc. 1915, p.97 – Rev. Soc. 1915, p. 44 in Hiez, 2017, p. 168, footnote, 12.

Table 1 “The evolution of the cooperative definition under of L. 1947”

Ar. 1 of L. 1947: initial version	**Ar. 1 of L. 1947: modified by ar. 1 of L. 92-643 of 13th of July 1992**	**Ar. 1 of L. 1947: modified by L. 2014**
Cooperatives are companies whose main objects are: 1° To reduce, for the benefit of their members and by the common effort of the latter, the cost price and, where appropriate, the selling price of certain products or services, by assuming the functions of contractors or intermediaries whose remuneration would affect that cost price; 2° To improve the marketability of products supplied to their members or those produced by them and delivered to consumers.	Cooperatives are companies whose main objects are: 1° To reduce, for the benefit of their members and by the common effort of the latter, the cost price and, where appropriate, the selling price of certain products or services, by assuming the functions of contractors or intermediaries whose remuneration would affect that cost price; 2° To improve the marketability of products supplied to their members or those produced by them and delivered to consumers. 3° And more generally to contribute to the satisfaction of the needs and the promotion of the economic and social activities of their members as well as to their training	The cooperative is a company formed by several persons voluntarily united aiming at satisfying their economic or social needs by their joint efforts and the creation of the necessary means.

Although the qualification of cooperatives as companies remained, the overall definition evolved over the years. Art. 1, as it was first introduced in 1947, defined cooperatives as companies that pursue price reduction and quality improvement, the wording reflecting the dominance of consumer cooperatives at the time. The following decades were met with structural changes for the French cooperative movement, as producer cooperatives increased, while consumer cooperatives decline and in many cases faced bankruptcy.

Consequently, the legislator responded to such changes in 1992 by adding the satisfaction of the members' needs and promotion of their activities and training to the initial definition as a third aim. The latter broadened the cooperatives' scope in order to cover all possible cooperative fields. The final change of the definition occurred on the occasion of passing the Social and Solidarity Economy (hereafter "SSE") law in 2014. In fact, the cooperative definition was fully redrafted by then. More specifically, the consumer cooperative nuances were abolished, the text was simplified, and the overall definition seems to be closer to the wording of the ICA cooperative definition, as it shares explicitly or implicitly some of its key wording and traits (e.g., voluntarily united, and aiming to meet common needs, via a common enterprise). The special laws tend to follow the above general definition, but they specify its key components according to the cooperative type that they regulate, its need, its special objective and its member qualification. Nevertheless, no misalignment was noted between the general and the special definitions, as they share the key elements of cooperatives: the satisfaction of the members needs via the cooperative enterprise (Hiez, 2013, p. 397; Hiez, 2017, p. 172-173).

One key element of the aforementioned definition is the objective of cooperatives, which is member-promotion or, to use the wording of the legislator, the satisfaction of the members' economic or social needs. The member-promotion objective is further specified under the various special cooperative laws (Chomel, 2010, p. 533; Hiez, 2017, p. 173). For instance:

- agricultural cooperatives aim at "*the joint use by farmers of all means likely to facilitate or develop their economic activity, to improve or increase the results of this activity*" (art. L. 521-1 Rural and Maritime Code),
- worker cooperatives aim at practicing their profession in a joint fashion (art. 1 of Law no. 78-763 of 19th of July 1978),
- merchant cooperatives aim at improving, through the joint effort of their members, the conditions under which they carry out their commercial activity (art. L. 124-1 of Commercial Code).

As cooperatives aim to satisfy the needs of their members, a link between the cooperative objective and the membership is implied by the definition of the cooperative. This is further developed by the acknowledgement of the cooperative principles, which includes the economic participation of members. At the core of economic participation is the transactions of members with the cooperative (Hiez, 2017, p. 173-174, 180). Based on the above, the doctrine has developed the concept of the *double quality*, to indicate that members are both shareholders and contractual parties of the cooperative (Coutant, 1950, p.230; Hiez, 2017, p. 174). In fact, in the case of agricultural cooperatives, the double quality principle has been explicitly introduced in art. Art. 521-1-1 of Rural and Maritime Code. Here, the relationship between the cooperator and the agricultural cooperative relies notably on the indivisible dual quality of service beneficiary and associate.

Apart from being shareholders, members are also contractors and thus, they are expected to transact with the cooperative (Hiez, 2013, p. 402). Nevertheless, there is no general provision that obliges members to transact with the cooperative, but in case it is infringed, then it may offer a basis for the member's exclusion, (Hiez, 2013, p. 402). However, the above obligation seems to be implied in many instances, such as in the case of worker cooperatives, which members need to be workers and thus supply their labour to the cooperative (except if they are investor members) or, in the case of agricultural cooperatives, the provision or reception of goods or services is part of the contract between the cooperative and the member (Hiez, 2017, p. 184).

Regarding whether cooperatives can transact with non-members, the General Law permits such transactions as long as they do not exceed 20% of the overall turnover, without prejudice to special laws (art. 3 L. 1947). Most special laws follow the above provision and set a limitation to such transactions, such as agricultural cooperatives[7] (Chomel, 2010, p. 534-535; Hiez, 2017, p. 185). However, in a few cases, such as in cooperative banks and consumer cooperatives[8], worker cooperatives[9], and pharmacists' cooperatives[10], transactions with non-members are free without any limitation by law (Chomel, 2010, p. 534-535; Hiez, 2017, p. 185).

The limited possibility to transact with non-members, generalised in 2014, is balanced by a very strong and important mechanism (art. 3 L. 1947 and decree no. 2015-594, 1st June 2015, art. 2): any profit that comes from the transactions with non-members must be accounted separately, in order to submit them to a special regime. Two main rules apply specifically to these profits: they can never be distributed among cooperators, and they must be entirely allocated to a fully indivisible reserve.

An issue that seems to emerge from the above is the lack of definition for what cooperative transactions are. The legislator refers to them in a vague manner as transactions, although not all transactions are included, only those relevant with the activity of the cooperatives and provided by or to its members (Hiez, 2017, p. 186). Nevertheless, the need for a clarification of the above concept would be useful, to prevent any potential confusion for the implementation of the relevant provisions.

With regard to whether a cooperative can pursue objectives other than member-promotion, art. 1 of the General Law stipulates that cooperatives aim at satisfying the economic or social needs of their members. Therefore, under the above definition, the pursuance of any other goals except member promotion does not seem to be promoted under such a provision; for which it has been criticized as being limited. However, the

[7] Art. 522-5 of Rural and Maritime Code: "Where the statutes so provide, non-cooperators may be admitted to benefit from the services of an agricultural cooperative or union, up to a limit of 20% of the annual turnover".
[8] Art. 2 of L. of 7th of May 1917: [consumer cooperatives] may not sell exclusively to their members, but they are then obliged to accept as associates all those whom they have already admitted as regular customers, provided that they undertake to fulfil the statutory obligations.
[9] Art. 5 of L. 78-763 of 19th July 1978: "[worker cooperatives of production] may employ persons who are not partners".
[10] Art. L. 124-2 of Commercial Code: "Pharmacists' cooperatives may not refuse their services in case of emergency to non-associated pharmacists and to all public or private establishments where patients are treated, when these establishments regularly own a dispensary".

French legislator prescribes for a special type of cooperative, the collective interest cooperative company (SCIC- société coopératif d'intérêt collectif), the purpose of which is, according to art. 19 of the General Law "*the production or supply of goods and services of collective interest, which are of social utility*". Social utility is considered to be the raison d'être of a SCIC, associated with the inclusion of various categories of members (workers, volunteers, users, investors and public bodies), as well as with a profit distribution prohibition clause. SCIC differs from a traditional cooperative, as it has as its target the interests of third parties, which may become members of the cooperative, but membership is not a precondition to obtain the services or goods provided by the cooperative (Hiez, 2017, p. 175-176).

With regard to economic activity, art. 1 of the General Law does not restrict cooperatives here, stipulating that cooperatives can be active in any branch of human activity (Hiez, 2013, p. 397; Hiez, 2017, p. 173). However, with regards to the insurance sector, art. L. 322-1 of Insurance Code, enumerates the possible legal forms that may be authorized to undertake such an activity, in which there is no reference to cooperatives. Therefore, despite the above general article, cooperatives are hindered to be active in the sector of insurance (Chomel, 2010, p. 532).

b) Establishment, cooperative membership and governance

As previously noted, cooperatives are qualified as companies and therefore they are registered to the Register of Trade and Commerce, just like any other company (*Registre du commerce et des sociétés*). With their registration, they acquire a legal personality (Chomel, 2010, p. 533; Hiez, 2013, p. 398).

Concerning the legal requirements to create a cooperative, the general cooperative law remains silent. Therefore, the company law is applicable and, thus, the general requirements to set up a company are the following:

a) drafting a statute,
b) register the statute before the tax services,
c) place a notice in a newspaper that includes legal notices,
d) gather all necessary documents and information to proceed with the registration at the center for the formation of enterprises, which is established at the Chambers of Commerce and Industry. Consequently, the founding members do not have a direct contact with the registry of the Court of Commerce, which oversees the Trade and Company Register (Hiez, 2018, p. 141-142).

However, in certain cooperative types, special laws diverge from the above-mentioned general provisions. For instance, in the case of agricultural cooperatives, a special authorisation is needed by the High Council for Agricultural Cooperation, which can approve or refuse the registration based on whether there is a conformity with the compulsory principles and coherence between the project presented and the economic

context in which it is inserted (art. L. 525-1 Rural and Maritime Code). In the case of maritime cooperatives, art. L. 931-11 Rural and Maritime Code stipulates that they "*are registered on a list drawn up for this purpose by the competent administrative authority, under conditions laid down by decree after the opinion of the Supreme Council for Cooperation*". A similar pre-requisite is also stipulated in art. 54 of L. no 78-763 of 19 July 1978, stating that "*worker cooperatives of production are required, independently of the obligations imposed on all undertakings, […] to provide labour inspectors with all useful evidence enabling them to verify that they operate in accordance with the present law*".

Regarding the minimum number of members, it is noted that the general cooperative law remains silent once again on the matter and as a result company law applies. If the interested parties choose for their cooperative the legal form of the limited liability company, then the required number of members is two, whereas for public limited companies the main rule is seven, except for particular cases in which this is diminished to two members (art. L. 525-1 Commercial Code). Therefore, worker cooperatives, for instance, may be established with two member-employees in case they choose the limited liability company and seven in case they choose the public limited company (art. 5 of L. 78-763 of 19th July 1978). As agricultural cooperative law presents a significant degree of autonomy from company law, it prescribes under its own provisions that the minimum number of members is in principle seven, except for a few agricultural cooperative types (equipment sharing and livestock raising cooperatives), for which this minimum is reduced to two. Although the minimum membership varies, a single-member cooperative cannot be established under French legislation (Hiez, 2017, p. 195-196).

When it comes to the admission of new members, the General Law does not offer any particular solution, thus leaving the matter to be regulated by the statutes (art. 7 of L. 1947). As follows, the company law would have been applicable, but the provisions on variable capital companies of the Commercial Code do not offer any solution on the conditions for new members' adherence. As a result, the admission of new members is left to the special cooperative laws to be regulated.

The special law on worker cooperatives is worth mentioning, because it regulates the above matter explicitly. In particular, the law stipulates that the workers that are employed at the cooperative for at least one year are obligated to apply for membership (art. 7 of L. 78-856, 19th of July 1978). The meeting of members is by no means obligated to admit the candidate member and can either accept or reject the application by a majority vote. In case of rejection, no appeal can be submitted, since the worker can renew their application each year. Regarding the justification of the refusal, the special law remains silent, thus leaving the meeting of members to decide with a broad discretion. However, according to common opinion the meeting of members' decision, refusing to admit a candidate member should not lead to a discrimination of the candidate member or to any abuse of rights (Hiez, 2017, p. 191-192).

In the case that special laws do not prescribe for the admission of new members and as there is no particular provision of company law to be applied for this matter, art. 7 of the General Law is applicable which, as we have seen above, leaves the matter to be regulated by the statutes. If the statute is also silent, then it the admission is considered as automatically accepted (Hiez, 2017, p. 192).

Overall, cooperatives are expected to be open to new members. At the same time, the legislator leaves significant space for the matter to be regulated in the statute and discretion powers to the competent cooperative body to reach to a decision (Hiez, 2017, p. 192).

An interesting element found in the special laws for agricultural and craft cooperatives is the prescription of a probationary period (*period probatoire*) for candidate members, even though it is not broadly followed in practice. During this period the candidate member has the same rights and obligations as other members. When the probationary period ends the candidate member becomes a (full or *definite*) member, except if there is an opposing decision by either the Board of Directors or the candidate member (art 9 L. 83-653, 20th of July 1983- craft cooperatives; art. L. 521-3 Rural and Maritime Code- agricultural cooperatives) (Hiez, 2017, p. 193).

Regarding whether the members can leave the cooperative, it is noted that generally, they are free to do so based on art. L. 231-6 of Commercial Code. However, in some special cooperatives, the statutes usually obligate cooperators to remain part of the cooperative for a period of time. Under the agricultural cooperative law, in which case law is the most numerous, the question arose of what the maximum length that period is. The courts ruled several decades ago that the contract of cooperation which obliges the member to transact with the cooperative and confers membership should have the duration of a person´s professional life (25-30 years). The length of the period progressively decreased and official statutes now state a maximum period of five years, which is renewable. Withdrawing from the agricultural cooperative before the contract terminates is possible in case of force majeure or just reason (art. R. 522-4 Rural and Maritime Code). The Board of Directors shall decide whether there is a reason that would justify the early withdrawal of the member and in case it refuses to permit it, the candidate member can appeal at first to the members' meeting and then to the courts (Hiez, 2017, p. 194).

A controversial hypothesis has been when the farmer sells the farm and is not anymore able to perform their obligations vis-à-vis the cooperative. According to the law, the cooperator would be obliged to **transfer** his shares to the buyer; whereas according to case law, this obligation would be satisfied when he **offers** the shares, even if the buyer simply refuses to become a cooperator. As the logic of the case law could be a very easy way to escape to the obligations, the law was therefore amended to make the cooperator responsible in the case of refusal by the buyer (Hiez, 2018, p. 182-183).

Apart from withdrawal, a membership can be terminated in case of member expulsion. Art. 7 of the General Law refers to member expulsion as a subject for the statutes to specify. In the event special laws do not introduce special provisions, then withdrawal is subject to the cooperative's statute.

The case of agricultural cooperatives is worth highlighting, since the law permits members' expulsion, if it is justified by serious reasons, such as criminal penalties or serious damages by unjustified acts, attempts of such damages to the cooperative, or falsification of crops delivered to the cooperative (art. R522-8 of Rural and Maritime Code).

Overall, concerning the regulation of member expulsion, a transition is noted regarding:

> a) the competent body that decides on member expulsion (initially the general assembly, today usually the Board of Directors),
> b) the reasoning and the procedure of expulsion (initially the courts did not examine the motives of the competent bodies decision on member expulsion but, later, special laws introduced reasons that would justify member expulsion, as well as procedural requirements, such as prior hearing of the member before the cooperative body with the decision powers on member expulsion (Hiez, 2017, p. 195).

Regarding the members' voting rights, it is noted that the principle *"one member, one vote"* is acknowledged by the very first article of the General Law. However, the above provision permits special cooperative law to diverge from the above general rule. In the case of agricultural cooperatives, the statute may prescribe for multiple voting rights to members. The criteria based on which multiple votes may be acquired are specific: either the importance of the economic activities of the member with the cooperative or the quality of the member's engagement within the cooperative (art. L. 524-4 Rural and Maritime Code). As we note from the above, the multiple votes cannot be distributed proportionally to the capital contributed by the members (Hiez, 2013, p. 405). Furthermore, the above provision also sets a limitation to the acquisition of multiple votes. Each member can only possess up to 1/20th of the votes that are present or represented at the general assembly.

A case worth mentioning is the case of collective interest cooperatives, due to its innovative character. According to art. 19octies of the General Law, each of their members has one vote, in that manner repeating the general provision of art. 1. However, what is particularly interesting in this cooperative type is when its statute enables the formation of member classes. In such circumstances, each member has one vote in its class, but the collective votes of each class can be unequally distributed according to the statute. In addition, the law stipulates certain limitations to prevent the dominance of one class to the detriment of the rest: a) each class can have up to 50% of the voting rights, b) each class can have no less than 10% of the voting rights, c) the voting rights cannot be distributed based on the criterion of capital distributions. According to Hiez (2017, p.

198): "*during the negotiations on the 2014 reform [of the general cooperative law], some cooperative organizations lobbied for introduction of a class system as a general provision, for example to welcome and regulate employees as cooperators in cooperatives other than workers' cooperatives*". This attempt was not fruitful, and the class system peculiarity remains as a trait of collective interest cooperatives.

Regarding the voting rights within cooperative unions, art. 9.2 of the General Law applies, according to which the statute of the union may prescribe for multiple voting rights in proportion to the number of members of primary cooperatives that participate at the union or based on the amount of the cooperative transactions between the primary cooperative and the union.

An issue interrelated with voting rights is the institution of "investor-members" which emerged during the 1990s in a number of European cooperative laws. In the case of France, art. 3bis of the General Law enabled their admission in 1992 (Hiez, 2017, p. 198). To be more precise, the above provision refers to the broad category of non-cooperator members, part of which are investor members. According to the above article, cooperatives may admit natural persons, in particular their employees, or legal entities which do not intend to use the cooperatives' services, as non-cooperator members. These members intend to contribute to the cooperative's objectives, mainly by sharing their capital. In order to limit their power and protect the member-cooperators, the legislator sets a number of limitations: a) all these non-cooperator members can acquire up to 35% of the total votes, b) if they are cooperative companies, then the percentage raises up to 49% of the total votes, however in this case the votes of the rest of the non-cooperator members cannot surpass the 35% of the total votes (Hiez, 2018, p. 82). In the case of non-cooperator members, the statute may enable the distribution of multiple votes to them based on their capital contributions, which reflects the idea that the democratic principle is not obligatory for non-cooperator members (Hiez, 2013, p. 405; Hiez, 2017, p. 198).

Regarding the internal structure of the administration of cooperatives, a first remark is that the relevant provisions of company law are mainly applicable for this matter and only in a few cases have cooperative-oriented solutions been enacted (Hiez, 2017, p. 203). This is the consequence of the silence of the General Law about the internal functioning and its reference to statutes. By contrast, nearly all the special laws require that the statutes choose between some traditional kinds of company. Firstly, limited liability companies (société à responsabilité limitée) or public limited companies (société anonyme), and today more often simplified joint-stock companies (société par action simplifiée). Of course, this choice has severe effects on the internal organisation, since the provisions applicable to the kind of company are mandatory for the cooperative, unless they contradict a provision of cooperative law. Again, agricultural cooperatives have a special regulation, since they are considered like a sui generis company, but in practice its regulation is very similar to public limited companies. In fact, only cooperatives created by reference to the General Law and not to a special cooperative law are really free to decide their organisation; but such cooperatives are rare.

More specifically, the supreme authority of the cooperative is that of **the members' meeting**. The members' meeting (or general assembly) is recognised to have a much more dominant role compared to the one acknowledged in companies. Regarding its competences, company law is applicable to the members' meeting regarding the decision-making of highly significant matters, such as dissolution, amendment of the statutes, conversion, and merger. Additional competences are introduced by the General Law (approval of accounts, reception of the representatives' report, appointment of directors, managers, and auditors) and in some cases by special cooperative laws, as well (e.g., distribution of surplus and issuance of cooperative certificates in agricultural cooperatives - art. L.522-4-1 of Rural and Maritime Code) (Hiez, 2017, p. 203).

In relation to the body in charge of the cooperative's administration, the applicable provisions differ depending on whether cooperators choose for their cooperative the form of a) a limited liability company (hereafter "LLC") or b) a public limited company (hereafter "PLC").

a) In case cooperatives opt for the legal form of an LLC, the management is exercised by one or more **Directors**, which are elected by the members' meeting and may be dismissed by that meeting. One of the main tasks of the Directors is to represent the cooperative before third parties (Hiez, 2017, p. 203).

Special cooperative laws introduce further provisions for workers' cooperatives (art. 16 L. 178-763, 19th of July 1978) and craft cooperatives (art. 18-19 L. 83-657). If the above cooperative types are set up as LLC and have more than 20 members, a **Supervisory Board** is elected by the members' meeting, establishing in this case a two-tier management structure (Hiez, 2017, p. 204).

b) In case cooperatives choose the legal form of a PLC, then they can opt for a one-tier or a two-tier management structure. For the one-tier structure, the cooperative is managed by a **Board of Directors**, which appoints a **President** with a broad set of powers. The president is responsible for representing the cooperative and liable to the members ((Hiez, 2013, p. 404).

In the second-tier structure, the cooperative is managed by an **Executive Board**, which is nominated by the **Supervisory Board** and elected by the members' meeting. The Executive Board has the same powers with the president of the one-tier structure. In practice, French cooperatives tend to follow the choice of a one-tier structure (Hiez, 2013, p. 404).

Irrespective of the type of company that is chosen, in principle, the persons taking part as members of the above boards must be members of the cooperative (art. 6 L. 1947), safeguarding in this manner member control (Hiez, 2017, p. 205-206). Although there may be divergences of the above rule, overall, most special cooperative laws tend to

safeguard member control and stipulate that the majority of the directors shall be member-cooperators (Hiez, 2017, p. 206).

Regarding the liability of the directors, a general liability principle is applicable, as long as it does not contradict cooperative law (Hiez, 2017, p. 205). In the case of LLC, PLC and agricultural cooperatives, their liability includes any faults that occur during the establishment of the cooperative, any infringements of law or statute, or any errors of management. There is also a special liability in case the cooperative principles are infringed, (such as when using the surplus in way that is not in line with the General Law) (art 26 L. 1947) (Hiez, 2017, p. 204-205).

c) Cooperative financial structure and taxation

How the legislator regulates the financial structure of cooperatives is of great interest, as it is interrelated with the ongoing trend of cooperative companisation,[11] which has been detected in many national laws within and outside Europe.[12]

Under the French legal landscape, the 1992 reform of the General Law incorporated several practices affiliated with capital companies, such as:

- the admission of investor-members,
- the possibility to incorporate a part of the reserves to the capital,
- the possibility to convert, under conditions, cooperatives into companies,
- the creation of new shares/financial securities (Hiez, 2013, p. 403; Hiez, 2017, p. 209).

In practice however, cooperatives have rarely made any use of the tools above, apart from the incorporation of reserves to the capital on occasion, and preferred instead to form subsidiaries[13], which remained in line with the trend of companisation (Hiez, 2017, p. 209; Azarian 1998).

The General Law's last reform took place with the enactment of the SSE law in 2014. Its aim was to modernise the cooperative law, without further enhancing the trend of cooperative companisation (Hiez, 2017, p. 209). On the contrary, with that reform most of the cooperative principles were explicitly mentioned, as well as the fact that they have to be respected.

[11] According to Hagen Henry, Guidelines for cooperative legislation, 3rd edition revised, ILO, p. 10, footnote 30, by stock companisation, it is understood to mean the processes in legislation through which the features of cooperatives are being approximated with the features of stock companies.
[12] For more information, see Douvitsa, I. (2021, forthcoming) ICA-EU Partnership Legal Framework Analysis Regional Report for Europe, Cooperatives Europe, Brussels.
[13] Despite their impact on cooperatives' development, the study of subsidiaries could be further examined by future research, since it exceeds the aims of the current report.

Regarding the applicable law, the issue of cooperative financial structure is regulated by cooperative law: more specifically by the General Law, that establishes general principles on the matter, and by special laws which, in some instances, introduce detailed provisions. As a result, the application of company law is limited to just a few issues that are not addressed by cooperative law, e.g., members' liability or minimum capital (Hiez, 2017, p. 209).

Minimum capital as a requirement for cooperatives' establishment

If a cooperative is formed as an LLC, it is not obligated to have a minimum capital, since the applicable provisions on LLC do not require such a condition for establishment. However, such a requirement is stipulated when it comes to the PLC, where the minimum capital for their establishment is 37,000 EUR. However, in case a cooperative is formed as a PLC, then the minimum required capital is decreased in half, and as a result the cooperative can be established with 18,500 EUR as its initial capital (art. 27 al. 2, L. 47-1775, 10th of September 1947) (Hiez, 2017, p. 211).

When it comes to special cooperative laws, the relevant provisions tend to introduce a minimum share value or a minimum number of shares as a requirement for membership. Such provisions lean towards a fixed capital logic, but they tend to require a very low amount of capital and therefore their impact is more symbolic than substantial (Hiez, 2017, p. 211).

For instance, in the case of a worker cooperative being formed as an LLC, the value of the cooperative share shall be between 15.24 to 76.22 EUR. In a workers' cooperatives, which needs to consist of at least two members, the minimum capital would be 30.48 EUR (art. 1 of decree 79-67, 18th of January 1979) (Hiez, 2017, p. 211). A similar approach has been followed for craft cooperatives, for which the minimum amount of each share is 15 EUR and in a two-member craft cooperative, the minimum share capital would be 30 EUR (art. 11, L. 83-657, 20th of July 1983 & decree 84-251, 6th of April 1984) (Hiez, 2018, p. 137). In the case of agricultural cooperatives, the minimum amount of each share is even lower, reaching 1.50 EUR. Thus, in a seven-member agricultural cooperative, the minimum capital would be 10.50 EUR (art. R.523-1 Rural and Maritime Code). In practice, the value of agricultural cooperatives' shares are significantly higher not only for financial reasons, but as a result of art. L. 521-3a Rural and Maritime Code, which stipulates that the number of shares is proportionate to the activities of the member with the cooperative (Hiez, 2018, p. 137).

Members' contributions to the cooperative capital

The members must contribute to the cooperative's capital with at least one share as a requirement for membership. However, a few special laws allow cooperatives to obligate new members to pay special fees, as they shall enjoy the cooperative's goods or services which have been built upon by the efforts of existing members (Hiez, 2017, p. 211, 220).

Concerning the acquisition of additional shares, members are not obligated by law to acquire new shares, except when special laws prescribe for compulsory additional

shares, such as in agricultural and worker cooperatives. In the agricultural cooperatives' case, the number of shares is proportional to the member's activity with the cooperative (art. L. 521-3 Rural and Maritime Code). Therefore, in case such activity increases, then the member shall acquire more shares. In the worker cooperatives' case, since the law permits membership acquisition with only one share, it is logical to allow the statute to prescribe for compulsory additional shares to financially strengthen the cooperative by its members (art. 6, L. 78-763, 19th July 1978) (Hiez, 2017, p. 215-216).

The ways that members can contribute to the cooperative capital are the following:

a) In cash: the new members may release at least a part of the subscribed capital upon admission and submit the remainder within the timeframe indicated by the statute but no later than 5 years (art. 12 L. 1947). By being flexible, this provision encourages persons that do not have the adequate financial means from the start to become members, thereby putting in action the prevalence of the person over capital, which is a dominant idea in cooperatives (Hiez, 2017, p. 212).
b) In kind: which is subject to external evaluation by an auditor.
c) In service: as there is no provision in cooperative law, company law is applicable. This allows contributions in service, except for the PLC. In the case of worker cooperatives such contributions are not allowed (art. 27 L. 78-763, 19th of July 1978), whereas in the case of housing (inhabitants') cooperatives they are permitted (art. L.201-203 Construction Code) (Hiez, 2017, p. 213).

The return of the subscribed capital after termination of membership

In principle, when membership is terminated, the subscribed capital is returned to the outgoing member under its nominal value, as defined in the statute (art. 18 L. 1947). However, the cooperative may form a special divisible reserve to be distributed among the outgoing members based on their capital contributions, if they have been members for at least five years, but the amount of that reserve is very low (art. 18 L. 1947) (Hiez, 2017, p. 222, 225).

Regarding special laws, a special provision on agricultural cooperatives stipulates that the Board of Directors shall decide on the date of the reimbursement of the subscribed capital, which cannot exceed five years since the member termination (art. R. 523-5 (6), Rural and Maritime Code) (Hiez, 2017, p. 215).

The formation of reserves

The French law prescribes for the formation of the following reserves:

a) The legal reserve: According to art. 16 of the General Law, 15% of the cooperative's surplus must be allocated to the formation of a legal reserve. The above is mandatory until the legal reserve becomes equal or higher than the share capital. The special laws may reiterate the above percentage (e.g., workers' cooperatives- art 33, L. 1978) or they may prescribe for a lower or higher percentage (e.g., 5% for merchant cooperatives – art L. 232-10, Commercial Code, 10% for agricultural cooperatives – art. R. 524-21, Rural

and Maritime Code, 50% for collective interest cooperatives – art. 23, 83-657, L. 1983) (Hiez, 2017, p. 224; Hiez, 2018, p. 248-249).
b) When the cooperative transacts with non-members, a reserve is formed by the profits generated from the transactions between the cooperative and non-members.
c) A special divisible reserve, which is optional and, as discussed, distributed among the outgoing members (art. 18, L. 1947).
d) Other reserves: apart from the abovementioned, the legislator enables cooperatives to form other reserves. For agricultural cooperatives, a plethora of reserves are stipulated in the law, corresponding to a wide variety of goals, such as the compensation for the reduced capital when a cooperator leaves the cooperative. Another important example is collective interest cooperative, for which an addditional mandatory reserve of 42.5% of net profits is provided (art. 19nonies L. 1947). It should be also noted that the French legislator neither encourages nor imposes the formation of a reserve for education and training (Hiez, 2017, p. 224).

As a general rule, the legal reserve, as well as the other reserves, if the statute states, are indivisible during the cooperatives' lifespan and in case of their dissolution, except for the special divisible reserve for the outgoing members (Hiez, 2013, p. 406). In addition, the indivisibility of reserves is promoted by the SSE law, which sets it as a condition for commercial companies to be acknowledged as Social and Solidarity Economy actors (art. 1 L. 856, 31st of July 2014) (Hiez, 2017, p. 225).

However, the 1992 reform of the General Law introduced a divergence from the above rule by making the reserves partly divisible (art. 16 L. 1947). Specifically, the law allows cooperatives to incorporate part of their reserves to the capital, which takes place with the issuance of new shares distributed based on the member's capital contributions or the increase of each share's nominal value. Nevertheless, the above derogation may only occur if certain conditions are fulfilled. For example, that such a measure is explicitly stipulated in the statute; it is decided by the members' meeting and is only for a limited amount, such as half of reserve for the first incorporation, or half of its increase since the last incorporation for the following ones (Hiez, 2017, p. 226).

Allocation of surplus

Regarding the surplus distribution, it is first noted that the General Law does not use the term "profit", but refers to "surplus", without defining this term. A variety of terms are found under the special laws ("net surplus" – in craft cooperatives, "net revenue" in worker cooperatives etc.), showing a lack of conceptual coherence between the general and special laws and among the various special laws themselves (Hiez, 2017, p. 226-227).

The surplus is distributed under the General Law for:

a) the payment of a very limited interest to the shareholders to remunerate the subscription of capital (art 14 L. 1947),

b) the patronage refunds (art. 15 L. 1947) in proportion to the activity of the member with the cooperative, upon decision of the members' meeting. This is the

only occasion that the above rule permits surplus distribution to the members, which leads to the conclusion that the income generated from the transaction between the cooperative and non-members is not to be distributed among the members (Hiez, 2013, p. 406). Patronage refunds are not always distributed in cash, but in some cases, they may be given in the form of shares, such as the case of craft cooperatives (art. 26 L.1983). According to Hiez (2017, p. 228), the advantage of providing patronage refunds in the form of shares is that the members benefit from the free shares, while the cooperative does not distribute any cash.

Apart from the formation of a legal reserve, which is mandatory, the remaining distributions of surplus are optional. The successive order of the above articles is not indicative of the order of the above distributions, leaving open the question on whether the interest payments should be prioritised over patronage refunds, or vice versa (Hiez, 2017, p. 227).

Special laws do not follow a unified solution on the matter above. For instance, in agricultural cooperatives the payment of interest takes place before patronage refunds (art. L.524-2-1 Rural and Maritime Code), whereas in worker cooperatives (art. 33 L.1978) the law introduces the opposite solution. Meanwhile, in the case of collective interest cooperatives, which are not directed towards the satisfaction of their members' interests: patronage refunds are not permitted at all (art. 19 nonies L. 1947) (Hiez, 2017, p. 227).

In case the surplus is not exhausted and a remainder is left after the above deductions, it cannot be allocated to the members, but, instead, it can be distributed for the formation of a reserve or provided as a subsidy to other cooperatives or cooperative unions, or to works of public or professional interest (art. 15 L. 1947) (Hiez, 2017, p. 229).

Except for the basic cooperative share, which confers the membership status and the admission of investor members, the law prescribes for diverse financial tools to cover the cooperatives' capital and investment needs, such as:

a) Special benefit shares, which may be taken up only by members of the cooperative and confer no additional voting rights, but financial benefits which are defined in the statute (e.g., a higher interest rate), without putting in jeopardy the cooperative principles (art. 11 L. 1947). This tool is a way to incite members to invest in their cooperative and gain additional rights, apart from those attributed to the basic shares (Hiez, 2017, p. 217).

b) Non-voting preference shares, which can be taken up by non-cooperator members and non-members (art. 11 bis L. 1947). Their holders receive interest before any other shareholder and gather in a special meeting, in which they appoint a representative for the members' meeting, though without voting rights (Hiez, 2017, p. 217).

c) The single special class of shares – preference shares, which is a means of substituting all the above shares with a single share, as long as the cooperative principles are not jeopardised (art. L228-11 Commercial Code) (Hiez, 2017, p. 218).

d) Associate cooperative certificates (art. 19tervicies L. 1947) and investment associate certificates (art. 19sexdecies to 19duovicies L. 1947), which differ only to point that the former are issued by cooperative banks and acquired by cooperative members, whereas the latter are open to any cooperative type (Hiez, 2017, p. 218; Hiez, 2018, p. 129).

e) The participatory notes (art. L.228-36 and art. L.228-37 Commercial Code), the remuneration of which is partly variable and their holders receive information and consultation (Hiez, 2017, p. 219). These are the only instruments that are actually issued regularly by some cooperatives, as they are financially attractive.

The law introduces a quota to the capital subscribed to some of these financial tools, in order to safeguard the cooperative's autonomy from any excessive powers of their holders based on their capital contributions:

- the non-voting preference shares and cooperative certificates' capital cannot exceed 50% of the total share capital (art. 19tervicies, L. 1947),
- the cooperative certificates cannot exceed 50% of the total capital of the previous financial year (art. 19sepdecies, L. 1947) (Hiez, 2017, p. 216).

The cooperative law introduces specific rules for the distribution of the remainder when a cooperative is dissolved. The remaining net assets after covering all expenses and liabilities cannot be distributed to the members, but, instead, they are allocated to another cooperative or to a social and solidarity economy enterprise, reflecting in this manner the principle of disinterested distribution (art. 19 L. 1947) (Hiez, 2017, P. 229).

However, in the case of merchant cooperatives, the Ministry of Commerce may allow the remainder to be distributed among the members (art. L. 124-14 Commercial Code), which is usually a common practice (Hiez, 2017, p. 230).

In case the cooperative is being converted into a company, then its indivisible reserves shall be allocated to a special reserve of the company, which shall remain indivisible at least for a ten-year time period (art. 25 L. 1947). The latter aims at preventing members, at least temporarily, from converting their cooperative with the ulterior motive of distributing the cooperative's indivisible reserves among themselves (Hiez, 2017, p. 226). The law on worker cooperatives goes even further and prohibits the distribution of such reserves permanently (art. 3bis L. 1978).

Taxation

As cooperatives are identified by law as companies, in principle, they are subject to the general tax regime of companies. However, a number of exceptions emerge. The first one is the general exemption from company taxation of agricultural cooperatives.

More specifically, based on art. 214 par. 1 of the General Taxation Code, the surplus allocated to the members as patronage refunds in the case of consumer cooperatives and workers cooperatives is tax deductible income. The above measure later expanded to include all cooperative types that conform with the General Law. These refunds need to originate only from the transactions between the cooperative and actually need to be returned to the members. For this reason, it is necessary that the cooperative keeps different accounts if it also transacts with non-members. Otherwise, it shall not be able to enjoy the abovementioned tax reduction measure (Hiez, 2018, p. 303).

Additionally, collective interest cooperatives are subject to special tax treatment. According to art. 209-8 of the General Taxation Code, the part of surplus that is allocated for the formation of indivisible reserves is tax-deductible (Hiez, 2018, p. 304, (Hiez, 2013, p. 408).

Furthermore, worker cooperatives have been able to take advantage of a general tax deduction measure stipulated by art. 237bis of the General Taxation Code. The latter is applicable to the contribution of all enterprises to investments. In particular, par. 3 of the above provision considers the allocations to the legal reserve as an investment deposit. The above measure means worker cooperatives submit 1/3 of their surplus to their legal reserve, which is the highest possible amount of surplus, making it tax deductible income with the constraint that it shall be used for the creation or acquisition of assets. Notably, the enactment of the above provision is a result of successful lobbying of worker cooperatives, who advocated for the inclusion of the above allocation to the general tax deduction measure favouring the investment contributions by enterprises. (Hiez, 2013, p. 408; Hiez, 2017, p. 224; Hiez, 2018, p. 304-305)

iii.Other specific features

Except for the financial external audit which all enterprises are subject to, cooperatives are also subject to a particular cooperative audit (“révision cooperative”) (Hiez, 2017, p. 230). The regulation of cooperative audit has been one of the main elements of the SSE law, when it reformed the General Law in 2014. Prior to the above reform, there was no general regime on cooperative audit but, instead, some cooperative types were subject to relevant special provisions (e.g., worker cooperatives, agricultural cooperatives, collective interest cooperatives), whereas others were not (e.g., cooperative banks, merchant cooperatives) (Chomel, 2010, p. 541).

Under the current cooperative legislation, art. 25-1 of L. 1947 introduces general provisions on the cooperative audit, applicable, in principle, to all cooperative types. According to the above provision, “*cooperative companies and their unions whose*

activity exceeds a certain threshold, assessed on the basis of a threshold fixed by decree of the Council of the State (Conseil d'Etat), are subject every five years to an audit, known as a "cooperative audit", aiming to verify the conformity of their organisation and operation with the cooperative principles and rules and the interest of their members, as well as with the specific cooperative rules applicable to them and, where necessary, to propose corrective measures".

Notably, the above provision has achieved a cooperative-oriented audit by considering the member-promotion purpose of cooperatives (when referring to the '*interest of members*'), as well as the compliance with the cooperative principles. As a result, the cooperative audit is clearly distinct from the common financial audit exercised for any kind of company and the wording of the provision, which makes no reference to the financial dimension of audit, leaves no room for misinterpretation (Hiez, 2017, p. 232).

One more element that should be discussed is the reference to the criterion of "*activity exceeding a certain threshold*". Depending on whether cooperatives are above or below such thresholds, they may be subject to a mandatory or an optional cooperative audit. However, collective interest cooperatives (art.19duodecies L.1947), craft cooperatives (art. 29 L. 83-657, 20th of July 1983) and housing cooperatives (art. L. 422-3 C. Const. Hab.) are subject to a mandatory cooperative audit independently of their size (Hiez, 2017, p. 234).

The auditor may be a natural or legal person with knowledge of, or experience with, cooperatives by being a cooperative representative in the past. They can exercise such duties after being granted an assent by the Ministry of Social and Solidarity Economy (Hiez, 2017, p. 237) (decree 706, 22th June, 2015).

The auditor is expected to draft a report for the cooperative under audit and submit it to the competent administrative body to be discussed in the next members' meeting. The auditor may also suggest any corrections in case the cooperative is found as non-compliant with the cooperative rules and principles, with the members' interest, and with the applicable special laws (Hiez, 2017, p. 236).

Another innovation of the SSE law of 2014 was the establishment of a public certification for cooperative auditors, that ensures their independence and facilitates free choice for cooperatives.

The legal framework on agricultural cooperatives once again presents an interesting case, since their cooperative audit is an implementation of the self-control concept. More specifically, special cooperative federations, after being certified, conduct a cooperative audit of their agricultural cooperative members. In addition, agricultural cooperative members are excluded from holding a seat at the Board of Directors and the supervisory council of the federation, which contributes to the autonomy of auditors (art. L. 527-1 Rural and Maritime Code).

The General Law and most special cooperative laws introduced provisions for cooperation among cooperatives early on. The latter as a principle was later acknowledged, with the reform of the general cooperative law in 2014 by the SSE law (art. 1 L. 1947) (Hiez, 2017, p. 240).

More specifically, art. 5 L.1947 stipulates that "*cooperatives may form among themselves cooperative companies governed by this law under the name of unions of cooperatives, for the management of their common interests or the development of their activities*". The above provision enables the formation of cooperative unions, which are qualified as cooperative companies and, thus, they are subject to cooperative law provisions. The objectives of the cooperative unions are defined by law as "*the management of their* [the members] *common interests or the development of their activities*", which does not exclude the political representation of their members. In practice, the unions are mainly focused on the promotion of the economic interest of their members, thus, their objective is mainly economic. On the other hand, the federation of cooperatives, such as in the case in agricultural cooperatives (art. R.527-1 Rural and Maritime Code), tend to focus on the political representation of their members and are established as associations (Hiez, 2017, p. 246).

Regarding membership, as the above provision states, cooperative unions may be formed among cooperatives, not excluding the participation of different cooperative types. However, under the special cooperative laws, usually these unions limit their membership to cooperatives from the same cooperative type (Hiez, 2017, p. 240).

The above provision goes on and stipulates that "*except in the case of agricultural cooperative societies or their unions, the statute of a cooperative union may provide that the members of the cooperatives which are members of the union may benefit directly from the services of the union or participate in the carrying out of operations falling within its object, provided that the statute of the cooperatives so permit. In such cases, the operations of the union are considered as carried out with cooperative members.*" The above provision enables the transactions between the members of primary cooperatives and the cooperative union, itself. According to Hiez (2017, p. 243), the above rule "*transforms the union from a technical, formal grouping of cooperatives into a wide community of cooperators.*"

An interesting aspect of cooperative unions is how the voting rights are regulated. As they are cooperative companies and subject to cooperative law, the "*one person-one vote*" principle applies, but derogations to the above are permitted (art. 9 L. 1947). In particular, the voting rights may be attributed based on the number of members of the cooperatives that join the union, or on the transactions of the member with the union (Hiez, 2017, p. 244).

Regarding special cooperative laws, as reiterated above, cooperative unions are sometimes recognised by a different term, but with similar objectives and functions. Apart from the unions, an outstanding implementation of the principle of cooperation among

cooperatives worth examining is the workers' cooperative grouping (art. 47bis to 47septies L.1978), which came as a response to the high number of subsidiaries that such cooperatives set up. This grouping enables a cooperative that participates to control another cooperative with a reciprocity effect (e.g., the workers of the controlled cooperative have a certain proportion of voting rights of the controlling cooperative). Such groupings do not have a legal personality, as they seem to establish flexible contractual relationships among the participants of the grouping. Although such a solution presents some interesting features, it has mainly been enacted to cover the needs of worker cooperatives, and therefore cannot be used as a starting point for the drafting of a general cooperative group (Hiez, 2017, p. 248).

It may be noted that a cooperative is also used as the frame for the *Union d'économie sociale* (L. 1947, art. 19 bis). This original grouping is comparable to a cooperative union, but shaped to welcome not only cooperator members, but also other members, with the restriction that 65% of voting rights must be owned by SSE enterprises.

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

Although the French cooperative legislation is considered as significantly cooperative friendly, a number of issues emerged from the above analysis that leave room for improvement, such as:

- the heterogeneity of the French cooperative legislation: more specifically the co-habitation of a general cooperative law along with company law's general provisions on companies with a variable capital, as well as the excessive number of special cooperative laws that seems over time to be increasing, depicts a picture of a legal labyrinth, meaning a rather complex system of norms that are hard to be followed, applied and even studied properly, especially if we take into account the low interest of study and research by academia;
- the incompleteness of the General Law: although in practice a cooperative can be established under L. 1947, its incompleteness hinders its applicability;
- the rather limited definition of cooperatives under the General Law, which lost the opportunity in the 2014 reform to expand the cooperative goal beyond member promotion, in order to incorporate the collective interest cooperative's objective into the general definition;
- the lack of reference to the seventh ICA cooperative principle on the concern for the community;
- the absence of a definition on cooperative transactions, which is important especially when it comes to the cooperative transactions with non-members: the law refers in an abstract manner to "transactions" and although it is obvious

that it does not consider any kind of transaction, a specified and proper conceptualisation of the term would be needed;
- the absence of definition of the surplus and the fact that there are different terms used among the special laws, indicating the overall lack of coherence among the special cooperative laws themselves and them with the General Law;
- allowing exceptions to the disinterested distribution of the remainder after liquidation in the case of merchant cooperatives;
- the lack of comprehensive rules to fully regulate the already ongoing practice of forming subsidiaries by cooperatives;
- the surplus allocated as patronage refunds and to the indivisible reserves as tax deductible income only for a few cooperative types;
- the absence of any reference to a reserve for education and training;
- the lack of legal research and knowledge, that entails a risk of misunderstanding of cooperative law by judges.

Despite the above shortcomings, the French cooperative legislation establishes a number of good practices, such as:

- the enactment of a General Law that, despite its weaknesses, prescribes for common principles among the various special cooperative types;
- the reference to most of the cooperative principles;
- the acknowledgement of cooperatives undertaking any kind of activity,
- a low number of memberships to establish a cooperative;
- the emphasis on the one person one vote principle and derogations within certain conditions;
- the limitations on voting rights and capital contributions of the investor members;
- the absence of distributions of dividends;
- the distribution of patronage refunds;
- the issuance of diverse financial instruments with certain conditions to safeguard cooperative autonomy;
- the disinterested distribution of the remainder after liquidation as the main rule for cooperatives;
- the indivisibility of reserves as a general rule during the cooperative's life and in case of dissolution;
- in case of conversion of a cooperative to a company, the temporary indivisibility of the indivisible reserves, which are transferred to the new company;
- the establishment of a cooperative audit, verifying the compliance with member promotion and with the cooperative rules and principles and its differentiation with the common, financial audit;
- the tax deduction of indivisible reserves and patronage refunds from taxable income, albeit in a few cooperative types; and
- the exercise of cooperative audit of agricultural cooperatives by their federations and the introduction of measures to safeguard the auditors'

expertise in cooperatives and their autonomy from the cooperative that they audit.

III. Recommendations for the improvement of the national legal framework

To address any shortcomings, as well as strengthen and further expand the already existing good practices of the French cooperative legislation, a non-exhaustive list of recommendations is submitted, including the following key issues, as they came up during the research.

General Recommendations on organisational law matters

- Clarifying the relationship between company law and cooperative law: the application of all provisions of company law is confusing and sometimes detrimental. For instance: to limit legal uncertainty, voidability of decisions held by the Board of Directors is usually restrictive in company law, and the major limitation in French law is that such a decision can only be void if it infringes a mandatory rule found in Book II of the Commercial Code, dealing with company law. As cooperative law is not regulated by that code, no decision of a Board of Directors that infringes cooperative principles can be declared void by a court.
- revisiting the idea of codification, which is stipulated in art . 30 of the General Law to establish more coherent articulation between general and special provisions. Many special provisions are similar or very close, it would be useful to convert this diversity into general rules. A recent attempt towards this direction took place between 2015-2017.[14]

Recommendations on the General Law

- completion of the law, by adding provisions that would transform it into a fully functional, comprehensible law and reduce its dependency on company law and special cooperative laws, so that cooperatives that wish to be established under its provisions do not face judicial insecurity;
- expansion of the general definition of cooperatives and in particular the inclusion of objectives beyond member promotion, so that the collective interest cooperative particularities are also reflected in the general definition;
- inclusion of the seventh ICA cooperative principle on concern for the community to the list of cooperative principles that are referred in art 1;
- inclusion of a general provision that would offer a definition on cooperative transactions;

[14] For more information please visit: http://recma.org/actualite/proposition-pour-une-loi-cooperative-renovee-et-utopique

- inclusion of a general provision that would define the surplus and prevent the use of different terminology among the special laws, to avoid confusion;
- inclusion of a general provision that would specify in which order the allocations of the annual surplus take place, among patronage refunds, reserves, payment of interest;
- prohibition of any exceptions to the disinterested distribution of the remainder after liquidation, as a general rule for all cooperatives;
- inclusion of voting rights based on classes as a general principle to encourage and give voice to employees that wish to participate in a cooperative other than workers cooperatives; and
- encouragement of the formation of a reserve for education and training, as it is stipulated in Portugal and Spain.

Recommendations on other matters

- a clarification of the relationships between cooperatives and subsidiaries: agricultural cooperatives and merchants cooperatives (the richest cooperatives) have relied very heavily on subsidiaries; it is therefore impossible to abolish them entirely. A proposed solution is to reorganise these relationships and at the very least ensure information and control by cooperators;
- expansion of tax deductions of the surplus allocated as patronage refunds and to indivisible reserves for cooperative types; and
- promotion of research and study. One potential way to achieve this would be by incorporating cooperative studies into the main curricula of schools and universities in general, including in the field of cooperative law, along with an emphasis on relevant research by providing incentives (e.g., scholarships for PhD students, funding of legal studies).

IV. Conclusions

The morphology of the French legal landscape on cooperatives presents an interesting case for study, as it resembles a mosaic of around thirty legal statutes for cooperatives, regulating the various cooperative branches, traditional and emerging, which cohabit with a general cooperative law that introduces general provisions that are applicable in principle to all cooperative types.

Despite the attempt of the legislator to increase the role of the General Law, even by introducing a provision that was in contrast with the traditional legal thinking, in practice, France is "*La reine*" of special cooperative laws, the numbers of which have been growing over the years along with their dominant position.

Content-wise, the French legislator strives for a balance between safeguarding the cooperative principles and introducing practices of capitalist companies to cooperatives, responding in this manner to the cooperatives' need for addressing their financial and investment shortages.

The above balance seems to be achieved in many instances, to a lesser or a higher degree, and the result indicates that, despite the 1992 reform of the General Law in which many of the cooperative principles were mitigated, none have reached the stage of total abolishment.

One other interesting element of the French legislation is how the enactment of the SSE law brought about significant reforms at the core of cooperative legislation, such as with the enactment of a cooperative-oriented audit as a general regime for all cooperative types.

In an attempt to evaluate the French cooperative law through the eyes of a foreign scholar, it seems that the richness and pluralism of its good practices (e.g. indivisibility of reserves, tax deduction of indivisible reserves and patronage refunds, lack of distribution of dividends, distribution of the remainder after liquidation according to the disinterested distribution principle) outweigh its shortcomings (e.g. incompleteness of General Law, lack of comprehensive rules to fully regulate the already ongoing practice of forming subsidiaries by cooperatives) and, thus, leads quite rightfully to its consideration as a significantly friendly legal environment for cooperative development.

Nevertheless, there is significant room for its improvement, such as in cooperative education, regulation of the phenomenon of subsidiaries and expanding tax incentives to all cooperative types, which emerged as key areas that could be tackled by future research. Here, it is important to note that improvements could be tackled primarily through the development of the general law on cooperatives, towards which the majority of recommendations of the report refers.

To conclude, the good practices established under the French cooperative legislation, along with its weaknesses, offers a great insight and perhaps a source of inspiration for foreign legislators that wish to establish an enabling legal framework for cooperatives.

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