

# **LAS COOPERATIVAS SOCIALES. COMPARACIÓN ENTRE EL RÉGIMEN EN PORTUGAL Y EN ESPAÑA\***

## **SOCIAL COOPERATIVES. A COMPARISON BETWEEN THE REGIME IN PORTUGAL AND SPAIN\***



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### 1.

#### INTRODUCTION

The entities known as social cooperatives are a type of cooperative that, by producing goods or providing services of general interest, satisfies the needs of the community in which they operate or of a specific target group of vulnerable people. Consequently, they serve broader interests than those of their members. These cooperatives are subject to an economic regime, more or less stringent, aimed at preventing the direct and indirect distribution of the cooperative's surpluses and assets, and instead use them to achieve general interest objectives<sup>1</sup>. This type of cooperative emerged in connection with the phenomenon of social enterprises<sup>2</sup>. The initial doctrinal works on social enterprises, originating in Italy in 1990, formulated a concept for such enterprises bearing striking similarities to the traditional cooperative model, albeit with certain adaptations<sup>3</sup>. Notably, a year later, in 1991, the Italian Parliament approved the Law on Social Cooperatives (Legge 8 Novembre 1991, n.381), recognized as the first regulation of this type of cooperative. Following this legislation, European lawmakers identified the social cooperative framework as the most appropriate, or

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<sup>1</sup> HERNÁNDEZ CÁCERES, D., "Las cooperativas sociales como manifestación del principio cooperativo de interés por la comunidad", in *Innovación social y elementos diferenciales de la economía social y cooperativa*, AGUILAR RUBIO (Dir.), Madrid, Marcial Pons, 2022, pp. 79-98.

<sup>2</sup> EMES, *Las empresas sociales y sus ecosistemas en Europa. Informe comparativo*, 2020, p.42.

<sup>3</sup> VARGAS, C., "La empresa social concepto, regulación en Europa y propuestas de lege ferenda para el ordenamiento español", *Responsabilidad, Economía e Innovación social corporativa*, VARGAS (dir.), HERNÁNDEZ (coord.), Madrid, Marcial Pons, 2021, p. 317.

natural means to encapsulate the phenomenon of social enterprises<sup>4</sup>. This development facilitated the extraordinary proliferation of these entities throughout Europe<sup>5</sup>, extending their influence to Spain and Portugal as well.

In Portugal, social solidarity cooperatives were regulated through a specific law, Decree-Law No. 7/98, of January 15 (hereinafter DL7/98), encompassing the 174 cooperatives established in 2017<sup>6</sup>. In contrast, their incorporation in Spain occurred within the cooperative laws themselves. Due to the distribution of legislative competencies between the State and the Autonomous Communities regarding cooperatives<sup>7</sup>, this has made the legislative development and analysis of these entities more complex. In Spain, their inclusion took place not only in the national cooperative law, Law 27/1999, of July 16, on Cooperatives (hereinafter LCOOP), through the regulation of *social initiative cooperatives*, but also in the seventeen autonomous cooperative laws currently in force. Furthermore, regional lawmakers in Spain have regulated these entities with different names than those proposed by the national law, such as social interest cooperatives, social integration cooperatives, or social services cooperatives. In some instances, they have even divided and distributed the social activities typically carried out by these cooperatives into two classes of independent cooperatives. All of these factors have contributed to increasing the complexity of studying these entities.

On the other hand, their implementation in the Spanish territory has been uneven, with 80% of the 607 social cooperatives in 2017 concentrated in four Autonomous Communities: Andalusia, Catalonia, the Basque Country, and Madrid<sup>8</sup>. Based on these figures, and given the limited space available, we will only analyze the cooperatives from these autonomous communities<sup>9</sup> and those

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<sup>4</sup> In these terms FICI, A., *Social Enterprise Laws In Europe After the 2011 «Social Business Initiative». A comparative analysis from the perspective of worker and social cooperatives*, Bruselas, CECOP, 2020, p.17.

<sup>5</sup> DEFOURNY, J. y NYSSSENS, M., “Conceptions of Social Enterprise and Social Entrepreneurship in Europe and the United States, Convergences and Divergences”, *Journal of Social Entrepreneurship*, núm. 1(1), 2010, p. 33.

<sup>6</sup> CASES - COOPERATIVA ANTÓNIO SÉRGIO PARA A ECONOMIA SOCIAL, CASES | A realidade estatística das Cooperativas de Solidariedade Social em Portugal (2017-2018), 2020, p.11.

<sup>7</sup> The competence to legislate on cooperatives lies with both the State and the Autonomous Communities that have assumed such competence in their Statute of Autonomy, as ruled by Constitutional Court Judgment 72/1983. Currently, all Autonomous Communities have regulated this competence in their Statutes, so after the approval of the latest regional regulations, Spain has a national cooperative law and 17 autonomous cooperative laws. The national law will only apply to cooperatives that carry out their cooperative activity in the territory of several Autonomous Communities, except when it is primarily developed in one of them, as well as those that operate mainly in the cities of Ceuta and Melilla (Art. 2 LCOOP). Meanwhile, autonomous laws will apply when cooperatives primarily carry out their cooperative activity in the territory of one Autonomous Community, being subject to the cooperative law of that territory.

<sup>8</sup> BRETOS, I., DÍAZ-FONCEA, M. y MARCUELLO, C., «La Cooperativa de Iniciativa Social: un modelo de Empresa Social en España», *REVESCO, Revista de Estudios Cooperativos*, 2020, núm. 135, p.5

<sup>9</sup> The autonomous laws of cooperatives to be analyzed are the following:  
Law 14/2011, of December 23rd, of Andalusian Cooperative Societies (hereinafter LSCA) and Decree 123/2014, of September 2nd, approving the Regulation of Law 14/2011, of December 23rd, of Andalusian Cooperative Societies (hereinafter RLSCA).

regulated by the state law, as it served as a reference for many of the autonomous cooperative legislations when regulating this entity. De Therefore, this study will examine the state, Catalan, Basque, and Madrid *social initiative cooperatives* (art. 106 LCOOP, art. 143 LCC, art. 107 LCCM y art. 156.3 LCPV); he Andalusian, Basque, and Madrid *social integration cooperatives* (art. 100 RLSCA, art. 133 LCPV, art. 121 LCCM); and the Andalusian *social interest cooperatives* (art. 94 LSCA).

For the comparison of these entities, we will analyze three key characteristics that allow for the identification of social cooperatives according to the International Organization of Industrial and Service Cooperatives (CICOPA)<sup>10</sup> and part of the academia<sup>11</sup>: their social purpose, economic framework, and the potential involvement of other stakeholders in the cooperative.

## 2.

### SOCIAL PURPOSE

The main characteristic of this type of cooperative is that they primarily engage in activities of general interest<sup>12</sup>. However, upon comparing Spanish and Portuguese social cooperatives, it becomes apparent that the latter may not undertake all the activities permitted for their Spanish counterparts. In fact, Portuguese legislation regulates only one type of social cooperative, whereas in Spain, there are up to three different subtypes depending on their purpose, social objective, and the type of services or goods they can produce for members and third parties.

In the case of Portuguese social solidarity cooperatives, their purpose is to address the needs for social, labor, or economic promotion and inclusion experienced by their own members. These members belong to vulnerable groups, including individuals with disabilities or those who are socially excluded. As a result, the reconciliation of the general interest and the members' interests is more intense compared to ordinary cooperatives<sup>13</sup>. The Portuguese legislator provides that “social

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Law 12/2015, of July 9th, on cooperatives in Catalonia (LCC).

Law 11/2019, of December 20th, on Euskadi Cooperatives (hereinafter LCPV).

Law 2/2023 of February 24th on Cooperatives of the Community of Madrid (hereinafter LCCM).

<sup>10</sup> CICOPA is a sectoral organization of the International Cooperative Alliance (ICA) which identified 5 characteristics that would help define this type of cooperatives: 1. Explicit general interest mission, 2. Non-state character, 3. Multi-stakeholder membership structure, 4. Substantial representation of working members and 5. Non or limited distribution of surplus. CICOPA, *World Standards of Social Cooperatives*, 2004, p.1.

<sup>11</sup> HERNÁNDEZ CÁCERES, D. “Las cooperativas sociales...”, *ob cit*, pp. 81-82.

<sup>12</sup> In this regard, CICOPA establishes that “The most distinctive characteristic of social cooperatives is that they explicitly define a general interest mission as their primary purpose and carry out this mission directly in the production of goods and services of general interest” (CICOPA, *ob. cit.*, 2004, p.2).

<sup>13</sup> MEIRA, D., “O fim mutualístico desinteressado ou altruista das cooperativas de solidariedade social”, *CIRIEC-España, Revista Jurídica de Economía Social y Cooperativa*, nº 36, 2020, p. 227.

solidarity cooperatives are those which, through the cooperation and mutual assistance of their members, in compliance with the cooperative principles, seek, without profit, the satisfaction of their social needs and their promotion and integration, specifically in the following sectors: a) Support for vulnerable groups, especially children and young people, persons with disabilities and the elderly; b) Support for socially disadvantaged families and communities with a view to improving their quality of life and socio-economic integration; c) Support for Portuguese citizens living abroad, during their stay outside the national territory and after their return, in a state of economic need; d) Development of support programs for specific groups, especially in situations of illness, old age, disability and severe economic need; e) Promotion of access to education, training and vocational integration of socially disadvantaged groups. In addition to those listed, social solidarity cooperatives may perform other actions that have the same purpose as those provided for in the previous paragraph and, within the limits of the Cooperative Framework, provide services to third parties” (art. 2 DL7/98).

These social solidarity cooperatives in Portugal could be likened to the first subtype of Spanish social cooperatives, known as *social integration cooperatives*. This is because they are predominantly composed of individuals affected by physical, psychological, and/or sensory disabilities, as well as those in situations of social exclusion. Their primary objective is to provide their members with care and facilitate their social and professional integration. Examples within this category include the social integration cooperatives in the Basque Country (Art. 133 LCPV), Andalusia (Art. 100 RLSCA), and Madrid (Art. 125 LCCM). However, the main distinction between these Spanish cooperatives and their Portuguese counterparts lies in the percentage of members without difficulties allowed. While Portuguese social solidarity cooperatives admit only individuals with difficulties and their relatives as ordinary members, Spanish cooperatives also admit other individuals, provided that the majority (not the entirety) of members belong to those vulnerable groups. Thus, within these Spanish cooperatives, individuals both with and without integration needs may coexist.

In order to fulfill these mutualistic purposes,<sup>14</sup> which also carry a high social content, Portuguese social solidarity cooperatives and Spanish social integration cooperatives may be established as a consumer cooperative when the cooperative provides them with means or services for their sustenance and development; as a worker cooperative when the cooperative organizes the

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<sup>14</sup> MEIRA, D., “The Portuguese social solidarity cooperative versus the PECOL general interest cooperative”, *International Journal of Cooperative Law*, Vol. I (1), 2018, p.66.

production and marketing of products they collectively produce; or as an integral or mixed cooperative when combining the functions of both<sup>15</sup>.

In addition to the aforementioned cooperatives, as alluded to earlier, Spanish laws also regulate two other subtypes of social cooperatives that lack analogues in Portuguese social cooperative legislation. The second subtype of Spanish social cooperatives is constituted by what we have referred to as “*integration professionals cooperatives*”<sup>16</sup>. Their primary purpose is also the promotion and full social and work integration of specific sectors of the population through the provision of services related to the promotion of personal autonomy. However, unlike the previous type, they can only be established as worker cooperatives, and they are not required to be composed of individuals with difficulties. This is because those individuals with difficulties will not be members of the cooperative but rather the target audience for the services provided by the worker members of the cooperative. Consequently, this worker cooperative is characterized by its cooperative activity of providing work or employment to its members, who are mainly professionals in the fields of health, education, and social work, etc. Examples within this category include the Andalusian social interest cooperative (Art. 94 LSCA) and the Madrilenian social initiative cooperative (Art. 104 LCCM).

Finally, the third subtype is referred to as *social initiative cooperatives*, a term used in the national law. These cooperatives can engage in the social integration activities of the two preceding subtypes and, additionally, other types of social activities. The national legislator states that these are cooperatives that, regardless of their class, have as their social purpose either the provision of welfare services through the implementation of health, educational, cultural, or other social activities, or the development of any economic activity aimed at the labor integration of individuals facing any form of social exclusion and, in general, addressing unmet social needs in the market (art. 106.1 LCOOP). As we can see, this type of cooperative, unlike the previous two subtypes, no longer focuses on the integration of a specific sector of the disadvantaged population but provides services to the entire population in general. Within this subtype, one can include state, Catalan (art. 143 LCC) and Basque (art. 156.3 LCPV) social initiative cooperatives. Finally, it should be noted that the Madrid law also regulates this type of cooperative, although not expressly, but indirectly by requiring cooperatives that wish to qualify as non-profit organizations to carry out activities of

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<sup>15</sup> In Spain, the reference to the integral cooperative is collected exclusively by the Madrid legislator (art 125.1.c LCCM), although nothing prevents the other social integration cooperatives of other communities from being constituted as such. As for the Portuguese, its configuration as mixed is also defended by the doctrine (MEIRA, D., “O fim mutualístico desinteressado...”, *ob. cit.*, p.235).

<sup>16</sup> There are authors who call them as *cooperatives of social initiative in the strict sense* (FAJARDO GARCÍA, G., “Las cooperativas sociales entre el interés mutualista y el interés general”, in *Estudios de Derecho Mercantil. Liber amicorum profesor Dr. Francisco Vicent Chuliá*, Cuñat, Massaguer, Alonso y Gallego (dirs.), Petit (coord.), Valencia, Tiran lo Blanch, 2013, p.271).

general interest<sup>17</sup>, so that these cooperatives would also fall under the category of social initiative cooperatives (D.A.1<sup>a</sup> LCCM).

### 3.

#### ECONOMIC REGIME

Another characteristic that allows for the identification of social cooperatives is the presence of limitations affecting their economic regime. Thus, for a social cooperative to be recognized as such, it will not be sufficient for it to solely engage in a general interest activity; it must also comply with certain economic requirements.

In configuring this economic regimen, we also find certain differences between Portuguese and Spanish social cooperatives. Portuguese social solidarity cooperatives are obliged by the legislator to allocate the entirety of cooperative surpluses to reserves (Art. 7 DL7/98), thus favoring the self-financing of the cooperative<sup>18</sup>. Additionally, in the event of liquidation, if not succeeded by another cooperative of the same kind, the amount of all reserves, both voluntary and mandatory, constituted with undistributed surpluses, must be allocated to another social solidarity cooperative, preferably from the same municipality, to be determined by the federation or confederation representing the cooperative's primary activity (Art. 8 DL7/98). This imposed economic regime serves to underscore that this type of cooperative primarily operates in the interest of the community, guided by the values of altruism and solidarity articulated by the legislator in defining them. In other words, they pursue a mutualistic, disinterested, or altruistic purpose<sup>19</sup>.

In contrast, in Spanish legislation, we observe two different situations regarding the economic regime. On the one hand, a subtype of social cooperatives, those previously referred to as social integration cooperatives<sup>20</sup>, operates under the ordinary economic regime as the legislator does not impose any specific regulations on surplus distribution. Consequently, unlike other social cooperatives, they are free to allocate surplus among members based on their participation in the cooperative activities. This circumstance may be surprising when compared to Portuguese social

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<sup>17</sup> The legislator requires them to “pursue social, civic, educational, cultural, scientific, sports, health, development cooperation, environmental protection, promotion of the social economy or research, and promotion of social volunteering, or any other general interest purposes of a similar nature, irrespective of their class” (D.A.1<sup>a</sup> LCCM).

<sup>18</sup> MEIRA, D.: “Artigo 100.º”. In: *Código Cooperativo Anotado* (coord. MEIRA, D. & RAMOS, M.E.), Almedina, Coimbra, 2018, pp. 539-547.

<sup>19</sup> MEIRA, D., “O fim mutualístico desinteressado...”, ob. cit., p.234; MEIRA, D. et al., “Portuguese social solidarity cooperatives between recovery and resilience in the context of covid-19: preliminary results of the COOPVID Project”, CIRIEC-España, *Revista de Economía Pública, Social y Cooperativa*, núm. 104, 2022, p.242.

<sup>20</sup> The Andalusian social interest cooperatives are not subjected to a more stringent economic regime either. Instead, the legislator grants complete freedom to the members to decide in the General Assembly, or at the time of the cooperative's formation, whether it will adhere to the regime of non-profit cooperatives.

solidarity cooperatives, which, due to their composition and activities, were considered counterparts to Spanish social integration cooperatives. This circumstance may be surprising when compared to Portuguese social solidarity cooperatives, which, due to their composition and activities, were considered counterparts to Spanish social integration cooperatives<sup>21</sup>. The absence of a more rigid economic regime for these cooperatives may be due to their predominantly being composed of individuals facing integration difficulties. Consequently, the surpluses will go directly to these disadvantaged members, contributing directly to the cooperative's purpose.

On the other hand, the remaining Spanish social cooperatives will be subject to a more stringent economic regime due to the requirement to qualify as “non-profit cooperatives”. To attain this classification, they must adhere to a set of economic criteria. Before starting with the economic requirements for obtaining this qualification, it should be pointed out that the reference to the non-profit nature of cooperatives as an identifying feature of cooperatives has long since disappeared from the various Spanish cooperative laws, unlike the Portuguese Cooperative Code, which expressly includes it in its definition of a cooperative in Article 2. As evidence of this profit orientation, it could be noted that the latest laws governing Spanish cooperatives have expanded the possibility of engaging with third parties; they have allowed the non-segregated accounting of results from transactions with both third parties and members, distributing them among the members; as well as partially distributing reserves<sup>22</sup>. Consequently, Spanish cooperative laws expressly regulate the possibility of obtaining the designation of a “non-profit cooperative” for those cooperatives that comply with a set of more stringent economic requirements aimed at preventing the direct and indirect distribution of positive results.

As have mentioned above, the remaining Spanish social cooperatives will be required to set themselves up as “non-profit cooperatives”. To achieve this designation, they must expressly incorporate four conditions into their bylaws, with some variations, are the same in almost all the legislation analyzed. These affect the distribution of profits, the maximum interest that contributions

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<sup>21</sup> HERNÁNDEZ CÁCERES, D., “Social enterprises in the social cooperative form”, in *The International Handbook of Social Enterprise Law*, HENRY, VARGAS VASSEROT y ALCALDE SILVA (Dir.), Springer, 2022, p.183.

<sup>22</sup> PANIAGUA ZURERA, M., “La sociedad-empresa cooperativa en la evolución de los modelos ius cooperativos en España”, *Revista de Derecho de Sociedades*, núm. 40, 2013, pp. 20 y ff.; VARGAS VASSEROT, C., *La actividad cooperativizada y las relaciones de la cooperativa con sus socios y con terceros*, Cizur Menor, Aranzadi, 2006. Vargas Vasserot points out that “with each new regional law, greater approximations to the economic model are perceived (lower endowments of funds, more distribution of results, etc.) to the detriment of the social.” (VARGAS VASSEROT, C., “El nuevo (por diferente) marco legal de las sociedades cooperativas en Andalucía. El paso de una concepción social de la cooperativa a una economicista radical”, *Revista de Derecho de Sociedades*, núm. 53, 2018, p.7).

from members to the share capital can accrue, the remuneration of the Board of Directors, and the maximum amounts that can be paid to worker-members and employees<sup>23</sup>.

Regarding positive results, Spanish social cooperatives that are required to qualify as nonprofit, similar to Portuguese social solidarity cooperatives, are also prohibited from distributing profits among members<sup>24</sup>. However, there are differences among the various Spanish regulations regarding the allocation of these positive results: some legislators mandate allocating them to the creation of reserves<sup>25</sup>, others direct them to the consolidation of the entity and the achievement of its purposes<sup>26</sup>, while the national legislation does not specify a particular purpose, suggesting that these positive results could be allocated to any of the purposes outlined in regional legislations or to other purposes, provided they do not entail, or may not entail in the future, distribution among members<sup>27</sup>.

Regarding the next economic requirement, which refers to the limited interest in contributions to share capital, we should point out that this is one of the characteristics of cooperativism practically since its inception<sup>28</sup>. As such, Spanish laws introduce limitations on it for all types of cooperatives, fixing the maximum interest usually at six points the legal interest on money<sup>29</sup>. However, for social cooperatives that have to acquire the status of non-profit entities, a lower ceiling is imposed on this interest<sup>30</sup>, being established at the legal interest on money or even not allowing them to accrue any interest, as in the case of Madrid legislation<sup>31</sup>.

The following requirement for classification as a non-profit co-operative relates to the remuneration of the Board of Directors. Thus, Spanish laws, except for the Catalan one<sup>32</sup>, require

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<sup>23</sup> It should be noted that in the Basque Country, the regulation of the requirements to be classified as a nonprofit cooperative is carried out within the own fiscal regulations: Foral Norm 6/2018, of December 12, on the fiscal regime of cooperatives in the Historical Territory of Bizkaia (hereinafter referred to as NFRFCB) and Foral Norm 16/1997, of June 9, on the fiscal regime of cooperatives in Álava (hereinafter referred to as NFRFCA).

<sup>24</sup> The Catalan legislator only refers to freely disposable surpluses (art. 144.a LCC), allowing the distribution of extra-cooperative profits that are not allocated to the mandatory reserve fund (art. 81.2 LCC).

<sup>25</sup> The Catalan legislator stipulates that these surpluses must be allocated to an irrevocable reserve (art. 144.a LCC);

<sup>26</sup> The Basque regulation states that they should be allocated "to the realization of their purposes" (art. 52.2.a NFRFCB and art. 42.2.a NFRFCA); the Madrid legislation indicates that they must be devoted "to the consolidation and improvement of the service provided" (art. 107.3.a LCCM); and the Andalusian regulation specifies "to the consolidation of the entity and the creation of employment" (art. 80.1.c RLSCA).

<sup>27</sup> D.A.1ª.a. LCOOP.

<sup>28</sup> Robert Owen (1771-1858), considered by many as the father of cooperativism in England, was already implementing such a limitation. HERNÁNDEZ, D., "Origen y desarrollo del principio cooperativo de interés por la comunidad", *REVESCO*, núm. 139, 2021, p.3.

<sup>29</sup> Art. 48 LCOOP and concordant regional regulations.

<sup>30</sup> In contrast, the Basque legislator does not establish any special limitation for this type of cooperatives, so they will be subject to the same limit as the rest of ordinary cooperatives, the legal interest rate plus six points (art. 63.2 LCPV).

<sup>31</sup> Art. 104.3.c LCCM.

<sup>32</sup> On the contrary, we find the Andalusian law, which does not establish any specific limitation on the remuneration of any position for cooperatives to be considered nonprofit.



to obtain this qualification that the performance of the positions on the Board of Directors must be of a voluntary nature, without prejudice to economic compensations for expenses that directors may incur in the performance of their duties<sup>33</sup>. The Madrid law complements this obligation by clarifying that “the voluntary nature of the positions is not incompatible with receiving advances derived from the condition of worker members of its components”<sup>34</sup>.

The final economic requirement to obtain the qualification of a non-profit entity concerns the maximum amounts that can be paid to worker members and employees. This ensures that the organization does not circumvent the prohibition of distributing positive results through the remuneration of the work of its members. Thus, Spanish laws establish that the remuneration of worker members or, as the case may be, employees may not exceed 150% of the remuneration stipulated by the applicable collective agreement for salaried personnel in the sector, based on the activity and professional category<sup>35</sup>.

To conclude on the economic regime of Spanish social cooperatives, it should be noted that they are not specifically required to allocate reserves to a particular destination after liquidation, as observed in Portuguese legislation. Instead, the allocation will follow the same pattern as in ordinary cooperatives, with the remaining liquid assets being treated as non-distributable among members, as stipulated in most cooperative laws. In this regard, Spanish laws typically envision two scenarios in the event of the cooperative's liquidation. In the first scenario, if members choose to join another cooperative, the remaining liquid assets can be individualized and assigned to members. They can transfer these assets to the mandatory reserve fund of the cooperative they subsequently join<sup>36</sup>, or use them to pay mandatory contributions or entrance fees<sup>37</sup>. The second scenario occurs when members do not join another cooperative. In this case, the cooperative's assets must be allocated to another cooperative, a federative entity, or the confederation to which the cooperative belongs<sup>38</sup>. It is worth noting that regional Spanish laws increasingly incorporate exceptions to the idea of non-distributability of reserves in case of liquidation. For instance, the Andalusian law allows for the distribution of up to 70% of the mandatory reserve fund<sup>39</sup>.

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<sup>33</sup> D.A. 1<sup>a</sup>.c LCOOP, art. 52.2.b NFRFCB y art. 42.2.b NFRFCA.

<sup>34</sup> Art. 104.3.b LCCM.

<sup>35</sup> D.A.1.<sup>a</sup>.d LCOOP, art. 114.d LCC, art. 52.2.c NFRFCB y art. 42.2.c NFRFCA. The Andalusian and Madrid regulations omit the worker members (art. 104.3.d LCCM, art. 80.1.b RLSCA).

<sup>36</sup> Art. 75.2 LCOOP.

<sup>37</sup> Art. 98.3 LCCM.

<sup>38</sup> Art. 75.2.d LCOOP and concordant regional regulations.

<sup>39</sup> Art. 82.1.d y e LSCA.

#### 4.

### THE INVOLVEMENT OF STAKEHOLDERS

In these cooperatives, as they engage in activities of general interest, various groups of stakeholders may acquire the status of members. These groups can include workers, users, volunteers, local authorities, other legal entities, etc<sup>40</sup>. Similar to the preceding legal characteristics, distinctions emerge between Portuguese and Spanish regulations concerning the admission of individuals and the political rights they can exercise.

Thus, in Portuguese social solidarity cooperatives, we find two classes of members: full members and honorary members. The former are “individuals who, intending to use the services provided by the cooperative for their own benefit or that of their family members, or to develop their professional activity within it, voluntarily request admission” (art. 4 DL7/98). In other words, these are vulnerable individuals whom the cooperative aims to assist with their needs for social, employment, or economic integration, along with their family members, who are obliged to carry out the consumer or worker cooperative activity.

On the other hand, honorary members will be “individuals who contribute goods or services, specifically social volunteering, for the development of the purpose of the cooperative” (art. 5.1 DL7/98). These members mainly correspond to volunteers who provide their services selflessly to the cooperative. Volunteers play a significant role, especially in social solidarity cooperatives, which can even be categorized as promoters of volunteerism<sup>41</sup>. The presence of this type of members is optional, and their admission must be approved at the general assembly. The proposal for admission should be reasoned and submitted by the cooperative's administrative body, including a report on the donations of goods or services that significantly contribute to the development of the cooperative's purpose (art. 5.2 DL7/98). These members “shall have the right to information on the same terms as effective members, but they cannot choose or be elected to be part of the governing bodies. However, they may attend general assemblies without the right to vote” (art. 5.3 DL7/98). As a result, honorary members lose their political rights, leaving the management of the cooperative exclusively in the hands of full members. To compensate for this derogation of the cooperative principle of democratic member control<sup>42</sup> and to encourage the participation of honorary members, the legislator envisages the creation of an advisory body, the general council. This council will bring together all effective and honorary members, as well as members of the governing bodies, to make

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<sup>40</sup> HIEZ, D., “The general interest cooperatives: a challenge for cooperative law”, *IJCL International Journal of Cooperative Law*, n.º 1, 2018, pp. 105-106.

<sup>41</sup> MEIRA, D., “O fim mutualístico desinteressado...”, *ob. cit.*, p. 235-236.

<sup>42</sup> MEIRA, D., “The portuguese social solidarity cooperative versus the PECOL general interest cooperative”, *International Journal of Cooperative Law*, num. 2, 2019, p.68.

suggestions or recommendations and will have the competencies established in the operating regulations approved by the general assembly (art. 6.1 y 6.2 DL7/98). Additionally, this body may choose one of the honorary members to attend meetings of the supervisory body and will provide them with all the information to which members of this body are entitled (art. 6.3 DL7/98).

In the case of Spanish legislation, as we mentioned earlier, there are also provisions for other individuals, distinct from regular members, to acquire membership status and participate in the cooperative's decision-making. These include volunteers and other natural and legal persons, whether public or private, with no uniform criteria in their regulation<sup>43</sup>. However, similar to Portuguese legislation concerning honorary members, the presence of these additional contributors is optional, and their participation is subject to the will of the regular members.

Starting with volunteers, despite the significant role they often play in these types of cooperatives, they are specifically regulated by the Catalan legislator in the configuration of the social initiative cooperative and by the Madrid legislator, which refers to them as “special members” in the configuration of the integration social cooperative. Nevertheless, as mentioned earlier, their presence will be optional since, in both cases, it is stated that the bylaws *may* provide for their participation. (art. 143.4 LCC, art. 121.4 LCCM). In both legislations, in addition to providing for their participation, their legal regime must be regulated by statute, respecting in all cases their regulatory rules<sup>44</sup>. In Catalan legislation, the regulation of these volunteers is similar to that of Portuguese honorary members. as it establishes that they may attend the general assemblies and may designate a representative for the meetings of the board of directors, in both cases with a voice but without voting rights, although in this case it is understood that the volunteers will not acquire the status of member, nor will they be obliged to contribute capital. In contrast, the Madrid law does configure them as members, special members and, taking into account the few references to them in its articles, it can be deduced that they will have voting rights and will have to make a contribution to the share capital<sup>45</sup>. Finally, regarding the presence of volunteers in the rest of the state or autonomous social cooperatives, despite not finding specific regulation within cooperative laws, there is no reason why their presence cannot be provided for in the bylaws<sup>46</sup>. Even if provided for in the bylaws, and if the cooperative activity is not the provision of work, these volunteers can

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<sup>43</sup> PANIAGUA, M., “Las sociedades cooperativas de integración social y de iniciativa social, y el voluntariado social”, *Revista de Derecho de Sociedades*, núm. 15, 2000, p. 421.

<sup>44</sup> Law 45/2015, of October 14th, on Volunteering.

<sup>45</sup> The reference to these “special members” is made when regulating voting rights and contributions to the social capital of the associates. (art. 25.1.d y f LCCM).

<sup>46</sup> *Vid.* HERNÁNDEZ CÁCERES, D., “Las cooperativas sociales...”, *ob. cit.*, p.94.

acquire the status of “collaborating members” and will have the right to participate in the socio-economic rights and obligations of the cooperative<sup>47</sup>.

In addition to volunteers, Spanish legislators also include provisions regarding the participation of other natural persons. In this regard, it is observed that within cooperatives dedicated to the integration of people with difficulties, similar to Portuguese social solidarity cooperatives, they also foresee the joint or indistinct participation of the tutors or parents of these individuals (art. 143.2 LCC, art.100.2 RLSCA). Moreover, legislators expand the list of individuals to include the care staff (art. 143.2 LCC, art. 125 LCCM) and those holding a legitimate interest related to the social purpose of the cooperative (art.100.2 RLSCA). In the case of other social cooperatives, even if explicit reference is not made to the participation of these individuals as members, it is presumed that they may also acquire the status of “collaborating members”<sup>48</sup>.

Finally, within the regulation of Andalusian and Madrid integration cooperatives, there is the possibility of the involvement of private entities whose regulations or bylaws foresee or allow financing or other forms of collaboration in the development of the activities of such cooperatives<sup>49</sup>. Moreover, Spanish legislation also allows the participation of legal entities under public law in these cooperatives, as is the case with state social initiative cooperatives. These public entities and bodies participate as members in the manner established by the bylaws (art. 106.2 LCOOP). In Andalusian, Madrid, and Basque integration cooperatives, public entities must appoint or designate a representative or technical assistant who will provide their personal work to the cooperative, and, depending on the analyzed legislation, this representative “will attend meetings of the social organs in which the public entity [...] is a part, exercising the rest of the rights inherent to the status of a member, on behalf of the represented entity” (art. 100.2 RSCA); be a member of the board of directors (art. 125.3 LCCM); or attend with voice at the meetings of all social organs (art. 134.1 LCPV). The regulation of the remaining social cooperatives makes no explicit mention of the participation of these public entities within them, neither allowing nor prohibiting them. However, Spanish cooperative laws admit the involvement of such entities as members in the articles that

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<sup>47</sup> According to state law, collaborating members are individuals or legal entities who, without being able to engage in or participate in the cooperative activity inherent to the social purpose of the cooperative, can contribute to its achievement (art. 14 LCOOP and concordant regional regulations).

<sup>48</sup> Art. 14 LCOOP and concordant regional regulations.

<sup>49</sup> In other words, it is not enough for these private entities, through a decision of their organs, to decide to participate in the cooperative through one of the possible forms, as allowed by the article regulating those members who do not engage in cooperative activity. This article does not assess how this private entity is configured (Art. 13 LSCA, Art. 26 LCCM). Instead, it will be necessary for their bylaws to determine this explicitly. This explicit mention allows many associations and foundations operating in the field of social services to create or participate in social initiative cooperatives. (vid. VIDAL GARCÍA ALONSO, J. “Las sociedades cooperativas de iniciativa social como potenciales agentes de desarrollo en el ámbito local”, *REVESCO, Revista de Estudios Cooperativos*, núm. 68, 1999, p.202).

generally regulate who can be members of cooperatives, admitting individuals or legal entities, public or private<sup>50</sup>. Therefore, it is understood that these public entities can also participate in these social cooperatives, albeit with the limitations established therein.

The participation of public entities in Portuguese social solidarity cooperatives implies their transformation into public-interest cooperatives, regulated through Decree-Law 31/84 of January 21. This regulation presupposes cooperatives with a strong involvement of the state or public legal entities in their capital formation and their management. It requires authorization from the public entity to establish itself and subjects them to specific rules that violate the cooperative principle of democratic member control<sup>51</sup>. In this regard, CICOPA, when defining social cooperatives, refers to their non-state character, the independence they must maintain, the danger of becoming mere instruments of the administration, and the need to limit the voting power of these public entities, so that their number of votes is always lower than that of the other private natural or legal persons who are members of the cooperative<sup>52</sup>. Therefore, we do not consider this type of cooperative, despite providing services of public interest and promoting economically relevant activities of general interest<sup>53</sup>, to fall within the category of social cooperatives.

## 5.

### CONCLUSIONS

As observed, one of the main differences between Spanish and Portuguese social cooperatives lies in the types of activities they can undertake. While Portuguese legislation only recognizes social solidarity cooperatives, consisting of individuals from vulnerable groups aiming to facilitate their integration, Spanish law identifies up to three distinct subtypes based on their social purpose and activities. These include social integration cooperatives, similar to their Portuguese counterparts; professional integration cooperatives, which also provide integration services but are not exclusively staffed by individuals with difficulties; and social initiative cooperatives. The latter can engage in healthcare, educational, cultural, or other socially-oriented activities to address needs not met by

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<sup>50</sup> Art. 12 LCOOP, art. 22.1 LCC, art. 19.1 LCPV, art. 13.1 LSCA, art. 14.2 LCCM.

<sup>51</sup> In these cooperatives, the State or other legal entities of public law will participate in the organs of public interest cooperatives in proportion to their capital, and the number of votes cast by the members of public interest cooperatives in general meetings is proportional to the capital they have paid in. Likewise, the possibility for the public entity to appoint and replace its representatives, regardless of any agreement of the general assembly, is regulated, along with a special regime for the cessation of the public portion (Art. 8, 12, and 13). Even the preamble itself speaks of “the adoption of some solutions not always in line with the purity of cooperative principles”, SALAZAR LEITE, J., Art. 6, *Código cooperativo comentado*, Almedina, Coimbra, 2018, p. 48 y ff.

<sup>52</sup> CICOPA, *ob. cit.*, 2004, p.3-4.

<sup>53</sup> MEIRA, D., “O fim mutualístico desinteressado...”, *ob. cit.*, p. 238 y 239.

the market, in addition to the goal of integrating individuals facing exclusion. Consequently, the spectrum of activities Spanish social cooperatives can undertake is much broader than that of Portuguese cooperatives.

Differences are also evident in terms of the economic regime. Portuguese cooperatives face limitations on surplus distribution, requiring the entire surplus to be allocated to reserves. In case of liquidation, these reserves must be directed to another social solidarity cooperative. In contrast, Spanish integration cooperatives, which were counterparts to the Portuguese ones in terms of the services provided, face no such limitations on surplus distribution. The other two subtypes of Spanish cooperatives are subject to a specific economic regime. They must qualify as non-profit cooperatives and adhere to more stringent economic requirements than the Portuguese ones. These requirements aim to prevent both direct and indirect distribution of positive results.

Finally, in both legislations, the involvement of persons other than members is envisaged, and such presence, in any case, is discretionary. Nevertheless, some differences arise concerning these different types of individuals and the rights they may hold. Spanish law allows a broader range of individuals other than ordinary members to acquire membership compared to Portuguese legislation. Notably, the participation of legal entities in public law does not constitute a violation of cooperative principles in Spain, unlike in Portugal.

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