

Social Enterprises in the Social Cooperative Form



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1 Introduction

In Europe, most social enterprises have their origins in the tradition of the cooperative movement in the fields of labor, agriculture, health, retail, credit, and education.¹ The first works that studied social enterprises in Europe were developed in Italy in 1990. These works elaborated a conception of the social enterprise with many similarities to the traditional model of cooperatives, adapted to provide answers to more social needs.² In 1991, the Italian Parliament passed a specific law for social cooperatives, which led to an extraordinary boom of these entities

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¹EMES (2020, p. 42).

²Vargas Vasserot (2021, p. 317).

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throughout Europe.³ After this pioneering experience, European legislators found the cooperative model to be the most appropriate, or the most natural, for framing the phenomenon of social enterprises,⁴ to the point of being considered by some as a modified form of the cooperative.⁵

As such, some of the characteristics that define the European concept of social enterprise are currently related to the cooperative principles that guide the actions of this type of entity. Thus, the social dimension of social enterprises in Europe is identified with the cooperative principle of concern for the community, which has been present in the cooperative movement since its inception, and which currently requires cooperatives to contribute to the sustainable development of their communities in the ecological, social, and economic spheres.⁶ This social dimension is also influenced by the principle of voluntary and open membership.⁷

Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

This principle enables the rest of the community to join the cooperative and to benefit from the same advantages enjoyed by members, thereby demonstrating the altruism of the cooperative members toward potential future members. Finally, the social function of cooperatives has been recognized legislators in the constitutions of some European countries, such as Spain, Italy, and Portugal.⁸

The political or participatory governance dimension of social enterprises finds its equivalence with the cooperative principle of democratic member control, which establishes that decision making within the cooperative is not linked to paid-up capital but governed, in principle, by the rule of “one member, one vote.” They are also entities with a high degree of autonomy, as defined by the cooperative principle of autonomy and independence. Social enterprises are autonomous organizations and managed by their own members.

Despite the similarities, cooperatives cannot be directly considered as social enterprises, because they do not meet all the requirements. However, a type of cooperative has emerged that adapts some of the attributes of social enterprises while respecting the essential cooperative principles and elements. These new entities, known as social cooperatives, have been considered to be a type of social enterprise.⁹ Social cooperatives combine the mutualistic purpose typical of cooperatives with the general interest of the whole community or of a specific target group, serving broader interests than those of their social base.

³Defourmy and Nyssens (2010, p. 33).

⁴Fici (2020, p. 17).

⁵Fici (2017, p. 47).

⁶Hernández Cáceres (2021, p. 23).

⁷ACI (1995, p. 17).

⁸Fici (2015, p. 2).

⁹Defourmy and Nyssens (2013, p. 13).

In defining or identifying common characteristics, authors have pointed out that the social cooperative is an entity that operates according to a democratic procedure through member participation and its purpose is to pursue the public interest of the community.¹⁰ The International Organization of Industrial and Service Cooperatives (CICOPA), which is a sector of the International Cooperative Alliance, agrees in part with this definition, although it expands on it by identifying five main characteristics of social cooperatives: 1. explicit general interest mission, 2. non-state character, 3. multi-stakeholder membership structure, 4. substantial representation of worker members at every possible level of the governance structure, and 5. non- or limited distribution of surplus.¹¹ This interpretation is also adopted by other authors, such as Defourmy and Nyssens, who even add a sixth characteristic, “*One member, one vote,*” or “*limitation to the rights of shareholders.*”¹²

Among all these characteristics proposed to identify a social cooperative, some can be ruled out because they are not exclusive to social cooperatives but rather inherent to the social form of cooperative and will be present in all cooperatives, social or not. The first of these is the “non-state character.” As CICOPA itself recognizes, this characteristic is linked to the fourth cooperative principle of autonomy and independence. The same principle applies to the “one member, one vote” rule, which is part of the second cooperative principle of democratic control of members and which specifically specifies, “members have equal voting rights (one member, one vote).”¹³

Thus, based on these definitions, social cooperatives have only three characteristics that distinguish them from other cooperatives: an explicit social mission, a specific economic framework that mainly affects the distribution of surpluses and liquidation, and the participation of multiple stakeholders in the cooperative.

2 Regulatory Models in Comparative Law

The regulation of social cooperatives has been carried out very unevenly, using different names to refer to them, and without a clear consensus as to where and how they are to be regulated. Thus, one can find cases in which social cooperatives are included in the general law on cooperatives, as if they were another type of cooperative or a type of qualification that can be obtained by any type of cooperative that meets certain requirements imposed by the legislator. Other countries have decided to regulate them through their own exclusive law, to give these cooperatives greater importance, although these countries also include several references to the general law on cooperatives, which regulates a large part of their social framework.

¹⁰Du et al. (2020, p. 37).

¹¹CICOPA (2004).

¹²Defourmy and Nyssens (2013, p. 16).

¹³ACI (1995, p. 17).

Table 1 Regulation of the analyzed social cooperatives

Country	Legislation	Name of social cooperative
Belgium	Companies and Associations Code 2019 Royal Decree of 28 June 2019	Cooperative as a social enterprise
Brazil	Law no. 9.867 of November 10	Social Cooperatives
France	Law n° 47-1775 of September 10, 1947, on the status of cooperation	Cooperative society of collective interest
Greece	Law 2716/1999 on Development and modernization of mental health services and other provisions	Limited liability social cooperatives
	Law 4430 on Social and Solidarity Economy and Development of its Institutions and other provisions	Social cooperative enterprises
Italy	Law 8 November 1991 n. 381	Social cooperative
Portugal	Decree-Law no. 7/98	Social solidarity cooperatives
South Korea	Framework Act on Cooperatives Enforcement Decree	Social cooperatives
Spain	Law 27/1999 of July 16, 1999, on Cooperatives	State social initiative cooperative
	Law 11/2019 of December 20, 2009, on Cooperatives in the Basque Country	Basque social initiative cooperative Basque social integration cooperative
	Law 12/2015 of July 9, 2015, on cooperatives	Catalan social initiative cooperative

Finally, some countries have regulated them within other laws of broader content, such as corporate codes, laws regulating the social economy, or within laws related to the activities that cooperatives can carry out.

Legislators have opted for different formulas, which may seem contrary to the logic that a social cooperative regulated through its own law would be regulated in greater detail than a social cooperative regulated within a general law on cooperatives. As such, social cooperatives do not demonstrate a clear correlation between the form of regulation and their greater or lesser degree of development. Depending on this degree of development, three models of regulation¹⁴ can be found (Table 1):

¹⁴In addition to the legislations cited here, other countries have also regulated social cooperatives; for brevity, these have not been included in this paper. Examples are the Czech Republic, which regulates the *social cooperative* in Articles 758 et seq. of Law no. 90/2012 on commercial companies and cooperatives; Croatia, which develops the social cooperative in Article 66 of the Law of 11 March 2011, no. 764, on cooperatives; Hungary's *work integration social cooperative*, regulated in Articles 8, 10(4), 51(4), 59(3), 60(1), 68(2)(e), of Law no. X-2006 on cooperatives; Poland, which recognizes the *work integration social cooperative* in the Law of 27 April 2006 on social cooperatives; and South Africa, which regulates the *social cooperative* within Part 5 of The Cooperatives Act 14, of 2005.

- Legislation with little regulation: These are laws that only contain the definition of a social cooperative and a list of the activities to which it may be dedicated. In some cases, these laws also generalize the characteristics of the people to whom they are addressed and the presence of volunteers. Examples are legislations in Brazil and Spain; the former regulates social cooperatives (*cooperativas sociais*) through Law no. 9.867, of November 10, 1999, and the latter includes social cooperatives in different legislations.¹⁵ Thus, we find the state social initiative cooperative (*cooperativa de iniciativa social estatal*), which is regulated in Article 106 of Law 27/1999 of 16 July on Cooperatives; the Catalan social initiative cooperative (*cooperativa de iniciativa social catalana*), regulated in Article 143 of Law 12/2015 of 9 July on Cooperatives; and the Basque social integration cooperative (*cooperativa de integración social vasca*) and Basque social initiative cooperative (*cooperativa de iniciativa social vasca*) in Articles 133 and 156 of Law 11/2019 of 20 December on Cooperatives of Euskadi (Basque Country).
- Legislation with an intermediate regulation: These legislations, in addition to the contents of the previous category, specifically regulate other aspects of social cooperatives, such as membership criteria, member types, voting rights of members, destination of surpluses and allocation of assets in the event of liquidation, activity of the cooperative with non-member third parties, registration of this type of entity, possibility for these entities to enter into agreements with different administrations, and applicable tax benefits. Examples are the Italian legislation that regulates social cooperatives (*cooperative sociali*) through Law 8 novembre 1991, n. 381; Portuguese legislation, which develops the regime of social solidarity cooperatives (*cooperativas de solidariedade social*) in Decree-Law no. 7/98; the French legislation with the regulation of the cooperative society of collective interest (*société coopérative d'intérêt collectif*) within Title II Ier Law n° 47-1775 of September 10, 1947 on the status of cooperation; and the Belgian legislation, which regulates the cooperative qualification as a social enterprise in Title 3, Book 8 within the Companies and Associations Code of 2019 and Royal Decree of June 28, 2019 that sets out to establish the conditions for authorization as an agricultural enterprise and as a social enterprise. Regarding the latter legislation, only cooperative entities may qualify as social enterprises.
- Legislation with detailed regulation: In this last group are those legislations that, in addition to containing what is regulated by the previous categories, develop in a more extensive and detailed manner other matters, such as the constitution of the cooperative, minimum capital to be contributed by each member, regime for holding assemblies, composition and decision making of the administrative body, dissolution and liquidation of the cooperative, and modification and supervision by the authorities. This group would include the Greek legislation, which

¹⁵For the Spanish legislative analysis, in addition to the state law, the laws of the autonomous communities of Catalonia and Basque Country have been chosen, since these are the regions with the largest number of this type of cooperatives. Bretos et al. (2004, p. 9).

regulates *limited liability social cooperatives* in Article 12 of Law 2716/1999: Development and modernization of mental health services and other provisions and *social cooperative enterprises* in Chapter Δ of Law 4430 on Social and Solidarity Economy and development of its institutions and other provisions; and the South Korean legislation, which regulates *social cooperatives* in Chapter IV of the Framework Act on Cooperatives and in its Enforcement Decree.

3 General Interest Mission

The main characteristic of social cooperatives is that they mainly develop activities of general interest, in such a way that they substitute the mutualistic purpose of the cooperatives for broader purposes that affect the society or community in which they are inserted. This activity is the *raison d'être* of the cooperative; the cooperative is created mainly to meet these needs of general interest and satisfy them. In this sense, CICOPA states:¹⁶

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.

A summary of the activities that each of the cooperatives analyzed can carry out is found in Table 2. Depending on the goods and services they produce and the way in which they provide them, three types of social cooperatives can be distinguished:

- **Social integration cooperatives:** These are cooperatives formed by a certain percentage of people affected by physical, mental, and/or sensory disabilities, as well as by people in a situation of social exclusion, and which seek to facilitate their social and professional integration either through their associated work or the provision of general or specific consumer goods and services. In the first case, the persons concerned would set up a worker cooperative to organize, channel, and market the products and services of the members' work. This type of worker cooperative finds its equivalence in work integration social enterprises. In the second case, the members involved constitute a consumer cooperative that can develop any type of economic activity, either producing goods or providing services to the members themselves and that is aimed at contributing as far as possible to the treatment of the members or facilitating their economic self-sufficiency.

The analyzed legislations include several cooperatives that, as they are regulated, fall within this type of cooperative. These are the cases of the Basque integration cooperative and Greek limited liability social cooperative. In addition to these are three others that are also considered integration cooperatives, both those created for the integration of vulnerable groups and for special groups, but

¹⁶CICOPA (2004, p. 2).

Table 2 Activities carried out by the analyzed social cooperatives

Country	Name of social cooperative	Integration		Social purposes	Activity with non-members
		% members disadvantaged	No % of disadvantaged members		
BE	Cooperative as a social enterprise	X	X	X	X ^a
BR	Social Cooperatives	X			
FR	Cooperative society of collective interest	X	X	X	X
GR	Limited liability social cooperatives	35%			
	Social cooperative enterprises for social insertion	30%/50%			
	Social cooperative enterprises of collective and social benefit		X	X	X
IT	Social Cooperative Type A		X	X	X ^a
	Social Cooperative Type B	30%			X ^a
PT	Social solidarity cooperatives	X	X	X	X
SK	Social cooperatives	X	X	X	X
SP	State social initiative cooperative	X	X	X	X ^a
	Basque social initiative cooperative		X	X	X ^a
	Basque social integration cooperative	51%			X
	Catalan social initiative cooperative	X	X	X	X ^a

^aBy application of the general cooperative regime

can only be configured as worker cooperatives: the Italian type B social cooperative, Brazilian social cooperative, and Greek social insertion cooperative enterprises.

Aspects affecting people with difficulties vary among the legislations analyzed. One is the percentage of members with difficulties who must form these cooperatives, which ranges from 30% to 51%.¹⁷ The only legislation that does not contain a minimum percentage is that of Brazil, which initially set it at 50% but decided to veto the article that regulated it, on the grounds that admitting this percentage would contradict cooperative principles by creating an organization in

¹⁷These percentages coincide with those established by CICOPA (2004, p. 3).

which half of the workers are not members while also opening the door to the proliferation of fraudulent worker cooperatives.¹⁸

The second aspect that varies from one legislation to another is the group of people for whom these types of cooperatives are intended. Some cooperatives are created for a very specific target group, such as the social responsibility cooperatives in Greece that only admit as ordinary members older people or people under 15 years old who need rehabilitation owing to mental disorders.¹⁹ Meanwhile, other cooperatives of this type admit heterogeneous groups of people, either because they use generic formulas, such as “people with disabilities” or “in a situation of social exclusion” that include a broad group of people, as do the Basque social integration cooperatives; or because they make a detailed list identifying the specific group of people for whom these cooperatives are intended, such as persons with disabilities, ex-drug addicts, former prisoners, victims of domestic violence, victims of illegal human trafficking, unhoused people, refugees and asylum seekers, single-parent families, and long-term unemployed people.

- **Small social cooperatives:** These are cooperatives with a much broader field of activities than the previous group, and can provide health, educational, cultural, and social services or facilitate the social and professional integration of disadvantaged people, but which, unlike the previous ones, do not have to be made up of a percentage of people with difficulties. Thus, when constituted as a workers’ cooperative, the members will often be health professionals, teachers, or social workers,²⁰ rather than people in distress. The Italian type A social cooperative, Basque social initiative cooperative, and Greek social cooperative enterprises of collective and social benefit fall under this group.

The reason they cannot be formed by a certain percentage of disadvantaged members is because the legislations that include this type of cooperative are the same legislations that regulated the previous type. A cooperative with a high percentage of members with difficulties will be classified as a social integration cooperative, instead of a small social cooperative.

Although the three cooperative types mentioned above can, in principle, carry out the activities indicated above, some differences can be observed. The Basque social initiative cooperative, in addition to the aforementioned activities, can also carry out any economic activity whose purpose is “the satisfaction of social needs not met by the market” (Article 156.3), thus considerably broadening its scope of action. Greek social cooperative enterprises of collective and social benefit can engage in sustainable development activities that “promote environmental sustainability, social and economic equality, as well as gender equality, protect and develop common goods and promote reconciliation between generations and cultures” (Article 2.6). The Italian social cooperative type A, which could

¹⁸Damiano (2007, p. 205).

¹⁹Nasioulas (2012, p. 153) and Fajardo García and Frantzeskaki (2017, p. 60).

²⁰Fajardo García (2013, p. 270).

develop an expanded number of activities per the legislative decree of 3 July 2017, n. 112, operates a narrower scope in reality: certain socio-health and educational services and integration or reintegration into the labor market of people with disadvantages or disabilities. The decree makes no mention of other relevant aspects, such as the environment and equality.

- **Broad-spectrum social cooperatives:** This group includes cooperatives whose corporate purpose encompasses that of the two preceding types of cooperatives. The legislation does not differentiate between cooperative types to provide these services but regulates a single type of social cooperative that admits members among people with difficulties (without requiring the presence of a certain percentage as a minimum) and without difficulties. The regulated cooperative type can carry out activities aimed at the social and professional integration of such people and provide health, educational, and cultural services or social needs not met by the market. This group includes the Spanish social initiative cooperative, Catalan social initiative cooperative, South Korean social cooperative, French collective interest cooperative, Portuguese social solidarity cooperative, and Belgian cooperative classified as a social enterprise.

The case of the Korean social cooperative should be highlighted owing to its uniqueness. First, Korean legislation allows the cooperative to carry out any other activity as long as the social activity is the main activity, understood as such when it “accounts for more than 40% of the total amount of the cooperative’s activity as a whole” (Article 93.2). In other words, Korean legislators views as the main activity an activity that in reality is not the main activity—the cooperative can engage in a non-social activity that accounts for up to 60% of the cooperative’s activities. Second, the granting of small loans and mutual aid programs to members is included among the possible activities to be developed. These grants are intended to improve members’ mutual welfare, so long as they are within the limit of the total amount of the cooperative’s paid-up capital (Article 94).²¹

In addition to these activities of general interest, most of the legislations analyzed allow this type of cooperatives to let non-member third parties participate in the cooperative activity, either as workers or as recipients of the services provided by the cooperative. This possibility of action results in the improved welfare and improvement of the community, since not only the members will benefit from these services but also the entire community will participate in the benefits provided by these activities. In most cases, this participation in the cooperative activity with third parties has limitations, as in the case of Greek social cooperative enterprises, where the number of non-member employees cannot exceed 40% of the total number of employees (Article 18). The case of the South Korean social cooperative is striking. For one, it is the only type of cooperative in Korea that the law allows to carry out business activities with non-members.²² For another, the law identifies

²¹ Jang (2013, p. 658).

²² Jang (2013, p. 658).

some activities in which it is allowed to provide services to non-member third parties without any limit, and other activities in which it is not allowed or is very limited to do so, as is the case of medical and health services, where the law delimits both the target public to whom it can be provided, drawing up an exhaustive list of recipients, and the amount thereof, establishing a maximum of 50% of the total amount of services provided (Article 95.1 and 24 and 25 Decree). The case of the French collective interest cooperative is likewise extraordinary. French law authorizes non-member third parties to benefit from the products and services without any limitation, unlike the other types of French cooperatives.²³

4 Economic Regime

The next identifying characteristic of the social cooperative is the presence of some common limitations or indications that are repeated in most of the legislations analyzed and that affect their economic regime. Thus, for a social cooperative to be considered as such, it will need to not only comply only with the development of an activity of general interest but also to consider economic aspects, as can be seen in Table 3. Practically all legislators, when regulating these figures, will establish specific precepts indicating the possibility to distribute surplus and their allocation. The law determines the possibility of distribution of the reserves and allocation of the cooperative's assets during liquidation.

The first of these common issues concerns the distribution of surplus among members. In this regard, CICOPA recognizes that:²⁴

Whereas cooperatives may use part of their surplus to benefit members in proportion to their transactions with the cooperative (3rd cooperative principle), social cooperatives practice limited distribution or non-distribution of surplus.

However, this is not the case in all the legislations analyzed. Instead of only two types of cooperatives (which limit or prohibit), there is a third one, which, after the relevant allocation to reserves and possible payment to the members of the interest earned on their capital subscription, allows the distribution of the surplus among members.

This last group of cooperatives that can distribute the entire surplus among members is mainly made up of the cooperatives previously referred to as social integration cooperatives. In this type of cooperatives, whether worker or consumer cooperatives, most of the members are disadvantaged people. By not introducing any type of limitation and allowing the distribution of surpluses, the law ensures that surpluses will go directly to the disadvantaged members, which directly contributes to achieving the cooperative's purpose—to socioeconomically empower and

²³Margado (2004, p. 155).

²⁴CICOPA (2004, p. 4).

Table 3 Economic regime of the social cooperatives analyzed

Country	Name of the social cooperative	Surplus sharing	Irreparable reserve	Distribution of liquidation assets	Non-profit	Limitation on interest
BE	Cooperative as a social enterprise	Limited		General Interest		X
BR	Social Cooperatives	Allowed				
FR	Cooperative society of collective interest	Forbidden	X	Coop. and Social Econ. ^a		X
GR	Limited liability social cooperatives	Allowed				
	Social cooperative enterprises	Limited		Social Econ.		
IT	Social cooperative Types A and B	Allowed	X	General Interest	X	X
PT	Social solidarity cooperatives	Forbidden	X ^a	Coop.	X	
SK	Social cooperatives	Forbidden	X	General interest and Coop.		
SP	State social initiative cooperative	Forbidden	X ^a	Coop. ^a	X	X
	Basque social initiative cooperative	Forbidden	X ^a	Coop. ^a		
	Basque social integration cooperative	Allowed	X ^a	Coop. ^a	X	
	Catalan social initiative cooperative	Forbidden	X	Coop. ^a	X	X

^aBy application of the general cooperative regime

professionally and socially insert these people. Moreover, the distribution of surplus will be carried out in proportion to the cooperative activity developed by each of the members, as indicated in the third cooperative principle of economic participation of the members.²⁵

This is the case of the Greek limited liability cooperative, which can distribute 95% of the surplus among members (Article 12.12). In the cases of the Basque integration cooperative, Italian social cooperative,²⁶ and Brazilian social cooperative, the law offers no specific rules for the destination of surpluses and the general

²⁵ACI (1995, p. 18).

²⁶The economic regime of the Italian social cooperative is the same for types A and B. In the type A cooperative, which is not made up of members in difficulty, the profits are also shared among all members.

regime applies to them. That is, in the case of these three cooperatives, the distribution of surpluses is no more limited than for the rest of the cooperatives.

Among the cooperatives whose distribution of profits is partially limited is the Belgian social cooperative, in which surplus distribution will take place “after having fixed an amount which the society reserves for projects or allocations necessary or useful for the realization of its object” (Article 6 § 1.6° of the Decree). According to this wording, the distribution of profits is conditional on the availability of profit after the amount that the cooperative reserves for projects is set. In the end, the cooperative itself decides whether to distribute surpluses. This depends on whether it allocates a greater or lesser amount to projects, exhausting the available profits. Moreover, the purposes to which these reserved amounts are destined contribute directly to the achievement of the cooperative’s social purpose—“-generating a positive social impact for people, the environment or society” (Article 8.5.§ 1st. 1°). In those cases in which the cooperative is not made up of members who are disadvantaged people, then the cooperative can be expected to allocate all the profits to projects.

The Greek social cooperative enterprise also belongs to this group, which in principle prohibits the distribution of profits among members, unless they are workers, in which case 5% must be allocated to the legal reserve, 35% to the workers (whether they are members or not), and the rest to the creation of new jobs and expansion of productive activities. However, the distribution of this 35% can also be eliminated, since, even if there are worker-members within the cooperative, it can be allocated to the creation of new jobs and expansion of productive activities if the assembly so decides with the vote of at least two-thirds of its members (Article 21.2).

The group of cooperatives that prohibit the distribution of surpluses among members is more numerous compared with the previous ones, although it is not possible to identify a single trend in terms of the allocation of surpluses. A few legislations impose, after the endowment to reserves, the prohibition of distributing the rest of the profits, without giving any precise indication as to what is to be done with these surpluses, as is the case of the Spanish social initiative cooperative. Other legislations require the remainder of the profits to be allocated to a reserve that cannot be divided among members, as is the case with the Portuguese social cooperative, South Korean social cooperative, and Catalan social initiative cooperative, although the latter must use the reserve for activities that fall within the cooperative’s corporate purpose. Finally, a few legislations give a wide range of possibilities on the allocation of surpluses that cannot be distributed among members. For the Basque social initiative cooperative, the surplus must be used for the realization of its purposes (Article 52.a of the Provincial Tax Law). For the French collective interest cooperative, the surplus must be allocated either to a reserve or assigned “in the form of subsidies to other cooperatives or unions of cooperatives or to works of general or professional interest” (Article 16).

Another characteristic of this last group is the prohibition established by all legislations on the distribution of reserves among members. Some laws establish such a condition expressly for this type of cooperative, while others are affected by the referral to the general regime in which all cooperatives experience such a

prohibition. This is a logical requirement, given that the law cannot prohibit the distribution of profits among members while obliging the cooperative to allocate them to reserves that are distributable. An outcome of such legal loophole is that members can obtain those profits that in principle are irreparable.

Among the issues affecting the economic regime of cooperatives, the CICOPA only refers to the distribution of surplus. The present legislative analysis showed that during the liquidation procedure, the social cooperative prohibits the distribution of the remaining assets among members once all debts have been satisfied and the members reimbursed for their contributions to the capital. Instead, most of the legislation analyzed allocates it to different purposes, albeit ones that have in common the promotion of the general interest, cooperative movement, or social economy. Among those that are obliged to allocate them to general interest purposes are the Italian social cooperative, which has to allocate these assets to public utility purposes; and Belgian cooperative as a social enterprise, which has to allocate them to purposes related to its corporate purpose that is of general interest. Among those that allocate the remaining assets to the cooperative movement are the Portuguese social cooperative, which must allocate them to another cooperative of general interest, preferably in the same municipality (Article 8); and Spanish, Basque, and Catalan cooperatives, to which the general regime applies. The South Korean social cooperative is in an intermediate situation, between general interest and support for the cooperative movement; it can allocate surpluses to the social cooperative federation, a social cooperative with similar purposes, a non-profit entity, a public service entity, or to the National Treasury (Article 104). Among those that use surpluses for purposes related to the social economy, the Greek social cooperative enterprise must transfer surpluses to the Social Economy Fund (Article 22.3). The French collective interest cooperative combines support for the cooperative movement and social economy by being able to use surpluses for another cooperative or other social economy entity.

In addition, this regime has some particularities that are repeated in the regulations of social cooperatives, but their consideration as an identifying characteristic of the type merits investigation, given the lack of uniform treatment. Thus, some of the legislations analyzed define this type of cooperatives as *non-profit* cooperatives.²⁷ However, this cannot be claimed to be a common characteristic of social cooperatives, since four of the legislations make no reference in this regard. The same is true of *limitations on compensation for subscribed capital*. Although some regulations include it, there is no uniformity; only five of the regulations analyzed establish the prohibition of accruing interest in excess of the legal interest, while the rest of the regulations do not make any reference. Moreover, the same limits established for

²⁷ *A contrario sensu*, an implication would be that in the rest of the types of cooperatives, this profit motive would be present. It is not the aim of this study to examine the presence of the profit motive in cooperatives, only to reflect some of the common requirements imposed on social cooperatives by the legislations analyzed. Further information on this content is available in other works that deal with the subject in greater depth, such as Aguilar Rubio and Vargas Vasserot (2012), Llobregat Hurtado (1999), and Paniagua Zurera (2005).

other cooperatives in the general regulation should be applied to the social cooperatives in these legislations.

Finally, most of the legislations analyzed typically establish, together with the legal regime of the cooperative, a series of tax benefits for this type of cooperative, such as reductions in social security contributions, tax benefits in inheritance and gift tax, access to special subsidies for financing, and favorable conditions in public contracting.

5 Multi-Stakeholder Membership Structure

The last of the representative characteristics pointed out by CICOPA among these social cooperatives is the presence of governance based on multi-stakeholder participation.²⁸ By developing a general interest activity, the cooperative has, as members, different groups of stakeholders, such as workers, users, local authorities, and different types of legal entities. As members of the cooperative, their interests would be represented within the cooperative's bodies, and they would have a direct influence on decision making through their vote. This structure enables the cooperative to take actions not from a single perspective, as might occur in a consumer or worker cooperative, in which only consumers or workers are members. Decisions within a social cooperative are much more inclusive by considering the needs and concerns of all the different groups that comprise the cooperative. This would be the case of an organic agricultural cooperative of proximity that is created jointly by producers and consumers of organic food, where the interest of the members is combined with the environmental objective through the joint structure of two types of stakeholders whose interests would be opposed.²⁹

This multi-stakeholder composition has been implemented by some legislations, which impose the obligation for the social cooperatives created to have a variety of member groups. Thus, the French collective interest cooperative must have at least three categories of members (Article 19 septies), while the South Korean social cooperative requires at least two stakeholder groups (Article 19.2 Decree). These different groups or categories of interested persons will be composed of persons benefiting from the cooperative's activities, workers, producers of goods or services, and volunteers.

Meanwhile, the rest of the legislations do not establish the obligation to be configured as a multi-stakeholder cooperative, but neither do they prevent the confluence within the cooperative of members belonging to several of the different groups mentioned above. As such, although not expressly regulated, this multi-stakeholder structure can be found in the rest of the social cooperatives, depending on how the cooperative is configured by its own members. In this sense, the

²⁸CICOPA (2004, p. 3).

²⁹Defourmy and Nyssens (2017, p. 14).

Table 4 Persons who can be members in the analyzed social cooperatives

Country	Name of social cooperative	Public sector	Volunteers
BE	Cooperative as a social enterprise		
BR	Social Cooperatives		X
FR	Cooperative society of collective interest	X	X
GR	Limited liability social cooperatives	X	X
	Social cooperative enterprises	X	
IT	Social Cooperative Types A and B	X	X
PT	Social solidarity cooperatives		X
SK	Social cooperatives		X
SP	State social initiative cooperative	X	
	Basque social initiative cooperative	X ^a	
	Basque social integration cooperative	X	
	Catalan social initiative cooperative	X ^a	X (no members)

^aBy application of the general cooperative regime

legislation has foreseen that some specific figures can also be members of this type of cooperative, which will facilitate multi-stakeholder situations within the cooperatives. These are the figures of public administrations and volunteers, as can be seen in Table 4.

Most of the legislations analyzed expressly allow public entities to participate in the social cooperative as members. Some of them establish limitations on the presence of the latter in the cooperative. For example, all public entities cannot hold more than 50% of the share capital in the French collective interest cooperative (Article 19 septies). In Greek limited liability cooperatives, all legal entities, public or private, must exceed 20% of the total number of members (Article 12.4. γ). Others limit the type of public entity that can become a member, as in the Basque social integration cooperative, which requires that a public entity must be responsible for the provision of a social service (Article 134.1), or in the Greek social cooperative enterprises, in which the participation of local authorities is not allowed and require the approval of the public body that supervises them (Article 14.5).

The participation of public law legal entities in the bodies of the cooperative will be carried out through the appointment of a representative who will exercise the rights corresponding to the public entity as a member of the cooperative. The case of the public entity partner in the Basque integration cooperative is notable. In addition to the rights corresponding to it as a partner, its representative “will provide its personal technical, professional and social assistance work together with the members of the cooperative and will attend with voice to the meetings of all the social bodies” (Article 134.1). Therefore, the public entity will always have a representative in the Board of Directors, although only with a voice and without voting rights.

A similar tendency happens with volunteers, defined as people who provide their services within the cooperative free of charge. They are provided for by most of the legislations regulating social cooperatives and, in almost all of them, are allowed to acquire the status of members. As was the case with public entity partners, some of

the legislations establish limitations to the presence of these volunteers within the cooperative. In the Italian social cooperative, their number may not exceed 50% of the total number of members (Article 2.2). The limited liability cooperative only allows them to be adult volunteers working in the field of mental health, and whose number may not exceed 45% of the total number of members (Article 4.β).

In these cases, volunteers who acquire the status of member will have the same political and information rights as the rest of the members, being able to attend and vote within the cooperative's bodies. The only exceptions are found in the Catalan social initiative cooperative, which admits the presence of volunteers but does not allow them to acquire the status of member, although they can attend general assemblies, with a voice but no vote, and designate a person to represent them at the meetings of the board of directors, with a voice but no vote (Article 143.4).

Finally, the Portuguese social cooperatives offer a singular case with respect to volunteers. Under the name of *honorary members*, these cooperatives regulate a type of member whose political rights are very restricted.³⁰ Volunteers may be admitted to the general assembly at the reasoned proposal of the board of directors and may attend the same but without the right to vote. These members enjoy the right to information in the same terms as the rest of the full members, but they cannot elect or be elected to the corporate bodies (Article 5). In view of this limitation of political rights, the law, to encourage the participation of these members within the cooperative, allows the bylaws to provide for the creation of a general council, a consultative body where these honorary members will meet with the members of the corporate bodies and may make suggestions or recommendations (Article 6).

Despite the linking of the figures of volunteers and public entities to social cooperatives, as mentioned above, not all legislations consider their presence indispensable, nor the requirement of having a multi-stakeholder structure, for a cooperative to be considered a social cooperative. In this sense, social cooperatives can also be single-stakeholder entities when they have only one type of members that carries out its work with a social interest, such as Latin American worker cooperatives, created within the "popular economy" movement by poor people seeking to create their own jobs.³¹

6 Conclusions

The first social enterprises in Europe were developed based on cooperatives. Consequently, some of the characteristics that define the European concept of social enterprise are related to the principles that guide the actions of cooperatives. The subsequent emergence of social cooperatives has demonstrated the combination of

³⁰For more information on the restriction of these rights for honorary members and the possible breach of the cooperative principle of democratic management, see Meira (2020, p. 235).

³¹Defourny and Nyssens (2017, p. 14).

mutualistic purpose with general interest of the community or of a specific target group, serving broader interests than those of its social base.

Accordingly, countries have sought to regulate social cooperatives. The existing regulations have been uneven, even using different names to refer to social cooperatives. This review found countries with little regulation, such as Brazil and Spain, others with detailed regulation, such as Greece and South Korea, and still others in between, such as Italy, Portugal, Belgium, and France. Despite the differences, some common aspects can be observed in all these regulations that allow the identification of the legal features of cooperative types.

The first of these features is the development of activities of general interest. Social cooperatives can be categorized into three types, depending on the activities that the legislation allows them to develop: social integration cooperatives, made up of a certain percentage of people with difficulties and which seek to facilitate their social and professional integration; small social cooperatives, also aimed at the integration of people with difficulties but which are not required to have a certain percentage of members with disabilities; and broad-spectrum social cooperatives, which can develop integration activities and other social services of general interest. In addition, these cooperatives allow non-member third parties to participate in cooperative activities.

The second characteristic is the presence of a specific economic regime that affects both the profits and, during liquidation, the assets of the cooperative. Thus, cooperatives that are not formed by people with difficulties will have the distribution of profits among the members limited, or even prohibited in some cases. The distribution of assets among members in the event of liquidation of the cooperative is also prohibited in most legislations; the assets must be used to promote the general interest, cooperative movement, or social economy.

Finally, regarding the multi-stakeholder structure mentioned by some experts, it cannot be concluded as one of the features of social cooperatives. Most legislations have express references to the possibility that both public entities and volunteers may participate as partners in the social cooperative. However, only French and South Korean legislation require the presence of members belonging to different groups of people. In the other legislations, social cooperatives can be configured as single-stakeholder entities.

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