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BOOK REVIEW

Dante Cracogna, Antonio Fici, and Hagen Henrÿ (Eds.): International Handbook of Cooperative Law

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The interesting volume by Cracogna, Fici and Henrÿ offers much more than the reader can normally expect from a handbook.

In addition to the very useful presentation of thirty-one national legislations on cooperatives (based on a predetermined model that facilitates the comparison), the handbook offers an exhaustive comparative essay about the different cooperative law systems and a deep analysis of the supranational legislation that Europe, South America and Africa follow in order to provide, through different technical solutions, uniform regulatory models to national legislators.

Usually the introduction of a handbook dedicated to a law comparison aims to anticipate some conclusions helping the reader to get used to the topic. In this case, instead, Fici goes beyond and offers a deep analysis of the concrete benefits of the comparative study and a complete picture of the main common elements of the cooperative laws (national and supranational) which should be considered an independent essay in and of itself.

The part of the volume on "The Convergence of Cooperative Law" presents an interesting analysis of the mandatory nature of the normative standards promoted by the International Labour Organization (ILO) in the international public law system and of the main peculiarities of the supranational legislation of the OHADA - Organization pour l'Harmonisation en Afrique du Droit des Affaires - (15 May 2011); the EU regulation dedicated to the European Cooperative Societies (22 July 2003); the South American

Cooperative Statute approved on 28 April 2009 by the Mercosur Parliament; and lastly the framework legislation approved by the International Cooperative Alliance for the Americas in July 2009.

As the right frame of a valuable painting highlights and does not overshadow the work of art, in the same way the first two hundred pages of the international handbook accurately introduce the analysis of the national legislations while also creating a solid foundation for the following normative data collection without reducing its importance.

The following six hundred pages dedicated to the analysis of thirty-one national cooperative laws offer a large number of ideas and solutions useful for every future study of the topic. This begins with the significant statistical data showing that in one-third of the normative systems analyzed, the cooperative companies (thanks to their contribution to create "a better world" according to the slogan of the United Nations International Year of Cooperatives 2012) are constitutionally recognized, as in article 45 of the Italian Constitution of 1948 (e.g. the fundamental Charter of Mexico 1917, Peru 1920, Turkey 1961, Russia 1993 and India 2012).

The overview offered to the reader, whether he is an economic operator or a scholar in law, is not as heterogeneous as one would expect coming from such different experiences in the cultural and normative traditions. This is a tangible proof of the positive effects of the normative harmonization led by the supranational organizations and also of the existence of cooperative "natural" rules which are identically adopted everywhere.

Therefore, the differences and peculiarities of the normative solutions adopted mainly catch the attention of those who are used to managing the typical problems of the cooperative companies.

In order to have a perfect example of the profound differences existing in the analyzed legislations, it is sufficient to compare the first two chapters dedicated to the Argentinean regulation and the Australian law. While the first system consists of a modern and coherent cooperative legislation, the second one is divided into a disharmonious and fragmented system of federal and national laws still unable to offer a clear definition of a cooperative company (considered a "vague concept"). Nevertheless, both legislations present interesting solutions to be taken into account.

The Argentinean regulation deserves attention for: *i)* the recent law regarding the "workers buy out" (Law nr. 26684 of 2011) for bankruptcy enterprises *(empresas recuperadas)*; *ii)* the clear rule that allows the admittance of new members only if this is compatible with the state of the economic activity*; iii)* the rule that limits the immediate payment of the unwinding share in case of withdrawal *ad nutum* only if the total amount does not exceed five percent of the share capital (with the postponement of the remaining part of the debt); *iv)* the chance that the bylaw set rules in order to fix an obligatory ratio between the use of the mutual services and the participation to the corporation stock; *v)* the law imposing the destination to indivisible reserve of the profit coming from activities with third parties and also of the capital gains originated from property asset transfers.

On the other hand, also the less innovative Australian legislation set noteworthy original rules, like, for example, those that *i)* restrict the vote in the general meetings only to the active shareholders according to an operative standard defined by the bylaw; and *ii)* impose the postal vote of the shareholders for all decisions related to the transformation of the cooperative.

If the ideas and solutions offered by the first two legislative systems analyzed definitely catch the reader's attention, the rest of the book continues to be a progressive discovery of a treasure trove of interesting normative rules, as the following points, which deserve particular attention, clearly demonstrate:

i. the Canadian option (similar to Italian law) to allocate mutual returns not only issuing new stocks, but also issuing new social loans debt securities (p. 305);

ii. the innovative Colombian regulation, in particular Legislative Decree nr. 1333 of 1989 on the "pre-cooperatives" by which legal entities that do not have either the required technical capacity or the minimum number of members to create a cooperative, but established to become, thanks to the support of the *entitad promotora*, a "normal" cooperative in five years, or to be dissolved (p. 364);
iii. the "one member cooperative" (i.e. a cooperative with only one member) in the Finnish law (p. 382), in the Danish law (p. 576) and in the Dutch law that also allows the unique member to be a legal entity so as to facilitate financial transactions (p. 548);
iv. the worthy French idea of "the collective interest cooperative company" that, on the model of Italian Law nr. 381/1991, regulates the organizations which are clearly multi-stakeholders with five different member categories (workers, users, volunteers, public authorities and investors) excluding any mutual returns of the mandatory entire allocation of the surplus to profit or reserve (p. 400);
v. the German rule that allows the bylaw to regulate a partly fixed share capital (p. 420);
vi. the Peruvian normative which limits the share capital decrease to a maximum of ten percent per year (p. 596);
vii. the Indian (p. 458) and the Peruvian (p.600) rule that imposes the approval of the annual budget by the shareholders' general meeting;
viii. the Polish normative which limits the maximum number of members in the social cooperatives to fifty, in order to assure the direct democratic control of the organization (p. 618);
ix. the Spanish rule that provides the "tacit approval" of the requests of admittance not expressly refused within three months (p.709);
x. the Uruguayan bankruptcy law which regulates the already mentioned "workers buy out" (p.790).

Besides these breakthrough rules, the handbook also offers interesting solutions for the cooperative normative traditional problems of democracy and mutuality.

Regarding the issue of the concrete participation of the members to the general meetings, it is easy to see how aside from some drastic solutions, such as the clear Indian prohibition of the "proxy votes", the problem is diffusely perceived and solved in different ways.

In fact, on the one hand we must consider the Brazilian rule, introduced in 2012, imposing the mandatory participation of the worker-members to all the general meetings (p. 281), along with the Indian regulation which states the proxy rule ban and the exclusion of the members who do not attend three consecutive general meetings (p. 455).

On the other hand, the ideas that deserve mention are the aforementioned Australian law, which allows only the "active members" to vote according to an operative standard defined by the bylaw (p. 217), the Chilean rule (only for special agricultural cooperatives and for special cooperatives of power supply) that allocates respectively one-third of votes per person, one-third of votes based on the participation to mutualistic activities and one-third in proportion to the invested share capital (p. 329), as well as the US rule present in several states statutes which allows the bylaw to choose between the democratic vote and the mutualistic one ("patronage-based voting": pp.764-771).

In contrast, only the German law regulates the supremacy principle of the direct democracy rather than the indirect one: the members representing one-tenth of the shareholders have the right to demand that the decision taken by the assemblies delegates is put to a new vote in the general meeting (p.422).

Regarding the election of the board of directors and of the auditing organ, the legislative solutions imposing the secret ballot (stated in Hungary, p. 439, and in Poland, p. 624) and the annual renewal of one-third of the board members (stated in Peru, p. 600) also deserve particular attention. However, the dual rule of the Mexican law also must be taken into account, as it allows the directors to be re-elected for a new five-year mandate only with a majority of two-thirds of the votes, and then further imposes the

designation of a surveillance council when one-third of the votes are dissenting in a director's election (p. 534). Thereby there is no country that provides a rule similar to the one introduced in Italy in 2003 (but cancelled before its entry into force), which imposed a legal limit to the re-election of the directors.

Regarding the modification of the mutual purpose, besides the numerous prohibitions of conversion (stated in Argentina, p. 1936; Austria, p. 246; Colombia, p. 369; and Portugal, p. 650), it must again be noted that Australia requires the "special postal vote" (p. 224) for such a decision, Belgium requires the partners unanimous consent (p. 264), while France and Uruguay only allow this when it is the only solution to save the cooperative from financial difficulties (p. 407).

However, all the main innovations in terms of mutualistic aim come from Northern Europe.

Following the example of the Dutch law of 1989 that initially provided the assumption of a "holding cooperative" that does not carry out any direct activity with its members; three other legislations provide the "indirect mutuality" allowing that the mutual transaction with the cooperative members can occur, not only directly with the cooperative, but also indirectly through subsidiaries. This is the case of the new article 124.1 of the French Commerce Code introduced in 2001 (p. 410), of the Finnish law of 2002 where the transaction between the cooperative members and a subsidiary is considered mutualistic if the cooperative held at least fifty-one percent of the share capital of the subsidiary (pp. 378-379), and of the Norwegian law reformed in 2007 which contains (art.1, par 3., Cooperative Act, 29 June 2007, nr. 81) a clear definition of this peculiar mutuality providing that "A cooperative society also exists if the interests of the members […] are promoted through the members' trade with an enterprise, which the cooperative society owns alone or together with other cooperative societies, including a secondary cooperative […]" (p. 567).

The idea should be further studied even in other national systems, especially where the spin-off of the cooperative's assets to a for-profit subsidiary can be a useful solution for the mutualistic crisis. In this way the (new) mutualistic holding will have more chances to get loans granted by the subsidiary's shares or, simply, new risk capital from those who are interested in the activity but do not trust the cooperative governance.

In Italy, a similar operation raises several serious problems considering, from the one hand, the sure inapplicability to the for-profit subsidiary of the specific rules dedicated to labour cooperatives (Law nr. 142/2001) and to social cooperatives (Law nr. 381/1991) and, from the other hand, the possibility that the (holding) cooperative should be penalized (even with the compulsory dissolution of the organization: art. 2545 *septiesdecies* c.c) for the absence of a (direct) mutual aim.

Under a different aspect, it must be noted that in many jurisdictions the possibility to exclude the members who do not participate in the mutual activity is clearly stated. This is the case in the aforementioned Australian law, which allows the board to exclude the members who have been inactive for three years (unless they pay, in the non-distributing cooperatives, a subscription annual fee to obtain the "active membership status": p. 217). This is also the case of the Indian law which states that a member can be "disqualified" if he uses the mutual service below the minimum level specified in the by-laws (p. 455); of the Japanese law in which it is stated that a member can be expulsed if he does not use the cooperative facilities for an unreasonable period of time (p. 514); and of the South Korean law that allows the exclusion of the member who has not used the mutual services for the maximum period specified in the articles of association (p. 659).

Finally, a special mention goes to the several normative rules that—more generally than the Italian legislation for the financial crisis of the workers cooperatives (art. 6, Law n. 142/2001)—expressly allow the general assembly to impose additional obligatory payments to the members. In Chile, the general assembly can force the member to pay new participation shares and other additional fees, according to the

provisions of the bylaw, for the financing of the ordinary and extraordinary expenses (p. 327). In Finland, it is stated that the general assembly may impose, if the bylaw provides for that possibility, extraordinary payments (non-recoverable unless otherwise stipulated in the bylaw) necessary to cover a need during normal operations (p. 386). In the Netherlands, the bylaw can impose on members the obligation to participate in an equity funding arrangement (p. 550) or, in agricultural cooperatives, also to finance the activity through (obligatory) long-term loans (p. 552). In Turkey, the additional payments must only be used for closing balance deficits (p. 726). Only in Russia, the law states that the members of consumer cooperatives are obliged to cover the sustained losses making new contributions within three months after the annual accounting document approval (pp. 678-679).

To conclude, there are several established reasons to invite the authors to continue this fascinating comparative study which has been produced in such a brilliant way, perhaps enriching the work with a homogeneous digital database including the analyzed legislative texts and, where possible, displaying a comparative collection of economic data related to the cooperative systems of the different countries.

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