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Cooperation among Cooperatives in Italian and Comparative Law

ABSTRACT

A study of a cooperative as an isolated economic unit, with no relations with other cooperatives, would provide only an incomplete and inaccurate picture of its full scope. In fact, from their emergence, cooperatives have developed economic and socio-political forms of inter-cooperative integration, which have enormously contributed to their success as a distinct legal form of enterprise. Therefore, not surprisingly, the International Cooperative Alliance has decided to consider "cooperation among cooperatives" as a specific principle of cooperative identity. The main objective of this article is to ascertain whether, how and to what extent cooperative law has implemented this principle. The comparative legal analysis will begin with Italian law, which constitutes an excellent example of how cooperative law can be shaped to favour the development of both individual cooperatives and a big and active cooperative movement, and which helps to build an adequate conceptual framework to deal with the subject of inter-cooperation.

KEY-WORDS

COOPERATIVES, INTER-COOPERATION, SECONDARY COOPERATIVES, COOPERATIVE GROUPS, COMPARATIVE LAW

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1. Cooperative integration and cooperative identity

A study of the cooperative that regarded it as an isolated economic unit, with no relations with other cooperatives, would provide only an incomplete view and an inaccurate concept of the cooperative. In fact, from the beginning, cooperatives have established economic and socio-political forms of inter-cooperative integration, which have enormously contributed to their success as a distinct legal form of enterprise. Admittedly, the creation of a system of cooperatives has coincided with the excogitation of the cooperative idea of business, to the point that it would not be incorrect to conclude that cooperative integration is one of the essential elements of the cooperative identity.

Already in 1879, George Jacob Holyoake, in the second volume of his *History of Cooperation*, emphasized the fundamental role of the "North of England Cooperative Wholesale Society" of Manchester—a federation of cooperative stores, established in 1863 by 48 cooperatives, for the wholesale purchase and distribution of commodities for store sale—in the initial development of the (most famous) Rochdale cooperative, as well as the development of other cooperatives, and, in more general terms, in the promotion of cooperation and the establishment of a cooperative "movement" (Holyoake, 1906)[1]. These federations—which, in fact, were cooperatives of cooperatives—were expected to benefit the cooperative stores (and, especially, small and new stores) through reductions to purchasing costs[2]. The

[1] However, Holyoake points out that the idea was introduced earlier, with the first official mention of a cooperative wholesale society dating back to 1832, "although it was in Rochdale that the idea was destined to take root and grow and be transplanted to Manchester" (Holyoake, 1906: 351). The Rochdale Society of Equitable Pioneers—which was registered on 24 October 1844 and opened its first store on 21 December of the same year in Rochdale, near Manchester, UK—is almost universally regarded as the first structured manifestation of the kind of business organization to which the title and substance of "cooperative" have been conferred. However, it is widely accepted that, before the establishment of the Rochdale Society—and not only in the UK—other cooperative-like entities existed already. Rochdale became the home of the modern cooperation largely as a result of the adoption and formalization by the Society of specific rules of conduct, which certainly contributed to its success and also inspired the cooperative movement and the International Cooperative Alliance (ICA) in the formulation of the cooperative values and principles. Quotations supporting this assertion are countless. It may suffice to mention here Gide (1921), Fauquet (1951), Digby (1948), Birchall (2011), Sanchez Bajo and Roelants (2011). See, also, for basic information, http://www.rochdalepioneersmuseum.coop/ [last accessed 28 June 2014].

[2] In this regard, Holyoake (1906: 355) shares the words of Abraham Greenwood, the chief founder of the Wholesale Society of Manchester, which he reports as follows: "1st. Stores are enabled, through the agency, to purchase more economically there heretofore, by reaching the best markets. 2nd. Small stores and new stores are at once put in a good position, by being placed directly (through the agency) in the best markets, thus enabling them to sell as cheap as any first-class shopkeeper. 3rd. As all stores have the benefit of the best markets, by means of the agency, it follows that dividends paid by stores must be more equal than heretofore; and, by the same means, dividends considerably augmented. 4th. Stores, especially large ones, are able to carry on their businesses with less capital. Large stores will not, as now, be necessitated, in order to reach the minimum prices of the markets, to purchase goods they do not require for the immediate supply of their members. 5th. Stores are able to command the services of a good buyer, and will thus save a large amount of labour and expense, by one purchaser buying for some 150 stores; while the whole amount of blundering in purchasing at the commencement of a co-operative store is obviated". Holyoake affirms that "never was a great movement created by clearer arguments or a smaller subscription" (1906: 355). Indeed, he reports that the subscription required was one farthing (i.e., a quarter of a penny) per member.

rapid expansion of the Cooperative Wholesale Society (or CWS, as the North of England Cooperative Wholesale Society later became known), along with the diffusion of this model of integration elsewhere, confirmed that these expectations were not unrealistic[3].

Nor was cooperative integration confined to practical or economic aspects of business, since the development of cooperatives was fostered, from the outset, by the establishment of other entities—the "Unions"—with the purpose of defending and promoting the associated cooperatives and of spreading the cooperative model of business, its principles and its values.

In 1869, representatives of local societies met in London and established a "Cooperative Central Board" (later, the "Cooperative Union"), with a head office in Manchester[4]. Unions of cooperatives with similar functions were then established in Europe, thus significantly contributing to the growth of the national cooperative movement[5].

In 1895, the "International Cooperative Alliance" (ICA) held its first conference in London, bringing to an international level the defence and promotion of cooperatives and their distinct identity relative to those of other business organizations. This position was made especially clear through the ICA's "Statement on the Cooperative Identity, Values and Principles", which included the famous "Cooperative Principles" (ICA Principles)[6].

Therefore, it is not surprising that, in its role as guardian of the cooperative identity, the ICA has decided to consider "Cooperation among cooperatives" a specific principle of cooperative identity. This principle reads: "Cooperatives serve their members most effectively and strengthen

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[3] The Scottish Cooperative Wholesale Society of Glasgow, or the SCWS, was established in 1867/1868. Others followed in different countries: in Copenhagen (1888), Basel (1892), Hamburg (1894), Moscow (1898), Helsinki (1904), Paris (1907) (see Gide, 1921). In 2000, the CSW flowed, by merging with another society, into the "Co-operative Group". An introduction to the CSW by Rachael Vorberg-Rugh, of the University of Liverpool, may be found at http://www.rochdalepioneersmuseum.coop/learning-resources [last accessed 28 June 2014]. The main stages of the history leading from the CSW to the Co-operative Group are illustrated at http://www.co-operative.coop/corporate/aboutus/ourhistory/ [last accessed 28 June 2014]. See also Webster, Wilson and Vorberg-Rugh (2012).

[4] See Digby (1948). The Cooperative Union eventually became known as Cooperatives UK: see http://www.uk.coop/.

[5] For example, according to Gide (1921: 123), "Of Italy and Switzerland it may be said that their co-operative history dates from the formation of their Co-operative Union (1886 in Italy, 1890 in Switzerland)". A brief international and cross-sectorial account of the formation of the cooperative movement is offered, in Italian, by Degl'Innocenti (1992) and, in English, by Zamagni and Zamagni (2010).

[6] The International Cooperative Alliance (ICA) is an independent, non-governmental organization established in 1895 to unite, represent and serve cooperatives worldwide. It provides a global voice and forum for knowledge, expertise and coordinated action both for and about cooperatives. It is the guardian of the cooperative identity, values and principles. The ICA has 268 member organizations from 93 different countries, as of 21 May 2014, and, thus, indirectly represents approximately one billion individuals worldwide. See www.ica.coop [last accessed 28 June 2014]. Those included in the Statement of 1995 (approved in Manchester) represent the third version of the ICA Principles (the preceding versions were contained in the Declarations of 1937 and 1966). For a history of the international cooperative movement and the ICA, see, among others, Birchall (1997).

the cooperative movement by working together through local, national, regional and international structures" (6th ICA principle)[7].

Indeed, if, by choosing a cooperative instead of a capitalistic company, people decide to undertake an economic activity in cooperation and not in competition, then one should expect the cooperative entities so established to cooperate and not to compete amongst themselves at the higher (and/or instrumental) stage of the economic process, which ultimately serves their members' needs. Therefore, cooperation among cooperatives is a necessary corollary of cooperation among people. By cooperating, cooperatives not only serve their members better, but also apply, on a higher level, the same values and principles that permeate first-degree cooperation[8]. Ultimately, people build their cooperation through structures of a higher degree, which comprise their individual cooperatives. All of this explains why inter-cooperation must be considered a specific element of the overall cooperative identity[9].

The main objective of this article is to ascertain whether, how and to what extent cooperative law has implemented the principle of "cooperation among cooperatives", which is of great importance for at least two reasons[10].

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[7] The 1966 restatement of the ICA Principles already included cooperation among cooperatives as the sixth principle. An implied reference to inter-cooperation may also be found in the second ICA principle, which deals with "cooperatives at other levels" as distinct from "primary cooperatives".

[8] See Martínez Charterina (2012: 140-141) which, with regard to the principle of cooperation among cooperatives, states: "this principle concludes a process of solidarity that together with the internal solidarity—which takes place within the cooperative where a process of self-help is carried out, on which basis the members seek to jointly satisfy their common needs—considers the external solidarity, which is to say, the cooperation among cooperatives or extension of the internal solidarity with the aim of completing a process of cooperation that ultimately refers to the same world in which we live and to the manner in which we connect with each other" [author's translation], and, furthermore: "This process of external solidarity, as an extension of the internal solidarity, makes it clear that there is a process that must be concluded. If in a cooperative persons cooperate with each other toward a common goal, this cooperation must be extended between the cooperatives in order to reach the cooperation's shared objectives" [author's translation]. These statements do not necessarily imply that cooperatives must cooperate by forming and participating in entities that are, formally, cooperatives (although this is normally the case, as the following analysis will show).
However, the fact that cooperatives cooperate through a cooperative structure gives more emphasis to the sixth ICA principle, since it is the cooperative legal form that, to a greater extent than any other, permits an application of the values and principles of cooperation at higher stages of economic coordination.

[9] In this regard, it is worth mentioning the story told by Holyoake (1906: 351) concerning the way in which the idea of the wholesale society took root, grew and was transplanted to Manchester: "A mile and half or more from Oldham, in a low-lying uncheerful spot, there existed, twenty years ago, a ramshackle building known as Jumbo Farm. A shrewd co-operator who held it, Mr. Boothman, had observed in the Studehill Market, Manchester, that it was great stupidity for five or six buyers of co-operative stores to meet there and buy against each other and put up prices, and he invited a number of them and others to meet at Jumbo Farm on Sundays, and discuss the Wholesale idea; …". These words immediately recall the statement attributed to Robert Owen, that is, "Competition must be replaced by co-operation" (Digby, 1948: 15).

[10] The topic of the cooperative merger will not be addressed here. Indeed, although, in theory, the cooperative merger might be seen as a form of cooperative integration, it is, in fact, not a form of cooperation among cooperatives—since,

Firstly, the sixth ICA principle, as other ICA principles, is rather general: It does not define the nature of the prescribed joint activity or the necessary features of its structures; rather, it simply mentions their purpose, which is to serve cooperative members and to strengthen the cooperative movement. As a result, the contents of the obligation to cooperate remain somewhat undefined, which complicates the obligation's enforcement (unless the legislator is more precise while translating the principle into law). Therefore, an analysis of the measures through which cooperative law implements the principle of cooperation among cooperatives is necessary in order to know and evaluate the real impact of this principle in the actual lives of cooperatives.

Secondly, since their incorporation into the International Labour Organization's Recommendation n. 193/2002, the ICA Principles might also be considered a formal source of cooperative law (if one shares the view that said Recommendation is an instrument of public international law)[11]. This would imply that implementing the sixth ICA principle is not a faculty for legislatures wishing to create a favourable legislative framework for cooperatives; rather, it is an obligation, whose compliance, together with the manners thereof, must be verified (given the open character of said obligation).

A final introductory observation relates to the specific reasons for cooperative integration. Its purpose is to highlight a different way in which cooperation among cooperatives and cooperative identity relate to one another.

In principle, cooperatives unite for the same general reasons as any other business organization[12]. There are, however, additional reasons that find their particular justification in the distinct identity of a cooperative and may explain why this sort of integration occurs among business organizations with the same legal form (i.e., cooperatives)—and why it sometimes occurs only (or, at least, mostly) among them.

If one considers that which we have termed the "socio-political" form of cooperative integration, which is historically represented by the "unions" of cooperatives, promoting and spreading the cooperative model of business and preserving its identity is the clear cooperative-specific objective

in any event, a single cooperative results from the merger. Cooperation among cooperatives presupposes the existence of two or more independent cooperatives that cooperate with each other; this is not the case with the cooperative merger. This is why such a merger may relate to integration (of which it represents the ultimate form), but certainly not to inter-cooperation—and, therefore, falls outside the scope of this article. For similar but more obvious reasons, there will be no reference in the text to the matter of integration between cooperatives and non-cooperative business organizations (although we will refer to this incidentally when discussing the possibility for a cooperative to hold shares or stocks of, or even to control, companies).

[11] For this conclusion, see Henrÿ (2013a).
ILO Recommendation n. 193/2002 concerning the promotion of cooperatives—which may be found, in various languages, at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R193 [last accessed 28 June 2014]—revises and replaces the preceding ILO Recommendation n. 127/1966, which covered the same subject but with a different scope (see par. 19, ILO Recommendation n. 193/2002).

[12] And, as any other business organization, they have to evaluate the costs and benefits of integration.

of this particular form of integration. Forms of integration with this specific function (i.e., to develop the legal form employed to conduct business) cannot be found in the capitalistic sector, in which the integration of business organizations follows other paths (e.g., the particular sector of the economy or the nature of the business).

If one looks, instead, at the "economic" form of cooperative integration, which is historically represented by the "wholesale societies", achieving growth while preserving an organizational dimension consistent with a cooperative's distinguishing features is the main reason cooperatives prefer this form of integration to others[13]. As has been correctly pointed out, one of the general features that distinguish cooperatives and stock companies is the way in which they grow: "Where stock companies grow through expansion and/or mergers, cooperatives grow through expansion and/or by cooperating horizontally or by forming unions and federations, serving the interest of the members at primary level and safeguarding the autonomy of the partners and constituent parties, respectively" (Henrÿ, 2013a: 83).

Indeed, (primary) cooperatives have to grow in a fashion compatible with their identity and its various elements, notably, members' democratic control[14]. In some circumstances—notwithstanding the principle of open membership, which also characterizes cooperatives[15]—a cooperative's efforts to expand its membership might be detrimental to its members' democratic control, making cooperation with other cooperatives the only possible manner of undertaking economic relationships with other people (as members of the partner cooperatives)[16]. The principles of members' democratic control and cooperative autonomy also explain why cooperatives may not lead or be part of hierarchical, vertical groups of cooperatives (whereas, in contrast, such a structure is common in the capitalistic sector)[17].

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13 In the ICA's Background Paper to the Statement on the Cooperative Identity of 8 January 1996, it is stated: "Indeed, co-operatives can only maximize their impact through practical, rigorous collaboration with each other. They can achieve much on a local level, but they must continually strive to achieve the benefits of large-scale organisations while maintaining the advantages of local involvement and ownership. It is a difficult balancing of interests: a perennial challenge for all co-operative structures and a test of co-operative ingenuity" (ICA, 1996).

14 On members' democratic control, as one of the main elements of cooperative identity, see Fici (2013b).

15 On this topic, see Fici (2013b) and Münkner (2015).

16 If, on the other hand, membership restrictions were artificial, the principle of open membership, as a trait specific to cooperative identity, would be violated. Cooperative promotion by representative entities of the cooperative movement—particularly when cooperative promotion aims at the constitution of new cooperatives or the growth of existing ones—could then also be considered a method by which to expand cooperation, notwithstanding and against artificial restrictions of membership by existing cooperatives. Cf. Bosi (2012).

17 Cf. Fici (2013b). A different conclusion applies to vertical groups, in which capitalistic companies are directed and coordinated by a cooperative. This subject, however, falls outside the scope and limits of this article, since it does not represent a form of integration among cooperatives, but, rather, a possible way for cooperatives to conduct their economic activities and pursue their objectives On the principles of members' democratic control and cooperative autonomy, cf. also Münkner(2015)".

In other words, when discussing, as is common with regard to the capitalistic sector, the boundaries of the cooperative firm and its ideal size, one cannot avoid taking into careful consideration the influence of cooperative identity. The respect of the cooperative identity, however, does not mean *per se* that cooperatives must remain small, since they can adopt measures and structures of governance that make a larger size compatible with cooperative principles[18]. In addition, more empirically, the existence of very large cooperatives around the world demonstrates that the cooperative model of business does not, in itself, preclude economic efficiency, even if measured in an ordinary capitalistic manner (i.e., in terms of turnover)[19].

2. Functions and forms of cooperative integration

Cooperative integration may serve several purposes, as is generally the case for integration among business organizations of any legal type.

However, as previously noted, in the cooperative sector, two main, specific objectives of cooperative integration may be identified, to which two distinct forms of integration correspond. The first of these forms may be termed "socio-political", while the second may be termed "economic"[20]. Using Charles Gide's words, "one [is] to develop the spirit of solidarity among the societies and to guide the co-operative movement; the other to bulk purchases, and, if possible, organize production" (Gide, 1921: 122). Hence, the distinction between these two forms is based mainly on their objectives and not on the nature of the activities necessary to achieve them (since such activities may be economic or not—a choice that may also affect, as we shall see, the choice of the legal form for performing the function).

Unions of cooperatives provide the best historical example of a form of coordination with the purpose of defending, assisting, promoting and representing the associated cooperatives and the cooperative ideal of business[21].

In theory, such unions could be local, national, regional or international. In fact, structures of each type and level exist (e.g., notably, the aforementioned ICA). Depending on the country and on various factors, such as the historical evolution of the national cooperative movement, unions

[18] Of course, this is a problematic issue, to the solution of which the law should contribute by appropriate rules—which would also serve to prevent larger cooperatives from deciding to escape the cooperative form by converting into other legal forms. On this topic, see Gadea Soler, Sacristán Bergia and Vargas Vasserot (2009).

[19] See, in this regard, Euricse and ICA (2013).

[20] In the classification made by other authors, a partially different terminology appears, although the substance remains the same. For example, Gide (1921: 122) uses "social" and "commercial", respectively; Fauquet (1951: 28), refers to groups with "social aims" and groups with "economic aims". More recently, Gadea Soler, Sacristán Bergia and Vargas Vasserot (2009: 540) distinguishes between "representative" and "economic" inter-cooperation.

[21] This may also include auditing the associated cooperatives, as we shall observe in our examination of existing cooperative law.

might comprise cooperatives of any type and economic sector; alternatively, they may comprise only cooperatives of a certain type or sector (e.g., only agricultural cooperatives or only consumer cooperatives)[22]. This means that, in certain cases, more unions of cooperatives can co-exist in a certain territory and that they may, in turn, unite themselves into structures of a higher degree and various levels of integration. Unions may also assume different denominations, such as alliances, associations, federations, confederations, or more particular forms[23].

The wholesale societies constitute the best historical example of an economic form of coordination among cooperatives, since they were established to provide (initially by purchasing, and afterward by also directly producing) the associated cooperatives with commodities to sell to their members.

This form of economic integration may be undertaken, not only by consumer cooperatives, but also by producer and worker cooperatives in every sector of the economy. Meaningful examples include processing or marketing cooperatives established by cooperatives of agricultural producers.

As observed with regard to unions of cooperatives, economic forms of integration among cooperatives could take place at various levels: local, national, regional or international[24]. When economic integration concerns cooperatives from different countries, the law may play a fundamental role in allowing or promoting it—particularly if the cooperatives wish to establish a secondary cooperative as their structure of integration. In this case, for example, the existence of a supranational cooperative law (which permits the establishment of a cooperative under that law rather than under the national law of one of the cooperatives involved) may help to surpass various issues deriving from the applicability of national law to structures with transnational features[25].

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[22] The ICA, however, seeks to promote the unity of cooperatives, regardless of their specific type, nature or sector of economic activity. For example, in the ICA's Background Paper to the Statement on the Cooperative Identity of 8 January 1996, it is stated: "Co-operatives must also recognize, even more than in the past, the necessity of strengthening their support organisations and activities. It is relatively easy to become preoccupied with the concerns of a particular co-operative or kind of co-operative. It is not always easy to see that there is a general co-operative interest, based on the value of solidarity and the principle of co-operation among co-operatives. That is why general co-operative support organisations are necessary; that is why it is crucially important for different kinds of co-operatives to join together when speaking to government or promoting "the co-operative way' to the public" (ICA, 1996).

[23] In Italy, for example, they are known as *centrali cooperative* (literally, "cooperative centrals").

[24] In the ICA's Background Paper to the Statement on the Cooperative Identity of 8 January 1996, it is stated: "Co-operatives around the world must recognize more frequently the possibilities of more joint business ventures. They must enter into them in a practical manner, carefully protecting the interests of members even as they enhance them. They must consider, much more often than they have done in the past, the possibilities of international joint activities. In fact, as nation states lose their capacity to control the international economy, co-operatives have a unique opportunity to protect and expand the direct interests of ordinary people" (ICA, 1996).

[25] One example of this type of legislation is Regulation n. 1435/2003 of the European Union on the European Cooperative Society (SCE). It must be pointed out, however, that, although specifically designed for the economic integration of cooperatives from different countries, the SCE is an EU legal form of business organization that also physical persons may establish (see Fici, 2013c). A similar, but different example is the Statute of MERCOSUR Cooperatives of 2009, which

Supranational instruments aimed at imposing or promoting the uniformity or approximation of national cooperative laws serve a similar purpose[26].

Depending on the specific purpose and structure of cooperative integration, the degree of mutual involvement among cooperatives may vary. For example, economic integration among consumer cooperatives might be limited to the joint acquisition of quotations from wholesalers or the joint collection and transmission of orders to wholesalers, without including joint purchasing (Gide, 1921). Alternatively, economic integration may involve the carrying out of an entire phase of the economic process, as is the case for marketing cooperatives in agriculture. In yet another example, socio-political integration might be limited to the defence and promotion of the cooperative business model or, in contrast, comprise the delivery of services of various types (including auditing) to the associated cooperatives.

It is important to note that the two forms of integration can never be completely separated, given that economic integration might have a political and ideological impact on the cooperative sector as a whole[27]. However, on the other hand, one possible manner of promoting the cooperative movement may be through economic activity of, for example, a financial nature[28].

Finally, the two functions (integration in economic activity and integration for socio-political reasons) might be performed by the same entity or by different entities[29].

With regard to their legal forms, these entities might be cooperatives or non-cooperative organizations (unless, of course, the law provides otherwise, such as by prescribing a particular legal form). The former is the legal form that one would expect to find (at least as far as economic integration is concerned), since its institutional purpose is not to make and distribute profits to the entity's participants (a for-profit purpose), but to serve their enterprises (a mutual purpose). Furthermore, the cooperative form is that which, more than the others, ensures that cooperative

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also allows for the establishment of supranational cooperatives as "Mercosur cooperatives"—and, thereby, facilitates joint ventures among cooperatives of different member states—but which has not been conceived as an autonomous body of rules that prevails over the national law of one of the countries involved (see Cracogna, 2013a).

[26] Examples range from the OHADA regulation on cooperatives in Africa to the Framework Law for the Cooperatives in Latin America, on which, see, respectively Hiez and Tadjudje (2013) and Cracogna (2013b). See also, for the USA context, cf. Dean and Geu (2008) which explores the Uniform Limited Cooperative Association Act, drafted by the National Conference of Commissioners on Uniform State Laws and approved in 2007.

[27] Economic integration among cooperatives, for example, may be viewed as a strategy for reducing the space of the capitalist economy and for reducing the number of capitalist players in the economic process. In Fauquet's view, for example, "co-operation strives through its integrations to reduce the area of the *central zone* occupied by the commercial and capitalist economy" (Fauquet, 1951: 32).

[28] As we shall observe in our analysis in sec. 4.4., which explores the significant experience of the "mutual funds" managed by the Italian unions of cooperatives—or, rather, by the companies controlled by them.

[29] However, Gide maintains that "though these two aspects [i.e., the social and the commercial aspects of integration] can be united in one organisation (as in Switzerland and some other countries) the work is better divided if they remain distinct, like two houses in a parliamentary government" (Gide, 1921: 122).

integration occurs without prejudice to primary cooperatives' members—notably, their rights to control their (primary) cooperatives—as we will soon argue.

Socio-political integration, on the other hand, does not necessarily require the employment of a legal form designed for economic activity (obviously, unless the law provides otherwise). Indeed, if the resulting entity aims only at advocating and preserving the cooperative model of business without performing any substantial economic activity in favour of the associated cooperatives, it may well assume a legal form not specifically designed for conducting business (e.g., that of the association or the foundation)[30].

Of course, the reference to entities for purposes of cooperative integration does not imply that cooperatives are incapable of implementing non-institutionalized forms of collaboration (e.g., through contracts or long-term contracts). Cooperation among cooperatives, however, requires a certain degree of formalization and stability to make the cooperation cooperative-specific, to potentially comply with the idea underlying the 6th ICA principle, and to be assumed as the specific subject of a study of (comparative) cooperative law.

3. Cooperative integration and cooperative law

According to the ICA, *qua* guardian of the cooperative identity, cooperatives must work together in order to serve their members most effectively and to strengthen the cooperative movement (6th ICA principle). As already observed, however, the ICA has not defined the contents of this obligation, which, therefore, lacks the potentiality to compel a cooperative's cooperative behaviour (unless the legislator is more precise when translating the principle into law). This is another example of the law's fundamental role, firstly, in shaping and, subsequently, in ensuring the respect of the cooperative identity[31].

Cooperative integration is an aspect of overall cooperative regulation that may, in theory, comprise several points, each of which could be addressed by different modes of law.

A preliminary issue, however, is whether or not the law should obligate cooperatives to work together, while taking into account the need to respect their autonomy as entities of private law.

As already stated, not only must inter-cooperation be seen as an essential element of the cooperative identity, but the ICA Principles, in which inter-cooperation is treated as a cooperative's obligation, may also be considered legally binding on legislatures (since their incorporation into the 193/2002 ILO Recommendation). Hence, legislators must, or at least should, force cooperatives to cooperate with each other if they wish to align cooperative law with cooperative identity. If one shares this view, legislatures' attitudes towards this subject may not be limited to the promotion of

[30] For example, the ICA itself is an association under Belgian law.

[31] See, in general, Fici (2013a).

cooperative integration; thus, a position of indifference towards this subject is even less justifiable.

In principle, the obligation to cooperate with other cooperatives does not generate issues in terms of cooperative autonomy (4th ICA principle)[32]. Indeed, it is the very identity of a cooperative that may justify restrictions in its autonomy when these restrictions are necessary to ensure that aspects of the identity other than the members' control of a cooperative are taken into account. Nor could one argue that such autonomy restrictions would prejudice private autonomy or put cooperatives in a worse position than non-cooperative forms of business.

With regard to the first point, the obligation to cooperate is an essential element of the cooperative identity, which, if translated into law, is part of the overall legal statute of a cooperative. Therefore, as the German Constitutional Court concluded, in a case that is particularly relevant for the analysis conducted in this article, there would be no infringement on the freedom of association and private autonomy if people were not obligated to choose the cooperative legal form as it is, given that freedom of choice of the legal forms for conducting business is guaranteed within a given jurisdiction[33].

With regard to the second point, working with other cooperatives may provide benefits that outweigh the costs (especially for small and new cooperatives), and, in any event, is a manifestation of solidarity, to which any individual cost-benefit analysis is irrelevant (at least, so far as this analysis is conducted in purely monetary terms). As we have argued in other work, the 6th ICA principle of identity, together with the fifth and the seventh principles, foresee the cooperative commitment toward "others"—namely, with regard to the sixth principle, the cooperative movement (which, in fact, includes other cooperatives and other members)—as contributing (along with other elements, such as open membership) to the "social function" of cooperatives, which co-exists with (and limits) their "mutual purpose" (Fici, 2013b).

Of course, even though cooperative autonomy cannot, as observed, be invoked to prevent a legislator from obligating cooperatives to cooperate, it may correctly be invoked to circumscribe or guide the legislator's discretion in regulating cooperative integration.

Indeed, the 4th ICA principle requires that cooperative integration be carried out in a form and with appropriate modalities such that it respects members' ultimate control of the cooperative[34]. In this regard, it is necessary to discuss whether the law should prescribe that the structure of cooperative integration be, itself, a (secondary) cooperative, or, at least, whether it must encourage

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[32] On the contrary, as observed *supra* in the main text, cooperating with other cooperatives is, in certain instances, the only manner by which a cooperative may expand without threatening members' democratic control (as would or might happen if the cooperative expanded its membership).

[33] See *Bundesverfassungsgericht*, 19 January 2001, n. 1759, in *Neue Juristische Wochenschrift*, 2001, p. 2617, and V. Beuthien (1989). The case considers the compulsory affiliation of German registered cooperative societies with cooperative auditing federations. I am grateful to Professors Hans-H. Münkner and Hagen Henrÿ for clarification on this point.

[34] Indeed, the term "organizations", as used in the fourth ICA principle, does not allow one to exclude cooperatives from its scope.

the use of this legal form over the use of other possible legal forms.

In fact, as previously observed, the cooperative form seems to be most appropriate for cooperative integration, given the particular identities of the participants. A secondary cooperative, in fact, would be subject to the same principles of organization as the primary cooperatives it integrates. This means that the member cooperatives would be treated equally in light of the principle "one member, one vote" and would, effectively, be empowered to participate in the management of the secondary cooperative. This ensures that participation in a structure of integration does not result in a limitation of the "sovereignty" of the members (of the primary cooperatives) and ultimately explains why the cooperative form should be privileged by the law in any decision regarding which legal forms cooperative integration must or may assume[35].

Cooperative integration, in conclusion, is a matter that should be dealt with specifically by cooperative law, and in manners that are compatible with and develop other profiles of cooperative identity (notably, cooperative autonomy and members' democratic control).

The rest of this article will focus on the current legal treatment of cooperative integration in order to verify whether, how and to what extent the 6th ICA principle has been translated into law. The analysis will start with Italian law, since it provides an excellent example of how cooperative law can be shaped to favour, not only the development of individual cooperatives, but also of a strong and active cooperative movement at large. In addition, Italian cooperative law provides an excellent conceptual framework for examining the topic of inter-cooperation from a comparative law perspective and for understanding the issues and options that this topic involves.

4. Cooperative integration in Italian law

Elsewhere, we have assessed Italian cooperative law as a sophisticated and cooperative-enhancing cooperative law[36], with the most concrete demonstration of this conclusion being the considerable

[35] This is not to state that the use of non-cooperative legal forms for cooperative integration (e.g., the stock company) should be prohibited in principle, as these non-cooperative forms may be adapted to comply with the common identity of the member cooperatives. The point is only that the cooperative form seems *naturally* most suited to cooperative integration, for the reasons presented in the main text.

[36] In Italy, the general regulation of cooperatives is found in articles 2511–2545 octiesdecies of the Civil Code (CC) of 1942, as amended by Legislative decree 17 January 2003, n. 6, on the reform of company law. In the CC, cooperatives are considered a particular type of "society"—as companies are referred to by the CC—which is different from all other company types. Additional general rules on cooperative societies may be found in other separate acts, among which, the most relevant are: Legislative decree 14 December 1947, n. 1577, on various aspects—notably, consortia of cooperatives; Law 31 December 1992, n. 59, on various aspects—notably, investor members and mutual funds for the promotion of cooperatives; and Legislative decree 2 August 2002, n. 220, on the control of cooperatives. We will refer to these legal texts in the main text of this article, as they are relevant to our study of inter-cooperation. In addition to the general regulation, there are also some special laws on particular types of cooperatives. The need to provide special rules for these cooperatives arises from the particular types of goods or services they provide (e.g., cooperative

number of existing cooperatives and the presence of a large and active national cooperative movement (Fici, 2013d)[37]. Indeed, Italian cooperative law promotes, not only the establishment of individual cooperatives (thus increasing their total number), but also their integration (thus fuelling a strong and well-organized cooperative movement)[38]. Both the economic and the socio-political forms of cooperative integration are paid careful attention in Italian law, through measures that both include cooperatives' obligations towards the cooperative movement (and, conversely, obligations of the cooperative movement—or, rather, of its representative institutions—toward cooperatives) and provide structures of integration that cooperatives may choose for conducting business together. Although, in principle, economic and socio-political integration are considered by law and have, historically, evolved separately, the latter has progressively undertaken economic activities to promote the cooperative movement, as we shall see in the following analysis.

4.1 Secondary cooperatives (consortia of cooperatives)

A "consortium of cooperatives" is the traditional form of economic cooperation among Italian cooperatives[39]. Notwithstanding its denomination, which is also found in the legislation, a consortium of cooperatives is, in fact, a secondary cooperative (i.e., a cooperative of cooperatives), established with the aim of serving its member cooperatives through economic activities that satisfy their particular needs as consumers or providers of the (secondary) cooperative enterprise. Indeed, being a (secondary) cooperative, a consortium of cooperatives pursues a mutual purpose, as would any other cooperative[40]. Its objective is to conduct an enterprise in the interest of its member cooperatives as consumers or providers of said enterprise[41]. Between a consortium and its member

banks, whose special regulations may be found in Legislative decree 1 September 1993, n. 385); the particular types of mutual relationships they have with their members (e.g., worker cooperatives, regulated by Law 3 April 2001, n. 142); or the particular aims they pursue (e.g., social cooperatives, regulated by Law 8 November 1991, n. 381). The Italian legal framework on cooperatives is further complicated by the fact that either the law of stock companies (*società per azioni*) or the one of limited liability companies (*società a responsabilità limitata*) may additionally and residually apply to cooperatives. These general aspects of Italian cooperative law (together with the numerous matters that this article will not cover) are presented in Fici (2013d).

[37] According to Euricse (2011), the number of active cooperatives as of 31 December 2008 is 71,578, with 1,155,290 employees and EUR 91.8 billion in turnover. The Italian National Institute of Statistics (Istat), in its 2011 Industry and Services Census, counted 1,200,585 employees in cooperative enterprises.

[38] For a brief history of the subject and further references, cf. Zamagni and Zamagni (2010).

[39] In the Italian legal literature, see, on this subject (and, also, for further references), Bonfante (2010).

[40] The concept of mutual purpose, particularly in relation to a legal entity's other possible purposes, is extensively discussed in Fici (2013b).

[41] Consumer cooperatives are formed by (natural or legal) persons interested in obtaining certain goods or services. They are, therefore, directed at providing their members with those goods or services, either through buying or manufacturing them for sale. In consumer cooperatives, the cooperative activity—or, in a strict sense, the "cooperative enterprise"—

cooperatives, there exist mutual (or cooperative) transactions that are of the same nature as those occurring in primary cooperatives.

The above (i.e., the legal nature of consortia as cooperatives) explains why the specific regulation of consortia of cooperatives under Italian law is very limited, such that consortia are subject to the same regulations as primary cooperatives, with only a few exceptions[42]. This specific regulation either concerns consortia directly or applies to them indirectly, when and inasmuch as the law deals with legal entities or entrepreneurs as possible members of a cooperative (which are the categories to which cooperatives that are members of consortia belong).

Consortia of cooperatives may be established given a minimum of three cooperatives and a minimum subscribed capital of EUR 516[43]. A consortium's bylaws may confer on its member cooperatives, in relation to the amount of the capital held or the number of their members, more than one vote (but no more than five) in the members' general meeting[44]—a structure that deviates (although within certain limits) from the "one member, one vote" rule[45]. In addition, a consortium's bylaws may confer on its member cooperatives more votes in the members' general meeting in proportion to the mutual transactions that each cooperative carries out with the consortium. This is, however, limited by the fact that a given privileged member may have no more than 10 per cent of the total votes in each general meeting; moreover, all privileged members, together, may have no more than one-third of the total votes in each general meeting[46]. Derogations from the "one

is that of transferring goods or services to the members, who are, therefore, consumer-members; all other activities (e.g., buying those goods, arranging those services, or employing people to accomplish such buying and arranging) are purely means to make the provision of the goods or services possible. Examples of consumer cooperatives include grocery cooperatives, housing cooperatives and cooperative banks, among others. In the case of consortia, the example par excellence is that of wholesale cooperatives. Producer cooperatives are formed by (natural or legal) persons interested in supplying certain goods or services; they are, therefore, directed at acquiring from their members those goods or services, in order to transform, process, market or sell them afterwards. In producer cooperatives, the cooperative activity, in the strict sense, is that of acquiring goods or services from the members, who are, therefore, provider-members; all other activities (e.g., processing and marketing goods or employing people to accomplish such processing or marketing) are purely means to make the acquisition of goods or services possible. Examples of producer cooperatives include agricultural cooperatives that transform milk provided by members into cheese and, in the context of consortia, a consortium that bottles and markets wine provided by its member cooperatives.

42 This is not to state that the specific regulation of secondary cooperatives *should* be limited; rather, it intends only to give an account of the current state of Italian legislation on this point.

43 See art. 27, par. 2 and 3, Legislative decree 1577/1947. The minimum number of three members is in line with what is usually provided for by European national general cooperative laws; moreover, it is in line with what is provided for by Italian law with regard to primary cooperatives (see art. 2522, par. 2, CC).

44 In fact, this option is given, not only to cooperatives comprised of cooperatives, but, more generally, to cooperatives with regard to their members, who are legal persons (art. 2538, par. 3, CC).

45 In Italian cooperative law, "each cooperative member has one vote, whatever the value of the share or the number of the stocks held" (art. 2538, par. 2, CC).

46 This rule applies more generally to all cooperatives consisting of entrepreneurs (art. 2538, par. 4, CC).

member, one vote" rule in secondary cooperatives are, therefore, possible and potentially useful in dealing with a heterogeneous membership[47].

More than for its specific contents (which, as stated, are very limited) the regulation of consortia of cooperatives as cooperatives of cooperatives is important simply because it exists. Indeed, not only does it provide cooperatives with the ability to form secondary cooperatives (which, in any event, would stem from the fact that Italian cooperative law does not limit cooperative membership to physical persons, as is the case in some other jurisdictions), but, more importantly, it also indicates (but does not mandate) the path of economic integration between cooperatives: namely, a structure having the legal form of a cooperative, which, as already stated, is to be considered the natural form of economic integration among cooperatives.

Under Italian law, however, cooperatives might choose other legal forms for their economic integration, as will be illustrated in the following section.

4.2 Cooperative-owned capitalistic companies

Italian law does not prevent cooperatives from establishing limited liability companies or stock companies to which to entrust the economic activities that might serve their interests. Indeed, Italian law allows cooperatives (and consortia of cooperatives) to hold shares or stocks of companies and even allows a single cooperative (or consortium of cooperatives) to control them[48].

This power also allows a single cooperative to establish a "heterogeneous cooperative group" as a result of controlling and directing one or more non-cooperative companies as subsidiaries (which, in their turn, might control and direct other companies as subsidiaries). Italian cooperatives have made extensive use of this structure to expand their business[49].

This legal pattern, however, may also be used as an alternative to the secondary cooperative (or consortium of cooperatives) form of cooperative integration, since nothing precludes co-ownership,

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47 In addition, they do not conflict with the ICA Principles, in which the "one member, one vote" rule is referred only to primary cooperatives (while, with regard to cooperatives at other levels, it is simply stated that they "are also organized in a democratic manner").

48 See art. 27 quinquies, Legislative decree 1577/1947, which was introduced by art. 18, Law 19 March 1983, n. 72, as well as article 15, Law 59/1992.

49 "Heterogeneous" because the group consists of one cooperative (as the parent organization) and one (or more) non-cooperative companies (as subsidiary organizations). In contrast, a "homogenous" group is defined such that it consists entirely of cooperatives (see infra sec. 4.3.). The potential for a cooperative to control a company has raised the question of whether a pure holding cooperative (namely, a cooperative that solely holds stocks or shares of companies) is legitimate under Italian law. The main issue is how to connect a mutual purpose (which, under Italian law, explicitly characterizes cooperatives: see art. 2511 CC) to a cooperative that simply holds companies' capital without directly performing any economic activity with its members. According to Bonfante (2010), the holding cooperative is legitimate as far as the mutual purpose is indirectly pursued through the subsidiaries ("indirect mutuality").
Extensive use of this model of business expansion has also been made by cooperatives of other countries. For example, for Spain, see Gadea Soler, Sacristán Bergia and Vargas Vasserot (2009).

by a plurality of cooperatives, of the stocks or shares of companies. Two or more cooperatives could, thus, establish a limited liability or stock company to conduct economic activity in order to satisfy a common interest (e.g., two agricultural cooperatives could establish a company to market their collective produce).

This alternative form of economic integration, in principle, does not conflict with cooperative identity, since integration would, in any event, be "horizontal", given that the resulting company would be controlled by the cooperatives (and not the other way around). It leads, however, to a different structure of relationships between the integrated cooperatives, since the resulting entity is subject to company law rather than cooperative law[50]. Therefore, unlike in the case of secondary cooperatives, integration into a company does not ensure that all cooperatives (or, consequently, all their members) control the structure of economic coordination. This creates risks in terms of cooperative identity (of the primary cooperatives) and explains why the secondary cooperative, in addition to being the most traditional form in the history of the cooperative movement, is also usually considered (as it is in this article) the most natural form of economic cooperation among cooperatives. Nothing excludes, however, that the subsidiary companies are *de facto* (as well as by an appropriate choice of rules in their by-laws) driven in a manner that is respectful of the cooperative principles, so as to give each cooperative the real opportunity to participate in their control[51].

4.3 The joint cooperative group

A new figure, which was introduced by the 2003 reform of Italian company and cooperative law and which may be relevant for the present discussion, since it seems to allow for a new form of economic cooperation among cooperatives, is the "joint cooperative group" (*gruppo cooperativo paritetico*), as provided for by art. 2545 *septies* of the Italian civil code.

The joint cooperative group is defined by law as the contract by which two or more cooperatives, which may also belong to different categories, regulate the direction and coordination of their respective enterprises. The legal regulation of the subject is very brief. The law indirectly states that the contract must have a final term; that the group may be directed by one or more cooperatives; that public or private non-cooperative entities may be admitted; and that any cooperative has the right to withdraw without penalty if the conditions of the exchange have become detrimental to its members as a result of joining the group.

The contents, purposes and boundaries of this new figure are still unclear. For example, some argue that this contract produces only internal effects among the parties, does not create a legal entity that may have legal relationships with third parties, has no mutual purpose and does not

[50] This also implies that, in principle, the tax treatment (as well as other specific regulations) of cooperatives do not apply to a company controlled by cooperatives, while, in contrast, apply to a secondary cooperative (which may be another practical reason for choosing this more traditional form for cooperative integration).

[51] The issue raised in the main text has, of course, no relevance for cases in which a consortium of cooperatives controls a company (since, in such cases there would only be a single parent organization—that is, the consortium of cooperatives).

institute real integration among cooperative enterprises[52].

What seems more certain is that the joint cooperative group is a flexible structure that may be adapted by the parties to assume many functions and pursue many objectives[53]; on the other hand, this form of integration is based on the 'substantial' equal treatment of all parties involved, with particular regard to the distribution of the economic results of the group (rather than its governance, since direction, as stated, may be entrusted to one or more cooperatives within the group). Indeed, the law stipulates that the contract must provide for "the criteria of compensation and the equilibrium in the distribution of the benefits from the common activity"; moreover, it confers on the parties the right to withdraw when participation in the group becomes economically unsatisfactory to them (or, rather, to their members). This also explains why the group has been qualified "joint" (*paritetico)*, and even more appropriately should have been qualified "equal" (*paritario*)[54].

If one shares this view, the joint cooperative group may be seen as a true alternative to the secondary cooperative (or consortium of cooperatives) for the economic integration among cooperatives. The group under art. 2545 *septies* of the Italian civil code is, no doubt, of a more hierarchical character than the consortium, since one cooperative may direct the activity of the others. This might raise doubts in terms of cooperative identity (since a cooperative, as stated earlier, might not be subject to external control); these doubts, however, may be overlooked, considering that in no case may a group share the benefits (and/or the costs) of the common activity unequally among its participant cooperatives and that, in any event, each cooperative may always withdraw from the joint cooperative group at its convenience, thereby making the governance of the group more collaborative than it may initially appear[55].

4.4 The national association of the cooperative movement and the "mutual funds"

Thus far, we have dealt with the forms and structures of cooperative integration with regard to economic activity. This last subsection, however, is dedicated to the form of integration that, in this article, we have termed "socio-political".

The key subjects of socio-political integration, under Italian law, are the "national associations of representation, assistance and protection of the cooperative movement", as they are literally

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52 See, in this sense, Bonfante (2010).

53 This is a conclusion that holds true also in in light of the possibility to combine the regulation of this contract with another, new and more general, Italian regulation, namely, the regulation of "network contracts" (cf. art. 3, par. 4*ter*-4*quinquies*, Decree law 10 February 2009, n. 5).

54 See Bonfante (2010: 369). It is meaningful that Spanish legal scholarship (see Gadea Soler, Sacristán Bergia and Vargas Vasserot, 2009: 553) uses "equal" (*paritario*) to qualify the cooperative group to which art. 78, par. 1, of Spanish state cooperative law makes reference (see footnote 100), since this group is very similar to the Italian cooperative group.

55 Shared governance, in fact, here materializes *ex post* rather than *ex ante*, as in the case of secondary cooperatives.

referred to by Italian law[56], and the "mutual funds for the promotion and development of the cooperative movement", which the former may establish. The cooperative auditing function also plays a fundamental role in shaping an integrated cooperative system in Italy, which, as we shall see, is based on compulsory contributions from individual cooperatives and indirect legal incentives for participation.

National associations may be recognized as cooperative auditing associations by ministerial decree if they have no less than 2,000 associated cooperatives based in at least five Italian regions and operating in at least three sections (as defined by the type of mutual relationship) of the national register of cooperatives. In addition, they must give evidence of their qualifications with regard to auditing functions[57].

Of course, the subject of the cooperative audit lies outside the scope of this article. It must only be noted that, in Italian law, auditing is compulsory for all cooperatives (with only a few exceptions) and aims at verifying the "mutual requirements" and the "mutual nature" of cooperatives by taking into account the effectiveness of membership, the member participation in cooperative management and in mutual relationships, the absence of profit distribution purposes, and the eligibility for tax and other benefits[58].

For the limited purposes of this article, it is worth pointing out that the legally recognized associations of the cooperative movement play a fundamental role in the cooperative audit. In fact, such associations audit their member cooperatives[59]. In contrast, cooperatives that are not members of any association are audited by the State (*rectius*, by the Ministry of Economic Development, which also conducts extraordinary inspections when necessary); however, in performing this function, the Ministry may decide to avail itself of qualified auditors of the recognized associations[60].

Obviously, this regulation of the cooperative audit generates incentives for cooperatives to become members of an association of the cooperative movement, since being audited by their

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56 See articles 11, par. 1, Law 59/1992, and 2, par. 4, Legislative decree 220/2002. However, these are usually known as "*centrali*" (in Italian) or "federations". The largest ones are, at present, Confcooperative and Legacoop (which, together with the AGCI, established, in 2011, the "Alliance of Italian cooperatives" as a structure of coordination among them).

57 See art. 3, Legislative decree 220/2002.

58 The matter is extensively regulated by Legislative decree 220/2002 on "cooperative vigilance", which consists of "cooperative revisions" (the ordinary form of control, which normally takes place every two years) and "extraordinary inspections", and partly regulated by the CC (with regard to certain potential consequences/sanctions). The Italian Constitution already refers to the control of cooperatives, when it stipulates in art. 45 that "The Republic recognises the social function of the cooperation with mutual character and without private speculation purposes. The law promotes and favours its growth with the most adequate means, and ensures, through appropriate controls, its character and purposes".

59 See art. 2, par. 4, Legislative decree 220/2002.

60 See art. 7, par. 2, Legislative decree 220/2002. More precisely, the arrangement referred to in the text concerns only the ordinary audit—namely, cooperative revision—whereas extraordinary inspections are always conducted by the Ministry through its functionaries or through functionaries of other public bodies (art. 8).

association is preferable to being controlled by the State or by auditors of associations they have decided not to join, especially when these cooperatives must, in any case, bear the costs of the audit, as is the case under Italian law[61]. Thus, this regulation certainly helps to reinforce the national cooperative movement, since, although participation in associations is not compulsory, it is strongly encouraged by the cooperative audit regime[62]. Additionally, by performing the auditing function entrusted to them, the auditing associations may contribute to the development of a certain cooperative movement, with certain characteristics and qualities (e.g., in terms of effective member participation, real democracy, etc.).

In accordance with art. 3 of Legislative Decree 220/2002, the same associations eligible for the auditing function may establish mutual funds for the promotion and development of the cooperative movement[63]. These funds must have the exclusive purpose of promoting and funding new enterprises and initiatives of cooperative development. To this end, they may promote the establishment of cooperatives and consortia of cooperatives, as well as own shares of cooperatives or subsidiary companies established by them. The mutual funds may also fund specific projects of development of cooperatives and consortia of cooperatives, organize and manage the training of managers of the cooperative sector, or promote studies and research on economic and social topics relevant to the cooperative movement[64].

What is particularly worth highlighting in this article is the system of alimentation of these funds, which is based on compulsory contributions from the cooperatives that are members of the national association that promoted the institution of the mutual fund. These cooperatives are obligated to allocate 3 per cent of their total annual profits to the mutual funds[65]. In addition, when a cooperative (or, more precisely, a prevalently mutual cooperative[66]) is dissolved or transformed

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61 See art. 8, Legislative decree 14 December 1947, n. 1577.

62 As already stated, however, compulsory affiliation with an auditing association of the cooperative movement could not be considered an opposition to the constitutional freedom of association and private autonomy, as long as one considers that the founders are not obligated to choose the cooperative legal form to conduct business—and that once they have freely decided to do so, they must accept the legal regime of cooperatives as it is (including compulsory affiliations or compulsory audits): see footnote 33.

63 See art. 11, par. 1, Law 59/1992. More precisely, these funds are not managed directly by the national association but by an association or a stock company established *ad hoc*, in both cases without a profit purpose (art. 11, par. 1). At least 80 per cent of the stock capital of the company so established must be held by the national association (art. 12, par. 1), while if the mutual funds are managed by an association, it is automatically comprised of all the cooperatives and consortia of cooperatives that are members of the national association. On the legal issues raised by this regulation, see recently Bosi (2012).

64 See art. 11, par. 2 and 3, Law 59/1992.

65 See art. 11, par. 4, Law 59/1992, and art. 2545*quater*, par. 2, CC.

66 The difference between prevalently mutual cooperatives (PMCs) and non-prevalently mutual cooperatives (or other cooperatives (OCs)) is the main distinction, which was introduced into Italian cooperative law by the 2003 reform of

into another type of company, its residual assets, subtracting only the paid-up capital and the dividends due but not yet distributed, are devolved to the mutual funds[67].

Cooperatives (and consortia of cooperatives) that are not members of any national association are also subject to these obligations; however, they contribute to a public fund with purposes similar to those of the mutual funds[68]. Again, as observed with regard to the cooperative audit, this is a measure by which Italian law pushes cooperatives to become members of cooperative representative associations.

Along the same lines, state promotion of the cooperative movement also comprises a specific and supportive tax treatment of cooperatives' mandatory contributions to the mutual funds (3 per cent): These contributions are tax-exempt for the funds and tax-deductible for the cooperatives[69].

Undoubtedly, this regime favours the development of a well-structured cooperative movement as a sort of distinct subject or actor, which operates "beside" (but also, if one considers the role of promotion and control, "behind" and "above", respectively) the cooperatives and their consortia. Compulsory contributions are the distinguishing feature of this cooperative system, and they have the clear objectives of increasing the number of existing cooperatives and of bringing solidarity in the movement (such that existing and larger cooperatives help create new cooperatives or develop smaller cooperatives). It also shows that the development of the cooperative movement may be fostered by the state, not by imposing on cooperatives to take part, but, rather, by conveying proper incentives to do so. It finally demonstrates that the representative associations of the cooperative movement may also promote it through sophisticated financial activities, such as participation in the capital of cooperative start-ups.

company and cooperative law. According to art. 2512 CC, PMCs are cooperatives that act predominantly with their members as users of the goods and services provided by the cooperative (in consumer cooperatives), as providers of the goods and services used by the cooperative for its economic activity (in producer cooperatives) or as workers (in worker cooperatives). According to art. 2513 CC, the condition of prevalence must be analytically documented by highlighting in the cooperative balance sheet that, depending on the type of "mutual transaction", (a) the sales proceeds from user members are higher than 50 per cent of the total sales proceeds (in consumer cooperatives); (b) the labour costs for worker members are higher than 50 per cent of the total labor costs (in worker cooperatives); or (c) the production costs for the goods and services provided by members are higher than 50 per cent of the total production costs (in producer cooperatives). By way of contrast, OCs are obligated, neither to act predominantly with their members, nor to report on the volume of the activity with them. Unlike OCs, PMCs are also subject to constraints on the distribution of profits in art. 2514 CC. The distinction between PMCs and OCs is not so relevant under organizational law; rather, it is mostly relevant under tax law.

67 Art. 2514, par. 1, d), CC, and art. 11, par. 5, Law 59/1992.

68 See art. 11, par. 6, Law 59/1992.

69 See art. 11, par. 9, Law 59/1992.

5. Cooperative integration: A comparative law overview

The analysis conducted thus far has also sought to pave the way for a comparative legal study of the matter of cooperation among cooperatives. In fact—in addition to the general problems that always arise when cooperative law is analysed from a comparative perspective, beginning with the identification of its sources[70]—a comparative study of inter-cooperation is complicated by the diversity of terminology within the law and the non-uniformity of understanding (also on the scholarly side) of the functions and activities that may fall within this topic. The hope is that this article might help to clarify the kinds of points and issues the subject of cooperation among cooperatives should cover when being explored by a legislator or a legal scholar.

Having stated this, the following comparative analysis does not purport to exhaustively present, describe and discuss the current legal regime of inter-cooperation; rather, it will focus on those aspects and findings—some more general, others more particular—that appear to be most significant in light of the conceptual framework delineated in the previous section of this article, assuming Italian law as a point of reference. Among other things, this may also permit us to revisit and redefine the issues raised previously, as well as to reassess them critically through useful comparative references.

i) First, it must be pointed out that, notwithstanding the importance (as historically and comparatively proven) of inter-cooperation for the growth of cooperatives; the existing cooperative practices thereof; and, last, but not least, the 6th ICA principles, as formally and substantially incorporated into ILO Recommendation 193/2002[71], there are jurisdictions in which cooperation among cooperatives is still an aspect not specifically covered or insufficiently addressed by cooperative law[72].

Indeed, in many instances, the legal recognition of inter-cooperation consists only of provisions for the possibility of a cooperative being a member of other cooperatives or for cooperatives

[70] Cf. Fici (2013a).

[71] Which, moreover, and among other statements equally relevant to this topic, invites (or, rather, obligates, if one holds that it is a source of public international law) governments to "facilitate the membership of cooperatives in cooperative structures responding to the needs of cooperative members" (par. 6, d) and to "encourage conditions favouring the development of technical, commercial and financial linkages among all forms of cooperatives so as to facilitate an exchange of experience and the sharing of risks and benefits" (par. 13).

[72] Obviously, jurisdictions that do not have cooperative law at all also pertain to this group. A prime example is Ireland, where a general cooperative law does not exist (but its introduction is under discussion, and there is, however, a specific law on credit unions: the Credit Union Act (1997-2012) and cooperative-like entities usually register under the Industrial and Provident Societies Act (1893-1978) if they prefer not to exist under the Companies Act (1963-2012). In any event, the IPSA (1893-1978) only provides that a society consisting of two or more societies may be registered (sec. 1 of the 1913 Act amending the IPSA 1893), which, of course, is not sufficient to conclude the existence of a specific regulation of inter-cooperation in the country. See Carroll (2013). On the debate concerning the introduction of a specific cooperative law in Ireland, see De Barbieri (2009: 37) which argues that "Ireland does need a law that protects the co-operative identity and gives the public a clear way to identify a co-operative society from another type of corporate entity", and Carey (2009).

comprising cooperatives to derogate from the "one member, one vote" rule[73]. This situation, on the one hand, implies the legal admissibility of secondary (or higher-level) cooperatives; however, on the other hand, it is certainly insufficient to conclude that the matter of inter-cooperation finds proper consideration in those jurisdictions[74].

However, these jurisdictions represent the exception, since, in general, the topic of inter-cooperation is more extensively addressed by cooperative laws, although this occurs in various manners and to different extents, as we shall soon observe[75].

ii) We have previously reflected on the importance of a legislation that facilitates cross-border inter-cooperation, as well as on this legislation's consistency with regard to the identity of cooperatives (as delineated by the ICA). If legislators around the world are to promote inter-cooperation, they should refrain from creating obstacles to cooperation among cooperatives. Yet, in some countries,

[73] The potential for a secondary cooperative's by-laws to provide for plural votes is contemplated in many cooperative laws (we have already seen it in sec. 4.1. of this article, while dealing with Italian cooperative law; see also, among others, art. 26, par. 6, of Spanish State Law, 26 July 1999, n. 27, and art. 9, par. 1, of French General Law n. 47-1775 of 1947, as recently modified by art. 24 of Law, 31 July 2014, n. 2014-856). As already mentioned in the main text, plural voting in secondary cooperatives is compatible with the fourth ICA principle and is even recommendable when a secondary cooperative's member cooperatives have different numbers of members. Usually, cooperative laws allow voting power to be related to the number of members of the member cooperative or to its participation in the cooperative activity (cf., e.g., art. 26, par. 6, of Spanish State Law, 26 July 1999, n. 27). In certain cases, however, they also allow voting power to be related to the amount of the capital subscribed (as in the already mentioned case of article 2538, par. 3 of the Italian Civil Code). This does not raise doubts in terms of cooperative identity to the extent that the amount of capital subscribed is proportioned to the size of the member cooperative's membership; otherwise, a capitalistic manner of governance would be introduced, whose legitimacy should depend on the existence of a ceiling to the number of additional votes that a single cooperative could have in each members' meeting (as happens, for example, in Italian law, as we have already seen in sec. 4.1., or in Spanish law, where, with reference to secondary cooperatives, it is stipulated that "no member may have more than one third of total votes, except in the case of a cooperative comprised of only three members, in which case the limit is 40 per cent, and if the cooperative is comprised of only two members, agreements shall be adopted by unanimity of members' votes" (art. 26, par. 6, of Spanish State Law, 26 July 1999, n. 27)[author's translation]. On the other hand, in German cooperative law, it is stipulated that the by-laws of a cooperative that is exclusively or, at least, predominantly comprised of cooperatives, may confer plural votes, without providing for any limit to this power: cf. art. 43, sec. 3, n. 3, of Law 1 May 1889. Another example of this is given by Finnish Cooperative Law 1488/2001, where it is stated (in Chap. 4, sec. 7): "(1) In the general meeting of the co-operative, one member shall have one vote in all matters to be considered by the general meeting. (2) However, it may be stipulated in the rules that the members have differentiated numbers of votes. The number of votes of one member may be more than ten times the number of votes of another member only in a co-operative in whose rules it is stipulated that the majority of members are to be co-operatives or other legal persons". Admittedly, the Finnish Act of 2001 has been replaced by Law n. 421/2013, which came into force on 1 January 2014, and of which no translations still exist (however, the reform should not have changed the regulation of the aspects previously mentioned).

[74] The cooperative laws of China, Finland and the Netherlands pertain, among others, to this group of laws: See, respectively, Ren and Yuan (2013); Henrÿ (2013b); van der Sangen (2013).

[75] The absence of specific rules on inter-cooperation does not mean, of course, that cooperatives cannot integrate with one another, either by contractual arrangements or by making recourse to general law or company law provisions (if their applications to cooperatives are not prohibited by cooperative law).

such obstacles exist due to the unequal legal treatment of cooperatives relative to companies (which may derive from the simple fact that the cooperatives are not taken into consideration by the law). For example, in a federal system like that of Australia, the lack of federal regulation of cooperatives (in comparison to the regulation that exists for companies) constrains the capacity of cooperatives to operate at a federal level and consequently their capacity to cooperate amongst themselves at that level[76]. Needless to say, this legislature's attitude is even more detrimental for cooperative development than its indifference toward the subject of cooperative integration.

iii) The extent to which the topic of inter-cooperation is dealt with by cooperative laws varies substantially. It ranges from the extensive regulation and the variety and originality of measures found in Italian and Spanish laws[77] to the low regulation found in jurisdictions that only consider the economic form of cooperative integration[78].

Various levels of regulation do, therefore, exist. In some instances, the law addresses both the economic and the socio-political forms of integration, while, in others, it deals with only one. Some cooperative laws simply mention and provide basic regulations for the structures of cooperative integration, while others provide more specific legal regimes.

In any event, what seems more significant to emphasize is that diverse approaches to the subject exist. Some jurisdictions compel inter-cooperation (which can be done in different ways)[79]; others

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[76] The problem derives from the fact that sec. 51.xx of Australia's Constitution allows the Federal Government to make laws that regulate matters pertaining to corporations that have the primary purpose of engaging in trading and financial activities ("the corporations power"). This is a category to which cooperatives are meant not to belong (since they benefit their members); thus, it falls outside the scope of federal jurisdiction. See Sarina (2013) where a 2012 project of uniform state laws on cooperatives (the "Cooperative National Law Bill"), to overcome this obstacle, is presented and analyzed in detail. The same problem existed in Canada before the federal law on cooperatives was passed (Petrou, 2013).
The opposite can be said, for example, with regard to India, thanks to the Multi-State Cooperative Societies Act of 2002, or with regard to Spain, thanks to the State Cooperative law of 16 July 1999, n. 27 (which only applies to cooperatives whose "cooperative activity" with their members is conducted in several autonomous regions, unless they operate predominantly in one of them, and to cooperatives whose "cooperative activity" with their members is conducted mainly in the cities of Ceuta and Melilla (see art. 2, Law 27/1999). In the USA, attempts to adopt a uniform cooperative statute have failed thus far; however, drafts do exist, such as the Uniform Limited Cooperative Association Act of 2007 (already referenced in footnote 26).

[77] Spanish law will soon be treated in the main text. For Italian law, see the preceding section of this article.

[78] This is not always easy to evaluate. For example, there are many cooperative laws in which it is permissible to establish a cooperative that pursues an ideological purpose. Could this legal reference also include secondary cooperatives, whose objectives are to defend, represent and promote the cooperative movement?

[79] Germany is probably the most significant example of a jurisdiction promoting inter-cooperation, at least in Europe. German cooperatives are obligated to be members of a federation of compulsory cooperative audit (see art. 54 of the German Cooperative Law of 1889), and this membership is necessary for a cooperative to be registered (see art. 11, sec. 3, n. 3, of the same Law). The same model may be found in Austria (Miribung and Reiner, 2013) and in Japan (at least with regard to agricultural cooperatives: see Kurimoto, 2013).

promote it by providing incentives for cooperation (which also can be done in several ways)[80]; and still others provide structures for integration, but neither obligate nor encourage cooperatives to cooperate[81].

In addition, examples exist in which the law directly provides for the establishment of an entity for cooperative advancement and promotion[82]. This is a different approach to dealing with the topic

[80] We have already examined the case of Italy, in which cooperation is encouraged through rules that obligate cooperatives to contribute to the development of the cooperative movement and to subject themselves to cooperative audits bearing its costs. These rules favour the cooperative integration of the socio-political type, to the extent that cooperatives prefer to contribute to, and be audited by federations of which they are members. A different method of promoting cooperative integration, without making it compulsory for cooperatives, is to entrust organizations composed of cooperatives with public functions—notably, the cooperative audit. This is what happens, not only in those jurisdictions in which cooperatives are obligated to be members of an entity of compulsory cooperative audit (see the preceding footnote), but also in other jurisdictions, such as that of Italy, in which it is established that the public control of cooperatives may also be exercised by federations of cooperatives, on the basis of a delegation by the public authority (see *supra* sec. 4.4). In this sense, see also what is provided for by art. 84, par. 2, of the Framework Law for the Cooperatives in Latin America ("by delegation by the enforcement authority, higher-level cooperatives which represent the cooperative movement may have a supervisory function. They may also be in charge of the registration if empowered by the authority in charge of the cooperative registry"). An additional and very significant example of this may be found in the Canadian Province of Quebec, where the "Conseil de la coopération du Québec", an entity comprised of federations of cooperatives, carries out—through the delegation of law or through agreements with the public authority—a number of functions, from control over the registration of new cooperative entities and the collection of statistics on cooperatives to the implementation of cooperative development projects, to the point that it is possible to argue that "Québec's system of promoting cooperation among cooperatives is truly exemplary" (Petrou, 2013: 314). A further example is offered by Colombian Law 79/1988, in which it is provided that public funds for the development and promotion of cooperatives are preferably channeled through cooperative financial entities (art. 134)—entities that cooperatives may establish in accordance with articles 98 and 99 of the same law—although, in fact, this measure has not been implemented. Moreover, the laws that involve the representative organizations of the cooperative movement in the formation of entities specifically designed for the supervision and development of cooperatives (see the following point *vii*, in the main text, as well as footnote 95) incentivize, in an indirect manner, the formation of a national cooperative movement.

[81] Examples are numerous: see, for example, art. 82 ff. of Argentinian Law n. 20.337 of 15 May 1973 (although, admittedly, in the same law, the promotion of cooperative education and integration with other cooperatives are distinguishing traits of cooperatives: see art. 2, par. 1, n. 8 and 9, and art. 42, par. 1, n. 3); Law 23.427 of 1986, which obligates cooperatives to contribute to the Cooperative Education and Promotion Fund: See Cracogna (2013c); and art. 92 ff. of Colombian Law 79/1988. In fact, many national cooperative laws, though they neither obligate nor encourage cooperatives to integrate, indicate the route by which integration is possible, which is an inclusion that certainly favours (although it does not ensure) integration (as will be underlined with regard to Mexican law: See footnote 88).

[82] These entities are normally also in charge of the control of cooperatives. In addition to the Belgian National Cooperative Council, to which we shall make reference in the next footnote, this is a model that can often be found in the cooperative legislations of Latin America countries. For example, Argentinian Law n. 20.337 of 15 May 1973 (art. 105) establishes an entity (which is currently, after decree n. 721/2000, the "National Institute of Associativism and Social Economy" (INAES)) in charge of several functions relative to cooperatives, including their control and promotion (art. 106), and which is run and managed by a board consisting of a president and four members nominated by the national executive power. Two of the four members, however, participate in a representation of mutual associations and cooperatives and are nominated by the national executive power at the proposal of entities that unite mutual associations and cooperatives

of cooperative integration, inasmuch as a representative and promotional entity of the cooperative movement will come into existence, as happens with the compulsory regime, but this entity will be formed and operated in accordance with a legislature's desires (so that the entity might, for example, have a more or less public character if one considers the way in which it is composed). On the other hand, this is a condition for the state to promote the cooperative movement, since it is through this very entity that, either directly or indirectly (e.g., through tax law measures), public resources are conveyed to the cooperative movement[83].

iv) In those jurisdictions in which the cooperative law formally incorporates or explicitly refers to the ICA principles (as happens in many cases), cooperation among cooperatives should be considered automatically mandatory, since the sixth principle is clearly formulated in this regard ("Cooperatives *serve* their members most effectively and *strengthen* the cooperative movement *by working* together …")[84]. However, it may be that the cooperative law in question does not specify the contents of the obligation to cooperate, thereby raising the same issue as the ICA principles with regard to the identification of the content[85].

v) Although law is important to cooperative integration, cooperatives have been shown to cooperate even in the absence of substantial legal regulation[86]. In certain instances, it was the

(art. 2, decree 721/2000; currently the members of this entity are seven, and four of them represent mutual associations and cooperatives).

[83] Belgium constitutes a very significant example of such a situation. Belgian general cooperative law is found in articles 350-436 of the Company Code, while a special regulation applies to accredited cooperatives, which, in this case, may gain access to specific and more generous (compared to that of other cooperatives) tax treatment (Law 20 July 1955 and Royal Decree 8 January 1962). We have elsewhere termed this model of regulation the "double track model", as it recognizes two types of cooperatives: one under substantive law and another under tax law, with the latter having a more definite cooperative identity (see Fici, 2013a). This special regulation for accredited cooperatives provides for the establishment of a National Cooperative Council (NCC)—which, in addition to accrediting the cooperatives eligible for the specific tax treatment, has the mission of conducting activities to promote of the principles and values of cooperative entrepreneurship. The Belgian NCC is considered a governmental instrument, and it is embedded in the Ministry of Economic Affairs (see Coates, 2013). However, this body (and its board as well) is, in fact, composed of representatives of the cooperative movement, since its members are designated by commissions (of consumer cooperatives; of agricultural cooperatives; of production and distribution cooperatives; and of service cooperatives) composed of members designated by national groups of cooperatives, as well as by other, unaffiliated cooperatives (see article 2 ff., Law 20 July 1955). The regulation on the NCC has recently been amended: See Royal Decree 24 April 2014 on the composition and functioning of the National Cooperative Council. However, although this decree changes the internal structure of the Council, it does not affect its nature as an entity whose composition is strongly influenced by the cooperative movement.

[84] Emphasis added by author.

[85] See sec. 1, above.

[86] See, for example, the Irish Co-operative Organisation Society (http://www.icos.ie/, last accessed 9 June 2014) and the Dutch Council for Cooperatives, which comprises mainly cooperatives active in agricultural and horticultural industries (www.cooperative.nl, last accessed 9 June 2014). Both organizations have been established and currently operate

legislator that had to adapt existing regulations in order to take into account a growing practice of cooperation among entities of the cooperative sector[87]. Conversely, in other cases, the level of cooperative integration remains low despite the presence of detailed regulation[88].

Equally importantly, there is no evidence that a compulsory regime of cooperative integration has given life to a larger or stronger cooperative movement than an optional regime, in which cooperatives are recipients of legal incentives for cooperation[89].

vi) In this article, we have drawn a distinction between two forms of cooperative integration, consistent with the two possible functions that it may be assigned: an economic and a socio-political function. The comparative analysis illustrates that, while there are cooperative laws that, in effect, consider these functions separately[90], there are also many others that do not distinguish between the two and, thus, provide for structures of integration whose function may be freely determined by the founder cooperatives, in a manner that comprises both of the two functions mentioned above[91].

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in countries where cooperative law is either absent or does not provide regulation specific to cooperative integration, respectively.

87 Cf. Ren and Yuan (2013: 352), according to whom, "during the formulation of the Law [the Law on farmer specialized cooperatives of 31 October 2006, the only one existing in this country for the moment], agricultural cooperatives were in the early stage of development, and there were, as said, few cooperative federations. Since the law came into effect [on 1 July 2007] … a number of cooperative federations have begun to appear, therefore, the general requirements for cooperative federations have been provided in the implementation measures, rules and regulations of the Law as established by provincial legislative authorities".

88 This is the case in Mexico, for example. The General Law of Cooperative Societies of 1994 contains three chapters and more than 20 articles dedicated to second-level entities for the promotion, support, integration, etc., of cooperatives, but more than 50 per cent of Mexican cooperatives are not integrated (at least, according to Rojas Herrera, 2013), and by the studies mentioned therein, footnote 4).

89 Indeed, no one could state that, for example, the cooperative movement is more developed in Germany, where the compulsory regime applies, than in Italy, where affiliation is not compulsory (although, admittedly, in this last country, as we have already seen, there are very strong incentives for cooperatives to cooperate) or than in Argentina or other Latin American countries (where such incentives, if any, are not as strong as under Italian law).

90 Examples are numerous: See, among others, Germany (the auditing federations, which may also have the purpose of protecting their members' common interests, are registered associations: art. 53 and 63b of the German Law of 1889), Italy (see previous sections 4.1 and 4.4), Japan (at least, with regard to agricultural cooperatives: See Kurimoto (2013), Peru (whose general Law on Cooperatives of 1981 distinguishes between "cooperative headquarters" (*centrales cooperativas*), which are cooperatives of cooperatives and pursue economic purposes, and "national federations" of cooperatives and the "national confederation", which are nonprofit associations with socio-political aims: See art. 57 ff. and Torres Morales (2013), Poland (see footnote 93), Portugal (where article 81 ff. of Law n. 51/96 of 7 September ("Cooperative Code") distinguishes between "unions", with prevalently economic objectives, and "federations" and "confederations", with prevalent objectives of representation—although, in this law, the distinction between the two figures does not appear so clearly to a foreign observer, and this is even more true if one considers that, in contrast to the jurisdictions previously mentioned, both figures have the cooperative legal form), and Spain (see footnote 100).

91 See footnote 98.

In this regard, however, we have already made reference to Charles Gide's opinion concerning the opportunity to keep the two functions separate and performed by different entities[92]. In our opinion, this opportunity also derives from the fact that separation may be more respectful of the cooperative principles of cooperative autonomy and members' democratic control, since, when a sole entity plays the roles of both cooperative advocacy and economic integration, the risk of the umbrella organization invading the sphere of business autonomy of the associated cooperatives may increase. The legislative history of Poland is significant in this regard[93].

vii) We have already pointed out that cooperative integration may be of a compulsory nature. More precisely, the undertaking of economic forms of cooperative integration is, in general, not mandated by law, whereas socio-political integration is compulsory in some jurisdictions. In Austria, Germany and (albeit only in some cases) Japan, cooperatives must be members of an umbrella organization, which is also in charge of their audits (even their pre-registration audits)[94]. Auditing is essential in this regard because it is often invoked to justify compulsory affiliation, although nothing, in principle, prevents a system of compulsory audits by unions (or federations of cooperatives) from being implemented without obligating cooperatives to participate in such unions[95].

It must be pointed out, however, that, in other jurisdictions, a similar effect is produced by obligating cooperatives to contribute to the cooperative movement or to submit to audits, since

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92 See footnote 29.

93 In this country, cooperation among cooperatives was originally implemented through cooperative unions, which exercised activities towards both the defense and the representation of the cooperative movement, as well as business activities in the interest of their member cooperatives. During the communist system, these unions became instruments of state control over cooperatives. Subsequently, a provision in a 1990 law liquidated all the existing cooperative unions. This provision was later declared unconstitutional, and a 1991 law restored the ability of cooperatives to form unions, provided that these unions did not conduct any business activities and served as "auditing unions". A consecutive act in 1994 also enabled the establishment of "cooperative business unions", understood as cooperatives of cooperatives, which are separate from auditing unions (see Piechowski, 2013).

94 See footnote 79.

95 In fact, the law could directly attribute this power to entities of the cooperative movement or of the cooperative self-government, independently of whether the cooperatives to be audited are members of those entities—as is the case, for example, in Poland, where the National Cooperative Council controls cooperatives that are not associated with any auditing unions (despite this last entity having, admittedly, a particular legal nature, it may, however, be qualified as a cooperative self-government organism: See Piechowski (2013). Another possibility is that the law authorizes the state to avail itself of the auditors of the cooperative federations, as happens in Italy (although only with respect to cooperatives that are not associated with any federation, since it is the law that, for associated cooperatives, directly attributes the auditing function to the federations of cooperatives: See sec. 4.4), or to delegate the auditing power to federations of cooperatives, as foreseen in the Framework Law for the Cooperatives in Latin America (see art. 84, par. 2). Yet another possibility is that the law involves, in some regard, cooperative entities in the auditing procedure, as happens, for example, in Quebec, with regard to the *Conseil de la cooperation du Québec* (see Petrou, 2013).

these obligations constitute, for the cooperatives, a major incentive to integrate. That is, cooperatives can contribute to and be audited by their own representative organizations (rather than to and by the state or by organizations for which they have not applied or have refused membership)[96].

In the vast majority of jurisdictions, however, cooperative law neither obligates cooperatives to participate in secondary structures nor provides for compulsory contributions to the cooperative movement, thus leaving inter-cooperation to the free determination of cooperatives.

On the other hand, we have also already referred to the incentivizing strategy pursed by some cooperative laws, which appears to be the most respectful approach with regard to the cooperative identity and the most effective in terms of the edification of a solid and cohesive cooperative movement[97].

viii) We have stated in this article that it is consistent with the particular nature of cooperatives that they integrate themselves through a cooperative structure. Indeed, the comparative analysis reveals that legislators show a preference for the cooperative legal form—and, at times, even impose it on cooperatives that wish to integrate (even if only for socio-political purposes)[98]. There are, however, different examples of cooperative laws that authorize the use of other legal forms or provide

[96] In this regard, we have already referred to Italian law in previous sections of this article. Additional examples may be found, among others, in India (see sec. 63, par. 1, (b), of the Law of 2002 on Multi-State Cooperative Societies, which obligates the multi-state cooperatives to credit 1 per cent of their net profits to the Cooperative Education Fund maintained by the National Cooperative Union of India). In other jurisdictions, more general provisions may be found (such as, for example, in Canada, where sec. 7 (1) (g) (iv), of the federal law on cooperatives of 1998 includes "community welfare or the propagation of cooperative enterprises" among the possible destinations of the surplus generated by a cooperative), which bear the risk of being insufficiently effective if they are not coupled with other, more specific provisions for implementation.

[97] See footnote 80.

[98] See, for example, art. 5, par. 1, of the French General Law on Cooperatives n. 47-1775 of 1947, according to which "unions of cooperatives" are cooperatives subject to the same law. Another example can be found in Portugal. Cf. art. 81, par. 1, of Law n. 51/96 of 7 September, the "Cooperative Code", with regard to unions, federations and confederations, and Namorado (2013: 651), which states: "in fact, in Portugal, the whole cooperative sector is organized through cooperative structures".
In Latin America, the model of secondary cooperatives applies, in principle, to both economic and socio-political integration, if it is true that "Second or higher level cooperatives are organized to provide services to their members, and they may perform, pursuant to the provisions contained in this law and their respective bylaws, technical, economic, social, and cultural activities and represent the cooperative movement" (art. 84, par. 1, Framework Law for the Cooperatives in Latin America), in addition to, by delegation of the enforcement authority, activities of supervision (art. 84, par. 2, *ibidem*). Of course, this does not mean that, in fact, the same cooperative entity performs both functions (i.e., the economic and the socio-political); rather, it only implies that the referenced entities have the cooperative legal form or are subject to the rules on cooperatives (see, for example, art. 97 of Colombian Law n. 79/1988 and art. 98 of the same law with regard to financial cooperative institutions, as well as art. 85 of Argentinian Law n. 20.337 of 15 May 1973).

for special forms for the structures of integration (or, at least, for some of them)[99].

ix) Only in some countries may a detailed and sophisticated legal regime of cooperative integration be found. We have already described the Italian example. Another one exists in Spain, even if we limit our scope to its state cooperative law[100].

x) We have previously observed in this article that Italian law allows cooperatives to hold shares or stocks of companies, thus permitting the establishment of a group of companies (and not of

[99] See, for example, Piechowski (2013) with regard to the Polish National Cooperative Council.

[100] Simplifying—and referring to Gadea Soler, Sacristán Bergia and Vargas Vasserot (2009) for more information regarding autonomies' cooperative laws—Spanish State Law n. 27/1999 foresees different forms of economic inter-cooperation: the second-degree cooperative, established by no fewer than two cooperatives, with the aim of "promoting, coordinating and developing common economic purposes of its members, and reinforcing and integrating their economic activity" (art. 77, par. 1) [author's translation]; the cooperative group—that is, "the group formed of various cooperative societies, regardless of their class, and the entity at the head of the group which exercises powers and issues instructions of a mandatory nature for the associated cooperatives, in such a way that unity of decision in the area of said powers is produced" (art. 78, par. 1) [author's translation]; and other forms, given that "cooperatives of any type and class may set up societies, groups, consortia and unions among themselves, or with other physical or legal persons, public or private, as well as conclude contracts and agreements for the better accomplishment of their social objects and for the defense of their interests" (art. 79, par. 1) [author's translation]. With reference to representative or socio-political inter-cooperation, see articles 117-120 of the same law, which regulate the unions, federations and confederations that cooperatives may establish for the defense and promotion of their interests. Although this last regime is not compulsory, in Spanish cooperative law, measures of promotion of the cooperative movement by individual cooperatives may be found. One of these is the provision by which a portion of the surplus (5 per cent) of a cooperative must be allocated to the "fund for education and promotion" (art. 58, par. 1), the functions of which include "a) training and education of its members and workers about the cooperative principles and values, or about specific matters of its societal or labor activity and the remaining cooperative activities; b) the propagation of cooperation, as well as the promotion of inter-cooperative relationships; c) the cultural, professional and welfare promotion of the local environment or the community in general, as well as the improvement of the quality of life and the development of the community and actions of environment protection" (art. 56, par. 1) [author's translation]. This provision also states that "in order to accomplish the tasks of this fund, the collaboration with other societies and entities is possible, and all or part of their resources may be attributed" (art. 56, par. 2) [author's translation]. There also exist autonomous laws (such as Basque Law n. 6/2008) that, more precisely, foresee the channeling of the compulsory monetary contributions for cooperative education and promotion to entities among cooperatives created for the defense and promotion of cooperatives (see Gadea Soler, Sacristán Bergia and Vargas Vasserot, 2009). Furthermore, it is worth mentioning art. 75 of Law n. 27/1999, which provides that, in the case of liquidation of a cooperative, the fund for education and promotion is devolved to the federation to which the cooperative is associated (art. 75, par. 2, (a)), and particularly that: "Remaining net assets, if any, shall be devolved to the cooperative society or the federation indicated in the by-laws or designated by decision of the General Meeting. If there is no designation, this amount shall be credited to the National Confederation of Cooperatives of the class corresponding to the cooperative in liquidation, and if there is no such a Confederation, it shall be credited to Public Treasury which shall use it to establish a Fund for the Promotion of Cooperation. If the designated entity is a cooperative, it shall allocate it to the compulsory reserve fund, remaining unavailable for a period of fifteen years without the possibility to use this amount to cover the losses caused by the cooperative. If it were an associative entity, it shall use it to fund projects of investment promoted by cooperatives" (art. 75, par. 2, (d)) [author's translation].

cooperatives) led by a cooperative as the parent structure (i.e., a "heterogeneous group"). As stated, this is a model of business expansion that Italian cooperatives, but not only Italian cooperatives, have made great use of. However, the model has nothing to do with the matter of cooperative integration, since it does not serve to unite cooperatives, but to unite a cooperative with non-cooperative business organizations (unless shareholding is shared by two or more cooperatives, in which case the subsidiary company may act as a secondary cooperative to serve its parent cooperatives). If anything, this model raises the question of whether a cooperative may pursue its mutual purpose also or even exclusively (in the case of a purely cooperative holding) through its subsidiary companies[101].

However, it must be noted that the comparative analysis has incidentally revealed that, in some jurisdictions, which represent exceptions, a cooperative can, in principle, be subject to external control. This, among other things, permits the formation of "homogenous cooperative groups", consisting of a parent cooperative that directs subsidiary cooperatives. This is probably why, in these cooperative laws, a cooperative consisting of only one member is legally feasible—or even explicitly foreseen—by law[102].

xi) The comparative analysis has shown that certain cooperative laws include another interesting measure, which may be very important for increasing the total number of cooperatives in a country and facilitating their integration. This consists of a provision allowing a cooperative to invest or deposit its funds into a cooperative bank (but, of course, it might equally refer to business operations of any other nature with any other type of cooperative)[103]. Being not an obligation, but a simple

[101] The indirect mutuality is explicitly recognized in the French regulation of "trader cooperatives" (see art. L 124-1 of the French Commercial Code, which states that these cooperatives may carry out, either directly or indirectly, activities in the interest of their members and may acquire shares—and even control shares—of enterprises), in Finnish law (see chap. 1, sec. 2, n. 1, of Law 1488/2001, according to which the services to members may be provided either by the cooperative or by its subsidiaries), in the Netherlands (see art. 2:53, par. 1, of the Dutch Civil Code and van der Sangen, 2013), and in Norwegian law (see art. 1, par. 3, of Law 29 June 2007, n. 81: "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 […]. The same applies if the interests of the members are promoted through the members' trade with an enterprise, which the secondary cooperative owns alone …". Also see Fjørtoft and Gjems-Onstad (2013).

[102] The cooperative with a single member is now explicitly provided for by the new Finnish Law on Cooperatives n. 421/2013 (see Henrÿ, 2013b), whereas, under Dutch Law a cooperative must not be compulsory liquidated when only one member remains (see van der Sangen, 2013). In contrast, in Danish law, although a single person may set up a cooperative, the cooperative must have at least two members at the time of its formation (see Fjørtoft and Gjems-Onstad, 2013).

[103] See sec. 64, par. 1, (a), of the Indian Multi-State Cooperative Societies Act of 2002. This raises a more general reflection on the importance that cooperative law foresees (as, for example, articles 98 and 99 of Colombian Law n. 79/1988) specific financial entities for cooperatives that may remedy the cooperatives' particular problems of (ordinary) finance, which cooperatives normally encounter due to their structural characteristics and identities.

option, a provision like this cannot ensure inter-cooperation; however, it can certainly work as a sort of guide to facilitate the principle of cooperation among cooperatives[104]. Such a provision might be far more effective if it were coupled with state incentives, such as specific tax treatments for business operations between cooperatives[105].

xii) Finally, there are jurisdictions in which the integration of cooperatives with other non-capitalistic and non-profit entities is promoted—a situation that appears to be very important for reinforcing the social economy (as opposed to the for-profit capitalistic economy) and the cohesion among the entities thereof[106].

6. Conclusions

In principle, there is no apparent reason for business organizations to integrate on the sole basis of their common legal form. Cooperatives represent the exception: The cooperative legal form unites enterprises *per se*, regardless of the nature of the activity performed or the sector of the market in which they operate. This occurs because the cooperative legal form carries particular values and principles of organization and conduct, which is not the case with other legal forms of business organization. These values and principles permeate the relationships between a cooperative and its members and among the members themselves, and influence the cooperative's behaviour towards external stakeholders, other cooperatives and cooperative members, and the community.

As shown by the history and the comparative analysis, "cooperation among cooperatives" is one of the elements that shape an identity so particular as to be capable of uniting separate enterprises in common goals.

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104 As correctly pointed out by Veerakumaran (2013).

105 Although of a different nature, it is also worth mentioning here a provision of Spanish State Law n. 27/1999, in which, not only is the activity among cooperatives provided for, but it is also qualified as "cooperative" activity (*actividad cooperativizada*), thereby putting it on the same level as the activity between a cooperative and its members. This is a definition that certainly favours the development of such activity (for example, with reference to the limitations that a cooperative faces with regard to the possibility of acting with no members): "In order to fulfil its social objects, a cooperative may enter into inter-cooperative agreements with other cooperatives. In virtue of these agreements, the cooperative and its members may carry out activity of supply, provision of goods and services with the other cooperative signing the agreement, having these facts the same consideration as the cooperative operations with their own members. The results of these operations shall be entirely attributed to the compulsory reserve fund of the cooperative" (art. 79, par. 3) [author's translation]. See also art. 7 of Colombian Law 79/1988: "Cooperative acts will be those carried out by the cooperatives between themselves or between the cooperatives and their own members, thereby pursuing their social object" [author's translation].

106 A paradigmatic example is represented by the "social economy unions", as provided for and regulated by art. 19 *bis* ff. of the French General Cooperative Law n. 47-1775. Also see Fici (2016).

Although cooperative integration has been carried out and continues to be carried out, even without a legal framework to provide for it, the law may help to build a more active and structured cooperative movement, in which cooperatives may thrive both individually and as a system.

This article has explored, through a comparative analysis based on the detailed and cooperation-enhancing Italian regulation framework and illuminated by historical references, various legislative approaches and manners and other measures with which to deal with the subject of inter-cooperation.

Although the main purpose of this article was to lay the foundations for a thorough study of this topic and a more critical approach to its exploration, a possible conclusion is that the cooperative laws that promote inter-cooperation by incentivizing (rather than by obligating) cooperatives to integrate; that obligate cooperatives to contribute to the development of the cooperative movement and ensure that these compulsory contributions are used effectively in the interest of the cooperative movement; and, finally, that provide for a (secondary) cooperative as the default structure for integration (at least when said integration has primarily economic purposes) are the cooperative laws that apply the 6th ICA principle of cooperative identity in the most effective manner and, most importantly, in perfect compliance with the other traits of cooperative identity: notably, cooperative autonomy and members' democratic control.

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