

PRINCIPLES OF EUROPEAN COOPERATIVE LAW

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COOPERATIVE LAW

Principles, Commentaries
and National Reports

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Principles of European Cooperative Law. Principles, Commentaries
and National Reports

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Hans-H. Münkner and Ian Snaith 2017

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FOREWORD

The Principles of European Cooperative Law is, in many ways, the culmination of a line of work that started in 2009, when Euricse (the European Research Institute on Cooperative and Social Enterprises) was just established and undertook its first project on comparative analysis of cooperative law in the European Union. Since then, both the current state and the evolution of cooperative law have been key elements of Euricse's research program, which has yielded other important publications on this topic, including, most notably, the *International Handbook of Cooperative Law* in 2013. This line of research devoted particular attention to comparative analysis of the laws that regulate cooperatives in different countries, in Europe as well as in other continents. At Euricse, we are indeed convinced that the quality of the legal framework is one of the most important conditions affecting the degree of success of any institution, including cooperative and social enterprises.

These first studies, carried out by convening and working with a growing international team of legal scholars from various European universities, highlighted the high degree of fragmentation and diversity of cooperative law in different national contexts, and started to investigate the barriers that this fragmentation poses to cooperative development and growth. The research showed that not only are cooperative laws quite different from country to country, but they often also fail to take into account the specificities of cooperative enterprises. Yet, when they do, they can be one of the most powerful tools for unlocking the potential of these enterprises and maximising their contribution to social and economic development.

After the first comparative analyses of the main European countries (and some analysis of countries outside Europe), the research group realised that the difficulty of developing coherent and fairly homogeneous legislation across countries was due in part to the lack of a sufficiently general reflection on the basic tenets of a good cooperative law, regardless of national specificities. In other words, what was lacking was the construction of an ideal set of norms that would define the identity and identify the founding characteristics of cooperative enterprises without limiting their flexibility and ability to function. This was the starting point of the research that led to the results presented in this book.

The work, conducted in partnership with other European universities and research centres, was based on two premises: first, it would consider only European countries, both because they have comparable legal traditions and

also in order to help the European Commission and some European countries in their effort to harmonise the different legal frameworks. Second, it would be based on the most general definition of cooperative enterprise, the one developed by the International Cooperative Alliance. The research thus follows the seven cooperative principles codified by the Alliance in 1995.

Thanks to the work of an impressive team of researchers, this book provides an important contribution towards a more unified approach to cooperative law at the European level, and will be of use not only to researchers but also to any nation that might want to update or improve its cooperative legislation. At the same time, much work remains to be done in order to develop a comprehensive framework – one that includes cooperative law as well as regulations pertaining to the other branches of law that also affect cooperatives (such as, for instance, taxation and labour law). At Euricse, we are proud of the results that the group of scholars that have carried out this research has achieved and are very grateful for their work. Moving forward, we will continue to carry out legal research as part of our multidisciplinary approach to the study of cooperative and social enterprises, and to support the analysis of the laws and regulations that define, shape and affect cooperative enterprises throughout Europe and beyond.

Carlo Borzaga
President of Euricse

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LIST OF ABBREVIATIONS

ACI	Alianza Cooperativa Internacional
ADG	Akademie Deutscher Genossenschaften (German Cooperative Academy)
BaFin	Bundesamt für Finanzdienstleistungsaufsicht (Federal Office for Supervision of Financial Services)
Bencom	A society registered to conduct business for the benefit of the community under CBSA 2014
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BVR	Bundesverband der Volksbanken und Raiffeisenbanken e. V. (German National Federation of Peoples Banks and Raiffeisenbanks)
C(AICE)A 2004	Companies (Audit Inspection and Community Enterprise) Act 2004
C.Com	Código de Comercio (Spanish Code of Commerce)
CA 2006	Companies Act 2006
CASES	Cooperativa António Sérgio para a Economia Social (António Sérgio Cooperative for Social Economy)
CC	Código Civil (Spanish Civil Code)
CCAA	Comunidades Autónomas (Autonomous Communities)
CCBSA	Co-operative and Community Benefit Societies Act 2014 (UK)
CE	Constitución Española (Spanish Constitution)
CIC	Community Interest Company
CLG	Company Limited by Guarantee
CONFAGR	National Confederation of Agricultural Cooperatives
CONFECOOP	Portuguese Confederation Cooperative
CRP	Constituição da República Portuguesa (Portuguese Constitution)
CSC	Código das Sociedades Comerciais (Portuguese Commercial Companies Code)
CSR	Corporate Social Responsibility
DG Bank	Deutsche Genossenschaftsbank AG (German Cooperative Bank, Ltd, Frankfurt)
DGRN	Dirección General de los Registros y del Notariado, del Ministerio de Justicia (Spanish Directorate General of Registers and Notaries, at the Ministry of Justice)

DGRV	Deutscher Genossenschafts- und Raiffeisenverband (German Cooperative and Raiffeisen Federation)
DGV	Deutscher Genossenschaftsverband (German Cooperative Federation)
DRV	Deutscher Raiffeisenverband (German Raiffeisen Federation)
eG	eingetragene Genossenschaft (registered cooperative society)
EU	European Union
EURICSE	European Research Institute on Cooperative and Social Enterprises
FCA	Financial Conduct Authority
FiCA	Finnish Law on Cooperatives (<i>Osuuskuntalaki</i>), 14.6.2013/421
FrCA	French Cooperation Act n. 47-1775 of 10 September 1947
FSA	Financial Services Authority registrar from 2001 to 2013
GCA	German Cooperative Act (1889–2006)
GenG	Genossenschaftsgesetz (German Cooperative Societies Act)
GG	Grundgesetz (German Federal Constitution)
GM	General Meeting
HGB	Handelsgesetzbuch (German Commercial Code)
IA 1986	Insolvency Act 1986
ICA	International Co-operative Alliance
ICA P	International Co-operative Alliance's Principles of 1995
ICC	Italian Civil Code of 1942
IFRS	International Financial Reporting Standards
ILO	International Labour Organization
IM	Investor/Non-user Member
IPS	Industrial and Provident Society
LAC	Law on Auditing of accounts, 22/2015 of 20 July
LBES	Lei de Bases da Economia Social (Portuguese Framework law on Social Economy)
LC	Ley de Cooperativas 27/1999 (Spanish Cooperatives Law 1999)
LESFL	Ley 49/2002, de 23 de diciembre, de Régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo (Spanish Law 49/2002 of 23 December 2002 on the fiscal system for non-profit organisations and fiscal incentives for sponsorship)
LFICA	Law 13/2013 of 2 August on Integration of agricultural cooperatives
LGC 1974	Ley General de Cooperativas 52/1974 (Spanish General Law of Cooperatives 1974)
LGC 1987	Ley General de Cooperativas 3/1987 (Spanish General Law of Cooperatives 1987)
LLP	Limited Liability Partnership

LLPA	Limited Liability Partnerships Act 2000
LOA	Ley Orgánica de Asociaciones 1/2002 (Spanish Organic Law of Associations 2002)
LOCM	Ley de Ordenación del Comercio Minorista (Spanish Ordering of Retail Trade Law)
LRFC	Ley de Régimen Fiscal de las Cooperativas 20/1990 of 19 December Spanish (Fiscal System for Cooperatives Law)
LSC	Ley de Sociedades de Capital 1/2010, of 2 July (Spanish Capital-Based Company Law)
Ltd.	private limited company
MitbestG	Mitbestimmungsgesetz (German Co-determination law)
NPO	non-profit organisation
PA	Partnership Act 1890
PCC	Código Cooperativo Português (Portuguese Cooperative Code)
PLC	public limited company
RA	Repertorio Aranzadi (Aranzadi law compendium)
RD	Real Decreto
RD Leg.	Real Decreto Legislativo
REVESCO	Revista de Estudios Cooperativos
RJCAM	Legal Framework of Mutual Agricultural Credit and Cooperative Credit Scheme
ROAC	Official Register of Auditors of Accounts
RRC	RD 136/2002 adopting the Co-operatives Register Regulations.
RRM	Reglamento del Registro Mercantil (Company Register Regulations)
RZ	Randziffer (note)
SA	Sociedad Anónima
SCA	Spanish Cooperatives Act n. 27/1999 of 16 July 1999
SCE	European Cooperative Society
SCE R	Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)
SCEAG	SCE Ausführungsgesetz (Law on the implementation of the SCE Regulation No. 1435/2003 into German law)
SHO	self-help organisation
SN	Sistema de Normalização Contabilística (Portuguese Accounting Normalization System)
SROI	social return on investment
STS	Sentencia del Tribunal Supremo (Spanish Supreme Court Judgement)
TBL	Tripple Bottom Line Approach
TMO	taux moyen de rendement des obligations des sociétés privées

TransPuG	Transparenz- und Publizitätsgesetz (German Transparency and Public Information Law)
UmwG	Umwandlungsgesetz (German Transformation Law)
WGG	Gesetz über die Gemeinnützigkeit im Wohnungswesen (German Law on General Interest in the Field of Housing)
WGZ	Westdeutsche Genossenschafts-Zentralbank eG, Düsseldorf (West German Cooperative Central Bank)
WPO	Wirtschaftsprüferordnung (German Law Regulating the Profession of Chartered Accountant)
WSC	withdrawable share capital
ZfgG	Zeitschrift für das gesamte Genossenschaftswesen (Journal for All Cooperative Organisations)