



European Research Institute on Cooperative and Social Enterprises

WORKING PAPER N. 045 | 12

COOPERATIVE FINANCE AND COOPERATIVE IDENTITY

Gemma Fajardo García

JEL classification: K29, L29, L39
Fondazione Euricse, Italy

Please cite this paper as:
Fajardo García G. (2012) "Cooperative finance and cooperative identity", Euricse Working
Paper, N.045| 12

COOPERATIVE FINANCE AND COOPERATIVE IDENTITY*

Gemma Fajardo García**

Abstract

The question addressed in this paper is whether the financial structure of cooperatives constitutes a badge of identity that differentiates cooperatives from other corporate legal forms such as capital-based companies.

To this end, it examines features of their financial structure that are considered typical of cooperatives in a number of documents published by international organizations: the International Co-operative Alliance's Statement on the Co-operative Identity (ICA, Manchester, 1995); the International Labour Organization's R193 Promotion of Cooperatives Recommendation (ILO, 2002); Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), and the Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee, and the Committee of Regions on the promotion of co-operative societies in Europe (Brussels 23.02.2004, COM(2004) 18).

All these documents agree in pointing to the ICA cooperative principles as characteristics that identify cooperatives. They also agree in pointing to certain aspects of the financial structure of cooperatives as identifying features: most of the cooperative's share capital has to be held by the cooperating members, shareholding does not determine the member's rights, any return on capital must be at a limited rate, and part of the cooperative's reserves cannot be divided among the members.

Other aspects of their financial system, while typical of cooperatives, are not so essential to their nature. These include reserves remaining indivisible even if the cooperative is dissolved or changes its legal form, and variable share capital.

Lastly, this examination has brought to light certain weaknesses in the legal system covering cooperatives that need to be remedied by measures such as establishing guarantees for members when the cooperative demands new contributions to capital, favouring solvency by strengthening the creation and preservation of the cooperatives' capital and reserves, and others that have come to light as a result of allowing or demanding stability (rather than variability) of the cooperative capital, such as making shares easier to transfer or allowing cooperatives to acquire their own shares in order to make it easier for members to join and leave.

Keywords

Cooperatives, Cooperative Law, Cooperative Identity, Cooperative Finance, Cooperative Principles.

* Paper presented at the "Cooperative Law in Europe: New Challenges and Perspectives" seminar held in Manchester, 31 October 2012, and organised by Co-operatives United/International Year of Co-operation, UK Co-operative Group & Study Group on European Cooperative Law (SGECOL). Text translated by Mary-Georgina Hardinge.

** Tenured Lecturer in Commercial Law, University of Valencia (Spain); SGECOL Member.

1. Introduction

Is the cooperative's financial structure one of its badges of identity? Or to put it another way: could we say that cooperatives are differentiated from other types of company by their financial structure? The question can only be solved by comparing the financial structure of cooperatives and other forms of company in the legal framework of each country.

After that, we need to share the results in order to assess whether certain features of their financial structures are both shared by cooperatives throughout the European Union and, at the same time, can be clearly differentiated from those of other types of company. This work still has to be done and is one of the tasks that SGECOL (Study Group on European Cooperative Law) has set itself.

What I am going to talk about here is much simpler. I am going to focus on features of their financial structure that are considered typical of cooperatives in particular documents:

- International Co-operative Alliance's Statement on the Co-operative Identity (ICA, Manchester, 1995)
- International Labour Organisation's R193 Promotion of Cooperatives Recommendation (ILO, 2002)
- Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), and
- Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of Regions On the promotion of co-operative societies in Europe (Brussels 23.02.2004, COM(2004) 18).

I will contrast these with the financial structure of commercial companies, particularly public limited-liability companies (Plc).

We need to remember that the European Union has been working since the 1970s to harmonise its Member States' laws on the financial structure of commercial companies. The main instruments for this are the Second Council Directive of 13 December 1976¹ and the Directives on annual accounts².

- The purpose of the Second Council Directive is to coordinate the guarantees that companies have to provide to protect the interests of their members and others in relation to founding the Plc and preserving and modifying its capital, in order to make these guarantees equivalent in all the Member States
- The Directives on annual accounts give capital-based companies a harmonised basis for drawing up company accounts.

¹ Second Council Directive of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (77/91/EEC).

² Directives: 78/660/EEC Fourth Directive on the annual accounts of certain types of companies; 83/349/EEC Seventh Directive on consolidated accounts; 86/635/EEC Directive on the annual accounts and consolidated accounts of banks and other financial institutions; 91/674/EEC Directive on the annual accounts and consolidated accounts of insurance undertakings.

Whatever its purposes and legal form, any company needs financial resources, whether of its own or provided by others, in order to do business and meet its creditors.

The main financial resources a company owns are its capital and reserves. The resources from other sources can include loans and debentures.

2. The ICA Statement on the Co-operative Identity (1995)

The main aim of the International Co-operative Alliance (an international organisation that represents the various cooperative 'families') is to promote and safeguard the cooperative values and principles. At its 1995 congress and general assembly in Manchester, it adopted its Statement on the Co-operative Identity. One of the main aims of the Statement is to set out principles by which cooperatives should abide. Several of the principles described in the Background Paper and in the Identity Statement itself relate to the financial structure of the cooperative, particularly the 3rd Principle: Member Economic Participation.

Some of the same rules apply to commercial companies, such as that membership requires contributing capital or that members can allocate all or part of the surplus to creating reserves. Others are specific to cooperatives, like those we shall now see.

In relation to capital the Statement and Background Paper state that:

- a. *"Co-operatives operate so that capital is the servant, not the master of the organization"*.
In a Plc, the capital the members subscribe determines their financial and voting rights. A cooperative, however, is governed by the principle of democratic member control, and *"members allocate surpluses for [...] benefiting members in proportion to their transactions with the co-operative"*. This means that in cooperatives the members' rights are not decided by their capital contribution.
- b. *"members contribute equitably to the capital of their co-operative"*.
If they do not receive any compensation on their capital, members will not be motivated to make new contributions, which is why they all have to contribute equitably to the capital, whether equally or in proportion to their transactions with the co-operative.
- c. *"willing to accept the responsibilities of membership"* reminds members that they have obligations to their cooperative, which include *"providing equity as the needs arise"*. This rule means that members can be required to make new contributions to the capital of the cooperative. In contrast, shareholders in commercial companies cannot be obliged to subscribe any capital increase without their consent.
- d. *"if [co-operatives ...] raise capital from external sources, they do so [...] on terms that ensure democratic control by their members and maintain their co-operative autonomy"*. The members of the cooperative are *"persons united to meet their common needs and aspirations"*. This principle seems to allow the cooperative to have other members who contribute capital and do not take part in the cooperative activity. However, its purpose is to prevent the cooperative being controlled by these members.

- e. *"Members usually receive limited compensation, if any, on capital subscribed" and if the capital subscribed is a condition of membership, "only rarely should such membership 'share or shares' be paid any interest". If the cooperatives make special appeals to members for further investments: "Under those circumstances, it is appropriate to pay interest on such investments, but at a 'fair' rate. The return paid on such investments should be at a competitive, not a speculative rate: for example, the government or normal bank interest rate". In capital-based companies the shareholders are entitled to divide the profits among themselves in proportion to the capital that each has contributed. In cooperatives the profits are distributed among the members in proportion to their transactions with the cooperative rather than in proportion to the capital contributed. However, they can receive compensation on the capital they have contributed to the cooperative in the form of 'interest', although it will always be limited.*

As regards reserves, the Statement says that *"part of [the reserves] at least would be indivisible"* and the Background Paper explains that *"This approach, which in many co-operatives should be the normal way to allocate surpluses that are not returned to members, is vitally important in securing the long-term viability of the co-operative"*.

Cooperatives may create reserves with the retained earnings of their activities. *"Normally, all or a significantly large proportion of these earnings are owned collectively, representing the collective accomplishments of members supporting their co-operative. In many jurisdictions this collective 'capital' is not even divided among the members should the co-operative cease to exist; rather, it is distributed to community enterprises or other, associated co-operatives"*.

In commercial companies, if shareholders leave the company or if the company is dissolved, the shareholders are entitled to a distribution of the company's assets in proportion to their share of the capital. In cooperatives, however, members who leave can recover their contribution to the capital but if the cooperative is dissolved the indivisible reserves are usually not distributed among the members.

The Background Paper also mentions the possibility that members may allocate the year's surpluses not only to patronage dividends but also to *"capital reserves in their name"*. This would allow surpluses to be allocated to setting up divisible, individual reserves as well as to increasing the members' shareholdings or their nominal value.

Another possibility the Background Paper refers to is that members *"regularly contribute a portion of their dividends on some rotating basis or until retirement; in those cases co-operatives would not pay interest, the member benefiting from continuing participation and future dividends"*. This way of obtaining funds through the members' placing part of the patronage refunds they receive at the disposal of the cooperative is frequently used. It is treated as making the cooperative a loan.

3. The General Conference of the International Labour Organization adopted the Promotion of Cooperatives Recommendation on 20 June 2002

This Recommendation makes a number of proposals for governments to promote cooperatives, including:

- a. Promotion and strengthening of the identity of cooperatives should be encouraged on the basis of the cooperative values and the cooperative principles as developed by the international cooperative movement (point 3).

This recommendation reinforces the ICA Statement and, consequently, the distinctive features of cooperatives we have just been seeing.

- b. *"promote policies aimed at allowing the creation of appropriate reserves, part of which at least could be indivisible, and solidarity funds within cooperatives"* (point 6). This stresses the importance of indivisible reserves for ensuring the cooperatives' future viability.
- c. *"adopt measures to facilitate the access of cooperatives to investment finance and credit"* (point 12). These measures could include the possibility of cooperatives' accepting a limited number of investor members.

4. Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)

The purpose of this Regulation is to give cooperatives a legal instrument that allows them to develop cross-border activities. The Regulation draws attention to the specific features of cooperatives and recognises that neither the Statute for a European Company (SE) nor the Regulation on the European Economic Interest Grouping (EEIG) are suitable for cooperatives. However, it says that provisions adopted by the Member State where the SCE is registered to implement EU directives on companies can be applied to the SCE ('Whereas' clause 18). Also, the Statute for a European Cooperative regulation itself reflects the structure of Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company. For instance, the SCE regulation gives pride of place to share capital just as though a SCE were a capital-based company (articles 1, 3 and 4), but does not regulate its cooperative activity with its members, which is the main purpose of a cooperative³.

The Regulation is not designed to harmonise national cooperative laws but, since the member states had to reach a consensus in order for it to be approved, it could be said to reflect characteristics that are considered to be shared by the different traditions of cooperative law.

The articles that refer to the financial structure of SCEs include:

I. Rules taken from commercial company law that do not reflect the specific features of cooperatives.

The purpose of these rules is to strengthen the SCE's solvency⁴, provide financial information⁵ and guarantee the existence⁶ and preservation⁷ of the capital.

³ A limited and inadequate exception is the reference in art. 66 to payment of a dividend to members in proportion to their participation in the SCE's activities.

⁴ For example, by requiring a minimum share capital (arts. 3.2 and 3.3) or the establishment of a legal reserve (art. 65).

⁵ Mainly through requirements concerning the SCE's statutes, this information includes the minimum number of shares which must be subscribed in order to qualify for membership (art. 4.7), the amount of capital subscribed and the nominal value of the subscribed shares (art. 5.4), changes in the nominal value of the shares (arts. 4.9 and 4.10) and the surpluses that must be allocated to the legal reserve (art. 5.4).

⁶ Shares may not be issued at less than nominal value (art. 4.3). Contributions to capital may only be made with assets capable of economic assessment (art. 4.2) and if other than in cash must be valued by experts (art. 4.6).

II. Rules that strengthen the characteristics of cooperatives as identified in the ICA Statement.

Some of the 'whereas' clauses of the Regulation reflect these characteristics and the Articles go into further detail. I will just mention the following:

- a. As well as the capital contribution required for membership, the Regulation acknowledges that where provided for in the statutes, applications for a supplementary stake in the capital may be addressed to members (art. 14.3). However, it is not clear whether or not the member can refuse to make this new contribution⁸.
Since asking for a supplementary stake does not require the statutes to be amended, opposition to this decision does not constitute grounds for resignation under art. 15.2.
- b. In spite of the requirement that members of a cooperative have to take part in its economic activity, the Regulation allows a (limited) number of "non-users", who it calls "investor members". 'Whereas' clause 9 states that "In some circumstances cooperatives may also have among their members a specified proportion of investor members who do not use their services".
The circumstances the Regulation mentions are that the laws of the Member State of the SCE's registered office must permit it and that acquisition of such membership is subject to approval by the general meeting or any other organ delegated to give approval by the general meeting or the statutes (art. 14.1).
- c. 'Whereas' clause (10) is a reminder that the SCE must respect various principles, including that "there should be limited interest on loan and share capital". Art. 67 allows "a return on paid-up capital and quasi-equity, payment being made in cash or shares" as one of the possibilities for the profits available for distribution. However, this rule does not set any limit or provide that the quantity distributed in this way should be limited.
- d. 'Whereas' clause (8) states that the principle of the primacy of the individual is reflected in the specific rules on membership, resignation and expulsion, with

Steps are also taken to ensure that contributions are effectively paid, distinguishing between those made in cash (art. 4.4) and other than cash (art. 4.5).

⁷ To ensure the preservation of the capital, the statutes have to lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE (art. 3.4). As the cooperative does not have a fixed share capital, the Regulation requires the statutes to set a sum which will perform the same guarantee function as share capital does in a commercial company. On the functions of capital in a commercial company see MASSAGUER, J. "El capital nominal. Un estudio del capital de la sociedad anónima como mención estatutaria", *Revista General del Derecho*, nº 550-551, julio-agosto 1990, p. 5549. On the functions of capital in cooperative societies see FAJARDO, G. *La gestión económica de la cooperativa: responsabilidad de los socios*, Tecnos (ed.), 1997, pp. 28-57.

⁸ Art. 4.9 provides for a particular case that can entail members' having to make new contributions or payments: a resolution to increase the nominal value of the shares by consolidating the shares issued. This article states that "Where such an increase necessitates a call for supplementary payments from the members under provisions laid down in the statutes, the decision shall be taken by the general meeting in accordance with the quorum and majority requirements for the amendment of the statutes". This requirement does not provide any additional guarantee, as the nominal value of the shares has to be stated in the SCE's statutes (art. 5.4) and any increase in value will require amendment of the statutes.

the implication that members cannot exercise any rights over the assets of the cooperative.

This rule is spelled out in arts. 16 and 65.3, which respectively state that *"loss of membership shall entitle the member to repayment of his/her part of the subscribed capital, reduced in proportion to any losses charged against the SCE's capital"*, and *"Members leaving the SCE shall have no claim against the sums thus allocated to the legal reserve"*.

- e. The indivisibility of the reserves can apply even if the cooperative is dissolved. 'Whereas' clause (10) says that *"net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes"*.

Art. 75 tries to clarify the meaning of net assets and after repeating that they should be allocated on the principle of disinterested distribution, allows exceptions if allowed by the law of the Member State⁹.

III. Rules that refer to characteristics of cooperatives that are not mentioned in the ICA Statement:

- a. The capital of a SCE shall be variable (article 1.2) and this must be mentioned in the cooperative's statutes (article 5.4).
- b. The capital is variable because it may be increased by successive subscriptions by members, on the admission of new members, or by the capitalisation of all or part of the reserves available for distribution (article 4.8); and it may be reduced by the total or partial repayment of subscriptions. These variations do not require amendment of the statutes or disclosure (article 3.5). Because the capital is variable, the SCE Regulation takes steps to make sure that members are kept informed about its amount¹⁰ and to safeguard the rights of the cooperative's creditors, particularly if the capital is reduced by repayments to members¹¹.
- c. Shares shall be held by named persons (article 4.3), whereas a public limited-liability company can issue both registered and bearer shares. The requirement

⁹ Specifically, this article reads as follows: "Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE. For the purposes of this Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of member's capital contributions".

¹⁰ On the one hand, the Regulation requires that "When it considers the accounts for the financial year, the annual general meeting shall by resolution record the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year" (art. 4.8) and, on the other, that "the number and class of shares the members hold and any changes in ownership or increase or reduction in their capital must be recorded in the index of members" (arts. 14.4 and 14.5).

¹¹ Art. 16 states that "except where shares are transferred, loss of membership shall entitle the member to repayment of his/her part of the subscribed capital, reduced in proportion to any losses charged against the SCE's capital". This could lead the cooperative to become undercapitalised. Consequently, art. 3.4 of the Regulation requires the statutes to "lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE". This sum may not be less than 30,000 euros (art. 3.2).

is in keeping with the person-centred nature of cooperatives: it is not irrelevant who the member is.

- d. The member's responsibility is or is not limited to the capital subscribed. In contrast to capital-based societies, where each shareholder's liability is limited to his or her shareholding, article 1.2 takes the principle of limited responsibility as its the starting point but adds: "*Unless otherwise provided by the statutes of the SCE*". In other words, the statutes may make the members responsible for more than their capital subscription.
- e. An SCE may not purchase its own shares. The possibility that a company may acquire its own shares has not achieved the necessary consensus in the European Union, where some countries, including Germany, forbid it. That is why the Second Council Directive of 13 December 1976's article 19¹² only went as far as to recognise that Member States may permit a company to acquire its own shares either itself or through a person acting in his own name but on the company's behalf. To the extent that the acquisitions are permitted, Member States shall make such acquisitions subject to the conditions laid down in the Directive. The SCE Regulation, however, totally forbids these cooperatives to acquire their own shares. This can be explained by the variability of their share capital.
- f. Limited assignment or transfer of shares. Article 4.11 allows SCE shares to be assigned or sold but only if certain requirements are met¹³.
- g. Securities other than shares and debentures conferring special advantages. Lastly, it is worth mentioning that article 64 of the Regulation makes provision for a specific external finance instrument for SCEs: "*The statute may provide for the issue of securities the holder of which are to have no voting rights. These may be subscribed for by members or by non-members*", and "*Holders of securities may be given special advantages*".

5. Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of Regions, On the promotion of co-operative societies in Europe (Brussels 23.02.2004, COM(2004)18).

The objectives of this Communication include improving co-operative legislation in the Member States and creating a more favourable environment for their establishment.

Following extensive consultation with European cooperatives, the Commission has therefore made a series of recommendations to governments.

The relevant ones for the financial structure of cooperatives are:

- a. *Access to Finance (2.2.3)*. The Communication recognises that "*co-operatives have no, or limited access to equity markets and are therefore dependent on their own capital, or credit financing*", and "*This is mainly due to the general*

¹² Amended by Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 (OJ L 264 of 25.9.2006, p.32).

¹³ "In accordance with the statutes and with the agreement either of the general meeting or of the management or administrative organ, shares may be assigned or sold to a member or to anyone acquiring membership".

lack of knowledge of the characteristics of the co-operative form of enterprise by both the credit institutions and the regulatory authorities. In this context [...], the Commission wishes to play an important role in facilitating exchanges of experiences amongst both co-operative organisations and national administrations on good and innovative practices in financing co-operatives”.

- b. Adapting accounting standards and rules to the cooperative specificities (2.2.3). The Communication highlights that *“it is also important to examine how best the accounting standards and other relevant rules may take into consideration the cooperative specificities related to the structure of capital and evaluation of assets”.*

The Commission's warning was very opportune because at that moment the European Union had decided that the International Accounting Standards should be adopted for European companies¹⁴ and there were doubts about whether these standards could be applied to cooperatives, since they class the share capital as a liability if the shareholder can apply for repayment¹⁵. The International Financial Reporting Interpretation Committee answered that in the case of the exclusion of the right of redemption of the member or the existence of an unconditional right to refuse the payments to the member, cooperative member shares can be shown as equity and not as liabilities. As a result, the Member States have changed their laws to introduce an optional stated capital for cooperatives, or to give the cooperative the right to refuse repayment of the member's shares¹⁶.

- c. Flexible use of the ICA cooperative principles (3.2.4). The Communication states that *“national legislators should be based on the co-operative definition, values and principles when drafting new laws governing co-operatives”.*

At the same time, however, this legislation should be flexible in order to adapt to the present needs of cooperatives: *“For example co-operatives might be permitted to issue non-user investor shares which are tradable and interest bearing, on the condition that the participation of such non-user shareholders be limited to ensure that the cooperative nature of the companies is not jeopardized”.*

- d. Disinterested distribution of assets (3.2.5). In this section *“the Commission encourages Member States to ensure that the assets of cooperatives upon dissolution or conversion should be distributed according to the cooperative principle of “disinterested distribution”; that is to say either to other cooperatives, where members can participate, or to co-operative organizations pursuing similar or general interest objectives”.*

¹⁴ Regulation (EC) N. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

¹⁵ According to Regulation No 1606/2002, only listed companies are obliged to prepare their consolidated accounts according to the International Accounting Standards, but the regulation also offers Member States the option of adopting the International Accounting Standards for the consolidated accounts of non-listed companies and the annual account of all companies as well, including cooperatives.

¹⁶ See MOCK, S. “Actual legal aspects of finance in German Cooperative Law”, *Droit Comparé des Coopératives Européennes*. Sous la direction de David HIEZ. Larcier 2009 pp. 7-13; or VERGEZ, M. “Modificaciones del régimen de la sociedad cooperativa relativas a la constitución del capital social”. *Estudios de derecho mercantil: En memoria del Profesor Aníbal Sánchez Andrés*, 2010, pp. 1019-1038.

Immediately afterwards, though, the Commission seems to contradict itself by saying, on the one hand, that *"it should be possible to provide for the assets of a co-operative to be distributed to its members upon dissolution, in well examined cases"* and, on the other, that *"Member States are encouraged to provide sufficient protection to co-operative assets by ensuring that in case of take-over bids and of the consequent conversion of a cooperative to the form of a public company limited by shares the wishes of members and the objectives of the co-operative are respected"*.

- e. Appropriate and proportionate tax treatment for equity capital and reserves of co-operatives (3.2.6). The Commission is aware that some Member States consider that *"the restrictions inherent in the specific nature of co-operative capital and reserves merit specific tax treatment"*. For example, *"the fact that co-operatives' shares are not listed, and therefore not available for purchase, results almost in the impossibility to realise a capital gain"*, or the fact that shares are repaid at their par value, and any interest on them is normally limited, may dissuade new memberships. The Commission recommends that *"any protection or benefits afforded to a particular type of entity should be proportionate to any legal constraints, social added value or limitations inherent in that form and should not lead to unfair competition"*.

6. Conclusions

The statements and resolutions of international organisations such as ICA or ILO and the European documents we have just seen all point to what are known as the "ICA cooperative principles" as the characteristics that identify cooperatives.

They also highlight certain aspects of the financial structure of cooperatives as identifying features:

- Most of the cooperative's share capital has to be held by the members who take part in its economic activity
- Shareholding does not determine the member's rights in the cooperative
- Any return on paid-up capital must be at a limited rate
- Part of the cooperative's reserves is indivisible and cannot be distributed to the members.

However, the essential nature of other aspects of the cooperative's financial system is more debatable.

- For example, the indivisibility of reserves is a shared feature in the case of members leaving the cooperative but exceptions are allowed if it is dissolved. Even the European Commission considers that the wishes of the members should prevail *"in case of take-over bids and of the consequent conversion of a cooperative to the form of a public company limited by shares"*.
- The possibility of requiring members to make new contributions to the cooperative's capital is not sufficiently clear. Also, if it were obligatory there

would have to be safeguards for members who opposed the decision or were absent when it was made.

- Variability of share capital is not an essential feature of cooperatives but is a legal instrument that encourages voluntary and open membership.
- After the accounting reforms, transferability of the members' shares and the possibility of the cooperative's acquiring its own shares will have to be encouraged if the cooperative opts for a stated capital, to make it easier for members to join and leave the cooperative.
- If the share capital remains variable, legislators will have to take measures that favour creating and preserving indivisible reserves and maintaining the share capital to ensure that the cooperative remains solvent. SCE resolution article 3.4 is probably not enough.

In conclusion, this analysis shows that the financial structure of cooperatives reflects essential characteristics of this form of company. However, it also shows the lack of a common approach to many aspects that are considered essential and the need for adequate regulation of the financial structure of cooperatives.