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Directions of the Development of Cooperatives in France. Legal and Historical Perspectives

Abstract

The article deals with the evolution of the various forms of cooperatives existing in French law. The regulations are presented chronologically, starting with the Act of 1867 and continuing with the regulations currently in force, in particular those of 1947. The types of cooperatives are presented according to the economic sector, which are a function of the private law regulations. Questions related to the French legal practice and theory, which may be important for the Polish practice and regulations, have been raised. Among other things, the answers to the following questions will be analyzed: what reforms have been carried out to adapt the old idea of cooperatives to the new economic conditions in France and in the world, whether the French cooperative model is a regulatory success or perhaps it developed by adapting to the environment, hence the large amount of case law in this system, why a cooperative code has not been created and whether it has an impact on the activities of cooperatives, although the share of cooperatives in many sectors of the economy is significant

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1 | Introduction

To understand the evolution of French cooperatives, it is necessary to go back to the genesis of the cooperative movement as the origin of cooperative law. The purpose of this article is to highlight the many peculiarities of French cooperative law that have long corrupted practice until it could be defined and then strictly limited. Although it has been updated to meet economic and fiscal needs, French cooperative legislation is still incomplete and contains many details about different types of cooperatives, which does not allow a holistic view, but only a reference to a specific type of cooperative.

The modernity and adaptability of the cooperative sector in France to national economic policies is well known. There are more than a dozen general cooperative sectors in France^[1]. These include agricultural cooperatives, workers' cooperatives, „cooperatives of common interest” (SCICs)^[2], rental housing cooperatives, homeowners' cooperatives, credit cooperatives, consumer cooperatives, artisan cooperatives, fishing cooperatives,

¹ National Cooperative Council, *French cooperatives in a nutshell*. <https://www.krs.org.pl/dzialalnosc-miedzynarodowa/spoldzielczosc-w-unii-europejskiej/1217-spoldzielczosc-francuska-w-pigulce>. [accessed 1.01.2024].

² A cooperative of collective interest (La société coopérative d'intérêt collectif) is a cooperative formed in the form of a SARL, SAS or SA with variable capital, according to the law of 2001 establishing the Scic, is the production or supply of goods and services of collective interest of social utility. Regardless of its object, the Scic is subject to the Commercial Code by virtue of its form (SARL, SAS or SA) and the law of September 10, 1947. It can be applied to all sectors of activity as long as the collective interest is justified by a territorial or sectoral project based on heterogeneous membership (adherence to cooperative principles (1 person = 1 vote) and limited profitability (obligation to reinvest almost all surpluses in the activity)). The Scic must include three types of members: employees of the Scic or, in the absence of employees of producers of goods or services, beneficiaries of the goods and services offered by the cooperative (suppliers, residents, etc.). The third category can be formed by any other type of shareholder, natural or legal person, private or public, who contributes to the cooperative (such as companies, associations, craftsmen, volunteers, farmers, local authorities, etc.). <https://bpi-france-creation.fr/encyclopedie/structures-juridiques/entreprendre-less/scic-societe-cooperative-dinteret-collectif>.

food cooperatives, transport cooperatives^[3]. The share of cooperatives in some sectors of the French economy is very high^[4].

There are more than a dozen cooperative sectors in France. These include agricultural cooperatives (2,600 cooperatives), work cooperatives (2,298), the so-called SCIC or „cooperatives of common interest” (627). SCICs or the specifically French type of “common interest cooperatives” (627), tenant cooperatives (175), artisan cooperatives (152), fishery cooperatives (100), trade or commerce cooperatives (97), food cooperatives (37), transport cooperatives (24), owner-occupied housing cooperatives (10), and a huge sector of financial cooperatives consisting of cooperative banks belonging to the Cr dit Agricole group (2. 462), Cr dit Mutuel (2107), and BPCE/Cr dit Coop ratif (44); separately classified are the school cooperatives, of which there are as many as 45,000^[5]. It is arguably these that are nurturing the young generations of cooperatives that are contributing to the success of French cooperativism as a whole.

In the global economy, the cooperative status is a kind of guarantee of stability, not seeking short-term profitability, answering only to its members, making it more resistant to crises. If the success of cooperatives in France seems undeniable, their late emergence and rather chaotic development have long raised questions about their impact on the economy.

The cooperative law in France contains provisions that bring together the rules applicable to the operation of cooperatives and specific provisions contained in a very large number of legal acts. It is complex because it includes provisions of a general nature relating to the cooperative model and provisions contained in dozens of acts applicable to different types

³ Examples of cooperatives in French – Les soci t s coop ratives artisanales, Les soci t s coop ratives de transport fluvial, Les soci t s coop ratives de banque, soci t s coop ratives de consommation, Les soci t s coop ratives de commer ants d taillants, Les soci t s coop ratives d’attribution d’immeubles, Les soci t s coop ratives d’entreprises de transport, Les soci t s coop ratives d’HLM., Les soci t s coop ratives d’int r t maritime, Les soci t s coop ratives ouvri res de production, La Soci t  Coop rative d’Int r t Collectif (Scic), Les soci t s anonymes coop ratives de production d’habitations   loyer mod r  et aux soci t s anonymes coop ratives d’int r t collectif d’habitations   loyer mod r , La soci t  coop rative d’int r t collectif HLM (Scic HLM), Les soci t s coop ratives europ ennes.

⁴ Cf. Mariola Lemonnier, „General characteristics of cooperative banks in France” *Law and Liaison*, No. 1 (2023): 113-133. <https://doi.org/10.36128/priw.vi44.652>.

⁵ Thomas Lamarche, Nadine Richez-Battesti, „Approches m so conomiques des coop ratives” *Revue de r gulation*, No. 34 (2023). <https://journals.openedition.org/regulation/22341>.

of cooperatives, as well as to the regulation of different legal forms and the way cooperatives are organized. This diversity is both the cause and the effect of the gradual regulation of cooperatives.

2 | Development and typification of cooperatives in France

The French law of September 10, 1947 on the statutes of cooperatives^[6] although amended several times, still serves as the „legislative reference base”, the „common substrate” of French cooperative law. According to article 1 of the 1947 law, as extensively amended by the law of July 31, 2014 in its current form, „a cooperative is an entity formed by a number of persons voluntarily associated to meet their own economic or social needs through joint efforts and the creation of the necessary means. It carries out its activities in all fields of human activity and respects principles such as voluntary membership open to all, democratic economic participation of its members, training of these members and cooperation with other cooperatives”^[7]. With the exception of special provisions for certain categories of cooperatives, each member of a cooperative is called a „cooperator” or „member”, as the case may be, and has one vote in the general assembly. The cooperative’s surpluses are primarily allocated to a reserve to ensure the cooperative’s development. While the old version of the regulation only mentioned the legal nature and purpose of the cooperative

⁶ Loi n° 47-1775 du 10 septembre 1947 portant statut de la coopération, JORF n°0214, 11 septembre 1947 as amended.

⁷ Art.1 La coopérative est une société constituée par plusieurs personnes volontairement réunies en vue de satisfaire à leurs besoins économiques ou sociaux par leur effort commun et la mise en place des moyens nécessaires. Elle exerce son activité dans toutes les branches de l’activité humaine et respecte les principes suivants: une adhésion volontaire et ouverte à tous, une gouvernance démocratique, la participation économique de ses membres, la formation desdits membres et la coopération avec les autres coopératives. Sauf dispositions spéciales à certaines catégories de coopératives, chaque membre coopérateur dénommé, selon le cas, „associé” ou „sociétaire”, dispose d’une voix à l’assemblée générale. Les excédents de la coopérative sont prioritairement mis en réserve pour assurer son développement et celui de ses membres, sous réserve de l’article 16.

as an essential element, the current version mentions other aspects: the purpose, the main principles of operation. These are the „determinants” of the cooperative institution.

Most of the rules applicable to the cooperative form are derived from the provisions of the law of September 10, 1947, which has been amended several times. Initially, the rules comprised 30 articles; in the law they now number 50 (except for the provisions of Titles II ter, III bis and III ter, which are dedicated to specific cooperatives by form). Other important changes were introduced by the reform of July 31, 2014, which had two objectives: the development of the cooperative model through provisions aimed at promoting the conditions for a dynamic cooperative model by creating new forms of cooperatives in connection with the introduction of simplifications and flexibilities in the organization and operation of these entities. However, it is important to note the role played by the principles of contract law, particularly with regard to agricultural cooperatives. Indeed, the French courts have sought to introduce greater freedom in the relationship between a cooperative and a cooperative member, „l’associé coopérateur [...] on the basis of contract law”^[8].

2.1. Diversity of cooperatives

The diversity of cooperatives, their purpose, the way they operate, leads to their classification. Cooperatives of a business (economic) nature are diverse, but can be formed in many sectors of activity, such as, for example, transport, trade, finance. Business cooperatives are characterized by the fact that they bring together individuals with the status of entrepreneurs who are engaged in independent business activities. The legal basis for this type of cooperative is Articles L. 124-1 and following of the Commercial Code and the Law of September 10, 1947. It should be recalled that the first such „cooperatives” (in today’s sense) were incorporated into commercial law (Commercial Code of 1807) and initially functioned in the form of limited partnerships.

The purpose of an economic cooperative is to improve, through the joint efforts of its members, the conditions under which they carry out their

⁸ Loïc Seeberger, „Historique de l’évolution du droit des coopératives, de ses origines à nos jours” *Revue internationale de l’économie sociale*, No. 333 (2014): 60-76. <https://doi.org/10.7202/1026044ar>.

economic activities. To this end, they may, in particular, carry out certain activities directly or indirectly for the benefit of their members.

A characteristic of user cooperatives is the association of people associated with them, but also users of products, goods, for services produced by the cooperative.

For example, the concept of residents' cooperatives (La coopérative d'habitants) was introduced by the law of March 24, 2014 as an expression of the participatory approach to housing. Article L. 200-1 of the French Building and Housing Code defines participatory housing as „a civic approach that allows individuals to join together, where appropriate, with legal entities to participate in the definition and design of their housing and common spaces, the construction or acquisition of one or more buildings for their residence and, where appropriate, to provide for the subsequent management of the buildings built or acquired”^[9]. Participating legal entities may not hold more than 30% of the share capital if the cooperative is formed as a residents' cooperative or as an allotment company. This participatory housing cooperative may develop activities and offer services to its partners or related third parties. However, third parties will only be able to access its activities or services with the approval of the General Assembly, which will determine the conditions of use^[10].

Ad hoc cooperatives are cooperatives that cannot be classified as user or entrepreneur cooperatives. They have a separate status in that the shareholders are neither entrepreneurs nor users, but for example employees, or because they are characterized by a multi-membership that includes different entities, such as users, employees, entrepreneurs, volunteers.

The activity and employment cooperative (La coopérative d'activité et d'emploi), on the other hand, has its origins in practice. It emerged in the 1990s, more precisely in 1995, and is an alternative to individual entrepreneurship in that a person who wishes to engage in entrepreneurial activity within the framework of a work and activity cooperative enjoys protection almost identical to that of an employee.

A worker cooperative is subject to the general cooperative law, although there are a number of specific provisions in its legal regime. The law of 31

⁹ Code de la construction et de l'habitation 08 juin 1978, Loi 79-17 1979-01-03 Article 9 I JORF 4 janvier 1979, Décret 78-621 1978-05-31 JORF 8 JUIN 1978.

¹⁰ Danièle Demoustier, Gabriel Colletis, „L'économie sociale et solidaire face à la crise: simple résistance ou participation au changement?” *Revue internationale de l'économie sociale*, No. 325 (2010).

July 2014 legalized this type of cooperative. It introduced articles 26-41 to the law of September 10, 1947, which defines worker and activity cooperatives as cooperatives whose main purpose is to promote the creation and development of economic activities by entrepreneurs – natural persons. These cooperatives provide individual assistance to individuals.

3 | Development of cooperative legislation in France

In order to better understand the history of cooperative law, it is necessary to outline the stages of its development. In French law, it is possible to identify two important pieces of legislation that have contributed to the emergence and development of cooperatives. The first is the law of July 24, 1867, which recognized, albeit indirectly, the existence of cooperatives, and the second is the law of September 10, 1947, which defined their status and gave them an identity. Of course, there are many other laws that have changed the form of cooperatives and that should also be highlighted, such as the Waldeck-Rousseau law of March 21, 1884, which authorized the creation of trade unions and dedicated certain provisions of the law to certain cooperative entities.

Cooperative law has required patient and rigorous work for almost a century to find its place in the French legal system. There are many reasons to explain such a long delay, and they stem from several factors: the understanding of the nature and purpose of cooperatives, the will of cooperatives, the will of opponents of cooperatives, difficult political, economic and social contexts, etc.

3.1. Origins of the law on cooperatives

From the beginning of the 1860s, the authorities in France were suspicious of the idea of cooperatives. The economic and social nature of cooperatives contributed to their functioning outside the legal framework, which caused great practical difficulties.

In 1865, an anonymous pamphlet entitled „Cooperative Societies and their Legal System”^[11] was published in France, a translation of the rules of the English prototype of cooperatives^[12]. The principles governing the operation of this society would soon become a model for the cooperative movement, which would follow them as basic principles. The four basic principles (still in force today) are as follows. „Open door”: anyone who wants to shop at a cooperative store or become a member (i.e. There are no conditions for membership; „one man, one vote”: in general meetings, all members have one vote, regardless of the number of shares they own; distribution of profits among members: in the case of the store, profits are distributed to the members in proportion to their contributions; limited remuneration of capital: members who have invested to buy shares receive interest each year in proportion to the number of their shares, not profits: if they want to receive a larger share of the profits, they should buy more shares.

In 1865, a French bill was drafted for a major reform of corporate law. Title IV of the bill was entitled „Des sociétés de coopération” – „Cooperative Companies” and was intended to clarify the concept of cooperatives. After many changes, Title IV became the much more general Title III, which referred only to cooperatives and „provisions specific to companies with variable capital”.

The Companies Act of July 24, 1867, however, did not simply permit the existence of cooperatives, but modified common law rules that might have hindered their development. This first act dealt mainly with the common law of companies rather than cooperatives. Nevertheless, it contributed greatly to the development of cooperatives, since ordinary commercial and civic associations incorporated little or none of the provisions of Title III into their statutes, which were not intended for them, while cooperatives fully embraced this tool. The variability of capital, introduced in Article 48 of the law, was also aimed at cooperative entities, although they were not required to apply the rule. At the time, the most important provision was the possibility of creating a cooperative with small financial contributions. The capital had to be able to increase throughout the life of the entity

¹¹ „Des sociétés de coopération et de leur constitution légale”.

¹² In 1844, a group of 28 craftsmen working in cotton spinning mills in the northern English town of Rochdale founded the first modern cooperative enterprise: Rochdale Society of Equitable Pioneers. It is considered the prototype of the modern cooperative, and the Rochdale pioneers are seen as the founders of the cooperative movement.

without changing the statutes. The idea was to prepare the economy for the mechanism of primary capital accumulation. Title III provided for the possibility of withdrawing from the cooperative and the right to exclude shareholders, which was a novelty in corporate law. In addition, the registered shares, which were the subject of Article 50 of the law, demonstrated the principle of *intuitu personae* in companies, allowing an entity to fall into the category of partnerships that wished to operate with variable capital.

The law of September 10, 1947, adopted after the end of the Second World War and still in force today after numerous reforms, was at the time of its adoption only the outline of a much more ambitious and substantial law. In fact, in addition to the Civil Code and the Commercial Code, there was to be a law on cooperatives that would cover the entire field of cooperative law, with its broad horizontal spectrum, in a single law.

Theorists and many practitioners have called for the creation of a cooperative code, but the lack of knowledge about the history and evolution of cooperative law and its principles has hindered any new projects. In principle, the purpose of scientific research in this field was and is to enable action for the future of cooperatives. It is therefore a matter of acting prospectively, in the light of the historical and legal evolution of the institution, in order to allow for improvements to the current law, based on the history and tradition of cooperatives. In fact, lack of knowledge and historical perspective have often prevented reforms for fear of distorting the spirit of cooperatives.

In early 1927, a draft cooperative law was prepared by a parliamentary team on cooperatives. The deputy Paul Ramadier presented a bill in 1931 in which he defended the development of a comprehensive legal construction of cooperatives. In his opinion, it was necessary to create a true cooperative code that would include all the legislation specific to groups of cooperatives, thus creating a stable and flexible legal framework that would accommodate different types of cooperatives. Despite the relevance of the proposal, it was not discussed in the French Parliament.

In April 1937, a draft law on economic cooperatives was presented, and in 1938 it was announced that non-legislative and legislative work on cooperative law would be resumed. A government commission called the Matignon Commission was responsible for drafting the text, as it met at the hotel of the same name. Meeting monthly until April 1940, the commission revised and supplemented the 1931 draft until it proposed the text of thirteen articles that constituted the concept of cooperatives. A general definition of a cooperative was proposed, although its legal construction was not

regulated. Like the work of 1931, the results of the Matignon Commission of 1940 remained without legislative success.

In the post-war period, various plans for economic recovery were developed in France. After taking office, Minister Paul Ramadier renewed his project to regulate cooperatives. The bill was submitted to the National Assembly on January 14, 1947, where it was voted on for the first time on July 30, 1947, with an overwhelming majority of 462 votes to 42. The law was finally passed almost unanimously on September 10, 1947^[13]. The law has been amended, supplemented and updated several times. Although it was not revolutionary, it completed the thorough legislative work that had been going on for almost a century. In the end, it clarified the legal nature of cooperatives and their main principles, and introduced the first legal definition of cooperatives. The legal nature of cooperatives was clearly defined, preventing the legal classification of cooperatives from being changed by case law^[14]. The law states that the primary purpose of a cooperative is to reduce, for the benefit of its members and through joint efforts, the cost of production and, where appropriate, the selling price of certain products or services, by taking over the functions of entrepreneurs or intermediaries whose remuneration would increase the price, a joint effort to improve the market quality of the products supplied to its members or those produced by them and supplied to consumers. The term “cooperative”-*cooperative* or „cooperative entrepreneur” – *société de coopération* almost completely replaced the former „association”-*association* in the 1947 law. It defined cooperatives as „companies”, similar to the 1867 law. This clarification of vocabulary was accompanied by an explanation of the legal basis of the model. The general provision both made common references to various

¹³ Loi n° 47-1775 du 10 septembre 1947 portant statut de la coopération, JORF n°0214, 11 septembre 1947 as amended.

¹⁴ Article 1 as amended by Law n°2014-856 of July 31, 2014 „La coopérative est une société constituée par plusieurs personnes volontairement réunies en vue de satisfaire à leurs besoins économiques ou sociaux par leur effort commun et la mise en place des moyens nécessaires. Elle exerce son activité dans toutes les branches de l'activité humaine et respecte les principes suivants: une adhésion volontaire et ouverte à tous, une gouvernance démocratique, la participation économique de ses membres, la formation desdits membres et la coopération avec les autres coopératives. Sauf dispositions spéciales à certaines catégories de coopératives, chaque membre coopérateur dénommé, selon le cas, «associé» ou «sociétaire», dispose d'une voix à l'assemblée générale. Les excédents de la coopérative sont prioritairement mis en réserve pour assurer son développement et celui de ses membres, sous réserve de l'article 16”.

specific provisions and limited the scope of the cooperative contract, making the cooperative a little less of a contract and a little more of an institution. Freedom of contract undoubtedly lost its importance, the legal status of cooperatives gained clarity.

An important contribution of the law of September 10, 1947 is that it recalls the main principles of cooperative law that build the movement and give them *plenitudo potestas*. Thus, we find in the legislation the principles of open doors or free access (Articles 1 and 3), from which the principle of *intuitu personae* (Articles 3 and 11), democratic governance (Articles 4, 6, 8, 9 and 10), federalism (Articles 4, 5, 6, 8, 9 and 10), dual status or exclusivity (Articles 1 and 3) and the upper limit of interest (Articles 14-19).

Later, Henri Desroche^[15] published „The Cooperative Project”^[16], returning to a very political vision of cooperatives as a lever for social transformation. In his view, if a cooperative is a social organization, its democratic existence requires change and finds its realization, in addition to the collective interest of the members, in the concern for the interest of the „community”, both „means and dimension”, established and institute. Cooperatives have also been associations, associations that are also “enterprises” (rather than capital companies), guided by the non-profit goal, contractual federalization and user interaction around the postulate of reciprocity. The non-profit principle is thus transformed into the principle of allocation and distribution of profits among the members^[17].

Despite the longevity of the law of September 10, 1947, it was originally intended to be only Title I of the Cooperative Code, containing general provisions, before opening up to titles specific to each type of cooperative. Its survival to this day is due more to its universal principles, which allow cooperatives to go beyond mere corporate law, than to any practical reality.

The 1947 law advocated a „pure” original cooperative model^[18], but left open the possibility that individual laws could borrow certain characteristics

¹⁵ H. Desroche was a French sociologist. His writings focus on the sociology of religion and cooperative systems and movements.

¹⁶ Yves Chevalier, „Desroche Henri, Le projet coopératif. Son utopie et sa pratique, ses appareils et ses réseaux, ses espérances et ses déconvenues” *Revue française de sociologie*, 19-2 (1978): 293-295.

¹⁷ Ibidem.

¹⁸ The 1844 model dates the founding of the first cooperative in Rochdale and the basic principles of the movement.

from other models^[19]. François Spain, defined the uniqueness of the cooperative contract, the (subjective) cause of which is not *animus lucri*, as the entrepreneur, even if he may have a common goal with him to achieve savings and their distribution. In a cooperative, the willingness to combine activities (*animus operandi*) for a purpose other than the sharing of benefits, even if the parties intend to benefit their members economically, is found in the *animus cooperandi*, the willingness to combine activities in order to participate, while gaining an advantage, in the achievement of social goals (user or operator function) in a society controlled by the users (associate function) and whose common members share responsibility, co-finance and co-determine (entrepreneur function)^[20].

The current legal basis for cooperatives in France consists of two main laws of general scope, the Commercial Code (Articles L124-1, L125-2, L125-18 et seq., L145-2, L225-22, L225-37, L 225-68, L225-261 et seq. L228-36, L231-1, L231-5, L442-7, L612-1, L912-3, L954-6)^[21] and the aforementioned 1947 law, which has been amended several times, with some of the most important changes being introduced by the law of July 17, 2001 and the decree no. 2002 of February 21, 2002 on the cooperative society of collective interest (SCIC) and the law of July 31, 2014 on the social and solidarity economy^[22]. In fact, the provisions of the 1947 law were amended once or twice a year^[23]. Even in 2023, decree no. 2023-1142 of December 6, 2023, amended Article 31 of Articles 26-7, 26-3, 26-39 of the Law.

An important general reform was that of July 20, 1983, which aimed to regulate economic cooperatives. The legislator intervened in a sectoral manner, providing craft, transport and maritime cooperatives with a legal

¹⁹ The first distinction between the concepts of association and cooperative took place in the 1860s. The newspaper „L'Association”, founded in 1864, became „La Coopération” in 1866.

²⁰ Chevalier, „Desroche Henri”, 45.

²¹ Code de commerce of September 10, 1807, Bulletin des Lois No. 164. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/. [accessed: 29.02.2024].

²² Loi n° 2014-856 du 31 juillet 2014 relative à l'économie sociale et solidaire, JORF n°0176 du 1 août 2014.

²³ In 2023, Ordonnance n° 2023-1142 of December 6, 2023, through Article 31, amended Articles 26-7, 26-3, 26-39 of the law, Ordonnance n° 2023-1142 du 6 décembre 2023 relative à la publication et à la certification d'informations en matière de durabilité et aux obligations environnementales, sociales et de gouvernement d'entreprise des sociétés commerciales, JORF n°0283 du 7 décembre 2023.

structure more suited to their needs. There was less interest in low-rent housing cooperatives.

Cooperatives are also regulated by the Crafts Code^[24] (Art.73,74,83), the law of July 19, 1978 on production cooperatives^[25], the law of May 17, 1982 on cooperative banks^[26], the law of July 20, 1983 on the development of certain activities in the social economy^[27], decree no. 84-1027 of November 23 on the introduction of revision procedures in cooperatives and other cooperative entities^[28], the law of January 6, 1986 on housing cooperatives providing (timesharing), buildings for common use^[29], the law of July 13, 1992 on the modernization of cooperative enterprises^[30], the law of August 1, 2003 on urban planning and urban revitalization, introducing the Cooperative Collective Interest HLM (SCIC HLM)^[31], decree of October 14, 2004 on cooperative limited liability companies for bodied low-rent housing and cooperative collective interest companies for low-rent housing^[32], law of July 3, 2008 containing various provisions on the adaptation of company

²⁴ Code de l'artisanat, Décret no 52-849 du 16 juillet 1952 portant codification des textes législatifs concernant l'artisanat [archive], as amended. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006075116/. [accessed: 29.02.2024]. On June 1, 2024, the new Craft Code will come into effect.

²⁵ Loi n° 78-763 du 19 juillet 1978 portant statut des sociétés coopératives de production, JORF n°0168 du 20 juillet 1978, as amended.

²⁶ Loi n°82-409 du 17 mai 1982 portant statut des sociétés coopératives de banques, JORF du 18 mai 1982, as amended.

²⁷ Loi n° 83-657 du 20 juillet 1983 relative au développement de certaines activités d'économie sociale, JORF n°0167 du 21 juillet 1983, as amended.

²⁸ Décret n°84-1027 du 23 novembre 1984 relatif aux modalités de mise en oeuvre de la procédure de révision coopérative concernant certaines catégories d'organismes coopératifs, JORF du 24 novembre 1984, as amended.

²⁹ Loi n°86-18 du 6 janvier 1986. Loi n°86-18 du 6 janvier 1986 relative aux sociétés d'attribution d'immeubles en jouissance à temps partagé, JORF n°0006 du 8 janvier 1986, as amended.

³⁰ Loi n°92-643 du 13 juillet 1992 relative à la modernisation des entreprises coopératives, JORF n°162 du 14 juillet 1992, as amended.

³¹ Loi n°2003-710 du 1er août 2003 d'orientation et de programmation pour la ville et la rénovation urbaine introduisant la société coopérative d'intérêt collectif HLM (Scic HLM), JORF n°177 du 2 août 2003 as amended.

³² Décret n°2004-1087 du 14 octobre 2004 relatif aux sociétés anonymes coopératives de production d'habitations à loyer modéré et aux sociétés anonymes coopératives d'intérêt collectif d'habitations à loyer modéré, JORF n°241 du 15 octobre 2004, as amended.

law to European law (European cooperatives^[33]) transposing Directive 2006/46/EC of June 14, 2006^[34], law of March 22, 2012 on the simplification of legislation and the reduction of administrative procedures^[35], law of July 31, 2014 on social and solidarity economy^[36], law of July 19, 2019 on simplifying, clarifying and updating company law^[37], decree No. 2020-1614 of December 18, 2020 extending and modifying decree no. 2020-418 of April 10, 2020 and decree no. 2020-629 of May 25, 2020 to adapt the operation of certain decision-making bodies to the context created by the covid-19 epidemic^[38], decree no. 2021-255 of March 9, 2021^[39], extending until July 31, 2021, the exceptional rules applicable to assemblies and the conduct of general meetings and collegiate bodies of legal entities^[40].

Sectoral regulations, on the other hand, include a series of legal bases that complete the landscape of cooperative law. The first cooperative regulations for agricultural credit societies were created by the law of November 5, 1894^[41] which favored the creation of mutual credit societies by members

³³ French law has been amended to encourage the formation of European cooperatives (SCEs). In France, a law of July 3, 2008 adapts community law and incorporates Title III bis into the law of September 10, 1947. Loi n° 2008-649, 3 juillet 2008 portant diverses dispositions d'adaptation du droit des sociétés au droit communautaire, JO 4 juillet 2008, p. 10705.

³⁴ Loi n°2008-649 du 3 juillet 2008 portant diverses dispositions d'adaptation du droit des sociétés au droit communautaire (sociétés coopérative européenne), elle transpose la Directive 2006/46/CE du 14 juin 2006, JORF n°0155 du 4 juillet 2008 as amended.

³⁵ Loi n°2012-387 du 22 mars 2012 relative à la simplification du droit et à l'allègement des démarches administratives, JORF n°0071 du 23 mars 2012 as amended.

³⁶ Loi n°2014-856 du 31 juillet 2014 relative à l'économie sociale et solidaire, JORF n°0176 du 1 août 2014 as amended.

³⁷ Loi n° 2019-744 du 19 juillet 2019 de simplification, de clarification et d'actualisation du droit des sociétés, JORF n°0167 du 20 juillet 2019 as amended.

³⁸ Décret n° 2020-1614 du 18 décembre 2020 portant prorogation et modification du décret n° 2020-418 du 10 avril 2020 et du décret n° 2020-629 du 25 mai 2020 pour adapter le fonctionnement de certaines instances délibératives au contexte créé par l'épidémie de covid-19, JORF n°0306 du 19 décembre 2020z póżn.zm.

³⁹ Décret n° 2021-255 du 9 mars 2021 proroge, sans les modifier, les règles dérogatoires applicables à la réunion et au déroulement des assemblées générales et des organes collégiaux des personnes morales jusqu'au 31 juillet 2021, JORF n°0059 du 10 mars 2021 as amended.

⁴⁰ Demoustier, Colletis, „L'économie sociale et solidaire face à la crise: simple résistance ou participation au changement?”.

⁴¹ Loi du 5 novembre 1894 relative à la création de sociétés de crédit agricole, JO 6 novembre 1894, Bull. off. n° 28758.

of agricultural associations. To this end, the law granted, under certain guarantees, a series of advantages to the credit societies, such as the exemption from patent rights, the exemption from the tax on the income from securities and the exemption from certain formalities and obligations imposed on ordinary commercial companies. Subsequently, the laws of March 31, 1899^[42], aimed at creating regional mutual agricultural credit funds, and of December 29, 1906^[43], authorizing advances to agricultural cooperatives, structured and strengthened mutual agricultural credit. In particular, the latter law aimed to organize long-term credit for the benefit of agricultural cooperatives affiliated to a local credit association. The law specified the conditions under which credit could be granted both by local and regional funds established under the law of November 5, 1894, and by cooperatives dependent on agricultural associations. In addition to their powers, the associations were reminded of their objectives by the jurisprudence of the early twentieth century^[44]. These rulings, which were widely commented on, led to the law of March 12, 1920 on the extension of the civil capacity of trade unions^[45], which allowed them to operate agricultural cooperatives. The law of August 5, 1920^[46] on mutual credit and agricultural cooperatives, established the legal basis for agricultural cooperatives and defined the characteristics of agricultural cooperatives, which until then had only been allowed to carry out agricultural activities.

The law of November 30, 1894^[47] on low-cost housing provided those with the lowest incomes the opportunity to find housing at a lower price. The law of December 5, 1922^[48], codified the provisions on low-cost housing, placing

⁴² Loi du 31 mars 1899 ayant pour but l'institution des caisses régionales de crédit agricole mutuel et les encouragements à leur donner ainsi qu'aux sociétés et aux banques locales de crédit agricole mutuel, JO 1er avril 1899.

⁴³ Loi du 29 décembre 1906 autorisant les avances aux sociétés coopératives agricoles, JO 30 décembre, Bull. off. 2798, n° 48562.

⁴⁴ Cass. crim., 29 mai 1908 (S. 1908. 1. 89); Cass. req., 3 avril 1912 (S. 1913. 1. 489).

⁴⁵ Loi du 12 mars 1920 sur l'extension de la capacité civile des syndicats professionnels, JO 14 mars, Bull. off., nouv. série, 269, n° 16238.

⁴⁶ Loi du 5 août 1920 sur le crédit mutuel et la coopération agricoles, JO, 7 août 1920.

⁴⁷ Loi du 30 novembre 1894 relative aux habitations à bon marché, JO 1er décembre, 1894.

⁴⁸ Loi du 15 août 1920 portant fixation au régime légal des sociétés coopératives de reconstruction formées par les sinistrés en vue de la reconstitution des immeubles atteints par les événements de guerre, JORF du 31 juillet 1920, p. 3294.

low-cost housing cooperatives in a single piece of legislation alongside the real estate reconstruction cooperatives created after the First World War.

It is also worth mentioning the laws of December 18, 1915^[49] on workers' production cooperatives, whose purpose was to organize credit for consumer cooperatives. In the law of 1867, Title III, dedicated to companies with variable capital, did not explicitly mention cooperatives, and the variability of capital became a feature that any company could adopt (even if the application of the provision was actually limited to cooperatives). However, it will be a long time before jurisprudence recognizes that cooperatives are indeed companies, even without the purpose of profit sharing, which clearly distinguishes them from other labor entities.

The consumer cooperative is still subject to the law of May 7, 1917, the status of the consumer cooperative is defined in Article L412-1 of the Consumer Code, created by the law of July 26, 1993^[50].

Workers' production cooperatives have their origins in the law of December 18, 1915. Subsequently codified in the Labor Code, they underwent a significant evolution under the law of July 19, 1978^[51]. According to the latter, the law of September 10, 1947, Title III of the law of July 24, 1867 and the law of July 24, 1966 on commercial companies apply to worker production cooperatives. They must therefore take account of the volatility of capital and can only be set up as SARLs or SAs.

The law of July 13, 1992^[52] on the modernization of cooperative enterprises, was a kind of dusting off of cooperative law. This law, in turn, modified the law of September 10, 1947 and the laws specific to certain special statuses: the above-mentioned laws of May 7, 1917, July 11, 1972, July 19, 1978 and July 20, 1983, the provisions on HLMs, cooperative banks, agricultural cooperatives and agricultural collective interest companies.

⁴⁹ Loi du 18 décembre 1915 sur les sociétés coopératives ouvrières de production et l'organisation du travail en France, JO 19 déc. 1915.

⁵⁰ Loi n° 93-949 du 26 juillet 1993 relative au Code de la consommation, JORF 27 juillet 1993, p. 10538.

⁵¹ Loi n° 78-763 du 19 juillet 1978 portant statut des sociétés coopératives ouvrières de production, JO 20 juillet, p. 2878.

⁵² Loi n° 92-643 du 13 juillet 1992 relative à la modernisation des entreprises coopératives, JO 14 juillet 2014, p. 9450.

3.2. Multiplication of special provisions

The suspension of the project of codifying cooperative law coincided with the proliferation of special regulations for each type of cooperative, in order not to disturb the specificity of each type of cooperative. Some general reforms have been carried out in the last sixty years. In order to understand the evolution of legal regulation, it is necessary to analyze the different types of cooperatives.

According to Georges Fauquet's classification^[53] the economy-oriented cooperatives are characterized by the need to serve their members economically. Since 1935, an attempt has been made to define a „cooperative sector” that brings together various forms of cooperatives, distinguishing them from the “popular associations” that developed in the interwar period, but also from other enterprises. „Cooperative associations, by virtue of their origin, the social class in which they developed, are related to all forms of popular associations [...]. What makes them different [...] is that they realize their purpose through organized economic activity, through business”^[54].

The first clarification of the concepts of association and cooperation took place in the 1860s. The newspaper *L'Association*, founded in 1864, became *La Coopération* in 1866. Between 1840 and 1850, the newspaper *L'Atelier* wrote that cooperatives were *sui generis* companies, organized solely on the basis of the contract that created them, and not civil companies acting in a collective name or in a partnership with cooperative clauses.

The theory of the cooperative concept gradually merged with the concept of the enterprise. The economic theory of the „entrepreneur” is independent of the market as an organization of non-competitive human relations^[55] but favors hierarchical regulation. The cooperative appears as a non-hierarchical way of economic but also social organization, integrating human beings in all their dimensions^[56]. This opposition between

⁵³ Fauquet Georges. *Le secteur coopératif*, Éditions de l'Institut des Études Coopératives, Paris, 1935.

⁵⁴ Sandrine Ansart, Amélie Artis, Virginie Monvoisin, „Les coopératives: agent de régulation au cœur du système capitaliste?” *La Revue des Sciences de Gestion*, No. 5-6 (2014): 111-119.

⁵⁵ Ronald H. Coase, „The Nature of the Firm” *Economica*, No. 16 (1937): 386-405. <https://onlinelibrary.wiley.com/toc/14680335/1937/4/16>.

⁵⁶ Georges Fauquet, *Le secteur coopératif: Regards sur le mouvement coopératif; Organisation du travail par équipes coopératives Diversité et classification des institutions cooperatives* (Geneve: Éditions de l'Institut des études coopératives, 1965), 345.

the company (based on hierarchical regulation) and the cooperative (based on the principle of non-hierarchy) is the first comparison. The economist Claude Vienney defined a cooperative organization as a „type of enterprise” with specific characteristics. In 1980, in his work *Socio-economy of cooperative organizations*, he tried to define the socio-economic form of the combination „group-enterprise” – „group-enterprise”. For him, the formation of cooperative law is marked by a series of paradoxes, because the contract of the company does not correspond to the conditions of its formation, cooperatives^[57].

Economic cooperatives include agricultural cooperatives, retail cooperatives, and craft, transportation, and maritime cooperatives^[58].

Banking and credit cooperatives have a long history that is inextricably linked to that of savings banks and mutual agricultural or maritime savings and loan associations. Their organization and operation are different, and the legislation applicable to them goes beyond the purely cooperative framework, given the financial operations and guarantees they must provide to customers, regardless of whether they are members. For this reason, the law of January 24, 1984^[59] on the operation and control of credit institutions defined their status. The need to provide the same rights and obligations as banking organizations and financial banking laws, cooperative principles have been partially overlooked. This applies in particular to exclusivity, since a bank must be able to provide banking services to any person.

Among the significant achievements of cooperative law, two are worth mentioning: the creation of cooperatives of collective interest and the transposition into national law of the legal status of European cooperatives, which are not really special but fall within the scope of cooperative law.

Created under Article 36 of the law of July 17, 2001, and organized under the decree of February 21, 2002, the Collective Interest Cooperative (Scic) is a new form of cooperative driven by solidarity from an economic, not social, perspective, but which, because of its altruistic objectives, is located between the social and associative categories. In this sense, it is not a new

⁵⁷ Danièle Demoustier, „De la société de personnes à l’entreprise d’économie sociale: la lente construction d’une notion, du XIX^e siècle jusqu’aux années 1980” *Revue internationale de l’économie sociale*, No. 3 (2019): 42-58.

⁵⁸ Chantal Chomel, „La longue marche de la société coopérative européenne” *Revue internationale de l’économie sociale* (2004): n. 291.

⁵⁹ Loi n° 84-46 du 24 janvier 1984 relative à l’activité et au contrôle des établissements de crédit, JO 25 janvier, p. 390.

specific status, but rather an adaptation of the law of September 10, 1947, which the law modifies. Thus, Article 36 of the Law of 2001 contains ten articles defining the Scic, which were included in Title II of the Law of September 10, 1947. Article 28 bis, which allows a registered association to transform itself into a cooperative, was also added to the general law of 1947. In addition, the law modifies Article L228-36 of the Commercial Code and allows access to shares for cooperatives created in the form of shares.

The Scic decree of February 21, 2002 provides a more detailed framework. Like the law of July 17, 2001, the decree defines the characteristics of this type of company, which is clearly distinct from the cooperative movement. Among the characteristics of the Scic are the following: its capital is made up of a number of shareholders, including necessarily employees and beneficiaries of the activity, as well as other natural or legal persons subject to private or public law; its clear acapitalism, formalized by the compulsory placement of at least more than 50% of profits in undivided reserves; and its quicker access to certain permits, authorizations and agreements usually reserved for associations in the public administration.

SCIC is a specific cooperative that weakens some of its principles while strengthening others. Created as part of a broad government economic program, it opens up significant opportunities to one day provide a legal framework for non-profit enterprises.

The law of August 1, 2003^[60] allowed the creation of cooperative collective interest limited liability companies for low-rent housing.

The adoption of the concept of European cooperatives on July 22, 2003 was a reminder of the failures of French projects in the European forum, especially when negotiations and debates were difficult and scattered. However, the European cooperative project was supported by the member states where the cooperative movement has a long tradition and a strong identity. Although the idea of a cooperative is distant in time, discussions on the creation of a cooperative with European status began in Brussels in the early 1980s. With the support of the European Economic and Social Committee and the European Parliament, in-depth work was carried out between 1990 and 1992, and in December 1991 the Commission adopted three proposals for regulations on the statutes of cooperatives, mutual societies and associations. These were sent to the Council and adopted

⁶⁰ Loi n° 2003-710 du 1er août 2003 d'orientation et de programmation pour la ville et la rénovation urbaine, JO 2 août, p. 13281.

by the EP in March 1992^[61]. Nevertheless, the lack of regulation at that time for the European company depended on the adoption of cooperatives with European status in the single market. The draft was finally adopted in 2003^[62], although it did not resolve contentious issues. This was evidenced, for example, by a case pending before the then Court of Justice of the European Communities concerning the rules for adopting a European cooperative statute and by the numerous references to national legislation contained in the provisions of European regulations and directives^[63].

4 | Summary

To conclude, it should be remembered that, despite the numerous specific provisions of French law, there have been several general reforms concerning all types of cooperatives.

At the end of the 19th century, the term cooperative was adopted because many of its links between the production unit, consumption, social solidarity, worker training and the trade union movement and even political groups remained. In every sector of the market economy, the indelible mark of the cooperative has spread, demonstrating both its potential and its adaptability. The founders of the concept left a significant legacy of principles, values and identity markers that accompanied cooperatives, creating a model whose advocate could be anyone. The hope born north of Manchester in Rochdale was to be reflected in the actions of cooperatives around the world, in every sector and at every time. More than 170 years later, the cooperative model has been modified and adapted to all sectors of the economy. Some sectors have proved to be opportunistic, interested in a structure that allows them to grow and develop, but much less in the spirit that prevails within them. A cooperative is not a company. It does not aim to increase the capital of its members. It is enough for it to serve their interests by allowing them to continue doing what they are already

⁶¹ Chomel, „La longue marche de la société coopérative européenne”, 22-27.

⁶² Règlement CE n° 1435-2003 du conseil du 22 juillet 2003 relatif au statut de la société coopérative européenne, JOUE L 207, 18 août, p. 1; complété par la directive 2003-72-CE du 22 juillet 2003 relative à l'implication des salariés au sein de la société coopérative européenne, JOUE L 207, 18 août, p. 25.

⁶³ C-436-03 Parlement-Conseil, arrêt du 2 mai 2006.

doing. However, those who deviate from the spirit of cooperatives by using this structure do not necessarily violate its letter. For example, agricultural cooperatives enjoy tax exemptions; they are not exempt from all burdens. Other cooperatives are even less susceptible to what justified the birth of the now century-old model. If the mass distribution of food is not just a matter of waging a price war that spares no supplier, it must be acknowledged that the cooperative spirit has disappeared, driven out of the shopping centers. The cooperative model participates in the reconstruction of economic relations, as does the corporate social responsibility movement. Finally, a controlled exit from the cooperative status to become a company has been allowed^[64]. The 2014 law on the social and solidarity economy in France aimed to reorganize an economic sector larger than the cooperative one, so that the development of cooperatives would have the same dynamics. There is no doubt that the regulation of cooperatives has undergone many important changes to adapt cooperatives to a competitive environment, and as the evolution of cooperative legislation has become more complex, the issue of codification will eventually return to the center of the discussion, as it has in the past.

Bibliography

- Ansart Sandrine, Artis Amélie, Monvoisin Virginie, „Les coopératives: agent de régulation au cœur du système capitaliste?” *La Revue des Sciences de Gestion*, No. 5-6 (2014).
- Chevalier Yves, Henri Desroche, „Le projet coopératif. Son utopie et sa pratique, ses appareils et ses réseaux, ses espérances et ses déconvenues” *Revue française de sociologie*, (1978).
- Chomel Chantal, „La longue marche de la société coopérative européenne” *Revue internationale de l'économie sociale*, No. 291 (2004).
- Coase Ronald, „The Nature of the Firm” *Economica*, No. 16 (1937): <https://onlinelibrary.wiley.com/toc/14680335/1937/4/16>.

⁶⁴ David Hiez, *La participation du droit à l'établissement d'une économie sociale et solidaire, dans „Vers une théorie de l'économie sociale et solidaire”* (Larcier, 2013).

- Demoustier Danièle, „De la société de personnes à l’entreprise d’économie sociale: la lente construction d’une notion, du XIX^e siècle jusqu’aux années 1980” *Revue internationale de l’économie sociale*, No. 3 (2019).
- Demoustier Danièle, Gabriel Colletis, „L’économie sociale et solidaire face à la crise: simple résistance ou participation au changement?” *Revue internationale de l’économie sociale*, No. 325 (2010).
- Fauquet George, *Le secteur coopératif*. Paris: Éditions de l’Institut des Études Coopératives, 1935.
- Fauquet Georges, *Le secteur coopératif: Regards sur le mouvement coopératif; Organisation du travail par équipes coopératives Diversité et classification des institutions coopératives*. Genève: Éditions de l’Institut des études coopératives, 1965.
- Hiez David, *La participation du droit à l’établissement d’une économie sociale et solidaire*. Larcier, 2013.
- Lamarche Thomas, Nadine Richez-Battesti, „Approches mésoéconomiques des coopératives” *Revue de régulation*, No. 34 (2023). <https://journals.openedition.org/regulation/22341>.
- Le Loarne-Lemaire Séverine, Christine Noël-Lemaître, „La coopérative, une organisation favorisant le besoin d’enracinement des salariés. Réflexions à partir d’une lecture de la philosophie de Simone Weil” *La Revue des Sciences de Gestion*, No. 5-6 (2014).
- Lemonnier Mariola, „General characteristics of cooperative banks in France” *Law and Liaison*, No. 1 (2023). <https://doi.org/10.36128/priw.vi44.652>.
- National Cooperative Council, *French Cooperatives in a Nutshell*, <https://www.krs.org.pl/dzialalnosc-miedzynarodowa/spoldzielczosc-w-unii-europejskiej/1217-spoldzielczosc-francuska-w-pigulce>.
- Seeberger Loic, „Historique de l’évolution du droit des coopératives, de ses origines à nos jours” *Revue internationale de l’économie sociale* (2014). <https://doi.org/10.7202/1026044ar>.

