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A cooperative group in French law: the quest for the holy grail

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Cooperation among cooperatives in French law is assimilated to its economic dimension. Nevertheless, the political alliance is not unknown. It is generally a classical lobbying organisation with no particular interest.

Two exceptions can be mentioned. On one hand, the workers' cooperatives established a system of mandatory arbitration, before any claim before a judge; this does not apply to purely labour law conflicts, since the labour court's competence is compulsory. On the other hand, the farmers' cooperatives established a large and strong network with many competencies, such as cooperative auditing, but above all a public acknowledgement to supervise the control of the cooperatives with the power of sanction.

Looking at the economic aspect of the cooperation, the basic observation is that several mechanisms are available, but the practice evidences some persistent tensions.

The description of the mechanisms available in French law (I) and the evaluation of the practice among cooperatives (II) will be a basis for drawing some conclusions about the future of cooperative groups in French law.

I. The mechanisms available to constitute a cooperative group.

A. The cooperative union

The union exists in the general cooperative law (L. n°47-1775, art. 5) but also many special cooperative laws.

Legally speaking, they are cooperatives, with the particularity that their members are themselves cooperatives.

Their specificity requires few adaptations to the general cooperative provisions applicable in principle: about the democratic principle the one person one vote is not meaningful since the members are themselves cooperatives; about the cooperative transaction, it is debated if the union can freely develop such transactions with the members of its members.

B. The social economy union

It was created in 1983, after the victory of the left wing in 1981 and its support for social economy: l. n°47-1175, arts. 19 bis f.

The reform aims to create a legal entity suitable for the cooperation among social economy enterprises.

The union d'économie sociale looks like a cooperative, is regulated in the general cooperative law, and is submitted in principle to all its provisions.

There are a few derogations: special membership for social economy enterprises even if it may welcome capitalist enterprises, and provisions to ensure that the social enterprises control the union.

C. The workers' cooperatives » grouping

Created in 2014: L. n°78-763, art. 47 f.

The grouping is not a legal person.

It requires that all the cooperatives part in the grouping adopt the same by-laws, and many decisions of one cooperative are valid only if it is adopted identically in all the other cooperatives.

The core of the innovation is the possibility for one cooperative to get 51% of the voting rights in the other cooperatives, provided that the other cooperatives get a minimum of shares in the controlling cooperative (minimum fixed in the by-laws).

Few in practice. The hope is to facilitate the conversion of subsidiaries into cooperatives by allowing them to keep control of the converted enterprise.

II. The practice established by the cooperative organisations

A. The use of the collective interest cooperative

It has been proposed to use that new cooperative to establish a conjunction of cooperation and control. Indeed, in the collective interest cooperatives (SCIC), it is possible to organize voting rights within some colleges; and if any member of a college has the same right as the others, the voting rights of each college may differ (L. n°47-1775, 10 Sept. 1947, art. 19 octies). It is technically possible but complex, and not frequent in practice.

B. The creation of subsidiaries

In the 1990s a debate emerged about the validity of the creation of capitalist subsidiaries by the cooperatives. Some special provisions regulated some hypotheses, and the question was whether these provisions were a derogation of a principle of voidness or the evidence of a principle of validity.

The families in which the cooperatives have grown the most used often subsidiaries. This allows them to escape to some cooperative provisions.

The most problematic question is the democratic control of members; this is not ensured in the subsidiary.

Worse, that phenomenon questions the pertinence of the cooperative model itself: if it is better to run the business through a subsidiary, doesn't it mean that the cooperative model is not suitable?

The consistency of the cooperative mechanisms provided by the law contrasts with the practice. The comparison with other jurisdictions raises the question of whether the legal mechanisms are not too rigid so that the cooperatives look for other solutions outside of cooperative law.

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