

EXPERT GROUP MEETING

THE ROLE OF COOPERATIVES IN ECONOMIC AND SOCIAL DEVELOPMENT: SUPPORTING COOPERATIVES AS SUSTAINABLE AND SUCCESSFUL ENTERPRISES

30 MAY TO 1 JUNE

LEGISLATIVE DEVELOPMENTS IN LATIN AMERICA AND THE CARIBBEAN

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1. Introduction

This paper aims at presenting a general overview of the developments of cooperative legislation undergone by the countries of Latin America and the Caribbean in recent years and to ascertain the level of compliance with the recommendations delivered by the United Nations in this respect.

The information gathered in order to draft this paper was collected mainly from private sources of the cooperative movements and scholars belonging to the different countries concerned. It is to be noted that official sources are not easily accessible, or are not complete or updated. Nevertheless, the information available can be reasonably considered sufficient enough as to give a fairly representative view of the matter.

The contents of this document consist of some general remarks about the cooperative legislation in the region followed by an analysis of the particular situation in various countries. It is closed with some conclusions and recommendations about possible legislative measures that could be taken in order to create a supportive environment for the sustainable development of the cooperatives in the region.

2. General remarks

a. Historical background

Cooperative legislation started in the region with the Commercial Codes of Mexico and Argentina in 1889. From there onwards it spread to different countries, mainly during the decades of 1920 and 1930, in general being incorporated to the existing codes (Brazil, Mexico, Colombia, Ecuador, Chile and Argentina, among others). After the Second World War, the Organization of American States (OAS) played an important role in fostering

cooperative legislation through its Secretariat, the Pan American Union. Later, laws on cooperatives migrated gradually from the codes to independent and specific laws recognizing the peculiar nature of such entities. As from 1969 several Continental Congresses on Cooperatives have been held in different countries, which contributed to improve the studies on the subject. The Project of the Framework Law for Cooperatives approved in 1988 by the Organization of the Cooperatives of America (OCA) and updated twenty years later by Cooperatives of the Americas (ICA Regional Organization) largely contributed to the development of cooperative laws in the region. The main reasons for such updating were the ICA Statement on the Cooperative Identity, UN Guidelines aimed at creating a supportive environment for the development of cooperatives (A Res. 56/114 Annex) and ILO Recommendation 193 on the Development of Cooperatives. During the first decades of the current century new laws following those lines were enacted in several countries.

b. General outline of the cooperative legislation

At present, cooperative laws regulating the formation, functioning and dissolution of cooperatives, and in many cases establishing a special government agency in order to register and supervise them, exist in almost every country of the region. These laws are of a general nature, that is to say, they reach all types of cooperatives and apply to the whole country, even those with a federal constitutional organization such as Argentina, Brazil and Mexico. However, in some countries there are also special laws regarding credit unions and in recent years laws on worker and social cooperatives have been enacted. A shared outstanding feature is that cooperatives are treated as legal persons different from other entities, particularly capital corporations and associations or charities, even if there are some tendencies to equate them with corporations. It is worth mentioning that a particular characteristic of the cooperative laws in the region is that they generally recognize the "cooperative act" as the peculiar form of activity of cooperatives as different from that of other subjects of law. Besides legislation, national constitutions often make reference to cooperatives, recognizing their social and economic role. That is the case in Brazil, with seven references, and in Bolivia, with thirteen. However, it is important to say that regulations issued by administrative agencies and offices also have a significant impact on the activity of cooperatives. Moreover, it is common for cooperatives to be prevented from engaging in certain activities, such as banking and insurance, which implies a clear discrimination. Finally, it should be noted that in recent years some countries have enacted, or are planning to enact, laws about social economy including cooperatives, which is in line with the recent UN Resolution A/77/L.60

c. Main aspects to be considered

There are three main aspects of the legislation that are specifically relevant to cooperatives. The first one is the process involved in the recognition of cooperatives as legal persons, which is usually lengthy and bureaucratic, as opposed to that of corporations, which can be incorporated in a very short time. The second one is state supervision, which is usually divided into supervision of the functioning of the cooperative in conformity with applicable cooperative law, and supervision related to the particular activity of the cooperative (credit, housing, public utilities, marketing, etc). The latter is applied in common with other -non-cooperative- organizations and frequently does not take into account the specificity of cooperatives. Finally, even if the law often provides for the promotion of cooperatives the government offices in charge of the enforcement thereof rarely carry it out properly, if at all, notwithstanding it being stipulated in the national constitution. This is particularly important in relation to taxation.

3. National situation in various countries

Argentina

Argentina is one of the countries with the oldest cooperative law in force in the region. It was enacted in 1973 and is still in force. Representatives of the cooperative movement participated in drafting the law and it has served adequately to the development of cooperatives; for that reason, cooperative organizations have repeatedly expressed their support to the law through congresses and statements made before successive governments. This very law created a national institute in charge of the registration, supervision and promotion of cooperatives (*INAES*), which is governed by a board composed of government officials and representatives of the cooperatives. This institute is vested with sufficient powers to issue the necessary regulations to enforce the law and by so doing it contributes to the updating of the provisions thereof without the need to make amendments through parliamentary processes. This was particularly important in order to adopt the measures required during the Covid19 pandemic, such as online meetings.

Brazil

During the last few years several measures were adopted in order to enable cooperatives to face pandemic problems and develop their potential: in 2020, the General Law on Cooperatives was modified to allow on line and hybrid meetings and a regulation was issued approving templates of bylaws and minutes of organizational meetings, thus streamlining the registration of cooperatives. In 2021, small agricultural cooperatives were admitted to participate in the official program for famine relief; the Law on Tenders was amended to facilitate participation of cooperatives and cooperatives were included in the framework law for startups. In 2022, the law on credit cooperatives was updated allowing cooperatives to

develop more easily as well as more efficiently; tourist cooperatives and electricity cooperatives were granted better conditions for their activities and health cooperatives were admitted to the modern online health system. At present, there are a number of projects under analysis, which have the support of the Cooperative Parliamentary Forum, composed of representatives and senators committed to promote cooperatives.

Chile

The last important reform of the General Law on Cooperatives was passed in 2016. It brought about significant changes such as proportional gender participation in the organs of the cooperatives; the possibility that all cooperatives constitute reserves up to a certain percentage and other measures oriented to facilitate the organization and activities of the cooperatives, among other issues. Since then, several minor reforms were implemented; some of them during the pandemic in order to cope with its effects. At present the government office in charge of cooperatives is being restructured and participation of the cooperative organizations in an advisory body is envisaged.

Colombia

In the last few years several new developments have occurred in the cooperative legislation of this country. In 2020, worker cooperatives were included in the program of support to formal employment; in the same year, the law on entrepreneurship provided important benefits for cooperatives and the law on housing and habitat included cooperatives in the official policy of financing housing projects. As far as taxation is concerned, benefits were granted to cooperatives in several laws. In the matter of public policy cooperatives are taken into account in different documents, especially in the promotion of social economy and within the National Development Plan 2022-2026, which is about to be approved. Finally, two important initiatives are now being considered with the support of the cooperative movement: the amendment of the Law on Cooperatives No 79/1988 and the regulation of loan and credit cooperatives.

Costa Rica

During the pandemic several measures were adopted in order to facilitate the activities of cooperatives: laws were enacted by virtue of which the terms of office of the members of the boards were extended in order to ensure the continuity of cooperatives' activities; virtual meetings as well as digital action by the different organs of the cooperatives were allowed by the *INFOCOOP*, the government agency in charge of supervising the cooperatives. A 2020 law broadened the scope of operations permitted to saving and credit cooperatives, but the supervisory authority of this type of cooperatives divided them into categories according to their volume of assets, which changed the previous situation as far as financial supervision is concerned. This is being questioned by the cooperatives.

Cuba

The 2019 constitutional amendment makes wider reference to cooperatives, going beyond the old exclusively agrarian conception. However, it maintains the idea of cooperatives as a form of property. In 2019, two laws were enacted in relation to cooperatives: one deals exclusively with agricultural cooperatives and the other is reserved for non-agricultural ones. The law on agricultural cooperatives is still closely connected with the Ministry of Agriculture and does not recognize inter cooperative organizations for economic or representative activities; the law on non-agricultural cooperatives is practically limited to worker cooperatives and, again, does not recognize higher degree organizations. At present, there is a project for a new law for agricultural cooperatives. However, the national policy on the subject is to maintain a dual regulation -agricultural and non-agricultural cooperatives- instead of having one general law for all types, with provisions for the existence of second and third level structures.

Ecuador

The Law on Popular and Solidarity Economy Organizations (*LOEPS*) governs cooperatives in general, whereas the Monetary and Financial Code -with strong action from the government agency concerned- regulates financial cooperatives, which represent the most important sector of the Ecuadorian cooperative movement. As regards the non-financial sector, in 2022 a legal provision for housing cooperatives was passed and very recently the National Assembly approved some amendments to the *LOEPS* concerning the organization and functioning of worker cooperatives, the authorization to form health, insurance and tourism cooperatives -not in existence before- and the creation of a National Committee of Appeals and Arbitration as the competent office in order to revise resolutions adopted by the Superintendence of Popular and Solidarity Economy. Finally, an ample project to amend the *LOEPS* is at a study stage by the respective legislative committee.

Guatemala

At the moment there are no significant legal news related to cooperatives. In 2019 an initiative to enact a new general law on cooperatives was introduced in the Committee on Cooperatives and NGOs of the Parliament but it did not obtain the support of the Confederation of Cooperatives of Guatemala and in the end such initiative did not go through. On the other hand, recently the Regulation on Sanctions to Cooperatives was updated by the National Institute of Cooperatives (*INCOOP*) and the fees for services delivered by the Registrar of the said Institute were modified. It is worth noting that such services are generally free of charge in the other countries of the region.

Honduras

The cooperative law passed in 1987 underwent several important amendments. The last one took place in 2019, when different aspects related to the minimum number of members and some governance characteristics of cooperatives were changed and the powers of the National Supervisory Council of Cooperatives (*CONSUCOOP*) were increased. At present, there exists an initiative, promoted by the Honduran Confederation of Cooperatives, to modify the cooperative law. Such initiative, among other things, foresees the broadening of the scope of saving and credit cooperatives; the possibility to create a cooperative bank by the cooperative sector; the formation of worker cooperatives; the formation of school cooperatives; the authorization to cooperatives to manage pension funds and the creation of a special guarantee fund for women.

Mexico

In recent years Mexico has not enacted new laws related to cooperatives and the 1994 General Law on Cooperatives is still in force. Nonetheless, there exist several bills pending discussion in both houses of the National Congress. According to constitutional provisions the legislation on cooperatives falls within the competence of the national government, but different member States of the Federation have in the last years enacted laws for the promotion of cooperatives and social economy entities and created specialized institutes in order to plan and carry out the respective measures.

Panama

During the pandemic the Panamanian Institute of Cooperatives (*INCOOP*) adopted several measures in order to facilitate the activity of cooperatives, particularly in relation to holding online general meetings. Otherwise no amendments were made to the 1997 general law on cooperatives. At present, a draft bill to amend the law, proposed by the *INCOOP*, is being analyzed by the cooperative movement. The draft foresees, among other things, certain requirements and training for candidates in order for them to become members of the organs of the cooperatives, and amendments concerning the organization and deliberation at general meetings.

Paraguay

The 1994 law on cooperatives was modified in 2015 bringing about serious problems to cooperatives in the field of taxation and in the system to be applied for the election of their authorities. However, the taxation restriction was solved by a new law in 2018 and the problem of the election system was sorted out by another law passed during the same year which allows cooperatives to adopt the election system they consider best. Also, in 2021 a new law on worker cooperatives was enacted. At present, representative organizations of the

cooperative movement and government offices are working together to draft the project for the regulation of this law. Finally, the Parliament Commission on Social Economy with the support of the whole cooperative movement promoted law 6.999/2022, which introduces cooperative education in primary and secondary public and private schools. Nowadays the regulation of this law is under way, in order to for it to be put it into practice shortly.

Peru

In spite of the General Law on Cooperatives being still in force according to the 1990 text, in the last few years several developments have taken place in Peru, such as the 2021 law to promote and strengthen agricultural cooperatives and the recent amendments that allow legal persons in general to become members of cooperatives. On the other hand, a bill for a new general law on cooperatives which incorporates the values and principles of ICA is being analyzed in the National Congress and has already obtained the approval of the respective commission. An initiative for a new law concerning saving and credit cooperatives has also been recently introduced.

Puerto Rico

The 2002 legislation for saving and credit cooperatives and 2004 for other types of cooperatives, known as the General Law on Cooperatives, have been amended many times following their enactment. The most recent amendments deal with the facilitation to incorporate young people to cooperatives, the incorporation of one chapter concerning energy cooperatives and the authorization to the Public Supervisory Corporation of Cooperatives to assist financially the process of merging saving and credit cooperatives. Nowadays, a bill on worker cooperatives is under consideration by the Senate, having already being approved by the Chamber of Representatives.

Uruguay

The General Cooperative Law enacted in 2008 has since been amended many times. In recent years (2020) both the scope of the government agency in charge of the promotion of cooperatives (*INACOO*P) and the powers of the supervisory agency were broadened. In 2021 another amendment granted cooperatives the possibility to allocate to reserves the total or part of their annual economic results in order to improve their competitiveness. Today there are several bills under consideration by the House of Representatives: one of them concerning gender perspectives in cooperatives; another one granting preference to cooperatives in public supply; a third one introducing some amendments to the regime of social cooperatives and, finally, a bill granting benefits to cooperatives in respect of which the government offices are in arrears in the payment of their services.

Venezuela

The cooperative law was enacted in 2001 and it has not been amended since. The values and principles recognized by the law are to a great extent those of ICA, even if with some modifications. It grants the government office in charge of the supervision of cooperatives - the National Superintendence of Cooperatives (*SUNACCOOP*)- broad powers over cooperatives, even when it formally recognizes their autonomy. In accordance with the national Constitution, the law entrusts the Government to carry out an intense public policy for the promotion of cooperatives, including an extensive tax exemption.

3. Conclusions and recommendations

a) Legislation should define and treat cooperatives according to their specific nature as it is conceived in the ICA Statement of Cooperative Identity, the UN Guidelines aimed at creating a supportive environment for the development of cooperatives and ILO Recommendation 193, and allow cooperatives to engage in all kind of legal activities in a level playing field with other enterprises.

b) Cooperatives are affected not only by cooperative legislation itself but also by other legislation related to different aspects, such as taxation, competition, finance, etc. Consequently, legislators could take those aspects into account in order to provide cooperatives with an adequate treatment in such fields, when appropriate.

c) Small cooperatives are common, especially in the agricultural field in which they have difficult access to professional assistance to carry out their administrative obligations. Consequently, special consideration should be given to them by legislation in order to facilitate their development through more simple requirements.

d) The participation of cooperative organizations in drafting the laws and regulations concerning cooperatives should be facilitated in order to ensure that these take due consideration of the peculiar nature of cooperatives and set forth adequate conditions for their development. Such has been the advice of the Annex of UN Resolution A 56/114 (point 10) and ILO Recommendation 193 (point 10.2) and experience has proved its advisability.

Buenos Aires, 15th May 2023.