ARTICLES

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COOPERATIVE SUPERVISION THROUGH THE LENSES OF INTERNATIONAL AND EU LAW, PECOL AND SOME EUROPEAN NATIONAL LAWS

Key words: Hans H.-Münkner; cooperative supervision, PECOL, cooperative law;

ABSTRACT: What is and should cooperative supervision be like? Are there legal constraints in International and European Union law in regulating cooperative supervision? What are the laws on this issue in Great Britain, Germany, France, Spain, Portugal, and Italy? What is Hans-H. Münkner's view on the matter, as expressed in The Principles of European Cooperative Law (PECOL)? This paper attempts to succinctly answer these questions.

1. The notion of cooperative supervision.

The legal order of many countries subjects cooperative societies to specific external control (i.e. conducted by persons other than members or components of corporate bodies). This control – hereinafter referred to as cooperative supervision,[1] – differs from other external controls to which cooperatives are subject (for example, by reason of the activity they undertake) for its necessary and main object: the structural and functional peculiarities of this form of enterprise.

2. International law and the International Cooperative Alliance.

All Member States of the International Labour Organisation ('ILO') must regulate cooperative supervision because of an international duty since 2002.[2]

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[1] The Italian legislator decidedly prefers the term 'supervision' to 'control' or 'audit' in referring to cooperative supervision, both in the Civil Code and legislation outside it. International organizations act similarly, such as the International Labour Organization ('ILO') with the now repealed Recommendation n. 127 of 1966 on the promotion of cooperatives in developing countries and the United Nations with the report of its Secretary-General of 14 May 2001 (A/56/73-E/2001/68), the annex to which corresponds to this important document for international law on cooperatives: the Draft guidelines aimed at creating a supportive environment for the development of cooperatives ('UN 2001 Draft Guidelines'). On the choice of the term to name cooperative supervision, see, on Italian legislation, V. Buonocore, Diritto della cooperazione, il Mulino, Bologna, 1997, pp. 338-339 and, on comparative law, Hans-H. Münkner, Germany, in AA.VV. Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge-Antwerp-Portland, Intersentia, 2017, pp. 320-321.

[2] The ILO is a special international organization, the members of which may be States only, but each of its members appoints four delegates, two of whom must be representatives of the Government, one representative of the employers and one representative of the workers; these national delegates make up the General Conference of the ILO and from among these delegates the members of the following other organ of the ILO are chosen: the Board of Directors. The Board is, in turn, made

By virtue of paragraph 10(1), the *Promotion of Cooperatives Recommendation, 2002* ('ILO Recommendation 193') – approved in Geneva on 20 June 2002 by the General Conference of ILO, of which Italy is a member, like all the other member states of the European Union – our State should (not shall, nor could),[3] devise a legal regulation of cooperatives in accordance with both their nature and function, and the cooperative values and principles indicated in paragraph 3 of the ILO Recommendation 193.[4] Cooperative supervision is dealt with in paragraphs 6(c) and 8(1)(b) of the ILO Recommendation 193 and requires ILO Member States *(i)* to adopt 'measures for the oversight of cooperatives on terms appropriate to their nature and functions, which respect their autonomy ... and which are no less favourable than those applicable to other forms of enterprise and social organisation', *(ii)* to ensure 'that cooperatives are not set up, or used for, non-compliance with labour law' and *(iii)* to combat 'pseudo cooperatives violating workers' rights'.

The ILO Recommendation 193, paragraph 3, refers to the cooperative values and principles as set out in the *Statement on the Cooperative Identity* approved by the General Assembly of the International Cooperative Alliance (ICA) in Manchester on 23 September 1995 ('ICA Statement').[5] The ICA Statement also binds for all ILO Member States.[6] The ICA Statement is mostly silent on cooperative supervision (having as its objective the characteristics required of a true cooperative). However, in the passage

up of fifty-six people, of whom twenty-eight represent national governments, fourteen represent employers, and fourteen represent workers. The ILO, established in 1919, since 1920 has a specialized service in the promotion of cooperatives in the world.

[3] Not 'shall', because the ILO Recommendation 193 is not a ratified ILO convention; nevertheless, as an ILO recommendation, ILO members should act in coherence with the guidelines and policies contained in the ILO Recommendation 193 (even if there is no sanction in case of national law or praxis that are incoherent with it), because they approved it, and they are obliged to bring it 'before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action' (art. 19, paragraph 6, ILO Constitution).

[4] The ILO Recommendation 193 is considered to be the international standard for promoting and regulating cooperatives. This standard is binding (as a legal guideline and policy, not as an imperative law) on all ILO members. According to H. Henrÿ,' Public International Cooperative Law' in D. Cracogna, A. Fici, A. Henrÿ (eds.), *International Handbook of Cooperative Law*, Springer, Berlin-Heidelberg, pp. 73-76, the ILO Recommendation 193 is also binding on States that are not members of the ILO, since it integrates public international law on cooperatives, indeed being its core, thanks to the fact that it represents the first and only universal application instrument on the law of cooperatives adopted by an international organization. On the ILO Recommendation 193, it is suggested to read the following three volumes, all published by the ILO and available on www.ilo.org: (i) H. Henrÿ, *Guidelines for Cooperative Legislatio*n, third edition, 2012, p. 47 ff.; (ii) S. Smith, Promoting cooperatives: an information guide to the ILO Recommendation No. 193, second edition, 2014; (iii) The Story of the ILO's Promotion of Cooperatives Recommendation, 2002 (No. 193). A review of the process of making the ILO Recommendation No. 193, its implementation and its impact, 2015. The opposite opinion is expressed, among others, by S. Smith, *Promoting Cooperatives*, cit., p. 28, who believes that the ILO Recommendation 193 'provides non-binding guidelines in drafting and/or revising national policy and legislation'.

[5] The ICA is a non-governmental organization recognized by the United Nations, founded in 1895 and currently made up of more than three hundred organizations (national and international) representing the cooperatives of the world operating in all sectors of the economy.

[6] Hans-H. Münkner, Co-operative Principles and Co-operative Law, second edition, LIT Verlag, Zürich, 2015, pp. 1-21, highlights the ambiguity of the term 'principle' contained in the ICA Statement, since it is used to indicate both an idea (abstract and invariable, regardless of the time, place and circumstances in which it is applied, accepted as true after being deduced from enduring observation and experience) and a practice (variable, depending on the time, place and circumstances in which it applies); this author, in listing the principles-ideas and principles-practices contained in the ICA Statement, warns that cooperative law in compliance with the ICA Statement should, respecting the former (which do not correspond to operational rules), identify the latter (i.e. conceive coherent dispositive or mandatory legal rules). Therefore, only the principles-ideas (the cooperative principles in the strict sense) indicate the indefectible characteristics of cooperatives (i.e. their identity), but they need the principles-practices to become cooperative law; this explains the reason why national legislations that comply with the ICA Statement can be different, having legitimately translated the principles-practices differently into their respective legal systems.

elaborating its fourth principle (called *Autonomy and independence*) it refers indirectly to cooperative supervision: cooperatives 'ensure democratic control by their members and maintain their cooperative autonomy', even by the public authorities.[7] The ICA, in explaining this principle,[8] stresses the importance of cooperative supervision – which can be modelled according to the nature, activity and size of the supervised entity – to be conducted in such a way as to ensure primarily that the cooperative remains a business organization democratically governed by its members and aimed primarily at responding to their economic, social and cultural needs. According to ICA, this supervision can be conducted in accordance with rules, either conceived by the cooperative itself and/or by the representative association to which it voluntarily belongs or imposed by the public authorities.

International law provides another binding guideline for Italy (as an ILO member), contained in paragraph 10(2) of the ILO Recommendation 193: it 'should consult cooperative organizations, as well as the employers' and workers' organizations concerned, in the formulation and revision of legislation, policies, and regulations applicable to cooperatives'. This guideline is reiterated even more strongly by the United Nations, with Resolution 56/114 (*Cooperatives in social development*) adopted by its General Assembly on 19 December 2001. This resolution invites Member States to take into consideration the UN 2001 Draft Guidelines[9] in the event of any changes to their law on cooperatives. It indicates that representatives of the cooperative movement should 'participate fully' and 'in an effective and equal partnership', *(i)* in drafting and monitoring law and practice and *(ii)* in formulating and carrying out of public policy regarding cooperatives.

3. European Union Law.

European Union law does not require its Member States to have specific legislation on cooperative supervision, nor has it envisaged harmonizing national legislation on this topic, as it has done repeatedly for statutory audits.[10] The European Union has not prescribed specific cooperative supervision for cooperatives set up in accordance with Regulation 1435/2003/EC on the Statute for a European Cooperative Society (SCE), although it clearly distinguishes such supervision from statutory auditing in artt. 70 and 71 s. In fact, art. 8(2) Regulation 1435/2003/EC merely provides that the SCE is subject to specific supervision, including cooperative supervision, only if this is required for cooperatives

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[7] On the relationship between the principle of autonomy and public intervention in cooperatives, cf. Hans-H. Münkner, Co-operative Principles, cit., pp. 119-141, where many examples come from different continents.

[8] With the ICA *Guidance Notes to the Co-operative Principles*, Brussels, 2015, pp. 22, 23, 25, 50 and 51, available on www.ica.coop.

[9] The UN 2001 Draft Guidelines were most recently referred to in the report of the UN Secretary-General of July 2021 (Cooperatives in social development, A/76/209) and the consequent UN General Assembly resolution 76/135 of 16 December 2021 (A/res/76/135) as a relevant source of international law on cooperatives, supplementing the ILO Recommendation 193. In the UN 2001 Draft Guidelines, paragraph 11 (entitled General law on cooperative or the general section of a single law on cooperative) also specifies that the law on cooperatives should define cooperatives using the ICA Statement. Finally, with regard to the United Nations, I would like to point out the report of the Secretary-General of the United Nations of 17 July 2023 (Cooperatives in social development, A/78/187) and the consequent resolution 78/175 of the United Nations General Assembly of 19 December 2023 (A/res/78/175), where, among other things, Member States are invited to support cooperatives more decisively as effective and sustainable forms of business.

[10] D. Hiez, Introduction, in AA.VV. Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge-Antwerp-Portland, Intersentia, 2017, pp. 11-12, together with the other experts in cooperative law who drafted the Principles of European Cooperative Law (on which see infra, § 5), expressed their opposition to a harmonization of the national laws on cooperatives imposed by the European Union.

established in accordance with the law of the Member State in which the SCE has its registered office; to be understood as both head office and registered office, since both shall be located in the same Member State, pursuant to the combined provisions of artt. 6 and 8(1)(c)(ii) Regulation 1435/2003/EC.[11] For example, the cooperative supervision of an SCE established in Germany must be conducted in accordance with §§ 53 ff. *Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften* (better known as GenG), in exactly the same way (also in view of the principle of non-discrimination laid down in art. 9 Regulation 1435/2003) as it would be conducted if it were a cooperative established under German law.[12] However, the entry into EU law of the optional model represented by the SCE has had the indirect effect (so-called spillover effect) of influencing the law on cooperatives conceived by some Member States.[13]

On the other hand, EU law has affected the national rules of Member States that require or allow non-profit private law entities to supervise their member cooperatives through both cooperative supervision and statutory auditing. Under Directive 2006/43/EC (see recital 11) and Regulation 537/2014/EU (see recital 6 and art. 2, paragraphs 3 and 4), auditors appointed by the aforementioned entities shall appear and be independent of the supervised cooperative. As a result, some cooperative systems – both national,[14] and regional,[15] – have had to reform legislation regulating cooperative supervision, requiring the entities in question to have an internal organisation suitable for guaranteeing the independence of those who carry out the statutory audit.

However, if an EU Member State provides promotional measures in favour of cooperatives (as must happen, for example, in Italy, Spain and Portugal, by virtue of their Constitutions), it must guarantee effective control over such cooperatives. Otherwise, it would favour entities that do not respect the requirements justifying such promotion. This would be in breach of the principle of coherence derived

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[11] On this point, cf. E. Cusa, Die Verwendung des Betriebsergebnisses, in Handbuch der Europäischen Genossenschaft (SCE), edited by R. Schulze, Nomos-Verlag, Baden-Baden, 2004, p. 166 ff. Regarding the supervision of cooperatives based in Italy, it is worth reading the Ministry of Economic Development (now called the Ministero delle imprese e del made in Italy) circular n. 19203 of 39 June 2006, according to which these SCEs shall be equated with Italian cooperatives also regulated by the Italian law on joint-stock companies.

[12] On the subject, see, among others, M. Schöpflin, sub artt. 8 and 71 SCE, in V. Beuthien, R. Wolff, M. Schöpflin, Genossenschaftsgesetz, sixteenth edition, München, C.H. Beck, 2018, pp. 1263 and 1339.

[13] One of the most significant examples of this phenomenon is offered by the German law on cooperatives; with the 2006 reform of the GenG, two innovations inspired by the SCE law were introduced: (i) the possibility that the cooperative no longer has as its purpose only that of responding to the economic interests of the cooperators ('[der] Erwerb oder die Wirtschaft ihrer Mitglieder') through the mutual enterprise, but also to respond to the social or cultural interests ('[die] soziale oder kulturelle Belange') of the members themselves (art. 1, section 1, GenG); (ii) the provision of the financing shareholders (named 'investierende Mitglieder' in art. 8, section 2, GenG).

[14] Such as the German (art. 55, sections 2 and 3, GenG) or Austrian (see especially art. 19, section 2, Bundesgesetz über die Revision von Erwerbs- und Wirtschaftsgenossenschaften, or Genossenschaftsrevisionsgesetz 1997, better known as GenRevG 1997)) that impose on cooperative auditing associations – genossenschaftlichen Prüfungsverbände in Germany that shall be in the form of registered association and Revisionsverbände in Austria that shall be in the form of association or cooperative – to also conduct statutory audits of the cooperatives belonging to them. On the above-mentioned German law see. M. Schöpflin, sub art. 55, in V. Beuthien, R. Wolff, M. Schöpflin, Genossenschaftsgesetz, sixteenth edition, München, C.H. Beck, 2018, pp. 695 ff.

[15] Such as that of the Trentino Alto-Adige Region (see art. 39, sections 4 and 5, regional act n. 5 of 9 July 2008), which permits recognized entities (in the form of association or cooperative) representing cooperatives also to carry out statutory audits of the cooperatives adhering to them. On this point see E. Cusa, Die Regelung der Genossenschaften in der Autonomen Region Trentino-Südtirol: ein Beispiel für Italien?, in Genossenschaften auf dem Weg in die Zukunft, Münstersche Schriften zur Kooperation, Shaker Verlag, Aachen, 2011, pp. 35–37.

from art. 107 of the Treaty on the Functioning of the European Union, as interpreted by the Court of Justice of the European Union.[16]

4. British, German, French, Spanish and Portuguese law.

To frame the Italian model of cooperative supervision, it is very interesting to compare it to some European States, including Great Britain (no longer in the Union, but the creator in 1852 of the first legislation on cooperatives, the *Industrial and Provident Societies Act*). Germany, France, Spain and Portugal are also compared. These States have in common the fact that they devised a specific supervision of their cooperatives in order to safeguard their structural and functional characteristics, and they must provide for supervision of their cooperatives, being required to respect the examined duty deriving from being members of the ILO.[17]

4.1. *Great Britain*.

In Great Britain, cooperative supervision has been conducted by the Financial Conduct Authority ('FCA') since 2001.[18] The supervisory regime applies to British cooperatives registered under the *Co-operative and Community Benefit Societies Act* 2014 ('CCBS'),[19] which are the bona fide co-operative societies pursuant to section 2(2)(a)(i) CCBS ([20]). The FCA's supervision of British cooperatives is set out in its *Registration Function under the Co-operative and Community Benefit Societies Act 2014 Guide* ('RFCCBS'), periodically updated.[21]. The RFCCBS states that the FCA merely monitors British cooperatives to ensure that they comply with the CCBS but does not assist them in complying with the

[16] As E. Cusa has attempted to demonstrate in 'Il diritto delle organizzazioni imprenditoriali nell'accertamento del requisito di selettività in materia di aiuti di Stato' in *Rivista delle società*, 2025, pp. 104-106.

[17] One of the most interesting cooperative supervising systems exists in the country with the highest number of citizens, poor people and cooperatives (around 800,000, slightly less than a third of all cooperatives in the world): India. With the establishment in 2021 of the Ministry of Cooperation, the Indian regulator (rectius, the Indian regulators, since the Union, the States and other territorial entities that make up this immense federal State are competent in this matter, as expressly provided for in the Indian Constitution) is trying to create a well-designed system, in compliance with the ACI Declaration, capable of knowing (especially through widespread digitalisation), monitoring (also on the side of their internal democracy, with newly established special public authorities), promoting (also with education and training, thanks to a widespread network of specialized public entities) and sanctioning Indian cooperatives; all of that, in collaboration with the Indian cooperative movement and its entrepreneurial component, made up of consortium cooperatives at city, district, state and national levels (some of the latter, in terms of turnover, among the largest in the world).

[18] FCA is the registering authority for the mutual societies in the UK. The activity as a registrar is separate from the FCA's role for financial services firms under the Financial Services and Markets Act 2000. Mutual societies are (i) building societies, (ii) community benefit societies, (iii) cooperative societies, (iv) credit unions, and (v) friendly societies. On the FCA as a registering authority of mutual societies, see the Financial Services Act 2012 (Mutual Societies) Order 2018.

[19] Not, for example, on cooperatives registered as a company or a limited liability partnership. On 1 October 2024, 85% of cooperatives (6,258 out of 7,360 mutual societies) are registered under CCBS.

[20] On this point, cf. I. Snaith, United Kingdom, in AA.VV 'Principles of European Cooperative La'. *Principles, Commentaries and National Reports*, Cambridge-Antwerp-Portland, Intersentia, 2017, pp. 699-706. In June 2023, the British Treasury Minister asked the Law Commission (an institution governed by law, tasked with promoting the reform of British law) to submit a draft reform of the CCBS; in September 2024, the Law Commission published the Review of the *Co-operative and Community Benefit Societies Act* 2014. Consultation Paper, in which no changes on cooperative supervision are envisaged; the final recommendations that the Law Commission will present to the British Treasury Minister to reform the CCBS are now awaited.

[21] In writing this essay, I used the version dated July 2025.

same legal framework.[22] The RFCCBS is very relevant since it integrates the key concepts around which cooperative supervision revolves, which are only evoked, in the case of the bona fide co-operative society,[23] or partly defined, in the case of the co-operative society by the CCBS.[24]. In any event, if the British cooperative does not qualify as a bona fide co-operative society, the FCA may remove it from the Mutuals Public Register pursuant to section 5(5)(a) CCBS.[25]

British cooperatives are required to submit their annual financial statements to the FCA, within seven months of the end of their accounting year, in accordance with section 89(1) CCBS, accompanied by the report of the auditor (not necessarily qualified if the financial statements are for a small company within the meaning of section 83 CCBS) and other information required in the relevant annual return form (AR30), as set out in RFCCBS 7.1.8. This model is particularly interesting, since it contains the information that the British law requires to be transmitted to the FCA to verify that the transmitting society can still be qualified as a bona fide co-operative society.[26]

In conclusion, the main features of the British model of cooperative supervision (quite distinct from the statutory audit of accounts) are based only on the intervention of a public body, which is recognized as having a wide discretion and strong powers of intervention over irregular cooperatives. However, the cooperative data and information, on which the FCA relies on to supervise cooperatives, is minimal and is mainly provided by the cooperative itself. Arguably, the effectiveness of this approach to supervision is limited, especially if the voluntary supervision of the cooperative aspects by the associations which represent the British cooperative movement is inadequate.[27]

4.2. *Germany*.

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[22] See RFCCBS 2.1.1, RFCCBS 2.2.1 and RFCCBS 2.2.2.

[23] The above concept is defined by RFCCBS 4.3.1 ('an autonomous association of persons voluntarily united to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise'); moreover, the FCA specifies, on the one hand (RFCCBS 4.3.2), that this definition is also used in the ILO Recommendation 193 and in the ICA Statement, but, on the other hand (RFCCBS 4.3.5), that there can be a bona fide co-operative society even if the fifth, sixth and seventh cooperative principles contained in the ICA Statement are not respected and that, in any case, 'this guidance is not exhaustive. We recognise the flexibility in the principles [contained in the ICA Statement] which are themselves intended as guidelines. There may well be other indicators that a society is a bona fide co-operative society' (RFCCBS 4.3.7).

[24] Section 2(3) CCBS only delimits the above definition when it states that 'co-operative society" does not include a society that carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with, or lent to, the society or any other person'; the interpretation of this provision is analytically illustrated in RFCCBS 4.2.1-4.2.4.

[25] The FCA publishes on its website a detailed annual report to show how it used its authoritative powers on British mutual societies.

[26] The AR30 model asks these five questions: (i) '7A.1 What is the business of the society? For example, did you provide housing, manufacture goods, develop IT systems etc.'; (ii) '7A.2 Please describe the members' common economic, social and cultural needs and aspirations. In answering this question, please make sure it is clear what needs and aspirations members had in common'; (iii) '7A.3 How did the society's business meet those needs and aspirations? You have described the society's business answer to question 7A.1, and in question 7A.2 you have described the common needs and aspirations of members. Please now describe how during the year that business met those common needs and aspirations'; (iv) '7A.4 How did members democratically control the society? For example, did the members elect a board at an annual general meeting; did all members collectively run the society'; (v) '7A.5 What did the society do with any surplus or profit? For instance, did you pay a dividend to members (and if so, on what basis); did money get reinvested in the business; put into reserves; used for some other purpose?'.

[27] On the British cooperative law see, among others, I. Adderley, *Co-operatives: Linking Practice and Theory, Co-operative Press Limited,* Manchester, 2025.

The German model of cooperative supervision (*Prüfung*) is different from the British model in many respects. Since at least 1934,[28] it has been characterized by being centred on the *Prüfungsverbände*.[29] In fact, the current German law *(i)* gives exclusively to these associations the power to conduct cooperative supervision (art. 55, section 1, GenG), under the strict control of the state supervisory authority (*Aufsichtsbehörde*) (artt. 56 and 63-64b GenG), *(ii)* requires any cooperative to join at least one *Prüfungsverband* (artt. 11, section 2, n. 3, 54 and 54a GenG), *(iii)* makes the registration of any cooperative subject to a prior assessment by a *Prüfungsverband* on the entity to be registered (artt. 11, section 2, n. 3 and 11a, section 2, GenG), so as to provide the court with all the information it needs to decide whether to enter it in the register of cooperatives (*Genossenschaftsregister*), with the consequent acquisition of legal personality (artt. 11a and 17 GenG)[30], and *(iv)* subjects each cooperative to the cooperative supervision conducted by the *Prüfungsverband* to which it belongs (artt. 53, section 1, 53a, section 1 and 55, section 1, GenG).[31]

In a way that can be shared, the common German law modulates the object and frequency of cooperative supervision on the basis of the size of the enterprise exercised by the cooperative: *(i)* it is normally biennial, but becomes annual for cooperatives with total assets on the balance sheet exceeding 2,000,000 euros (art. 53, section 1, GenG)[32]; *(ii)* has a simplified content for micro cooperatives (*Kleinstgenossenschaften*) (art. 53a GenG), inter alia with total assets on the balance sheet not exceeding €450,000, total revenues not exceeding €900,000 and not more than an annual average of ten employees (artt. 267 and 336 *Handelsgesetzbuch* to which art. 53a GenG refers); *(iii)* includes statutory auditing for cooperatives with total assets on the balance sheet exceeding €1,500,000 and total revenues exceeding €3,000,000 (art. 53, section 2, GenG).[33]

Artt. 57-60 GenG are well thought out in providing for the relations among *(i)* the administrative and supervisory bodies of the cooperative,[34] *(ii)* the members and *(iii)* the supervisory *Prüfungsverband*

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[28] As W. Grosskopf, Hans-H. Münkner, G. Ringle, *Our Co-op. Idea - Mission - Achievements*, AG SPAK Bücher, Neu-Ulm, 2010, pp. 134-135, who also points out that since 1889 all German cooperatives have been subject to due cooperative supervision. On the German way to supervise cooperatives and its influence on other jurisdictions cf. Hans-H. Münkner, 'Legal framework analysis. National report: Germany, 2020' available at https://coops4dev.coop.

[29] In the near future, some amendments to the German rules on cooperative supervision could come into force, aimed at combating false cooperatives more effectively, without however losing the centrality of the Prüfungsverbände in this supervision, if the bill – called Gesetz zur Stärkung der genossenschaftlichen Rechtsform and introduced in Parliament by the Government twice (the first in July 2024 and the second in June 2025 by the government that succeeded the previous one) – is definitively approved.

[30] On the advantages and disadvantages of this necessary opinion of the Prüfungsverband cf. Hans-H. Münkner, Germany, cit., pp. 322-323, which highlights, among other things, the fact that this opinion allows both to obtain only 0.5% of insolvent cooperatives among the newly established ones, and to preserve the reputation of the cooperative form and of the entire cooperative movement.

[31] If the cooperative is a member of more than one Prüfungsverband, the cooperative supervision is carried out by the Prüfungsverband to which it first belonged, unless otherwise agreed between the cooperative and the Prüfungsverbände concerned (art. 55, section 4, GenG)

[32] However, the Prüfungsverband has the power to subject the cooperative to extraordinary inspections whenever it deems it appropriate (art. 57, section 1, GenG)

[33] In 2024, there were around 7,000 German cooperatives with around 20 million members.

[34] The necessary cooperation between the supervisory body (Aufsichtsrat) and the Prüfungsverband is very much insisted on by W. Grosskopf, Hans-H. Münkner, G. Ringle, Our Co-op, cit., p. 140.

during the execution of the cooperative supervision, which is obviously conducted by experts.[35] At the end of this audit, the corresponding report (*Prüfungsbericht*) will indicate whether the cooperative has actually pursued the mutual purpose (art. 58, section 1, GenG). In the event of irregularities, the members are also promptly informed and possibly summoned to the meeting by the *Prüfungsverband* itself.

The ordinary object of cooperative supervision is threefold: *(i)* to verify the correct keeping of documentation (including, first and foremost, accounting books and financial statements[36]; *(ii)* to verify the economic, equity and financial situation of the cooperative, with particular reference to its economic sustainability; *(iii)* to verify the management of the cooperative (the peculiar element of cooperative supervision) in order to ascertain that it is conducted in pursuit of the mutualistic purpose (*rectius*, the *Förderzweck* pursuant to art. 1, section 1, GenG).[37] The third and last verification is facilitated if the administrative body draws up a plan to pursue this purpose (*Förderplan,* not required by law)[38] and a subsequent report on the pursuit of this purpose (*Förderbericht*).[39]

If the cooperative does not pursue the mutual purpose, it can be dissolved by the decision of the competent territorial tribunal (*Landgericht*) at the request of the competent highest State authority*,* pursuant to art. 81, section 1, GenG.

4.3. *France*.

It was not until 2014 that French law imposed cooperative supervision on all cooperatives.[40] Previously, it was only prescribed for certain cooperative sectors.[41]

Cooperative supervision (*révision coopérative*) is governed by art. 25-1 to art. 25-5 of *loi* 47-1775 *du 10 septembre 1947 portant statut de la coopération* (containing the general law of French cooperatives). These provisions regulate the *révision coopérative* as follows: *(i)* it critically and analytically examines the organisation and functioning of the cooperative on the basis of the cooperative principles, as defined

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[35] Pursuant to art. 55, section 1, GenG, natural persons performing cooperative supervision shall be sufficiently trained and experienced in cooperative supervision. An increasing number of persons qualified to exercise cooperative supervision are also statutory auditors.

[36] Hans-H. Münkner, Germany, cit., pp. 321 and 329-331, highlights the danger that cooperative supervision, also due to the inadequate preparation of cooperative auditors, will come closer and closer to an ordinary statutory audit, also because the law of business organizations tends to reduce the differences between cooperatives and companies.

[37] On the peculiar object of the cooperative supervision of German cooperatives, I refer to the following authors: (i) Hans-H. Münkner, Germany, cit., pp. 319-331; (ii) W. Grosskopf, Hans-H. Münkner, G. Ringle, *Our Co-op*, cit., pp. 135-138; (iii) M. Schöpflin, sub art. 53, in V. Beuthien, R. Wolff, M. Schöpflin, *Genossenschaftsgesetz,* sixteenth edition, München, C.H. Beck, 2018, pp. 660-674. On the other hand, about the differences between external control over cooperatives and external control over joint-stock companies and associations in the German legal system, even diachronically, cf. A. Donschen, *Die genossenschaftliche Pflichtprüfung*. Vergleich mit Vereins- und Aktienrecht, Shaker Verlag, Aachen, 2008.

[38] As C. Picker, *Genossenschaftsidee und Governance*, Tübingen, Mohr Siebeck, 2019, p. 419, to which I refer (pp. 456-470) for a series of observations on cooperative supervision.

[39] Hans-H. Münkner, 'Germany', cit., pp. 326-328, explains how the two documents mentioned in the text should be drawn up and the relative parameters for measuring, but also warns that some of these Berichte incorrectly report not the pursuit of the mutual purpose but the sole altruistic allocation of a part of the operating profits.

[40] More precisely, pursuant to the decree of the Conseil d'Etat n. 2015-800 of 1 July 2015, only the cooperatives with (i) at least two cooperators and (ii) the total revenues, net of taxes, for two consecutive accounting years, exceeding 30,000 euros, are subject to the necessary cooperative supervision.

[41] On the general and special law on French cooperative supervision cf. D. Hiez, *Sociétés coopératives*, third edition, Paris, Dalloz, 2023, pp. 370-387. In 2022, there were 22,410 cooperatives in France with about 31 million members.

in loi 47-1775, and the specific rules that apply to it, comparing it with other similar cooperatives and, if necessary, proposing corrective measures for the cooperative;[42] (ii) it shall be conducted every five years, unless the bylaws provide for a lower frequency, or it is required by at least one-tenth of the shareholders, or by one-third of the members of the administrative, or supervisory body, or by the competent state authority; (iii) it shall be executed at the end of three consecutive loss-making financial years or if the losses of one financial year are at least equal to half of the highest amount reached by the cooperative's share capital; (iv) it is carried out by a réviseur coopératif specifically authorised by prefectural decree, following the reasoned opinion of the Conseil supérieur de la coopération, and is appointed together with a deputy auditor by the general meeting of cooperative members;[43] (v) it concludes with a special report (rapport de révision) to be presented and discussed at the general meeting; (vi) if the rapport indicates significant irregularities and they are not spontaneously eliminated by the cooperative, it risks the payment of a fine until a compulsory dissolution is decided by the competent Minister.

4.4. *Spain*.

The Spanish legal system, at least as regards the State legislation represented by *Ley* 27/1999, *de 16 de julio, de Cooperativas*, does not provide for cooperative supervision, understood as periodic external control of the organizational and functional peculiarities of the cooperative. However, art. 1, paragraph 2, *Ley* 27/1999 prescribes that each Spanish cooperative conforms its structure and functioning with the cooperative principles, as consolidated in the ICA Statement and incorporated into the said *Ley*.

In fact, the cooperative is required to publish some information about these peculiarities in the financial statements and in the directors' report. However, the statutory auditors are only required to carry out a classic statutory audit[44] and not a cooperative supervision.[45]

The absence of cooperative peculiarities may, however, be ascertained by the *Inspección de Trabajo y Seguridad Social* (always *ex officio*, following its own initiative or after a request or complaint by third parties), at least if the irregularity relates to the '*normas del orden social*' in relation to working members, pursuant to art. 19(1)(f) *Ley 23/2015, de 21 de julio, Ordenadora del Sistema de Inspección de Trabajo y Seguridad Social*. However, I would like to point out that, by virtue of art. 113 *Ley* 27/1999, the said *Inspección* must ensure compliance with the aforementioned law and its implementing regulations and

[42] That is stated in the Révision coopérative. Principes et normes. Cahier des charges pour les sociétés coopératives non régies par un statut particulier ; this document was approved on 18 March 2016 by the Conseil supérieur de la coopération. This Council – chaired by the Ministre de l'économie sociale et solidaire or his representative and composed of four parliamentarians, twelve representatives of the public administration and thirty representatives of the cooperative organizations – defines the principles and draws up the rules on the révision coopérative, pursuant to the last section of art. 5 of Article 47-1775. The document in question specifies that the révision coopérative examines the legal, administrative and governance aspects of cooperatives, while it is not an audit or certification of accounts, nor an analysis limited to ascertaining the main management and financial balance ratios.

[43] The decree of the Conseil d'Etat n. 2015-706 of 22 June 2015, implementing art. 25-5 loi 47-1775, regulates the qualification, appointment, termination and independence of the réviseur coopératif, together with how the révision coopérative shall be carried out.

[44] However, considering some specific provisions of accounting law valid only for cooperatives, contained in the Orden EHA/3360/2010, de 21 de diciembre, por la que se aprueban las normas sobre los aspectos contables de las sociedades cooperativas.

[45] On this point I refer to G. Fajardo, Spain, in AA.VV. 'Principles of European Cooperative Law' *Principles, Commentaries and National Reports*, Cambridge-Antwerp-Portland, Intersentia, 2017, pp. 595-602 and, from the point of view of administrative law, M. Burzaco Samper, 'La intervención pública en las sociedades cooperativas' in *CIRIEC-España. Revista Jurídica*, 27/2015, pp. 333 ff.

that, pursuant to art. 116 *Ley* 27/1999.[46] In compliance with a regular administrative procedure the *Ministro de Trabajo y Asuntos Sociales* may decide on the disqualification (*descalificación*) of the cooperative (with the consequent necessary liquidation), if the cooperative has committed '*infracciones muy graves de normas imperativas o prohibitivas*' of *Ley* 27/1999.[47]

A similar situation to Spanish state legislation is found in some autonomous legislation on cooperatives, such as that of the Basque Country. Indeed, in this *comunidad autónoma* the cooperative inspections referred to in art. 158 *Ley 11/2019, de 20 de diciembre, de Cooperativas de Euskadi* are conducted by the *Inspección de Trabajo del País Vasco*, which is enpowered to establish if any of the cooperative infringements listed in art. 159 *Ley 11/2019* occurred. These infringements may result in the imposition of the administrative sanctions provided for in artt. 160 and 161 *Ley 11/2019*.[48] Among these sanctions, in the event of manifest, repeated and significant violations of the cooperative principles recognized in *Ley 11/2019*, there is the *desalificación* of the cooperative and, consequently, its forced liquidation or transformation.

4.5. *Portugal.*

The Portuguese model of cooperative supervision revolves around the following singular cooperative, established in compliance with *Decreto-Lei n. 282/2009, de 7 de outubro*: the *Cooperativa António Sérgio para a Economia Social - Cooperativa de Interesse Público de Responsabilidade Limitada* ('CASES').[49] Among the tasks that the law assigns to CASES is the one set out in art. 115, paragraph 1, *Lei* n. 119/2015*, de 31 de agosto* (corresponding to the *Código Cooperativo*): to monitor the Portuguese cooperatives, so that they comply with *Lei* n. 119/2015 and the cooperative principles consolidated in the ICA Statement (as specified in art. 3 *Lei* n. 119/2015).[50]

This supervision is periodically exercised by examining the articles of association of the cooperatives and their amendments, the financial statements (to which the report of the administrative and control bodies, the related minutes of the approval of the shareholders' meeting and any report of the statutory auditor shall be attached) and the social report. The cooperatives are required to transmit this documentation to CASES, pursuant to art. 116 Lei no. 119/2015. Following this transmission and its satisfactory review,

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[46] The above-mentioned article will be modified, if it is approved the government bill, presented to the Spanish Parliament in October 2024 (Proyecto de Ley integral de impulso de la economía social); on this bill cf. G. Fajardo, 'Reconocimiento legal y social de los valores y principios cooperativos como rasgos de identidad de las cooperativas' in *Deusto Estudios Cooperativos*, n. 25, 2025, pp. 93-94.

[47] The inspection function exercised on Spanish cooperatives is examined, inter alia, by L. Á. Díez Ácimas, 'La función inspectora en materia de sociedades cooperativas' in *Deusto Estudios Cooperativos*, n. 5, 2014, pp. 43 ff.

[48] The inspections and the administrative procedure by which the penalties indicated in the text are imposed are governed by Decree 12/2024, de 13 de febrero, sobre la inspección y el procedimiento sancionador en materia de cooperativas.

[49] In CASES, at least sixty per cent of the share capital must always be subscribed by the Portuguese State and the remainder by representative bodies of the Portuguese cooperative movement and social economy; in addition, in this cooperative, the chairman and vice-chairmen of the board of directors and the chairman of the supervisory body shall be appointed and dismissed by the Portuguese Government.

[50] On the subject I refer to D. Meira, Portugal, in AA.VV. Principles of European Cooperative Law. *Principles, Commentaries and National Reports*, Cambridge-Antwerp-Portland, Intersentia, 2017, pp. 487-502, and D. Meira, 'A fiscalização das cooperativas à luz do novo Código Cooperativo português' in CIRIEC-España, *Revista jurídica de economia social y cooperativa*, 28/2016, pp. 281 ff.

CASES issues an annual certificate proving the establishment and regular functioning of the cooperative (art. 117, paragraph 1, Lei n. 119/2015).

CASES must also apply to the competent court for the dissolution of the cooperative. It may do so, if the cooperative does not comply with cooperative principles, or uses illegal means to carry out its activities, or has chosen the cooperative form only to unduly benefit from tax benefits (or other benefits granted by public bodies), or carries out activities other than those indicated in the corporate purpose (art. 118, paragraphs 1 and 2, Lei n. 119/2015).

5. The Principles of European Cooperative Law.

When examining the European framework for cooperative supervision, the Principles of European Cooperative Law ('PECOL') cannot be disregarded, although the relevant legal rules have no binding effect in any State (thus being soft law).

In my opinion, the PECOL should be consulted when the Member States of the Union intend to introduce or update their laws relating to cooperative supervision, for at least the following two reasons. Firstly, the PECOL offers more stringent legal content to the cooperative principles contained in the ICA Statement and why they need to be respected.[51] If it is true that the States in question should comply with the ICA Statement as it is included in the ILO Recommendation 193, together with the content of the latter (inter alia containing specific rules on cooperative supervision), the PECOL will assist the legislators to verify that the domestic legal system is consistent with these two international documents.[52] Secondly, the part of PECOL on cooperative supervision was conceived by Hans-Hermann Münkner, one of the world's most respected scholars of cooperative law and a renowned consultant on the same subject for the ICA, other international organizations and many legislators around the world. It follows that his reflections in the PECOL are particularly well qualified to indicate whether a certain national discipline of cooperative supervision is in line with the ILO Recommendation 193, the ICA Statement and the UN 2001 Draft Guidelines on the subject of cooperative supervision.

Based on Münkner's assessment of the importance of cooperative supervision in the PECOL, the following is a summary of four recommendations to improve the model of cooperative supervision in Europe:

(i) The cooperative supervision should be conceived as a duty and a right for the cooperative,[53] in the sense that such supervision should not only control but also assist the cooperative;[54]

(ii) The main purpose of cooperative supervision should be to verify that the cooperative pursues its specific purposes (therefore, at least the mutualistic purpose, understood as the management of services

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[51] The ICA Statement is, in fact, in some points, too general and flexible, thus risking losing consistency to the cooperative identity (in the sense of its distinctiveness); the PECOL, therefore, can contribute to making the cooperative identity clearer and more up to date (so D. Hiez, Introduction, cit., pp. 13-14).

[52] In fact, one of the PECOL aims is to offer legislators a coherent model of cooperative law, as D. Hiez, Introduction, cit., pp. 11-13.

[53] 'Cooperatives are obligated and entitled to be audited' (Hans-H. Münkner, Cooperative audit, in AA.VV. Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge-Antwerp-Portland, Intersentia, 2017, p. 97).

[54] Assistance addressed to the managers, to the components of the corporate bodies and to the cooperative members, as Hans-H. Münkner, Cooperative audit, cit., p. 117, explains.

to cooperators through cooperative enterprise), as defined by law and outlined in the articles of association and has a structure and exercises activities that are consistent with the ICA Statement (i.e., the activities carried out primarily respond to the interests of the cooperative members);[55]

(iii) Cooperative supervision should be carried out by professionals who are familiar with the peculiarities of this form of business,[56] whether or not they belong to public bodies (State or other public administration authorities) or private entities (such as associations representing the cooperative movement).[57] In any case, supervision should be conducted in such a way as to ensure the autonomy of the cooperative (including from external public authorities), thus guaranteeing members the last word in the organization and operation of the cooperative;[58]

(iv) Cooperative supervision should also verify (in a modular way, depending on the size and activity carried out by the cooperative),[59] the economic sustainability of the mutual enterprise by auditing its accounts, in order to guarantee the interests of both the members and the corporate creditors, unless the audit is already carried out by another external auditor (the statutory auditor).[60]

6. The history of Italian law on cooperative supervision.

In Italy, there were several attempts (1894, 1896, 1905, 1920) to provide for the compulsory cooperative supervision of all cooperatives, including allowing the associations that represented the cooperative movement to carry it out in favour of their members.

However, it was not until 1926 that a general supervisory power was established for the *Ministero per l'economia nazionale*, which supervised cooperatives through a specific entity (*Ente nazionale per la cooperazione*); the law authorising supervision to only be conducted by the State was completed in the years 1930-1931 and in 1942 was finally integrated into artt. 2542-2545 Civil Code.

Before 1926, a series of provisions imposed cooperative supervision on specific categories of cooperatives (including worker and agricultural cooperatives), which received preferential treatment in public contracts. For this category of cooperatives, an articulated law of cooperative supervision was introduced by Royal Decree n. 278 of 12 February 1911.

After the fall of fascism in 1945, the General Directorate of Cooperation was established at the Ministry of Labour, and in 1946 the *Ente nazionale per la cooperazione* ceased to exist. The golden year of cooperative supervision, however, was 1947, with the approval first of the so-called Basevi Law (Legislative Decree provisional Head of State n. 1577 of 14 December 1947) and then of the Italian Constitution, with its fundamental art. 45, paragraph 1, for the matter examined here.[61] By virtue of the

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[55] Hans-H. Münkner, Cooperative audit, cit., p. 100.

[56] Hans-H. Münkner, 'Cooperative audit' cit., pp. 103-104.

[57] Ibid, pp. 114-116.

[58] Ibid, cit., p. 97.

[59] Ibid, cit., pp. 104-106.

[60] In this way, the operational efficiency of the cooperative is monitored, as well as its member-oriented effectiveness (Hans-H. Münkner, 'Cooperative audit', cit., p. 108).

[61] On the history of Italian legislation on cooperative supervision, cf. P. Verrucoli, 'La società cooperativa' *Giuffrè*, Milano, 1958, pp. 437 ff. and G. Bonfante,'La legislazione cooperativa. Evoluzione e problema' *Giuffrè*, Milano, 1984, pp. 48 ff.

said provision, the Italian Constitution, the State (and, if competent, also the Regions and the Provinces) shall ensure, 'through appropriate control mechanisms', the 'character of mutuality' and the absence of 'purposes of private speculation' of the private entities included into the 'cooperation' having the 'social function'.

After the Basevi Law, amended several times and still partially in force, the state legislation on cooperative supervision now revolves around Legislative Decree n. 220 of 2 August 2002.

7. The Italian model.

The current Italian model of cooperative supervision is based on the necessary control conducted by the State, assisted by the associations representing the Italian cooperative movement. More precisely, cooperative supervision is carried out by the State (through its employees) on all cooperatives (except for those which are expressly exempted from the type of supervision examined here, such as insurance cooperatives), in an ordinary way (through revisioni cooperative) and extraordinary way (through ispezioni straordinarie). The revisioni cooperative may be conducted by cooperative associations on their own member cooperatives if they have been authorized to do so by the State, which also controls their activity.

Cooperative supervision (i) shall combine consultancy and control, (ii) is aimed at the internal organs of the cooperative and (iii) has as its object the ascertainment of the functional and structural characteristics of the cooperative, and includes an examination of the cooperative's administrative-accounting management and the ascertainment of the consistency of the balance sheet (art. 4 of Legislative Decree n. 220/2002). The content of the supervision in question does not change with the size of the cooperative. The controlling organ and/or the statutory auditor work alongside the executors of cooperative supervision in the cases provided for by law or by the articles of association.

In the event that irregularities are discovered (including failure to pursue the mutual purpose) any measures to be imposed on the cooperative are decided by the Ministero delle imprese e del made in Italy; in the event of a crisis (a critical situation other than insolvency) or insolvency of the cooperative, the cooperative is subject to measures decided by the Ministry itself or by the territorially competent court, depending on which of these authorities arrives first.

According to Italian law, cooperative supervision can be defined as an activity of general interest, which, in implementation of the principle of horizontal subsidiarity, can be exercised by private entities, such as the associations representing the Italian cooperative movement, pursuant to art. 118, paragraph 4, of the Constitution.[62]

8. Conclusion.

This review of cooperative supervision in Italy and several other European States demonstrates diverse approaches to the cooperative supervisory function and the role of the State. Cooperative supervision plays an essential role in safeguarding the identity and proper functioning of cooperatives. Among the models of cooperative supervision examined here, the Italian model is the most statist and centralized;

[62] Art.118 provides that: 'The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity'.

moreover, the role of the public administration is the most marked both in the execution of supervision and in the imposition of sanctions or measures that affect the activity and organization of the cooperative.

In terms of approaches by other European countries, at one end of the spectrum, the model in Great Britain relies on the minimalist approach to cooperative oversight by a public body, the FCA, with no legislated role for cooperative associations or federations. In stark contrast, Germany has a highly structured and association-based model centred on the Prüfungsverbände. In 2014, France introduced the five-year mandatory révision coopérative, with provision for external review under specific circumstance. In Spain, the absence of a public body specifically dedicated to cooperative supervision has meant that oversight occurs mainly through labour inspections and sanctions for severe violations of the cooperative principles. In Portugal, supervision is centralised in the public cooperative supervisory body CASES in Portugal. These systems reveal differing balances between State intervention, cooperative autonomy and the role of representative associations.

All countries respond in some way to the international expectation – reflected in the *ILO Recommendation 193*, the *UN 2001 Draft Guidelines* and the *ICA Statement* – that cooperatives be monitored to ensure their conformity with cooperative values and principles. However, it has been argued that these documents alone are too general and flexible and that in the specific area of cooperative supervision, countries will benefit from a more stringent and comprehensive set of guidelines and greater uniformity in their approach. These guidelines are available in the PECOL and were conceived by Hans-Hermann Münkner.