The Role of the ILO in Cooperative Legislation

By Valentina Sorci

1. Guidelines for cooperatives legislation

“Cooperative enterprises build a better world, but cooperatives cannot – and must not – save the world!” This motto is used to describe the spirit of the third edition of Guidelines for Cooperative Legislation, edited by the ILO and its Cooperative Branch, which attempts to provide guidance and advice on the creation of enabling environments for cooperatives development at national, regional and international levels. The inclusion of the word “enterprise” in the slogan recognizes the dual character of cooperatives which are associations of persons who pursue their objectives through their own enterprise. This definition is laid down in or is, respectively, recognized by the main international organizations concerning cooperatives, namely the 1995 International Cooperative Alliance (ICA) Statement on the Cooperative Identity (ICA Statement), the 2001 United Nations Guidelines aimed at creating a supportive environment for the development of cooperatives (UN Guidelines) and the 2002 ILO Promotion of Cooperatives Recommendation.

The ILO always plays a key role in providing advice on the creation of enabling environments for cooperative development. Cooperatives contribute significantly to economic and social development in virtually all countries. Their documented resilience to crisis and thus sustainability and their particularity of being principle-based-enterprises that are member-controlled and led are increasingly drawing the attention of governments, policymakers and citizens around the world. The cooperative model is not only a solution for the creation and maintenance of employment levels, but may be an opening for social and economic promotion. This ILO publication contributes to one of the principles enunciated in 2012 by the United Nations on the occasion of the International Year of Cooperatives, which wishes to “encourage governments and regulatory bodies to establish policies, laws and regulations conducive to cooperative formation and growth.” For decades, both nationally and internationally, governments have been reluctant to recognize cooperatives as a viable business model, worthy of being promoted on an equal footing with what continues to be portrayed as the most efficient type of enterprise, namely stock companies. In fact, the relative stability of cooperatives during the current crisis has prompted publications demonstrating that cooperative enterprises are not less efficient enterprises and that the notion of efficiency needs rethinking. Thus, cooperatives will also be a suitable form of economic performance in a changed business world in the future. In fact, besides portraying
cooperatives, controlled by their members, as a means to achieve goals which stock companies do not find profitable and which governments are no longer able or willing to achieve reflects another equally important shift in how cooperatives are perceived; more and more, cooperatives are seen as a choice made by members seeking a specific and distinctive type of enterprise. Whereas sometimes, the formation of cooperatives remains the only “choice” that disadvantaged people have because mutuality, equality, equity, and democracy allow balancing the logic of the market and social inclusion policies. This third edition of the *Guidelines for Cooperative Legislation* focuses on ILO Recommendation No. 193 of 2002, on the promotion of cooperatives as this ILO standard forms the nucleus of the public international cooperative law.

To understand the centrality and the evolution of cooperative legislation, it is essential to note the context from which it is launched and developed: The International Labour Organization Recommendation No. 193 of 2002. The adoption of ILO R. 193 is a part of a long history of the ILO’s engagement in cooperative legislation started in 1920 and has since then assisted its member States to improve their cooperative law. Between 1952 and 1968 the organization carried out same 200 missions to 65 countries through a large technical cooperation programme of the United Nations Development Programme. With the adoption of the Recommendation No. 127 in 1996 concerning the role of cooperatives in the economic and social development of developing countries with a chapter on cooperative law. This document allows the cooperative law to take important steps leading to the adoption of the ILO Recommendation 193 in the International Labour Conference in 2002. Since then, a number of political effects and those of globalization have led to a crossroads in cooperative legislation.

The economic, social and political circumstances any law must reflect if it is to be effective needs analyzing against this background. The result of this analysis prompted the revision of the second edition of the Guidelines and it justifies the publication of this third edition.

This edition is also a response to the expressed needs of those using previous editions; in particular those who engage in cooperative lawmaking and who also need to be able to make their case in the political debate. As with the previous editions, the guidelines are not a recipe to follow. Whilst taking a clear position on the matters to be regulated in the cooperative law, they also mention other options and their consequences. They leave space for country specifics and for the particularities of national or regional legal systems; the ILO rejected the idea of presenting a model law. Model laws are often simply transferred or copied without the legislator adapting their underlying legal concepts to the particularities of its jurisdiction. These guidelines are centered on the ILO R. 193 and constitute the nucleus of this international law. The harmonization is both a consequence of and a requisite for the trend of further regional and international economic integration and it is an unavoidable consequence of globalization. If cooperatives are to remain competitive, the question is not whether cooperative legislation should support this trend but how peculiarities can be safeguarded within this trend.
The advantages of cooperatives as compared with other types of enterprises need strengthening through a common global effort which for stock companies has already been undertaken. The debate on cooperatives has gone to national and international levels. The transnational character of the ILO standards has been exemplary for the emergence of a global law by subject matter. Previous editions of the widely circulated guidelines were used as background material for cooperative policy and legislation consultancies in a large number of countries. The Guidelines for Cooperative Legislation is divided into four distinct part, but each part can be used independently of the others: a) regards the logic for cooperatives; b) provides specific information on cooperative legislation; c) provides the elements for cooperatives that should be considered in any cooperative legislation; d) explains cooperative lawmaking.

The guidelines do not restrict themselves in identifying possible answers to frequently asked questions such as: "What are cooperatives?"; "why legislation on cooperatives?"; "which law on cooperatives" but emphasize the recognition of the importance of the cooperatives system in the economy as an efficient model for sustainable development.

2. The role of enterprises in the social economy

In this context, it’s important to understand the reasons why the debate on the social economy has re-emerged. We are experiencing an unprecedented social and political exclusion of large numbers of people across the globe. The means of production and ownership of other assets are concentrated at a global scale in the hands of fewer people and anonymous entities as a result of communication technologies and deregulation of markets. These entities are the main global actors which are able to take advantage of globalized knowledge production. Concentration and exclusion may best be demonstrated by the patenting of the results of knowledge production. Gradually, the public debate is re-concentrating on cooperation, human dignity and solidarity to counter this exclusion. Social economy stands for another way of “doing business.” The debate on what constitutes the social economy is ongoing.

A distinction must be made between the social economy as a political concept relating to a specific activity or an objective and the legal form of the actors within that category. Social economy enterprises work in a variety of fields and take on various forms. In general the description of the social economy involves at least two aspects. It contains an account of activities and objectives such as health care, care for the elderly and disabled, education, job creation, integration of persons with disabilities into the labour market, reintegration of former drug users and delinquents. The common element of these activities is that they satisfy needs which are difficult to satisfy privately and which are less and less catered for by public institutions.

Among the best-known forms of enterprises in the social economy are the Italian social cooperatives. They provide health care, education or social services or integrate disadvantaged people into the labour market. They are characterized by heterogeneous membership/participation, bringing together producers, users, public entities, mainly local government; not all of them have to necessarily be a member of the cooperative. They cover
their financing needs partly through transfer from public budgets, from unemployment schemes and/or from social security schemes. In addition, they enjoy special tax treatment and special treatment in public procurement. This demonstrates also that the common interest of the cooperative members does not necessarily have to relate to the service or product produced and provided in order for the organization to qualify as a cooperative. The common member interest may relate, instead, to the way a good or service is produced and/or provided. The same is true for cooperatives rules of labour and social security law, as well as bookkeeping and accounting standards. The participation of (local) government in these Italian cooperatives ensures at least minimum public control. This phenomenon is mainly Italian in the formula of social cooperation but also exists in other EU countries in the form of the third sector and social enterprises. The Single Market Act II approved earlier this month by the European Commission describes the social enterprises as a flywheel employment in particular for females and youth but also for the employment of disadvantaged and disabled people.

In this context, surely the Italian social cooperatives can evaluate the performance of the most brilliant ones. Particularly in the area of social services, health and education, where cooperatives are able to develop services and create jobs, not only answering questions with regard to care and assistance that the public sector is unable to meet but also allowing for social innovation: developing new services that fall outside the traditional welfare in response to new areas of social risk as one of the new forms of poverty. These guidelines do not dictate the rules for cooperative legislation but have the objective of recognition and harmonization of the matter, trying to identify a possible path for the cooperative law. Considerations concerning globalization seek to explore the viability of cooperatives in the future; considerations concerning sustainable development seek to find policy arguments in favour of the maintenance of cooperatives as a specific enterprise type. Much depends on whether cooperatives will remain a viable enterprise alternative and whether the political arguments in favour of the maintenance of this alternative are stronger than those against it.

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