

Chapter 1

An Introduction to Cooperative Law

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1.1 Introduction

This chapter aims to provide an analytical and conceptual framework with which to understand cooperative law and undertake comparative investigation of this complex and fascinating area of law.¹ Accordingly, it will not offer a detailed account of

¹ This chapter, especially if read in conjunction with the following chapters of this book, may also serve as a support to lawmakers who wish to introduce or improve cooperative law. To this

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positive cooperative law—which, on the other hand, is the principal object of the following chapters of this book—but will rather concentrate on the main terminological and substantial issues that a modern and coherent theory of cooperative law is expected to deal with.²

To identify these theoretical issues, as well as possible solutions to them, this chapter will rely on a set of sources of a different nature, legal and non-legal, including cooperative practice and socio-economic scholarship. In particular—since a theory of cooperative law is, no doubt, expected to incorporate the essential features that distinguish cooperatives from other business organizations—priority will be given to the sources that focus on cooperative identity, beginning with the International Cooperative Alliance’s Statement on the Cooperative Identity of 1995 (ICA Statement) and the Principles included therein (ICA Principles). Indeed, not only has the ICA been the custodian of cooperative values and principles since 1895, centering its priorities and activities on promoting and defending the cooperative identity,³ but its Principles have also been integrated into the International

particular end, however, a more practical and comprehensive text is Henry (2012a). Notwithstanding its relatively long history (see Münkner (1982), p. 15, taking the Prussian Cooperative Societies Act of 1867 as the first law specially made to suit the organizational pattern of cooperative societies, but at the same time admitting: that before that time in England the first cooperatives were registered as friendly societies and as of 1852 as industrial and provident societies; that in France legal provisions were made in 1867 by including a special chapter on companies having a variable capital in the company code; and that in Michigan, USA, a law expressly recognizing cooperatives was made already in 1865; on the evolution of cooperative law, see also Montolio (2011); a historical account of cooperative law is offered in the chapters in part III of this book, normally in their first section), cooperative law is a subject largely neglected by legal scholarship, which results in very few, partial and outdated comparative studies and even in the almost total absence of cooperative legal studies in some countries (even in those characterized by a long and outstanding tradition in law and legal studies, like France: see Hiez 2013). By way of contrast, Germany and Italy (and more recently, but to a constantly increasing extent, Spain) are probably the countries where cooperative legal theory is most developed, at least in Europe. In particular, in Italy, cooperatives are a matter fully dealt with in all genres of legal literature (monographs, commentaries, treaties, manuals, articles and notes, etc.). The location of cooperative law in the civil code of 1942 has certainly contributed to this result.

² By way of contrast, in the rest of this book, due to its overall objectives, a more descriptive approach will be followed in presenting both national (part III) and international and supranational cooperative law (part II).

³ The International Cooperative Alliance (ICA) is an independent, non-governmental organization established in 1895 to unite, represent and serve cooperatives worldwide. It has 270 member organizations from 97 different countries as of 30 January 2013, thus indirectly representing around one billion individuals worldwide (source www.ica.coop, accessed 19 March 2013). Those included in the Statement of 1995, approved in Manchester, represent the third version of the ICA Principles; the preceding ones were contained in the declarations of 1937 and 1966; as this book will show (in part III), some national cooperative laws still refer to, or incorporate, the 1966 version of the ICA Principles. For a history of the international cooperative movement and the ICA, see, among others, Birchall (1997).

Labor Organization's Recommendation n. 193/2002,⁴ which admittedly increases their authoritativeness, also in terms of juridical effectiveness if one holds that said Recommendation is a source of public international law.⁵ In any event, the fact that the ICA Principles are explicitly referred to, or even formally incorporated into many national cooperative laws, demonstrates that they are a global "persuasive" source of cooperative law, which *per se* validates the choice to take them into consideration, or rather to move from them, when seeking a common, cross-national, denominator to discuss the cooperative identity issue from a comparative law perspective.⁶

To justify also from a practical point of view the theoretical exercise carried out in this chapter, it must be observed that a strictly legal analysis of cooperatives, especially where conducted in a comparative manner, can substantially contribute to the promotion of cooperatives for several reasons, including the general ones that follow.

Firstly, it may help to surpass a purely ideological approach to cooperatives, which—although necessary at the time of emergence of this particular type of business organization—may be detrimental to their continued growth now that they are nearly universally recognized by legislatures as one of the possible legal forms by which a private firm may operate in the market,⁷ and now that they are increasingly being appreciated by institutions and scholars for their positive contribution to sustainable human and economic development, to socio-political environment, and in short, to a better world.⁸

⁴ ILO Recommendation n. 193/2002 concerning the promotion of cooperatives—which may be found at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:R193, accessed 20 March 2013—revises and replaces (see par. 19, ILO Recommendation n. 193/2002) preceding ILO Recommendation n. 127/1966 on the same subject but with different scope; however, on the relationship between the two recommendations, see *amplius* Henry (2013a).

⁵ See in this sense Henry (2013a).

⁶ This methodology was already applied, although with limited regard to the comparative analysis of European national cooperative laws, in Fici (2013c), pp. 37ff.

⁷ Still, there are exceptions, which however have not precluded the formation of cooperative-type organizations: see Carroll (2013). Historically, before the enactment of laws on cooperatives, cooperative-type entities were mostly formed by employing a company type and adapting it to their specific needs, something which the law itself explicitly recognized as possible at times (see, for example, articles 219–228 of the repealed Italian commercial code of 1882, mentioned in Fici 2013a).

⁸ "Cooperative enterprises build a better world" was the slogan of the 193/2012 United Nations' International Year of Cooperatives, the purpose of which was to highlight the contribution of cooperatives to socioeconomic development, recognizing, in particular, their impact on poverty reduction, employment generation and social integration (see <https://www.un.org/en/events/coopsyear/index.shtml>, accessed 20 March 2013). On the socio-economic function of cooperatives, see also the Communication from the European Commission COM(2004)18 final, of 23 February 2004, on the promotion of cooperative societies in Europe. Many scholarly contributions highlight the socio-economic importance of cooperatives and their significance for human beings. Cf., among others and more recently, Restakis (2010); Sanchez Bajo and Roelants (2011); Henry (2012a), pp. 16ff., which however emphasizes that "cooperatives cannot—and must not—save the world", namely, they are "a special type of private enterprise" and not "a panacea for all the evils of this world" (*ivi*, p. 1). This is perfectly consistent with the approach to cooperatives and cooperative law adopted in this chapter.

Cooperatives, in fact, should be understood and studied, particularly by legal scholars, simply as one of the possible legal types of private organizations provided for by legislatures.⁹ Notwithstanding the origins of the cooperative movement, cooperatives are no longer linked to a specific group of people or workers with particular socio-economic characteristics, nor is there any reason to confine them thereto.¹⁰ Although the nature of the members and the services provided may affect the social desirability of cooperatives and thus be relevant in terms of policy (including tax policy), cooperatives are in principle business organizations that can be established by all those (individuals, entrepreneurs, other legal entities, etc.) interested in doing business in a cooperative form. This sort of “normalization” of the cooperative form is consistent with the view that cooperatives are an essential part of a pluralistic market populated by different players with diverse motivations, which prominent scholars deem particularly beneficial at the macroeconomic level.¹¹ At the microeconomic level, in turn, this approach is a precondition for examining cooperatives in relation to other business organizations, in particular (for-profit, investor-owned) companies, in order to conduct a comparative cost–benefit analysis of these different types of organizations, which among other things might show the rationale for their use and distribution in the real world, and provide guidance on the selection of the most suitable legal form for running a certain business.¹²

⁹ See *infra*, sec. 1.2.

¹⁰ On the contrary, ILO’s Recommendation n. 193/2002s; first paragraph states: “It is recognized that cooperatives operate in all sectors of the economy”, which is a point several national cooperative laws clarify. The last statement in the text, as correctly pointed out by Henry (2012b), p. 200, “does not overlook the fact that the formation of cooperatives often remains the only ‘choice’ that disadvantaged people have”. This seems to be, however, the consequence not much of a legacy of the past but rather of the very characteristics of this legal form, including the marginal role of capital, the democratic principle of administration, etc. Nearly a century ago, Charles Gide, a pioneer of cooperative theory—after stating that “if the consumers’ society had no other aim but to enable the working classes and the poor to feed themselves better, that would be no small thing”—recognizes that “consumers’ co-operation is not confined to the supply of food stuffs, but is able to extend to all the needs of human life, such as clothing, furnishing, and, above all, housing . . . And not only to the supply of material needs, but also to intellectual and moral ones . . .” (Gide (1921), pp. 2–3). Cf. also Gadea et al (2009), p. 32.

¹¹ On the macroeconomic benefits of a pluralistic market where for profit, cooperative and nonprofit, as well as public, enterprises operate simultaneously, see Stiglitz (2009), p. 345; Birchall (2011), p. 13: “diversity is important because it affects the capacity of a society to respond to uncertain future changes”. See also par. 6, ILO Recommendation n. 193/2002: “A balanced society necessitates the existence of strong public and private sectors, as well as a strong cooperative, mutual and the other social and non-governmental sector”; and COM(2004)18 final, of 23 February 2004, cit.: “today the Commission recognizes the rich variety of enterprise forms in the EU is an important element for the EU economy”.

Global data on cooperatives may be found in Birchall (2011), pp. 9ff.; Sanchez Bajo and Roelants (2011), pp. 105ff.

¹² This is the methodology found in Hansmann (1996), whose final words are worth mentioning here: “Freedom of enterprise is a fundamental characteristic of the most advanced modern economies. Capitalism, in contrast, is contingent; it is simply the particular form of patron ownership that most often, but by no means always, proves efficient with the technologies

Secondly, cooperatives need for their existence and development a specific legal framework that adequately reflects their particular nature and function,¹³ thereby ensuring them a level playing field relative to other business organizations, and that preserve their distinct identity, which more generally is the precondition for both a variety of legal entities and market pluralism to exist.

In fact, the very perspective adopted in this chapter, namely, to treat a cooperative as a particular type of business organization, suggests that the regulation of cooperatives cannot be identical to that of other business organizations, especially companies,¹⁴ but must be modeled on the specificities of its subject matter, which in turn this regulation contributes to shaping.¹⁵ This does not imply, however, that cooperatives are to be the recipients of a preferential treatment as compared to other business organizations, but of a specific treatment (which in fact, and in absolute terms, may turn out to be either better or worse than that reserved to other business organizations), as far as their particular features so require. This confirms the importance of a legal framework that, under organizational law, states and describes the essentials of cooperatives, thereby permitting the conveyance in a

presently at hand” (*ivi*, p. 297). Birchall (2011), p. 31, holds that “it is not possible to explain the presence of [cooperatives] without analyzing their advantages when compared to those of their competitors”. In times of economic and financial crisis, cooperative scholars emphasize the comparative advantage of cooperatives over other legal forms, as a consequence of their distinct identity: see in particular Sanchez Bajo and Roelants (2011), and Birchall and Ketilson (2009); Birchall (2013), pp. 1ff. Cf. also Spear (2000), pp. 507ff.

¹³ See par. 6, ILO Recommendation n. 193/2002: “Governments should provide a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by the cooperative values and principles set out in Paragraph 3”.

¹⁴ “Companization” of the cooperative form is viewed by some scholars as a recent trend in cooperative legislation: see in particular Henry (2012a), pp. 9ff., which divides the evolution of cooperative legislation into two phases: The first marked by distinguishing cooperatives from companies; the other one, starting in the 1970s, approximating them to companies, by unifying special laws applying to different types of cooperatives at national levels, unifying and harmonizing cooperative laws across national borders, and aligning cooperative law with stock company law, especially as far as the matters of capital structure, management and control mechanisms are concerned. Moreover, according to this Author, “The alignment of cooperative law with stock company law goes beyond introducing features of stock companies into cooperative laws proper. It can also be read from the at times indiscriminate application of other rules to cooperatives which were designed for stock companies and which contribute to shaping cooperatives as institutions and/or to defining their operations. . . . we need generally to look at labor, tax and competition law, (international) accounting/prudential standards, bookkeeping rules, and audit and bankruptcy rules”. Similarly, others speak of “hybridization” (Spear (2010)), and “degeneration” of the cooperative model (Somerville (2007), p. 5, 10).

¹⁵ If on the one hand it is true that “a good law cannot be drafted without a clear concept of the subject-matter for which the law is devised” (so Münkner (1974), p. 19), on the other hand law itself significantly contributes to the definition of the subject matter and the circulation of the concept thereof. It is not to hold a pan-legal view of the reality, but only to point out the role of law in shaping and interpreting the reality.

simpler manner of the cooperative identity for labor-, competition-, insolvency-, and tax law, as well as other policy purposes. The controversy surrounding the legitimacy, under European Union's State aid regulation, of the particular treatment of cooperatives within national tax law, which has recently led to a very significant judgment by the European Union Court of Justice, clearly illustrates the point at issue.¹⁶ However, more general explanations of the role of law in fostering cooperatives' growth exist, as well.¹⁷

Thirdly, the overall understanding of cooperatives, and of their distinct identity, would be greatly facilitated by an interdisciplinary approach to cooperatives, which would include cooperative legal theory and lend more attention and importance to it. For this to happen, it is necessary to strengthen cooperative legal studies and increase their visibility, which in particular would permit bridging the existing gap between economic and legal studies on cooperatives. In many cases, indeed, the cooperatives of economists do not correspond to the cooperatives of jurists. Economists tend to stress some characteristics of cooperatives (for example, their ownership structure) while overlooking others (for example, their solidaristic or altruistic orientation) that are fundamental to the global comprehension of cooperatives and their distinction from companies.¹⁸ On the other hand, legal scholars fail to analyze provisions of cooperative law and/or to compare possible solutions to a particular problem of cooperative regulation (also) in light of the economic theory. In the remainder of this chapter, concrete examples of the benefits of combining the legal and the economic theory of cooperatives will be presented.

¹⁶ See Court of Justice of the European Union, 8 September 2011 (C-78/08 to C-80/08), currently available at <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-78/08&td=ALL>, and *amplius* on this point Fici (2013b).

¹⁷ See Henry (2012a), p. 40f., which highlights the following: The existence of a cooperative law is a necessary, though not a sufficient, condition for getting a cooperative policy to work; the rule of law is a fundamental element in the new approach to development, which emphasizes respect for human rights; national laws are a necessary means to implement public international cooperative law, of which ILO R. 193 forms the nucleus; in international cooperation and among global economic agents, law is used in an ever-increasing manner as a means of information and communication, namely, law is a reference point and a guideline; law bridges the gap between the complexity of social life and the definition and attribution of various roles in society, on the one hand, and the knowledge, or rather the lack thereof about technology and social issues required in order to understand these complexities, on the other; law is a suitable and tested means to represent and maintain a just balance between the autonomy of the cooperators and the cooperatives, on the one hand, and the powers of the state, on the other; and law is a means to transform informality into formality.

¹⁸ The economic theory of cooperatives is vast. Extensive surveys of the literature, as well as ample bibliographic references, may be found in Bonin et al. (1993), pp. 1290ff.; Kalmi (2003); Mazzarol et al. (2011). See also, recently published articles in the *Journal of Entrepreneurial and Organizational Diversity* (JEOD), available at www.jeodonline.com.

1.2 Structure and Sources of Cooperative Law

Strictly speaking, cooperative law is the organizational law of cooperative entities—which, depending on the jurisdiction, are termed “cooperative societies”, “cooperative associations”, “cooperative companies”, “cooperative corporations”, or simply “cooperatives” (which are alternatives that, as will be shortly pointed out, do not necessarily carry legal implications)—as identified in (inevitably) general terms in this chapter and more accurately in the following chapters of this book. It thus consists of rules on the definition, formation, organizational and financial structure, allocation of surplus, operations, relations among constituencies and among cooperatives, dissolution, merger, demerger and conversion, etc., variedly distributed throughout a text (or, sometimes, more than one legal text).¹⁹

In a broader sense, cooperative law also comprises the provisions specifically dedicated to cooperatives that may be found in bodies of non-organizational law, such as labor-, tax-, competition-, and insolvency law, etc., and even civil procedure-, property-, and contract law.²⁰

This chapter (and this book) will almost entirely deal with cooperative organizational law and only briefly and occasionally refer to non-organizational legal aspects of a comprehensive cooperative regulation.²¹

However, the importance of cooperative non-organizational law for the full understanding of cooperatives and, as far as this chapter is concerned, for the very organization of cooperatives must not be overlooked. On the one hand, as already stated, organizational law is fundamental to the adequate treatment of cooperatives in other fields of law. In particular, if organizational law carefully defines a cooperative, a special treatment of cooperatives under, e.g., tax or competition law is more likely to exist and be justifiable, as the general legal regime of business organizations may more easily appear inconsistent with the distinct legal nature of cooperatives. On the other hand, the specific treatment of cooperatives under a particular sector of non-organizational law, may influence the organization of cooperatives if, for example, a particular tax treatment is reserved to

¹⁹ To give but an example, moreover of a supranational flavor, the regulation of the European Cooperative Society (on which see specifically Fici [2013b](#)) is contained in a text divided into eight chapters, which are: general provisions; formation; structure; issue of shares conferring special advantage; allocation of profits; annual accounts and liquidated accounts; winding-up, liquidation, insolvency and cessation of payments; additional and transitional provisions. Henry (2012a), pp. 63ff., distributes the main contents of an ideal model of a general cooperative law between the following sections: preamble; general provisions; formation and registration; membership; organs/bodies and management; capital formation, accounts, surplus distribution and loss coverage; audit; dissolution; simplified cooperative structures; horizontal and vertical integration; dispute settlement; miscellaneous.

²⁰ On the supplemental application to cooperatives of the law of companies or other entity types, see immediately below in the text.

²¹ On the other hand, a point treated in all the chapters in part III of this book (usually in their eleventh section) is cooperative taxation.

cooperatives that are organized or act in a certain way rather than in another way nonetheless permitted by law.²²

It must be observed—in line with the aforementioned need to examine cooperatives in more neutral and less ideological terms and in comparison with other business organizations—that the above statement does not only regard cooperatives and cooperative law, but other subjects as well. For example, tax-, insolvency-, labor-, and securities law, etc., play the same substantial role in determining the overall structure of company law, and may equally affect the internal governance of companies at various points.²³ Nevertheless, with respect to cooperative law, as will become evident in the following pages, the interplay between organizational law and other bodies of law, namely, labor and contract law, is in some instances the inevitable consequence of the nature of cooperatives as user-owned organizations.

The foregoing is intertwined with another issue of relevance in a general introduction to cooperative law. Cooperatives may normally perform any economic activity and be engaged in any sector of the economy, although some restrictions are found in some jurisdictions (which moreover, when unjustifiable in light of the particular nature of cooperatives, are to be classified as unlawful discrimination).²⁴ When cooperatives conduct an activity that the law subjects to a certain regulation, they must comply with that regulation just as all other business organizations conducting that activity must, unless the law provides otherwise. Obviously, in the former case, those regulations do not pertain to “cooperative law”; while in the latter case, to the extent that a specific treatment of cooperatives exists, which is different from that of other business organizations (even simply because cooperatives are exempted from one or more provisions), the rules concerning cooperatives can be considered a portion of “cooperative law” in its broader meaning.

As already stated, almost all jurisdictions recognize and regulate cooperatives as an eligible legal type of organization within a menu of types of private entities provided for by legislatures. However, one of the main problems in dealing with cooperative law from a comparative perspective (and sometimes even within a

²² See, above all, the “double track” model of cooperative legislation described in following sec. 1.7.

²³ Cf. Kraakman et al. (2009), p. 18f.

²⁴ Discrimination would be unlawful on several grounds, such as the principle of equal treatment and freedom of enterprise and competition, as well as public international law, i.e., ILO Recommendation n. 193/2002 (see *supra*, sec. 1.1). To help avoid such illegal treatment of cooperatives as compared to other business organizations, some cooperative laws explicitly state, in their opening provisions, that cooperatives are free to conduct any economic activity and operate in any sector of the economy. See, for example, art. 1, par. 2, of the French cooperatives act n. 47-1775 of 10 September 1947: “*Les coopératives exercent leur action dans toutes les branches de l’activité humaine*”; art. 1, par. 2, of the Spanish cooperatives act n. 27/1999 of 16 July 1999: “*cualquier actividad económica, lícita podrá ser organizada y desarrollada mediante una sociedad constituida al amparo de la presente Ley*”; art. 7, par. 1, of the Portuguese cooperative code: “*desde que respeitem a lei e os princípios cooperativos, as cooperativas podem exercer livremente qualquer actividade económica*.” This point is treated in the chapters in part III of this book (usually in their fourth section).

single jurisdiction!) arises from the fact that the system of sources of cooperative law is very complex due to a number of reasons.

Firstly, because there are several, formally distinct models of cooperative legislation. Depending on the jurisdiction, the general cooperative law may be found, *inter alia*:

- (i) In a single instrument which deals exclusively with cooperatives (normally an act on cooperatives, which in certain cases takes the emphatic name of “cooperative code”)²⁵;
- (ii) In several instruments dedicated to cooperatives only²⁶; or
- (iii) In a more general instrument (such as a civil code, a commercial or a company code, or an act that deals with a plurality of legal entities²⁷).

Of course, the above classification has only a formal value, since a juridical effectiveness does not depend on the denomination or location of the regulation but on the nature of the source from where the regulation flows and its relationship with other sources of law. Moreover, the above may also be found, although probably to a lesser extent, in the regulation of other legal entities, such as companies. It remains, however, that this variety makes comparative investigation of cooperative law more complex.

Furthermore, in some countries, cooperative law is a matter of (exclusive or concurrent) regional/state competence, which further complicates the legal framework of cooperatives at the national/federal level and for comparative legal research objectives.²⁸ This may also raise an issue in terms of cooperative equal

²⁵ A prominent example of this model is represented by the German act on cooperatives of 1889 although, even in this jurisdiction, some rules applicable to cooperatives may be found in other instruments such as the law on conversion of 1994/1995: see Münkner (2013). The cooperative code is the distinguishing feature of the Portuguese legal system, together with the numerous references to, and the special protection of cooperatives in the Constitution. Notwithstanding the code, however, in the Portuguese jurisdiction, there is a considerable amount of special laws on particular types of cooperatives: see Namorado (2013). The UK legislation on cooperatives provides a yet more particular example, as an administrative authority (the Federal Conduct Authority—FCA) is entrusted with the definition of a *bona fide* cooperative (i.e., a genuine cooperative) and only few explicit indications as to what a *bona fide* cooperative should or must be, are found in the applicable law (i.e., the Industrial and Provident Societies Act—IPSA of 1965, to be renamed the Co-operative and Community Benefit Societies and Credit Unions Acts 1965–2010 when sec. 2 of the Co-operative and Community Benefit Societies Act 2010 is brought into force): see Snaith (2013).

²⁶ This model can be found, for example, in Italy, where notwithstanding the fact that cooperatives are regulated in the civil code, there are other laws dealing with general aspects, such as investor members, consortia of cooperatives, and cooperative auditing: see Fici (2013a). Another example is Austria, where the general act on cooperatives of 1873 is complemented by an act on cooperative auditing, another on the merger of cooperatives, and yet another on cooperative insolvency: see Miribung and Reiner (2013).

²⁷ The general regulation of cooperatives is found, for example, in the Italian and in the Netherlands civil codes, in the Czech and in the Slovakian commercial codes, in the Belgian company code, in the Liechtenstein natural persons and company act.

²⁸ See, e.g., Australia, Canada, India, Spain, and United States. With regard to the Spanish jurisdiction, significantly Gadea et al (1009), p. 62, points out that the fragmentation of cooperative

treatment when a country's company law is, by way of contrast, a matter of exclusive competence of the state (or federal state).

Secondly, because the majority of jurisdictions have regulations on particular types of cooperatives (worker cooperatives, agricultural cooperatives, consumer cooperatives, cooperative banks and credit unions, etc.) in addition to—or, in a few instances, instead of—a general cooperative regulation.²⁹

Depending on the country, the regulation of these particular types of cooperatives may be contained either in separate special laws or in the very body of the general cooperative law. The former model inevitably complicates the legal framework regarding cooperatives, as well as legal research, especially of a comparative type. The latter is advisable where particular types of cooperatives were considered, in light of their special characteristics, to necessitate special legal treatment.³⁰

In some countries the number of special laws on cooperatives is so high, and the aspects they cover so numerous, that special laws end up prevailing *de facto* over the general cooperative law, in the sense that there is no need to refer to the general cooperative law for the formation and management of these special cooperatives (regardless of the formal relation between general law and special laws as stipulated by law³¹). In some cases it is not even understandable why there is a special law for certain types of cooperatives, since the particular reasons for a specific regulation are not clear.³²

law in Spain, due to distribution of competences between the State and the Autonomies, is potentially harmful for cooperatives competing with capitalistic enterprises which, in contrast, enjoy a uniform treatment under State law.

²⁹ This point is treated in the chapters in part III of this book, normally in their second section. In Japan a general law on cooperatives does not exist, but several special laws: see Kurimoto (2013). In the Republic of Korea, a general law on cooperatives was introduced only in 2011 and now co-exists with several special laws: see Jang (2013). In China there is only a law on farmer specialized cooperatives: see Ren and Yuan (2013).

³⁰ See Henry (2012a), p. 59f., which refers to a trend towards having one single general law covering all types of cooperatives, possibly with specific parts/chapters for specific types of cooperatives/activities, because this should best guarantee the autonomy of cooperatives, diminish bureaucracy, avoid the fragmentation of the cooperative movement, contribute to legal security for those dealing with cooperatives, be the most adequate tool, in the context of development constraint, to reach congruency between development-oriented, member-oriented and self-sufficiency goals of cooperatives. On this point see also the 2001 United Nations Guidelines aimed at creating a supportive environment for the development of cooperatives, at paragraphs 11 and 12, in <http://www.un.org/esa/socdev/social/documents/AnnexE200168.pdf>, accessed 25 March 2013.

³¹ Being contained in laws that are “special” with respect to the “general” cooperative law, the provisions of a special cooperative law should prevail over those of the general cooperative law, which should apply to special cooperatives only additionally and residually, i.e., to fill the gaps left by the special law and moreover to the extent that they are compatible with those of the special law. This is explicitly stated, for example, by art. 2520, par. 1, Italian civil code.

³² France is probably the most remarkable example in this regard. See Hiez (2013).

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