

HISTORY OF THE EVOLUTION OF COOPERATIVE LAW FROM ITS ORIGINS TO THE PRESENT DAY*

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To understand the history of cooperative legislation, it is helpful to look at some milestones in its development. Two important markers shape its evolution: the law of 24 July 1867 which recognised, although only indirectly, the existence of cooperative societies, and the legislative framework of the law of 10 September 1947, which defined the legal form and gave it its full legal identity. The slow genesis of a law specific to cooperatives began with the first attempts at forming cooperatives and culminated with the lasting consolidation of cooperative legislation. However, the rooting of particular clauses in the body of French law led to the specification of a unique statute of which the law on the social and solidarity economy, which was voted on this summer, is an obvious example.

Historique de l'évolution du droit des coopératives, de ses origines à nos jours

Pour comprendre l'histoire de la législation coopérative, des jalons doivent être posés. Deux importants marqueurs permettent de structurer son évolution : la loi du 24 juillet 1867, qui vient reconnaître – bien qu'indirectement – l'existence des sociétés coopératives, et la loi-cadre du 10 septembre 1947, qui en définit le statut et lui donne sa pleine identité. La lente genèse d'un droit à destination des coopératives a débuté avec les premières tentatives d'association et s'est achevée avec l'affermissement durable du droit coopératif. Cependant, l'enracinement des statuts particuliers dans le maillage légal a abouti à la spécification d'un droit propre, dont la loi sur l'économie sociale et solidaire – votée cet été – est un exemple flagrant.

Un histórico de la evolución del derecho de cooperativas, desde sus orígenes hasta nuestros días

Para comprender la historia del derecho de cooperativas, hay que recordar los hitos. Dos marcadores importantes permiten estructurar su evolución : la ley del 24 de julio 1867, que reconoce – aunque de manera indirecta – la existencia de las sociedades cooperativas, y la ley marco del 10 de septiembre 1947, la cual define su estatuto y les da su plena identidad. La lenta génesis de un derecho orientado a las cooperativas se inició con los primeros intentos de asociación y concluyó con el fortalecimiento durable de la legislación cooperativa. Sin embargo, el arraigo de los estatutos particulares en la red legal ha producido la especificación de un derecho propio, cuya ley sobre economía social y solidaria, votada durante este verano, constituye un ejemplo evidente.

Cooperative law required patient and rigorous efforts for almost one century, until it found its place in the French legislative structure. The reasons for this long period are manifold and the result of several factors: perception of the nature and the purpose of cooperatives, the preparedness of the members of cooperatives – as well as their critics – not to introduce specific legislation, the difficult political, economic and social contexts, etc.

Initially, general usage and private contracts provided for a concrete application, which left it to the efforts of cooperative members to expand – or limit – their association; in this sense, this practice continued to be essential. In its course, the theory of the cooperative movement could be developed in the 19th century – especially because of the efforts of reformists, sociologists and industrialists such as Charles Fourier, Robert Owen, or Saint-Simon. Even though the Societies Act (*Loi sur les sociétés*) of 24 July 1867 recognised – albeit indirectly – the existence of cooperative societies, it was due to case law as well as to the authors of the doctrine to give it a more comprehensive framework under the guise of legal certainty. For the benefit of the Waldeck-Rousseau Act of 21 March 1884 authorising professional associations, the legislature intervened repeatedly to provide specific legal provisions for the various cooperative families. Being useful in times of peace and necessary in times of war, the cooperative model finished by acquiring a legal status which clearly identifies and simultaneously defines it thanks to the framework legislation of 11 September 1947. The French Parliament has never stopped tightening its legal net just another little bit.

This study therefore wants to track the evolution of the legislative and regulatory framework of the law for cooperatives by starting from its origins in common usages and ending in its current specificity⁽¹⁾.

(1) This article is mainly based on D. Hiez, 2013, particularly pp. 23-37, and L. Seeberger, 2012. It is the theme of a doctoral thesis in the history of law and institutions at Université de Montpellier-1 on the subject of “The historic evolution of cooperative law in France in the 19th and 20th century” (*L'évolution historique du droit des coopératives en France aux XIX^e et XX^e siècles*), with Pr. Yves Mauton as supervisor.

The slow emergence of legislation for cooperatives

Agricultural and workers' associations: the first objects of legislative attention

Cooperation between farmers developed from the system of *fruitière* (ripening) – generally used to describe cheesemaking societies –, which was developed in Switzerland before the 18th century and became more popular in the neighbouring regions of France in various periods – in the Franche-Comté region during the 14th century and in the southern Jura as well as the Préalpes de Savoie – and it then developed in the Provence and the Roussillon regions (Melo, 2012). In principle, the relations between these growers focused on the reciprocal provision of milk between neighbours. Consequently, they formed some sort of mutual society between each other; various producers participated in cheese production in relation to their material and financial means.

Instead of selling the mature cheese and distributing the profits between the associates in proportion to their respective contributions, each cheese belonged to one of the associates – the one contributing the majority

of the milk – and this associate was then debtor to the others. Subsequently, when one of the producers accumulated an excessive credit, this producer became the owner of the next cheese, which he could dispose of at his discretion. The rules determining the relations between the associates turned out to be insufficient; the cooperative members then started establishing charters, in which the associates laid down their mutual obligations and prescribed sanctions against those violating these obligations. These contractual relations therefore contributed to the emergence of new disputes, and traces of them can be found from 1840 onwards in the jurisdiction of the Besançon Court of Appeals (I)⁽²⁾.

(2) References to legal texts are quoted in Roman numerals referring to the Annex at the end of this article.

Ultimately the question arose of the applicable law for such associations: would it not be appropriate to subject the old customary usages, on which the majority of the “ripening” associations were based, to a legal system to enhance legal certainty and allow the clarification of legal standards? In 1863, a commission was set up for this purpose by the prefect of the Doubs region, a commission chaired by Gustave Loiseau, the first president of the Besançon Court, who described the outcome of these efforts in his report of 23 August 1865. In particular, the commission considered that the strict application of the rules of civil law to cheesemaking societies would be disastrous if not impossible and recognised that legislation would be necessary given the divergence of the rulings handed down by various courts. It therefore proposed to introduce two articles in the Rural Code (*Code rural*) to qualify cheesemaking societies as “associations of a special nature under civil law” (*sociétés civiles d'une nature spéciale*; article 1), and if it was imperative and in the public interest to impose limits on the freedom of private contractual arrangements and of prescribing special provisions, such provisions should be limited to the strictly necessary. Finally, there were plans to enshrine in the law the rules, which could not be waived by contractual arrangements, and the specific usages, which were considered as the fundamental basis of cheesemaking associations (article 2).

However, this proposal was not followed up and the associations were never subject of any review in the legislative activities devoted to the various parts of the Rural Code (*Code rural*). But based on the work done by the commission, court rulings were successful in adopting more uniform solutions (II).

The first cooperative experiences and their temporary legal recognition

Despite the ban – based on the Allarde Decree (2 to 17 March 1791), the Le Chapelier Act (14 to 17 June 1791) and the affirmation of the offence of forming coalitions in articles 141 to 416 of the Penal Code – , cooperative organisations proliferated in France from the first third of the 19th century onwards. Their economic and social character primarily forced them to establish and to develop outside any legal framework and this gave rise to major practical difficulties.

But the emerging Second Republic seemed to take a favourable stance towards workers, when the provisional government promulgated the law of associations for workers by a decree adopted on 25 February 1848 on

the guarantee and organisation of work (III). Subsequently, another decree on the establishment of national workshops (IV) introduced the opening of work sites in Paris and its surroundings: the jobless were remunerated by the state for digging and excavation work while waiting to be returned to their normal employment by the return of prosperity. The vacuity of such a solution was apparent very quickly: there was a very high frequency of abuse, and the State had to support the workers forced to be inactive as a result of the insufficient number of tasks available; on 30 May, the National Assembly substantially modified the organisation of work in national workshops, before it ordered their definite closure on 22 June. This decision gave rise to several days of confrontation and thousands of fatalities. With the rebellion put down and peace re-established, the final abolition of the workshops was announced on 3 July.

But the State wanted to encourage the development of workers associations while retaining its role in the background; the essential efforts would have to be made by the workers themselves. In an initial period, this was done by awarding a loan of 3 million francs to be shared between the associations formed by contractual agreement either between workers or between workers and employers and by setting up a promotion council to advise on the disbursement of the loan to workers' associations (V); in a second stage, the National Assembly authorised workers' associations to participate in the decision-making or even the direct allocation of public works (VI). Workers were thus allowed to form associations, but this right was granted only as a legitimisation for the State to withdraw from its obligation to a right to work.

Simultaneously, the National Assembly of 1848 expressed a brief but vivid interest in amending – i.e. abolishing – the offense of forming associations enshrined in articles 414 to 416 of the Penal Code.

The Constituent Assembly discussed a proposal to modify the character and the sanctions attached. It was referred back to the workers committee and then to the legislative committee and finally to a special commission and therefore was the subject of three reports and just as many legislative proposals, which all came to nothing. The Legislature also received a proposal demanding the complete and full abolition of the offence of forming coalitions; a commission was then set up to preparing a legislative proposal.

But when Louis-Napoléon Bonaparte came to power after his election as President of the Republic on 10 December 1848, it put a stop to any aspirations of the workers. The outcomes are the Acts of 27 November 1849 (VII) and 25 May 1864 (VIII), which partially modified the provisions of articles 414, 415 and 416 of the Penal Code. In a first stage, legislative interventions confined themselves to stopping the attacks on the principle of the equality of all citizens before the law, but, in a second stage, they also focused on stopping the penalisation of coalitions and on establishing a new offence instead: infringing on the free exercise of industrial and labour activities; article 414 of the Penal Code is thus intended to protect this freedom.

But the distrust of those in power towards the cooperative groups remained at the eve of the 1860s, even if the Second Empire proved to be more liberal⁽³⁾.

(3) It meant waiting for the Waldeck-Rousseau Act of 21 March 1884 on the establishment of professional associations for the Le Chapelier Act and article 416 of the Penal Code being finally repealed.

The Act of 24 July 1867: Indirect recognition of legislation on cooperatives

The first legislative failures and the promulgation of the Act of 24 July 1867

In 1865, a brochure entitled “Cooperative societies and their legal structure” (*Des sociétés de coopération et de leur constitution légale*) was published anonymously in Paris. This publication contained the text of a draft law and, in the form of a document, provided the translation of the act governing the system of cooperatives in England during this period (Nast, 1928).

In the same year, a draft law on an important reform of corporate law was presented to the Legislature; it was divided into four books, each devoted to a particular category of corporation. Book IV was entitled “Societies of cooperation” and intended to determine, specify and affirm the existence of these societies. At the end of 1865 and upon request of the commission established by the legislature, there was an enquiry initiated by the Ministry of the Interior which concerned cooperative societies. After consulting members of cooperatives, the executive was forced to reconsider in the face of a challenge raised partly by the stakeholders themselves; it therefore focussed on including cooperatives in the general framework of corporate law and allowed certain exemptions from the general rules insofar as they were necessary to ensure the balance and viability of the planned legal development. Book IV of this draft legislation was thus replaced by a text on “special provisions for cooperative societies”; the legislative commission ultimately introduced new modifications before it presented the final proposal for a vote in Parliament. In this new version, Book IV was changed into a much more general Book III which is only concerned with “special provisions for societies of variable capital”. They were the first companies affected by this tedious legal effort and concerned to see specific legislation, which suddenly appeared for their benefit, while they feared to be controlled by the government which inspired this minimalist form of recognition.

Nonetheless, the Societies Act of 24 July 1867 (IX) did not simply focus on recognising the existence of cooperatives; it also modified the rules of general law which could have been a barrier to their establishment and development.

The contribution of the Act of 24 July 1867

This first significant legislative intervention was related to general corporate law rather than a law specifically tailored to cooperatives. But it nonetheless made a major contribution to the development of cooperatives, as the normal companies under commercial and civil law did not or only marginally integrate the provisions of Book III in their statutes; and they were not intended for them either, as cooperative societies were counter to the economic security desired in such entities and openly embraced this tool for themselves⁽⁴⁾.

The variability of capital and consequently of personnel was an *ex nihilo* creation of article 48 of the Act and directly intended for cooperative groups, even though they were not obliged to adopt it.

(4) After going through the subsequent reforms of corporate law, Book III of the Act of 1867 was enshrined in articles L.231-1 to L.231-8 of the Commercial Code in the version in force since September 2001.

Their primary interest laid in being able to set up a company with meagre financial contributions; it had to be possible for the capital to grow and to develop during the life of the company without amending the statutes or publication. This was the preparation for the accumulation of capital. And as it was then possible to easily join such a company, it had to be just as easy to leave it. Book III therefore provided for the possible exit and the right of the company to exclude one of its members which constituted another new feature in corporate law.

Furthermore, the personal certification of shares described in article 50 highlighted the principle of *intuitu personae* and thus allowed societies wishing to be subject to the variability of capital to be categorised as a private company. The company's shares were tied to individuals and – even after their release – they could only be commercially traded after the definite establishment of the company and without an opposing vote of the company's Board of Administration or its General Assembly.

The sustainable strengthening of cooperative law

The effervescence of special provisions

Leading the Ministry of the Interior gave Pierre Waldeck-Rousseau a lot of room for manoeuvre, and between 1883 and 1896 he took it upon himself to establish a specific legal basis for cooperatives. His project consisted of a number of successive proposals which had to be abandoned due to the violent opposition of small businessmen fearing for their survival; they accused the consumer cooperatives of disloyal competition because of the tax advantages they enjoyed – especially their exemption from patent fees.

AGRICULTURAL COOPERATIVES

Thanks to the Act of 21 March 1884 (X) on the establishment of professional associations and even though Book III of the Act of 24 July 1867 granted cooperative societies their first rights, unions attracted the greatest attention of the legislature in view of a legal framework for the cooperative movement. The first legislative provisions were thus intended for agricultural cooperatives. It was the Act of 5 November 1894 (XI) on the establishment of agricultural credit unions which promoted the establishment by members of agricultural associations, and – accompanying these unions – agricultural mutual credit societies. In this aim, the Act granted these credit unions various specific guarantees and advantages such as the exemption from patent fees, income tax on securities and certain formalities and obligations, which were imposed on regular commercial companies. Subsequently, the Act of 31 March 1899 (XII) on the establishment of regional mutual agricultural credit societies and the Act of 29 December 1906 (XIII) authorising advance payments to agricultural cooperatives structured and reinforced the system of mutual agricultural credit unions. The latter text in particular was meant to organise long-term credits for the benefit of agricultural cooperatives when they were affiliated to a local mutual credit union. The Act specified under which conditions the latter could be secured either by local and regional banks established according to the Act of 5 November 1894 or by cooperatives depending on agricultural unions.

Freed from these attributes, the unions were relegated to their proper objectives by the court rulings of the beginning of the 20th century (XIV); these decisions and ordinances, which were widely commented by legal doctrine, provided the basis for the Act of 12 March 1920 (XV) on the extension of the civil capacities of professional associations which extended their capacity to perform activities of agricultural purchasing cooperatives under certain conditions. Especially Book II of the Act on credit unions and agricultural cooperatives of 5 August 1920 (XVI) laid the foundations for agricultural cooperatives. This Book specifies in four articles a certain number of characteristics which had only been implemented in a simple way so far.

LOW-COST HOUSING COOPERATIVES

The last decade of the 19th century was marked by growing demands for workers' rights, and the Act of 30 November 1894 (XVII) on low-cost housing offered even the smallest incomes the means to find housing at a more favourable price by engaging in the construction or acquisition of low-cost houses. An Act of 5 December 1922 then codified the legislation on low-cost housing and smallholdings and was subsequently amended by the Act of 27 April 1923. These cooperatives were related to the reconstruction cooperatives established immediately after the First World War (XVIII).

PRODUCTION WORKERS COOPERATIVES

Their origins date back to the Act of 18 December 1915 (XIX) on production workers cooperatives and work organisation. It was then enshrined in the Labour Code and substantially developed in the Act of 19 July 1978 (XX) which became the single statute governing cooperatives of the SCOP type (*sociétés coopératives ouvrières de production*). Within the provisions of the latter, production workers cooperatives are governed by the Act of 10 September 1947, Book III of the Act of 24 July 1867 as well as the Act of 24 July 1966 on commercial companies. They thus had to include the variability of capital and could only be established in the legal structures of SARL (limited liability company) or SA (public limited company).

CONSUMER COOPERATIVES

Together with the production workers cooperatives, consumer cooperatives represent the most traditional model of the cooperative movement. Their development goes back to the first half of the 19th century in both France – where several municipalities had their own credit, consumer and production cooperatives – and the United Kingdom with the famous experience of the “Rochdale Society of Equitable Pioneers”. But these cooperative societies only experienced a real boom on the second half of the 19th century and found themselves in violation of the provisions of the Act of 24 July 1867 which prohibited an increase of corporate capital by more than Fr.200.000 per year. The Act of 7 May 1917 (XXI) on the organisation of credit for consumer cooperatives finally gave them a proper legal framework.

The legislators' obvious interest was to allow them access to raw materials to stem the type of speculation, to which small businesses tended to be victims, and the legislators therefore used the opportunity of

this act to encourage and impose credits on consumer cooperatives. These cooperatives therefore had a specific objective: selling to their associates the consumer products they bought or produced either themselves or by forming unions amongst themselves; distributing their profits among their associates on a *prorata* basis to individual consumption or by employing their entire profit or parts thereof for projects of social solidarity.

Despite its numerous amendments, the Act of 7 May 1917 remains the legal framework for consumer cooperatives. It must be seen in relation to the provisions of the Act of 10 September 1947, however, which established a general statute for cooperatives and which it had to comply with as well as article L.412-1 of the Consumer Code, which was laid down in the Act of 26 July 1993 (XXII).

The framework legislation of 10 September 1947

Following the promulgation of specific acts for the cooperative sector, more general efforts were undertaken. The authors were particularly concerned that the proliferation of specific legislation might be harmful to the global appreciation of cooperative principles and that some would even distort them.

At the beginning of 1927, a legislative proposal was placed before the Chamber of Deputies by the Parliamentary group of the cooperative movement. This first deliberation continued the following year in a more concise form and was forwarded to the High Council of the cooperative movement. Following a detailed examination, a legislative proposal was presented in 1931; but it was put on hold by the President of the Council as a result of a struggle on doctrine regarding the legal categorisation of cooperatives. Article 1 of the proposal said that cooperatives are companies or associations, and the Minister of the Interior refused to authorise this status. At the same time, Paul Ramadier⁽⁵⁾, a Member of Parliament, also presented a legislative proposal in 1931, in which he defended the preparation of an overall legislative structure. In his opinion, it was useful to establish a real Code of the Cooperative Movement which would encompass all legislative provisions governing cooperative groups and would thus provide a stable and flexible legal framework integrating specific statutory provisions. Despite the pertinent nature of this proposal, it was not discussed in the Chamber of Deputies.

Even though draft legislation on commercial cooperatives was presented in April 1937, the restart of extra-legislative as well as legislative activities on legislation for the cooperative movement was only presented in 1938 on the occasion of the Parliamentary Days of the cooperative movement. A government commission attached to the presidency of the Council, the so-called Commission Matignon because of its venue in the Hôtel Matignon, was mandated to draft a text. It met monthly until April 1940 and amended and completed the text of 1931. It finally presented a text of 13 articles which would constitute the statute of the cooperative movement; it proposed a general definition of the cooperative movement adopted by consensus, but it avoided the issue of the legal structure to be adopted by cooperatives (Bouly, 1946). Just as the activities in 1931, the work done by the Commission Matignon of 1940 was never discussed in the Chamber.

(5) Paul Ramadier (1888-1961) was a socialist Member of Parliament and Mayor who held eight ministerial offices and was President during the Fourth Republic. He was a militant cooperatist – he was a member of the High Council of the cooperative movement – and the main initiator of the framework legislation of 10 September 1947.

Only in the post-war years following the liberation of France and the plans for economic recovery a momentum developed in favour of implementing a statute of the cooperative movement, which had to benefit from a simple but comprehensive framework in which it could develop and participate in the economic recovery of the country. As newly appointed Minister, Paul Ramadier revitalised his proposal in the government of Léon Blum. The draft law was introduced in the National Assembly on 14 January 1947 where it was first voted on 30 July and adopted by an overwhelming majority of 462 votes against 42; after an emergency procedure adopted by the Council of the Republic for an amendment of the text, the framework legislation on a statute for the cooperative movement was finally adopted almost unanimously on 10 September 1947 (XXIII).

This Act is still in force, albeit with the amendments, additions and updates adopted at various times. Without being revolutionary, it represents a basic legislative effort covering almost the full century. It finally introduced clarifications with respect to the legal nature of cooperative groups and the fundamental principles governing the movement, but it also suffered from a number of problems, which were partly related to its lack of success.

It introduced a first legal definition of a cooperative. The legal nature of cooperative societies was clearly established for the future and prevented any redefinition by court rulings. The text remains very general, but it says that cooperative societies have those essential objectives: “to reduce – for the benefit of their members and by their common effort – the cost price and, as the case may be, the selling price of certain products or certain services by assuming the role of entrepreneurs or intermediaries whose remuneration would otherwise increase the cost price” and “to improve the market quality of the products supplied to the members or the merchandise they produce and supply to consumers”, with the members carrying out “their operations in all sectors of human activity”. The fundamental structure was not modified, as specific acts already established that cooperatives are companies; Book III of the Act of 24 July 1867 was also amended by a number of exemptions introduced by the new act.

The other essential contribution of the Act of 10 September 1947 was to re-establish the fundamental principles of cooperative law structuring the movement and to accord them a *plenitudo potestas*. The following principles were included: open door or free admission (articles 1 and 3); and immediately following from it the principles of *intuitu personae* (article 3 and 11); democratic management (articles 4, 6, 8, 9 and 10); a federative structure (article 5); the two-fold quality or exclusivity (articles 1 and 3); and finally the principle of repayment and a ceiling on the interest paid on shares (articles 14 to 19).

Despite the sustainability and applicability of the Act of 10 September 1947, it was initially intended to be Book I of a true Cooperatives Code and had to present general provisions before introducing the specific Books for each cooperative family. Its longevity is more due to its universal principles, which allowed the cooperative movement to leave the general legislation common to all companies, than to its practical realities. Nonetheless and even if it only provided legislation to supplement the never-ending stream

of specific statutes, it reversed the legal principle saying that special legislation shall provide exemptions from general legislation, and the various specific statutes had to be subordinated to the Act of 1947.

The increasing complexity of cooperative law

The multiplication of specific statutory provisions

The resignation of Paul Ramadier as President of the Council put a stop to the realisation of his legislative project for cooperatives. From this time until the present day, the modification of special statutes has seemed to take priority to avoid modifications to the specificities of each cooperative family. Only a few general reforms remain which were undertaken in the late 1960s. For a better understanding of the legal evolution of the various cooperative families it is useful to examine all of them separately.

BUSINESS COOPERATIVES

Following the classification introduced by Georges Fauquet and later adopted by Claude Vienney, these cooperatives are specifically characterised by the immanent economic services they provide to their members. They include agricultural cooperatives, retail cooperatives as well as craft, transport and shipping cooperatives (Chomel, 2008). All three categories have the benefit of three different legal texts.

- Since the end of the Second World War, agricultural cooperatives had the benefit of special legislation applicable to them alone, the Decree of 12 October 1945 (XXIV); its purpose was to abolish the agricultural corporatism defended by the Vichy regime and to restore the pre-war legislation which focused on agricultural credit unions and, to a lesser extent, on agricultural cooperatives in view of enabling a recovery of the primary sector. This particular legislation was only reformed in 1967 by the Decree of 26 September (XXV), which provided a special opportunity for agricultural cooperative societies to establish entities under civil or commercial law – depending on their production volume and access to national or international trading structures –, in favour of the provisions of the Act of 24 July 1966 (XXVI; on commercial societies as regards the latter solution). But the fierce opposition presented by the cooperative movement against this act resulted in the adoption of the Act of 27 June 1972 (XXVII). This act basically amended the Decree of 1967 and constitutes the current legal framework for agricultural cooperatives as it is enshrined in articles L.521-1 to L.529-6 of the Rural Code, which also recognises that “agricultural cooperative societies and their unions form a special category of society and are distinct from societies under civil or commercial law” (L.521-1, al. 2) and that they consequently form a type *sui generis*.

- The Act of 2 August 1949 recognised cooperatives in the retail sector and organised their specific legislation (XXVIII), and retail cooperatives accordingly benefited from a fully-fledged legal structure (Ponsot, 2008). It was based on the general legislation of 1947 and recognised the common procurement as the cooperatives’ exclusive activity, but it also restricted the development of these cooperatives and specifically prohibited them from

selling to third parties. The Act of 11 July 1972 (XXIX) replaced the Act of 2 August 1949; it intended to overcome these restrictions and to facilitate the establishment and long-term existence of these cooperatives. It primarily extended their business activities by determining their scope and allowing not only common procurement but also the establishment of collective retail outlets as well as assistance with respect to their technical and financial management as well as accounting. Furthermore, it maintained the exclusion of non-associated third parties from benefiting from their services while recognising an exception in case of pharmaceutical cooperatives. Finally, it specified that these cooperatives would be governed by the Acts of 10 September 1947 and 24 July 1966 on the above-mentioned commercial entities. The Act of 11 July 1972 was amended to account for the economic, legal and social development of cooperatives – in particular by the Act of 31 December 1989 (XXX) on the integration of education policy as well as the Act of 13 July 1992 (XXXI) on the promotion of investing associates –, and today, the Act is codified in articles L.124-1 to L.124-16 of the Commercial Code.

- Craft, transport and shipping cooperatives benefited from the legislation following from the Act of 20 July 1983 (XXXII).

Craft cooperatives organised themselves in the wake of the union movement. Generally, they were governed by legislation for economic interest groups (*groupements d'intérêt économique*, GIE) and associations and they were formed locally according to the agricultural cooperative model. A real innovation was introduced by the Act of 20 July 1983. This law followed the cooperative principles, but also included adjustments specifically for the craft sector: membership was limited to craftsmen registered in the official register of handicrafts or those performing identical or related activities with less than 50 employees. For this purpose, the operations undertaken with non-associated third parties could not amount to more than a fifth of the annual turnover of the cooperative. Over and beyond the specific figures on manpower or their economic activity, the loss of the craft status obliged a member to leave the cooperative, and this severely restricted the development of the members' business while favouring the reorganisation of micro-businesses and SMEs within economic entities. Furthermore, the Act provided for 15% of the profits to be allocated to the cooperative's capital and allowed a transformation of repayment into shares. Finally, it provided for an exemption from corporate income tax as well as business tax, which then became territorial rates (*contribution économique territoriale*, CET).

Despite their long tradition, transport and shipping cooperatives have always been the poor parent of the cooperative movement. Transport cooperatives were the result of a Decree of 8 February 1963 (XXXIII), while shipping cooperatives developed indirectly together with the creation of the National Shipping Credit Bank in the Act of 23 April 1906 (XXXIV). The legal framework for the cooperatives of transport businesses was based on the law for craft cooperatives; shipping cooperatives profited from similar provisions and had a special chapter in this Act of 20 July 1983. Their outstanding special feature is the definition of membership rights, which are related to their special character.

BANKING COOPERATIVES AND CREDIT UNIONS

They have a long tradition and are inseparable from savings banks or agricultural credit unions or shipping unions. The organisation and operation is different, and the legislation applying to them goes beyond the mere cooperative framework, as it also considers their financial operations and the guarantees they are to provide for their clients irrespective of the fact that they are or might not be members. As a result, an act adopted on 24 January 1984 (XXXV) on the operations and control of credit institution lays down legislation specific to them. They have to guarantee the same rights and obligations as banking and financial institutions under general law, and cooperative principles are bypassed in some respects; this particularly regards the issue of exclusivity, as the bank must be able to provide banking services to any person (Hiez, 2013).

The innovative turn of the 21st century

Among the last major developments of cooperative law, there are two deserving our attention: the establishment of cooperative non-profit societies and the transposition of the legislation on the European cooperative society into French law. These are no specific statutes as such, but they will have to be mentioned among the body of law, which is specific for cooperatives.

NON-PROFIT COOPERATIVES

Non-profit cooperatives (*sociétés coopératives d'intérêt collectif*, SCIC) were created by article 36 of the Act of 17 July 2001 (XXXVI) and organised by the Decree of 21 February 2002 (XXXVII). They constitute a new form of cooperative inspired by the perspective of the solidarity – as against the social – economy, which places them between groups formed by members and associations because of their philanthropic purpose; in this sense, the statute is by no means completely new, instead it is an adaptation of the Act of 10 September 1947, to which it constitutes an amendment. Article 36 of the Act of 2001 therefore consists of 10 articles defining the SCIC, and they are inserted in Book II *ter* of the Act of 10 September 1947 and follow upon a Book II *bis* focusing on social economic unions as they were introduced by this Act. An article 28 *bis* is also added to the general statute of 1947 and allows a registered association to reorganise itself as a cooperative without changing its structure as a body corporate. Furthermore, the Act amends article L.228-36 of the Commercial Code and allows the introduction of participation certificates in cooperatives established as SARLs (limited liability companies). The decree of 21 February 2002 on the non-profit cooperative introduces more specific legislation for SCICs. It organises the agreement process – which was later abolished by an act adopted on 22 March 2012 –, as well as conditions for the contribution of subsidies and the organisation of audits in cooperatives. Just as the Act of 17 July 2001, the Decree underlines the specificity of such groups, which differ widely from the cooperative movement. Their characteristics include: their capital is contributed by multiple members and includes a mandatory participation of employees and the beneficiaries of their operation, as well as other individuals or legal entities under private or public law; its non-capitalist purpose is formalised by a mandatory appropriation

of no less than 57.50% of its profits to its indivisible reserves; public collective bodies are free to join them; they have access to certain agreements, authorisations and conventions, which are normally reserved to associations; there is a statute providing for a mandatory audit of the cooperative.

The SCIC cooperative definitely is a paradox, as it weakens certain principles and strengthens others. It is included in an enormous economic programme and provides significant possibilities in view of establishing a legal framework for non-profit enterprises. To this end, its philanthropic purpose is also pursued in the Act of 1 August 2003 (XXXVIII), which allowed the establishment of cooperatives as public limited non-profit companies for low-cost housing.

EUROPEAN COOPERATIVES

As regards the introduction of legislation governing European cooperative societies in a Regulation and a European Directive adopted on 22 July 2003 (XXXIX), the problems of the French proposals and specifically the legislation of 10 September 1947 should be remembered and so should the many debates and discussions under more than one heading (Chomel, 2004). But the project was supported by the Member States where the cooperative movement enjoys a long-standing tradition and has a strong identity.

Even though the idea is older, the discussions on the creation of a cooperative under European law started in Brussels at the beginning of the 1980s. Thanks to the support of the European Economic and Social Council (EESC) and the European Parliament (EP), the work became more detailed between 1990 and 1992 and ended with the adoption of three proposals for regulations on cooperatives, mutual societies and associations by the Commission in December 1991 and three directives being adopted on the impact on workers. They were forwarded to the Council and adopted by the EP in March 1992. Despite the emergence of the European single market, the non-existent legislation on European companies proved to be a burden on the adoption of cooperatives under European law. The creation of the company statute under European law in 2000 provided an opportunity for reviving the discussions on cooperatives under European law. The text was finally adopted in 2003, even though some crucial points have not been resolved; this is proven by the case before the old European Court of Justice (ECJ) on the modalities governing the adoption of legislation on European cooperative societies (XL) as well as the numerous referrals to national legislations and the statutes included in the provisions of the European regulation and directive.

Despite the direct applicability of the regulation, an amendment of the domestic law was introduced to promote the establishment of European cooperative societies (SCE). In France, the Act of 3 July 2008 (XLI) transposed community law and included a Book III bis in the Act of 10 September 1947.

Conclusion

In conclusion, it is necessary to remember that several general reforms affecting all cooperatives have been introduced, even though there are multiple specific legislations governing them. The draft legislation on the

social economy and the solidarity economy, which was voted on in spring, is part of this legislative sequence.

The first major general reform is the reform of 20 July 1983, as it intended to introduce rules for business cooperatives. And as we saw previously, it introduced sector-specific provisions and guaranteed a legal structure for craft, transport and shipping cooperatives which was more tailored to their needs. To a lesser extent, it also concerned low-cost housing cooperatives.

As for the rest, it is appropriate to note that article 72 of the law includes a pious wish, as it states: “under its designation as ‘Cooperatives Code’, it will be followed up by the codification of appropriate legislative texts after hearing the opinion of the high-level commission established to study the codification and simplification of laws and regulations”. Even though the project came to nothing, the determination to modernise cooperative law still persists; almost a century of waiting was necessary for a consistent reform to emerge.

The rule embodied in the Act of 13 July 1992 (XLII) on the modernisation of cooperative businesses finally led to the dust being shaken out of cooperative law. This act gradually amended the Act of 10 September 1947 and the specific acts codifying certain statutes: The above-mentioned Acts of 7 May 1917; 11 July 1972; 19 July 1978 and 20 July 1983 as well as the provisions governing SCHLMs (low-cost housing cooperatives), banking cooperatives, agricultural cooperatives and agricultural non-profit cooperatives.

Among the most notable evolutions were the introduction of investment associates, the weakening of the impartibility of reserves, the creation of new types of securities; and the Act especially restored the legal principle of *specialia generalibus* and abolished the inverted structure introduced by the Act of 10 September 1947. Finally, a controlled exit strategy for cooperatives was permitted so that they could be reorganised as general companies (Hiez, 2013).

The act on the social economy and the solidarity economy of 31 July 2014 (XLIII) wanted to reorganise a sector which extended far beyond the cooperative movement so that it could develop in the same direction and with the same momentum. It included a particular focus on cooperatives. The framework legislation of 10 September 1947 was profoundly revised (Art. 24 and 25) and various typical statutory provisions were updated: SCOPs (Art. 27 to 32), SCICs (Art. 33 and 34); retail cooperatives (Art. 35 to 40); SCHLMs (Art. 41 to 43); craft and transport cooperatives (Art. 44); agricultural cooperatives (Art. 45 and 46); shipping cooperatives (Art. 49 and 50). Above all, the act undertook to create a new and specific statutory provision by introducing employment and operating cooperatives (Art. 47 and 48), which are intended to allow entrepreneurs to set up their operation in the form of a cooperative engaging in support functions.

There can be no doubt that, in line with the growing complexity of cooperative law, the issue of its codification will return to the focus of discussion, as it has done in the past.

ANNEX

Legislative references

- (I)** See as an example: Besançon, 28 December 1842 and 23 April 1845 (D.P. 47. 2. 15).
- (II)** Besançon, 12 January 1866 (D.P. 67. 2. 33) and subsequent established case law.
- (III)** Decree of 25 February 1858 on the guarantee and organisation of work, promulgated on 26 February, *Bulletin officiel*, no. 18.
- (IV)** Decree of 26 February 1848 on the establishment of national workshops, promulgated on 27 February, *Bulletin officiel*, no. 24.
- (V)** Decree of 5 July 1848, promulgated on 8 July, *Bulletin officiel*, no. 543.
- (VI)** Decree of 15 July 1848 on worker associations for public works companies promulgated on 19 July, *Bulletin officiel* (no. 578) and the related implementation order on tenders or awards of public works to worker associations of 18 August, promulgated on 24 September, *Bulletin officiel*, no. 692.
- (VII)** Act of 27 November 1849, promulgated on 1 December, *Bulletin officiel*, no. 1805.
- (VIII)** Act of 25 May 1864, promulgated on 27 May, *Bulletin officiel*, no. 12323.
- (IX)** Societies Act of 24 July 1867, promulgated on 29 July, *Bulletin officiel*, no. 1513, no. 15328.
- (X)** So-called Waldeck-Rousseau Act of 21 March 1884 on the creation of professional unions, promulgated on 21-22 March, *Bulletin officiel*, no. 14353.
- (XI)** Act of 5 November 1894 on the creation of agricultural credit unions, *Journal officiel* of 6 November, *Bulletin officiel* no. 28758.
- (XII)** Act of 31 March 1899 on the establishment of regional agricultural credit mutuals and the promotion of such mutuals as well as credit unions and local agricultural mutual credit banks, *Journal officiel* of 1 April.
- (XIII)** Act of 29 December 1906 authorising advances to agricultural cooperatives, *Journal officiel* of 30 December, *Bulletin officiel* 2798, no. 48562.
- (XIV)** Criminal Chamber of the Court of Cassation, 29 May 1908 (S. 1908. 1. 89); Petitions Chamber of the Court of Cassation, 3 April 1912 (S. 1913. 1. 489).
- (XV)** Act of 12 March 1920 on the extension of capacities of professional unions under civil law, *Journal officiel* of 14 March, *Bulletin officiel*, new series, 269, no. 16238.
- (XVI)** Act of 5 August 1920 on credit mutuals and agricultural cooperatives, *Journal officiel* of 7 August.
- (XVII)** Act of 30 November 1894 on low-cost housing, *Journal officiel* of 1st December, *Bulletin officiel* (no. 28799) and the related implementation order of 21 September 1895, *Journal officiel* of 26 September, *Bulletin officiel*, no. 30408; amended and supplemented by the Act of 31 March, *Journal officiel* of 1 April, *Bulletin officiel*, no. 30926.
- (XVIII)** Act of 15 August 1920 on the determination of the legal structure of reconstruction cooperatives created as a result of disasters in view of rehabilitating buildings affected by war events, *Journal officiel* of 31 July, p. 3294.
- (XIX)** Act of 18 December 1915 on workers' production cooperatives and the organisation of work in France, *Journal officiel* 19 December.
- (XX)** Act no. 78-763 of 19 July 1978 on the status of workers' production cooperatives, *Journal officiel* of 20 July., p. 2878.
- (XXI)** Act of 7 May 1917 on the organisation of loans to consumer cooperatives, *Journal officiel* of 9 May.
- (XXII)** Act no. 93-949 of 26 July 1993 on the consumers' (legislative section), *Journal officiel* of 27 July. p. 10538.

(XXIII) Framework Act no. 47-1775 of 10 September 1947 on the status of cooperatives, *Journal officiel* of 11 September, p. 9088.

(XXIV) Act no. 45-2325 of 12 October 1945 on the legal status of agricultural cooperatives, *Journal officiel* of 13 October, p. 6474.

(XXV) Ordinance no. 67-813 of 26 September 1967 on agricultural cooperatives, their unions and mixed agricultural non-profit societies, *Journal officiel* 27 September, p. 9507.

(XXVI) Act no. 66-537 of 24 July 1966 on commercial enterprises, *Journal officiel* of 26 July, p. 6402.

(XXVII) Act no. 72-516 of 27 June 1972 amending Ordinance no. 67-813 of 26 September 1967 on agricultural cooperatives, their unions and mixed agricultural non-profit societies, *Journal officiel* 28 June, p. 6619.

(XXVIII) Act no. 49-1070 of 2 August 1949 recognising cooperatives in retail trade and organising their status, *Journal officiel* of 5 August, p. 7651.

(XXIX) Act no. 72-652 of 11 July 1972 on cooperative enterprises and retail merchants, *Journal officiel* of 13 July, p. 7373.

(XXX) Act no. 89-1008 of 31 December 1989 on the development of commercial or handicraft enterprises and the improvement of their economic, legal and social environment, *Journal officiel* of 2 January 1990, p. 9.

(XXXI) Act no. 92-643 of 13 July 1992 on the modernisation of cooperative enterprises *Journal officiel* of 14 July, p. 9450.

(XXXII) Act no. 83-657 of 20 July 1983 on the development of certain socio-economic activities, *Journal officiel* of 21 July, p. 2242.

(XXXIII) Decree no. 63-94 of 8 February 1963 on cooperatives in the public road freight transport, *Journal officiel* of 9 February, p. 1366.

(XXXIV) Act of 23 April 1906 creating maritime credit societies, *Journal officiel* of 25 April, *Bulletin officiel*, no. 2714, no. 47330.

(XXXV) Act no. 84-46 of 24 January 1984 on the activity and control of credit institutions, *Journal officiel* of 25 January, p. 390.

(XXXVI) Act no. 2001-624 of 17 July 2001 on various social, educational and cultural provisions of law (amending law), *Journal officiel* of 16 November, p. 18229.

(XXXVII) Decree no. 2002-241 of 21 February 2002 on not-for-profit cooperative societies, *Journal officiel* of 23 February, p. 3473.

(XXXVIII) Act no. 2003-710 of 1 August 2003 on the orientation and programmes for cities and urban renovation, *Journal officiel* of 2 August, p. 13281.

(XXXIX) Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative, *Journal officiel de l'Union européenne* L 207 of 18 August, p. 1; supplemented by Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, *Journal officiel de l'Union européenne* L 207, 18 August, p. 25.

(XL) C-436/03 Parliament/Council, Order of 2 May 2006.

(XLI) Act no. 2008-649 of 3 July 2008 containing various provisions in view of adapting corporate law to community law, *Journal officiel* of 4 July, p. 10705.

(XLII) Act no. 92-643 of 13 July 1992 on the modernisation of cooperative enterprises, *Journal officiel* of 14 July, p. 9450.

(XLIII) Act no. 2014-856 of 31 July 2014 on the social and solidarity-based economy, *Journal officiel* of 1 August, p. 12666.

BIBLIOGRAPHY

Bouly G., 1946, “Le statut juridique de la coopération”, *Revue des études coopératives*, no. 76.

Chomel C., 2004, “La longue marche de la société coopérative européenne”, *Recma*, no. 291.

Chomel C., 2008, “Le cadre juridique des coopératives d’entreprises”, *Recma*, no. 307.

Hiez D., 2013, *Coopératives*, éditions Delmas.

Melo A., 2012, *Fruitières comtoises : de l’association villageoise au système productif localisé*, Fédération départementale des coopératives laitières du Doubs et du Jura, Besançon.

Nast A., 1928, Code de la coopération, étude sur le régime légal et réglementaire de la coopération en France, textes (lois, décrets, arrêtés, etc.) classés et annotés, Paris, Librairie du Recueil Sirey.

Ponsot F., 2008, “Les coopératives de commerçants”, *Recma*, no. 307.

Seeberger L., 2012, “Essai sur le droit coopératif français de ses origines à la V^e République : entre pratique et normes juridiques”, archives, université Montpellier-1.