

The Italian Experience: Problems and Opportunities of the Revision to the Co-operative Law

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Ladies and gentlemen,

It's very difficult to condense my presentation into twenty minutes, not only because I am an Italian, but overall, because the topic is very complex. So, I will not cover all the issues. I have no other choice but to select the items giving you an overview of what has happened in Italy for cooperative law.

The cooperative movement needed to change its legislation already 6 or 7 years ago.

In fact, Legacoop began to think about the reform of cooperative legislation in 1996. Already, in that year, it was necessary to create the new normative conditions.

The problem was not only for cooperatives, but, in Italy, involved all types of companies.

The process of legislative reform began with the law, approved by the Italian Parliament in 1998, but only regarding those companies quoted on the stock market.

This law is very important because it was the first step towards the general reform of companies, which were mainly regulated by a legislation from 1942. Of course, this last normative didn't respond to the present needs of companies and it didn't allow them to compete effectively in the international market.

The story of these last years showed that the company law reform was a common issue for all Italian political parties, both the left and the right. Indeed, after a long and thorough study carried out by a research Commission, the center-left government of that time drew up a proposal and presented it to Parliament.

This proposal contained the general principles and criteria, based on the Government having to lay down the definitive reform of company law, including cooperative law.

The main items of the proposal, regarding cooperatives, were:

1. to improve cooperative ability to raise financial resources to overcome the historical problem of under-capitalization;
2. to improve cooperative governance, with special attention on member participation,

- the role of board members and also the role of the internal auditing body.
3. to increase the autonomy of each cooperative, so that they would have more freedom in writing their own statutes, obviously within the framework of the law.

Unfortunately, the parliamentary term of the center-left Government finished and there was no time to debate and approve the proposal.

The new center-right Government adopted the same proposal and presented it again to Parliament.

However, the debate in Parliament resulted in marked and significant changes from the original version, overall, regarding the part for the cooperative principles. This law was approved in 2001.

The changes introduced by Parliament were not positive for the cooperative movement, principally because of two items:

- a) the distinction between cooperatives recognized by the Constitution and those not recognized;
- b) the possibility for cooperatives to become ordinary companies. This possibility was not permitted under the previous law because the mutualistic principle of cooperatives could not be changed into a profit making goal.

In particular, the above-mentioned distinction between recognized cooperatives and non-recognized cooperatives was based on a special requirement which was the mutualistic prevalence.

This requirement stated that a cooperative, to acquire this first qualification, had to have a prevalence of its activities with its members. Linked to this qualification there was the possibility for cooperatives to benefit from certain fiscal advantages.

However, the cooperative movement had many doubts about the conclusions of the Parliamentary work.

The principal doubts concerned:

- a) the incorrect interpretation of the Constitution which protects all cooperation, without distinction, characterized by mutuality, its social role and the absence of lucrative gain;
- b) more restrictions on relations with non-members, if the cooperative wishes to be a recognized cooperative;
- c) the risk of a split in cooperation, not only regarding the fiscal treatment, but also regarding the framework of the cooperative model (many items of cooperative law could become governed by different normatives, according to, whether the cooperative was recognized or not).

Immediately after the approval of the law, the Government appointed a Commission of juridical experts, led by Mr. Vietti, the Deputy Minister of Justice, to draw up the definitive reform of company law, referring to the principles established under the law of 2001. The work of this Commission lasted for all 2002. Its conclusions were examined by special Parliamentary Commissions and, finally, by the Government, which approved the law in 2003.

The cooperative movement's doubts and worries were seriously taken into account by the Vietti Commission, in drawing up the new law. In fact, even if it didn't put to rest all our doubts, the result of the Commission reduced the potential negative effects which were in the law of 2001.

Firstly, conforming more to the Constitution, the Commission individuated a more suitable definition for cooperatives recognized by the Constitution, substituting it with a "mutually prevalent cooperative".

Secondly, it drew up common rules for all the cooperatives, especially for the cooperative governance, the refund system and the relation between the cooperative and its members. Consequently, only a few rules are relevant, respectively, to the mutually prevalent cooperative and non-mutually prevalent one.

Despite the fact, we remain convinced that the requirement of mutualistic prevalence is incorrect, because it isn't able to evaluate the mutuality of a cooperative, we could say that the Vietti Commission correctly defined the same requirement.

In fact, every cooperative would have to check that it conformed to the requirement, using objective criteria referring to its typical mutualistic exchange (for worker-cooperatives, the member labour costs should be more than those of non-member employees; for consumer cooperatives, the value of member purchases should be more than those of non member purchases; etc.).

We must remember that, to qualify to be a mutually prevalent cooperative, it's necessary for the cooperatives to include in their statutes the traditional Italian mutualistic rules (dividend restrictions, prohibition on dividing the reserves during the cooperative's life and at the moment of their liquidation, the allocation of the equity to special mutualistic funds, used to create new cooperatives).

Then, for the cooperatives, to obtain the fiscal advantages, they must have the requirement of prevalence and the above-mentioned mutualistic rules.

However, for non-prevalent cooperatives, it's not completely true that they cannot access fiscal benefits. In fact, a law of 2002 also provided

for these cooperatives having the right to have some particular fiscal benefits, which were:

1. a tax relief, if the cooperatives choose, for the profits put into the legal reserve (30% of profits).
2. a favourable fiscal treatment for the refunds, when they are directed to increasing member participation in the company capital.
3. a preservation of fiscal regime for the interest on company loans.

It's possible to say that also this reform confirms the former trend of Italian legislation regarding the cooperatives. In fact, the new Legislation didn't provide for the notion of mutuality at all, preferring, instead, to forecast specific requirements, which, if respected by a cooperative, qualified it as a mutual cooperative (the above-mentioned mutualistic prevalence and mutualistic rules).

In any case, the effort of the Vietti Commission was important, also because it brought together in only one law almost all the normatives relevant to the cooperatives. We hope that this result will increase the knowledge about the cooperative culture, and promote it.

As we know, the cooperatives have historically had the problem of under-capitalization. The Vietti Commission tried to solve this problem forecasting the possibility for cooperatives to use the same financial tools as private companies.

This means that every cooperative (also the mutually prevalent ones) will be able to make use of common financial tools to raise capital. The use of these tools is a cooperative's choice. In fact, the cooperatives, if they want to take advantage of this, they must make provision in their statutes. The same statutes will have to contain the regulations governing the equity and administrative rights linked to the possession of the financial tools.

As already mentioned, the law increased the autonomy of cooperatives in writing their own statutes. In fact, the law left to cooperatives the choice about many legal items, some of which are very important in defining the cooperative model.

For example, the possibility to modify the mutualistic rules to change from the qualification of a mutually prevalent cooperative to a non-mutually prevalent one; the definition of entry criteria for new members, with the relevant procedures for safeguarding those wishing to become members, also forecasting the possible involvement of the assembly (in fact, the assembly can be convened, on the request of would-be members, to decide on their application); also the introduction of a

special member category, with its relevant rights and obligations different to those of ordinary members, in order to allow them the opportunity for training or future full membership; the possibility to give more than one vote to a member in a level two cooperative, based on their mutualistic exchange and not on their participation in the company capital; and, finally, the definition of criteria for dividing the refunds.

As you could have noticed, the reform of cooperative law has its pros and cons. Among the latter, there are also the rules relevant to the possibility for the non-mutually prevalent cooperatives to change into ordinary companies.

It's true, that the law forecasts important obstacles, which make this change more difficult and onerous. In particular, if the cooperatives decide on the change, the law lays down that the same cooperatives must allocate all their equity to the above-mentioned mutualistic funds. Despite these obstacles, the reform has undoubtedly opened a hole in the normative relevant to cooperatives, as happened in France.

All the cooperative movement will have the task to face this problem, with the awareness that the formal deterrents will not be enough.

We are sure that the truest and the most effective reaction will be the safeguarding and the spread of the cooperative culture, of its essential values. These goals can be achieved overall by strengthening the role of the members in the cooperatives, satisfying their social and economic needs and involving them in cooperative governance.

History has shown that the cooperatives are companies which carry out an important role in the Italian economy and society.

In the next years, we will have to strengthen and confirm this role. Every cooperative will have the responsibility and the merit in contributing to this success.