

CURRENT STATUS OF THE REGULATION OF RIGHT-OF-USE COOPERATIVE HOUSING IN SPANISH COOPERATIVE LAWS

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Abstract:

Housing is a fundamental right, but it is also a highly speculative market good. End users have grouped to gain access to housing through various formulas, among which are cooperatives. In Spain, the concept of right-of-use housing is a relatively new phenomenon. Its main characteristic is that the cooperative retains ownership of the building while granting its members the right to use the individual living spaces. This model will progress through an adequate legal framework that addresses and promotes its specific features, recognizing the value of living in a community. In response to the sector's demands, the model of right-of-use housing cooperatives has been addressed within cooperative or sector-specific legislation, mostly to safeguard the non-speculative nature of these projects. In this article, we analyse the content of these new laws.

1. Objectives of the work and methodology

The purpose of this work is to analyse the recent Spanish legislation that regulates right-of-use housing cooperatives, a model in which the cooperative maintains ownership of the building and awards its members the right to use individual housing spaces, and to assess whether these regulations can contribute to promoting and consolidating this type of cooperative that contributes to making effective the fundamental right of people to decent, adequate, affordable and sustainable housing.

To achieve this objective, the non-speculative nature of cooperatives is analysed, the content of the new regional laws that regulate this model is explained, and their suitability to protect and promote this model is analysed.

2. Introduction

Housing is a fundamental right, acknowledged in universal declarations of rights, such as Article 25.1 of the Universal Declaration of Human Rights or Article 11 of the International Covenant on Economic, Social and Cultural Rights, which refer to the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

Article 47 of the Spanish Constitution of 1978 also acknowledges this right. It states that “all Spaniards are entitled to enjoy decent and adequate housing”, adding that “the public authorities shall promote the necessary conditions and shall establish appropriate rules in order to make this right effective, regulating land use in accordance with the general interest to prevent speculation”. Likewise, the Autonomous

Communities that assume competence in housing matters, also recognise this right.¹

At the same time, housing is a market good within a highly speculative real estate market. Therefore, to make this right effective, in addition to the housing policies implemented by the public authorities at state, regional or local level, housing users have set up mechanisms within the realm of private initiative without seeking commercial profit to attain decent and affordable housing. In many cases, this has been achieved through housing cooperatives, a legal status already recognised by the first cooperative laws of the Second Spanish Republic,² and later by Franco's laws.³ This legal status is also found in the cooperative laws enacted after the Spanish Constitution came into force.

The choice of this legal status was not arbitrary but rather grounded in its personal and non-speculative nature, making it the ideal avenue for meeting the housing needs of citizens. This structure provides cooperative members and those who live with them with decent, suitable, and affordable housing (at cost price, as set out in various laws).

3. Non-speculative nature of the cooperative society. Special rules for housing cooperatives.

The International Cooperative Alliance (ICA) defines a cooperative as “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise” and adds that “as businesses driven by values, not just profit, cooperatives share internationally agreed principles and act together to build a better world through cooperation.”⁴

Self-help, self-responsibility, democracy, equality, equity, and solidarity are cooperative values. The principles are voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training, and information; cooperation among cooperatives; and concern for the community.

Thus, cooperatives are independent societies that operate under the ICA principles and those of free membership and voluntary withdrawal. They have a variable capital and are managed democratically. These societies bring together individuals or legal entities who share common socio-economic needs or interests. They aim to improve the economic and social well-being of their members and the surrounding community, foster improved human relations, and prioritize collective interests over individual profit. By

¹ Thus, Article 26 of the Statute of Autonomy of Catalonia (Organic Law 6/2006 of 19 July) provides that “Those individuals who lack sufficient resources have the right to a decent home, and public authorities shall, therefore, establish by law a system of measures to guarantee this right, within the terms determined by law”. The Statute of Autonomy of the Valencian Community (Organic Law 5/1982 of 1 July) states in Article 16: “The Generalitat of Valencia has to guarantee the right to decent housing to all Valencian citizens, especially to the most vulnerable” and that of Andalusia (Organic Law 2/2007, of 19 March) states in Article 25: “In order to favour the exercise of the constitutional right to decent and adequate housing, public authorities are required to promote public housing. The law shall regulate access to it on equal terms, as well as grants that facilitate it”.

² The State Law of 9 September 1931 on the Legal Regime of Cooperatives listed them in Article 18.5, as did the Catalan Law on Cooperatives of 17 March 1934, which called them (Article 9.1) “housing and accommodation”, classifying them as a subclass of consumer cooperatives. Earlier references to housing cooperatives can also be found, for example, in the Law of 12 June 1911, known as the Law on Cheap Houses.

³ The Cooperation Law of 2 January 1942 included subsidised housing cooperatives among its classes, regulating them in art. 41 and Law 52/1974 of 19 December.

⁴ The Cooperation Law of 2 January 1942 included subsidised housing cooperatives among its classes, regulating them in art. 41 and Law 52/1974 of 19 December.

engaging in collective business activities, cooperatives prioritize mutual assistance and the financial contributions of all members.⁵

According to this definition, the primary purpose of a cooperative agreement is not profit-making,⁶ but rather meeting the needs and interests of its members and enhancing their living conditions through the advancement of a collective project.

This seems to be the view of the Spanish Constitutional Court: “Cooperativism has come to be understood as the voluntary grouping of human efforts for the direct and unmediated performance of fundamentally economic activities. The cooperative movement and its instrument, the cooperative society, have been characterised by a certain mutualist nature. They have always strived for a purpose that extends beyond the collective benefits of their members, contributing to the enhancement of the social environment in which they operate” (Ruling 155/1993 of 6 May).

From the above, we can determine that the cooperative lacks profitability as an objective, i.e., it does not pursue corporate benefits. To this effect, the Judgement pronounced by the 15th section of the Barcelona Provincial Court on 8 May 1995, declared with regard to a consumer cooperative, the following: “Nothing prevents the intermediation of other organisations which, from another perspective, link the non-profit nature to business initiative, whether they take the form of consumer and user associations or cooperative societies, protected by the Constitution (Arts. 9, 2, 51 and 1.1. of the Constitution)”, although this is not undisputed in legal precedent or case-law.⁷

We can also argue that cooperative members do not receive dividends, therefore the cooperative lacks subjective profit. Thus, Article 2 of Legislative Decree 2/2015, of 9 May, which approves the Consolidated Text of the current Valencian Cooperatives Act, in defining the cooperative activity that members carry out within the company, states that these relationships are not for profit.

This is particularly evident in cooperatives which aim to generate savings for their members. This savings-oriented approach has also been recognized in minor case law, such as the ruling issued by the 15th Section of the Barcelona Provincial Court on September 23rd, 2010. The ruling declared that “... ‘cooperative savings’ in consumer cooperatives can be easily understood as a means to achieve the cooperative's objective of providing members and their families with consumer goods and services at better or more advantageous conditions, primarily in terms of cost. This is achieved by eliminating or reducing the commercial margin of the agents involved in the production and supply chain in the market, thereby bringing the member's cost (compensation cost) closer to the cost of acquiring goods or products by the cooperative, which represents the consumers grouped in the cooperative”.

Although these rulings refer to a specific type of cooperative, consumer cooperatives, the concept of cooperative savings is also found in other forms of cooperatives in which the activity of the member

⁵ This concept is almost literally included in some laws, such as Law 12/20105 of 9 July on Cooperatives in Catalonia (art. 1) or Law 5/2023 of 8 March on Cooperatives in the Balearic Islands (art. 2).

⁶ On this matter, Fajardo García, G., in *La gestión económica de la cooperativa: responsabilidad de los socios*. Ed. Tecnos, Madrid, 199

⁷ A summary of the different doctrinal positions can be found in *La naturaleza lucrativa o no lucrativa de las cooperativas*, a paper presented at the XVIII International Congress of Researchers in Social and Cooperative Economics (Mataró 2020).

constitutes, *lato sensu*, an act of consumption, as in the case of housing cooperatives.⁸

Spanish tax and accounting rules are clear in this respect. Thus, Article 15 of Law 20/1990 of 19 December on the Tax Status of Cooperatives sets out that transactions between cooperatives and their members should be calculated based on their market value, which is the normal price agreed upon between independent parties for the goods or services. However, there is an exception for certain types of cooperatives, including consumer and user cooperatives, housing cooperatives, agricultural cooperatives and cooperatives that provide services or supplies to their members as stated in their articles of association. In these cases, the “price of the relevant transactions shall be computed as the price at which they were performed, provided that it is not less than the cost of such services and supplies, including the corresponding part of the entity's overheads”. Accordingly, accounting regulations stipulate that the consideration made by members in exchange for the receipt of goods or the provision of cooperative services are considered compensatory payments for costs incurred.⁹

References to cost are also found in certain regional legal provisions, which state that the allocation of housing to members is done at the cost price. For example, Article 122.1 of the Catalan Law, Article 113.5.c of the Andalusian Law or Article 128.7 of the Balearic Law.

The non-speculative nature of the cooperative society translates into other aspects of cooperative regulation, based on the cooperative principles of the ICA mentioned above:

1.1.1. The general principle of “one member, one vote” applies to the member's decision rights. The weighting of votes is only allowed in exceptional cases and is always based on the member's activity within the cooperative, it is never determined by the amount of capital contributed. The distribution of profits or the allocation of losses among cooperative members is also determined based on the cooperative activity performed by each member within the organization, rather than the capital contributed by them. Upon leaving the cooperative, members receive a refund of the capital they have contributed. However, any collective capital gains generated within the cooperative remain within the company. These gains are typically allocated to mandatory reserves, which cannot be distributed among the shareholders, even in the case of the company's dissolution.

1.1.2. The remuneration of the share capital is not paid out in the form of dividends, but in the form of interest, which is limited by law.

⁸ It could be argued that the housing cooperative is, in a way, a specific type within the larger category of consumer cooperatives. This has been the trend followed by some Spanish legal rules, such as Law 14/2011 of 23 December on Andalusian cooperatives. Article 83 of this law simplifies the types of first-degree cooperatives, introducing the following categories: consumer, worker, service, and special cooperatives, and within the former, it includes consumer cooperatives *stricto sensu*, housing, credit, and insurance cooperatives as subclasses. In Valencian legislation, classification criteria for these companies, as outlined in Article 86, include considerations regarding the socio-economic structure of the cooperative. According to these criteria, cooperatives can be classified as production cooperatives if their objective is to enhance the income of their members. On the other hand, consumer cooperatives are those whose objective is to achieve savings in the income of their members.

⁹ This was the ruling of the Eleventh Rule of Order ECO/3614/2003 of 16 December of the Ministry of Economy, the first Spanish regulation to adapt the General Accounting Plan to the particularities of cooperative societies, which also established that account 756 must be labelled. And along the same lines, we find Rule Ten of the current regulation, Order EHA/3360/2010, of 21 December, which replaced the previous one.

1.1.3. The aforementioned cost price.

1.1.4. And, focusing on housing cooperatives, most Spanish laws, from State Law 27/1999 of 16 July to the various regional laws, stipulate that when the member proposes to transfer the rights they hold over the property, the cooperative has the pre-emptive right at the allotment price.

Given the above, the cooperative becomes the ideal social structure for housing projects in right of use, as the affordability of housing is maintained throughout its useful life. Although our analysis is focused on economic affordability, the new co-living system adds value to other aspects such as environmental sustainability, self-management, and fostering relationships with the cooperative building's surrounding environment, with a particular emphasis on the notion of care. In this sense, it has been said that the “cornerstone of collaborative housing is the common and democratic management of shared needs based on the principles of reciprocity and mutual support. For this reason, cooperatives provide an appropriate legal framework”,¹⁰ as self-management, mutual aid and community interest are also inherent to them.

4. The right-of-use housing cooperatives sector in Spain and Catalonia

Despite the legal provision granting the cooperative a pre-emptive right when a member intends to transfer their dwelling, this right has become inoperative in practice. This is mainly due to its short duration, which does not align with the useful life of the dwellings, as well as the common practice of dissolving the cooperative once the homes have been allocated to the members.¹¹ It could even be argued that when the cooperative allocates ownership of collectively developed housing to its members, only the initial members who served as promoters gain access to a cooperative dwelling. However, in most cases, subsequent transfers occur outside the cooperative and are subject to market rules and conditions.

The right-of-use model, characterised by the fact that the cooperative retains ownership of the dwellings, assigning to the members only the right to use and enjoy them, serves as a countermeasure to this practice. It emerges as an ideal instrument for satisfying the need for decent, affordable, and stable housing while preventing speculation and maintaining affordability throughout the useful life of the dwelling, at the same time it designs a model of shared coexistence, based on the values of mutual aid, sustainability, respect for diversity and collaboration with the environment.

The first Spanish experiences of right-of-use housing cooperatives, known as “senior cohousing”, were born in the last years of the 20th century, to promote the active aging of its members, by providing them with housing appropriate to their needs, with community spaces in which to socialize and develop activities that foster their capabilities. These experiences found in the comprehensive consumer and housing cooperative their ideal vehicle, since the characteristics of the cooperative adjusted to the

¹⁰ Keller, C. and Ezquerro, S. in *Viviendas colaborativas de personas mayores: democratizar el cuidado en la Vejez*, REVERSCO. Revista de Estudios Cooperativos, 29 de enero de 2021. Ediciones Complutense. <https://revesco.es/txt/revescochristelkellerysandraezquerro.htm>

¹¹ In the article “¿Resurge la cooperativa en el sector de la vivienda?” published in *Las Provincias* on 4 April 2018, Professor Gemma Fajardo says: “But for cooperative housing to generate these effects, the cooperative must exist. If we liquidate the cooperative, once the dwellings have been built, as has been done in Spain for years, they go to the free market, generating advantages only for the cooperative member. The cooperative should not be dissolved after allocating the property to the cooperative members, but Spanish commonhold property legislation is compulsory and leaves little room for cooperative self-management.” <http://www.lasprovincias.es/extras/coopera/resurge-cooperativa-sector-20180403190102-nt.html>

objectives and purposes of these experiences¹².

Although the right-of-use model is still residual in Spain, it has experienced significant growth, both in terms of the number of experiences and its new typologies (intergenerational housing, disabled people, LGBTQIA group,...), especially since 2010, in response to the serious global financial crisis of 2008.

There are currently more than a hundred projects, unevenly distributed throughout the territory, as can be seen in the following MAP 1, prepared by the Network of Red de redes de Economía Alternativa y Solidaria (REAS) and AlterHabitat.¹³ Most of them adopting the class of comprehensive housing and consumer cooperatives.

MAP 1:



As it can be seen in the map above, around half the number of right-of-use cooperatives are located in Catalonia (54 in the current year 2024). Of these, more than a third are in the city of Barcelona, as can be seen in the following MAP 2.¹⁴

¹² In this sense, you can see, for example, the website of one of these senior cohousing projects, that of “Trabensol Sociedad Cooperativa Madrileña”: <https://trabensol.org/proyecto-social-2/>

¹³ In <https://experience.arcgis.com/experience/21f036a19c87430b97ff21035f11a86a>. The map places the number of cooperatives under the cession of use regime existing in each province of the peninsula and the Balearic Islands, although it does not incorporate the some projects that are being developed in the Canary Islands.

¹⁴ This table has been prepared as internal documentation of LA DINAMO FUNDACIÓ, which has authorized its use for the preparation of this article.

MAP 2:

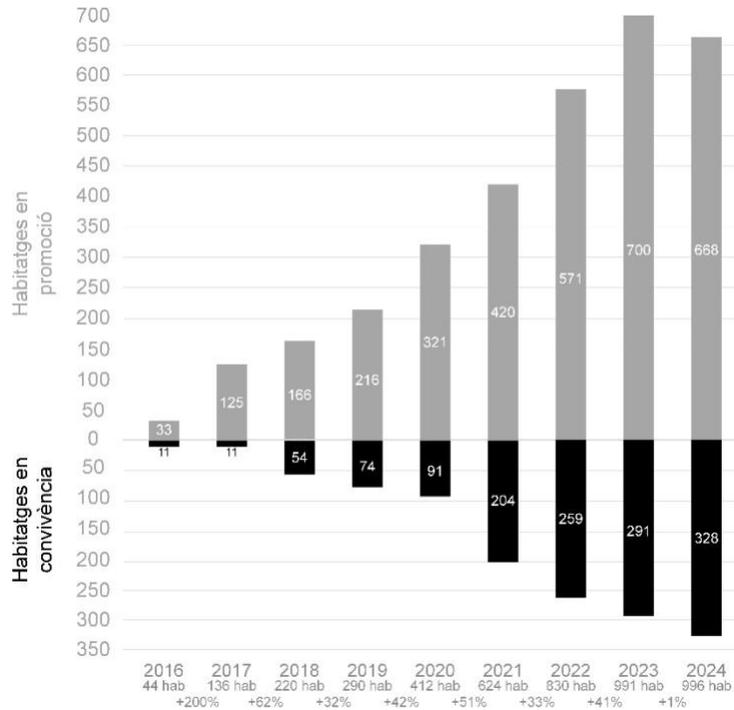


Right-of-use cooperatives in Catalonia

Right-of-use cooperatives in Barcelona

At the time of publication of this work, cooperatives in Catalonia have built – or are in the process of building– a total of 996 homes, most of them in the last four years, as can it be seen in the following table, which differentiates those that are under construction (in grey in the table) from those in which members are already residing in the cooperative (in black in the table) and which represent approximately one third of the cooperative housing.¹⁵

¹⁵ This table has been prepared as internal documentation of LA DINAMO FUNDACIÓ, which has authorized its use for the preparation of this article.



As said above, in absolute figures, this cooperative model is residual,¹⁶ but despite this we cannot ignore its rapid growth, to which, without a doubt, the public housing policies promoted by the Barcelona City Council, pioneers in Spain, and which have been followed by other Spanish local or regional administrations, have contributed. Resulting in the fact that the majority of cooperative housing projects for use in Catalonia are located on publicly owned land.

In this regard, in 2016 the Barcelona City Council organised a first public competition to award surface rights on municipal land, for seventy-five years, for a fee lower than the market price. The recipients of the competition were housing and consumer cooperatives for use, whose members had to be the final users of the homes, or non-profit associations that promoted the constitution of this kind of cooperative. The competitions have been replaced by the so-called “CONVENI ESAL”, signed by the City Council with various representative entities.¹⁷

The possibility of allocating the dwelling to the members for a title other than ownership is foreseen in all Spanish cooperative laws, without exception. All of them usually refer to the fact that the dwellings

¹⁶ For these purposes, it should be taken into account that the total number of homes in Catalonia as of January 1, 2021 was 3,915,129, of which 76.4% constituted the main family home, according to data from the Catalan Institute of Statistics (IDESCAT) <https://www.idescat.cat/novetats/>.

¹⁷ This is an agreement signed by the Institut Municipal de l'Habitatge de Barcelona (IMHAB) with various non-profit entities (ESAL): the Federation of Housing Cooperatives of Catalonia, the Coordinator of Foundations and the Network of Social Economy (XES), which has been published in the Gasetta de l'Ajuntament de Barcelona on November 13, 2023.

can be allocated “by any legally admissible title”,¹⁸ be it ownership, a limited real right of use and enjoyment (usufruct, right of occupancy, building lease) or a right of use of a contractual or obligatory nature.

However, most of the rules lack specific regulation when the use of the dwelling is allocated to the partner, relegating its regulation to the bylaws. In reality, the few special rules on housing cooperatives either refer directly to ownership or use terminology specific to rights in rem. As we shall see, only recently certain regulations have stipulated that the right of use within a cooperative is considered a mandatory corporate right, intrinsically tied to the member's status and excluded from any legal transactions conducted outside of the cooperative framework.

For this reason, the first experiences of cooperative housing in our country have configured the statutory right of use as a personal right, linked to the cooperative agreement. However, in his analysis of the Danish model *andel* Turmo (2004)¹⁹ warns that, despite this generic provision in the Spanish cooperative laws, the right of use will not cease to be residual, as long as there is no legal mechanism that prevents the change of regime in the allocation of the dwelling, since the mere agreement of the general assembly to modify the bylaws will be sufficient to allocate the property to the members.

In analysing two successful models, the Danish and Uruguayan cases, Vidal (2018) underscores the importance of having legal frameworks and public policy instruments that incorporate “mechanisms to prevent profit-making and individual capitalization of equity value in cooperative properties”. Vidal further highlights the need for regulations to address aspects such as the valuation of capital shares, the control of monthly rent, restrictions on housing subletting, prevention of the conversion of cooperative dwellings into individual ownership, and guidelines for the dissolution process of cooperatives. In summary, Vidal emphasizes the necessity for “comprehensive and coherent legal frameworks that

¹⁸ This possibility was incorporated into our positive law in the first post-constitutional laws: Law 1/1982, of 11 February, on cooperatives in Catalonia, established it in Article 58.4, and Law 4/1983, of 9 March, in the Basque Country, in Article 81.3. Article 129.3 of the first post-constitutional state law on cooperatives, Law 3/1987, of 15 March, of Law 9/2018, of 9 October, of Extremadura; Article 116 of Law 2/2023, of 24 February, of Madrid; Article 120.2 of Law 5/1998, of 18 December, of Galicia; Article 119.3 of Law 4/2001, of 2 July, of La Rioja; Article 112.3 of Law 8/2006, of 16 November, of Murcia; Article 118.3 of the Castilian Law, Law 4/2002, of 11 April; Article 153.3 of Law 4/2010 of 29 June of the Principality of Asturias, Article 114.3 of Law 6/2013 of 6 November on cooperatives of Cantabria; Article 135.3 of Law 11/2010 of 4 November of Castilla La Mancha; 2 April, known as the General Law on Cooperatives, regulated it along the same lines. The same provision can be found in Article 89.3 of the current Law 27/1999 of 16 July, and in subsequent laws: Article 97.3 of Law 14/2011 of 23 December of Andalusia; Article 68.2 of the Foral Law 14/2006 of 11 December of Navarre; Article 84 of the Aragonese law, Legislative Decree 2/2014 of 29 August; Article 128.9 of Law 5/2023 of 8 March 23 of the Balearic Islands; Article 112.2 of the Canarian Cooperative Law, Law 4/2022 of 31 October. There was a brief exception to this regulatory approach with the enactment of the first Valencian regulation, Law 11/1985 of 25 October. This law limited housing cooperatives to the allotment of ownership or rental as stated in Article 74. This provision remained in effect until the enactment of Law 8/2003, of 24 March. The amended regulation, which is still in force today under Legislative Decree 2/2015, of 15 May, allowed for the allocation of cooperative housing to members through any legally acceptable means. For a more exhaustive analysis of the evolution of these rules, see *Viviendas Colaborativas: estado actual en la Comunidad Valenciana*, Collective work coordinated by ALGUACIL MARÍ, M.P., Valencia, 2021, Ed. Aula de Emprendimiento en Economía social y Sostenible Universitat de València and Diputación de Valencia, pages 110 to 118 and <https://fecovi.es/documentacion/publicaciones/9-Libro-Viviendas-Colaborativas-estado-actual-CV.pdf>

¹⁹ *Andel: El model escandinau d'accés a l'habitatge*, Turmo, R., Finestra Oberta, number 39 February 2004, Ed. Jaume Bofill Foundation, <https://fundaciobofill.cat/uploads/docs/y/m/1/6/b/0/6/c/4/378.pdf>.

effectively respond to the unique needs and characteristics of cooperative systems. Cooperatives need land, financing, and legal recognition to develop”.²⁰

This last analysis has been promoted by LA DINAMO FUNDACIÓ,²¹ an entity whose mission is to foster and promote the cooperative housing model for use as an alternative to conventional models of access to housing, and whose purposes include the development and collaboration in studies and research in this field. In compliance with these purposes, it has also promoted other studies to analyse the public measures necessary to promote these projects, including the need to develop an appropriate legal framework, such as the cited work by BAIGES, C.M FERRERI, M. VIDAL (2019). According to this paper, comparative law experiences show that this model has spread, above all, in countries where there was a specific regulation of a protective nature.²² This has been the case in Denmark, when regulating private housing cooperatives (*andel*) or common housing (*almen*), in Uruguay, the Netherlands, Germany or Italy. In some cases, these regulations and public policies promoting the model are found at the local level, in cities such as New York, Zurich, or Quebec.²³

Due to this reason, the emerging housing cooperative sector in Spain has been advocating for the establishment of its own set of rules. They have actively formulated proposals regarding the content of future regulations, based on another of the documents prepared at the initiative of LA DINAMO FUNDACIÓ: “*The Advisable Legal Mark to Promote the Cooperative Model in Right of Use*”.²⁴

This last document made a series of proposals on the content of a future regulation of right-of-use cooperatives, to promote and consolidate this model. This legal framework was to regulate the following points:

- Consider right-of-use cooperatives as a type of consumer cooperatives, thus placing the emphasis on housing, as a good for use, as the habitual and permanent residence of members and the people who live with it, and not as a real estate investment asset.
- Define the right-of-use cooperative, which includes elements for private use and elements for collective and community use.
- Expressly provide that the right to use cooperative housing constitutes the cooperative activity and, therefore, cannot be transferred independently and unrelated to the status of member.
- Prohibit the right of use of the partners from becoming an attribution of ownership over the housing. Thus, if the cooperative opts for the transfer of use regime, it will not be able in the future to agree on a modification of its statutes and regulations, to change the tenure regime of the members, who will always be users.

²⁰ Baiges, C., Ferreri, M. Vidal, L., in *Polítiques de referència internacionals per a la promoció d'habitatge cooperatiu d'usuàries*, p. 28 and 32, at https://ladinamofundacio.org/wp-content/uploads/2019/12/Document-estudis-internacionals-_La-Dinamo.pdf

²¹ To learn more about this entity, you can consult its website: <https://ladinamofundacio.org/>

²² *El foment públic del cooperativisme d'habitatge en cessió d'ús a Dinamarca i Uruguai. Cap a la generació d'un marc legal de l'habitatge cooperatiu en cessió d'ús*. Vidal, L., https://ladinamofundacio.org/wp-content/uploads/2018/08/El-foment-public-del-cooperativisme_La-Dinamo.pdf.

²³ Baiges, C., Ferreri, M. Vidal, in *Polítiques de referència ...*, *op. cit. supra*.

²⁴ *Sobre el marc legal aconsellable per impulsar el model de cooperatives en règim d'ús (The Advisable Legal Mark to Promote the Cooperative Model in Right of Use)* is published at https://ladinamofundacio.org/wp-content/uploads/2018/08/Sobre-el-marc-legal-aconsellable_La-Dinamo.pdf.

- Eliminate the obligation for housing cooperatives to submit their annual accounts to external audit, when the company retains ownership of the property, to avoid a disadvantage compared to other models of ownership, co- ownership or collective ownership.
- Limit the transfer, *inter vivos* or *mortis causa*, of contributions to share capital, and with them, the status of partner, to members of the cohabitation unit who do not have the status of partners.
- Regulate a specific economic regime, limiting the different contributions that current and future members must make to cover the cost of construction, as well as including other provisions necessary to attend to the operation of the building; the non-distribution of the results; the provision of non-distributable collective funds, including a solidarity or mutual aid fund, which allows possible defaults to be dealt with - especially for members in vulnerable situations.
- Establish favourable tax measures.

The above proposals have been debated and accepted by the right-of-use cooperatives, which are grouped into federations of cooperatives and other non-profit organizations, state or regional, which have acted as interlocutors of the administrations, demanding the recognition of this cooperative model, its promotion and the enactment of appropriate legislation.²⁵

These demands are gradually being addressed through the enactment of recent laws, especially at the regional level; these are analysed below.

5. Analysis of recent regulations governing cooperative housing in right of use

Indeed, most of the regulations analysed in this paragraph are the outcome of petitions formulated by right-of-use housing cooperatives through their federations or other representative associations. In the case of Catalonia, although it still does not have a law regulating this housing model, it is the autonomous community with the highest number of housing cooperative projects in Spain, and many of these projects have already been inhabited for a considerable period. Catalonia has taken a leading role in shaping the regulatory framework necessary to foster the growth of the new housing cooperative movement. Currently, efforts are underway to incorporate this framework into Catalonia's Cooperatives Act. Nonetheless, we will examine the pioneer regulations of other Autonomous Communities.

5.1. Balearic legislation. Housing Law *versus* Cooperative Law

The sectoral legislation on housing was the first to use the term “right of use” or “right to use”²⁶ as a *tertium genus* that can be placed between rental housing and ownership, although it is closer to the former. It is not surprising that the first explicit recognition of right-of-use housing cooperatives in Spanish legislation also came from the hand of a housing regulation, i.e., Law 5/2018, of 19 June, the Housing Law of the Balearic Islands.

²⁵ In the case of Catalonia, an autonomous community that is a pioneer in the claim for a legal framework on cooperative housing in cession of use, in addition to the documents of LA DINAMO FUNDACIÓ, you can consult the demands made by the Sectorial d'Habitatge de la Xarxa d'Economia Solidària (XES) in the <https://xes.cat/habcoop-assequible>.

²⁶ One of the first regulations to include this term was the Royal Decree 106/2018, of 9 March, which regulates the State Housing Plan 2018-2021, whose Article 70, entitled “Limitation of the price of rent or right of use”, came to standardise the usage fee with the rent or rental price.

The Law refers to these cooperatives by including them among the objectives of the regulation set out in Article 2, namely: to promote the participation of right-of-use housing cooperatives in public housing policies.

In its eighth additional provision, “On measures for the promotion of housing cooperatives”, the Law stipulates that public administrations may establish any of the forms of collaboration outlined in cooperative regulations with housing cooperatives or their representative entities. It also imposes on the public administration the duty to establish annual programmes for the promotion and encouragement of right-of-use housing cooperatives, which will be represented on the Autonomous Community Housing Board.

The ninth additional provision stipulates that public administrations may constitute building leases on their property in favour of housing cooperatives, by means of a public tender reserved for the latter, provided that they are legally constituted, duly registered as housing cooperatives and indicate in their name that they are housing cooperatives under a right-of-use system. Additionally, their bylaws must unambiguously state that the building will be used for the permanent residence of their members.

In addition to complying with the applicable cooperative regulations, the tenth additional provision of the Law lays down special rules which must also be complied with by right-of-use housing cooperatives which intend to bid for the aforementioned public tenders:

- If a member of the cooperative intends to transfer their rights to the dwelling *inter vivos*, they must adhere to the procedure outlined in the cooperative rules, which includes the preferential right of acquisition for applicants seeking admission, and follow the price specified within those rules.
- The right-of-use system must be permanent in time.
- These cooperatives must be non-profit.
- If there are no applicants for admission or if they decline to exercise their pre-emptive right, the governing board shall, within three months: (i) extend this right to applicants seeking admission to other right-of-use housing cooperatives; (ii) exercise the pre-emptive right directly in the cooperative's name if it has sufficient equity; (iii) offer this right to the public administration temporarily, without becoming a cooperative member, while promoting the entry of a new applicant. Only if none of these options are exercised, the member may freely transfer their rights to any individual who meets the necessary criteria for membership and subsequently becomes a cooperative member.

Following the initial regulation in the Housing Law, the Balearic legislator has further addressed this model in the new Law on Cooperatives, Law 5/2023, of 8 March. Article 130 defines for the first time right-of-use housing cooperatives as those “which retain full ownership or any other right over the land and/or building and provide, at cost price, to the user members and, where appropriate, to the other members of a cohabitation unit, the exclusive use of the dwellings and premises that can be used privately, together with the shared use of the common premises, for habitual and permanent residence. Their regulation shall be made explicit in the statutes or rules of procedure”.

Furthermore, the article stipulates that these cooperatives are responsible for administering, managing, conserving, and enhancing the entire building. They allocate the corresponding financial contributions to the members and the cooperative is deemed the ultimate consumer in this context. Additionally, the article

includes the important point that these cooperatives are classified as consumer cooperatives for tax purposes.

As was previously the case with the Balearic Housing Act, the new cooperative law introduces additional requirements for these cooperatives to fulfil, including those required to be considered not-for-profit. Furthermore, they must provide services to satisfy the collective needs of their members. These user members may be both general and specific groups, such as the elderly, people with functional diversity, etc.

The Law further defines the legal nature of the right of use over private spaces or premises, which members can utilize for their personal needs. It describes this right as both personal and corporate in nature, emphasizing that it cannot be transferred through *inter vivos* or *mortis causa* acts. Therefore, the successors in title of the deceased member have the right to a claim assessment following the cooperative rules. The articles of association can include provisions that allow the full repayment amount to be withheld until the rights and obligations of the deceased member are transferred to a new member upon termination of membership.

Similarly, the Law defines cohabitation units as groups comprising users assigned to a dwelling, irrespective of whether a familial relationship exists among them, however, at least one of the individuals in the unit must be a user member of the cooperative. The articles of association or bylaws of the cooperative must govern the rights and responsibilities of both members and individuals residing with them. Furthermore, the rules of social discipline on the use of dwellings and common premises apply to all members and residents.

As a mechanism to protect this cooperative model, Article 130.5 establishes certain limitations by which right-of-use cooperatives must abide:

- They may not assign to the members the ownership or any other right in rem over the dwellings or premises that may be used for private purposes.
- Upon dissolution, the dwellings must be transferred to another cooperative of the same type, to the entities that group them or to other non-profit entities whose objective is affordable housing on a right-of-use basis, to continue to be used for the habitual and permanent residence of the members and their cohabitation unit.
- Right-of-use cooperatives cannot be transformed into any other type of company or any other type of cooperative. In the event of a merger or split, if the resulting cooperative is of a different type, the dwellings, and other premises susceptible to private use must be transferred to another or several cooperatives or the entities grouping them, following the provisions outlined in the previous section.
- These cooperatives may not carry out the commonhold division of the building except in justified situations, such as in the case of a pre-existing building that is already subject to commonhold division, legal or regulatory requirements or when it is necessary to facilitate obtaining financing from financial institutions. However, even in these exceptional cases, the commonhold division cannot result in the allocation of individual property rights nor rights in rem to members over the dwelling or the entire property.
- All the above limitations must be registered in the Land Registry.

The Law also contains special rules and limitations on the economic regime of these cooperatives:

1. To become a member, individuals must contribute to the cooperative's capital, with the

maximum amount equaling the development or acquisition costs of the property. Both the mandatory contributions of each member to the share capital and any additional mandatory contributions necessary to finance the construction must not exceed a total of 35 % of the development costs.

2. Members are solely obligated to make the contributions outlined in the preceding paragraph, which may be adjusted, if necessary, based on the General Index of Consumer Prices.

3. Furthermore, the members of the cooperative must make regular contributions as determined by the general assembly or, if applicable, the assembly of each project, to cover the operative expenses of the cooperative. This obligation does not exempt them from paying for other goods and services provided to them by the cooperative.

Lastly, like other housing cooperatives, these cooperatives are subject to the right of pre-emptive acquisition as stipulated in Article 133 of the Law. This right applies when a member intends to transfer their right to the dwelling *inter vivos* within five years, or any longer period specified in the bylaws (up to a maximum of ten years from the date of possession). Specific regulations apply if the cooperative is involved in the promotion of subsidised housing.

5.2. The Basque Country Law and its reference to right-of-use cooperatives

The first post-constitutional cooperative law was Law 1/1982 of 11 February 1982 on cooperatives in the Basque Country. Article 58.4 established that the use and enjoyment of the dwellings could be awarded and transferred to the members by any legally admissible title, a rule that was maintained in Article 114.3 of Law 4/1993, of 24 June.

Although this second Basque regulation provides a more precise classification of cooperatives, it is only in the recent law 11/2019 of 20 December that we find an explicit reference to right-of-use housing cooperatives.

Unlike the case of the Balearic Islands, the Basque legislator has limited its regulation to specific aspects of this model, without including the shielding rules that we have seen in the previous section.

Like its predecessors, the current Article 118 establishes that ownership or use and enjoyment can be transferred to members through any legally admissible title. It further states that “when the cooperative develops or acquires a group of dwellings and premises, as a unified building, for transfer to members, the whole property will be owned by the cooperative in full ownership or under another right, for an indefinite period or a fixed term if so provided in the bylaws. In this case, cooperating members will have a right of use over the dwellings and premises allocated to them by the cooperative in accordance with its bylaws and internal organisational rules governing their rights and obligations”.

Furthermore, in right-of-use cooperatives, membership acquisition is contingent upon making a capital contribution, with the maximum amount of this contribution being equivalent to the development or acquisition costs of the property. Additionally, members are required to make periodic payments determined by the cooperative bodies for the maintenance, improvement, and other related expenses associated with the residential property. We note that, in contrast to the Balearic Law, there is no limitation in any way on the contributions required from members, which does not favour the affordability of housing.

Similarly, according to the Basque law, when a member departs, their right of use will be made available to the governing board, which will then assign it to a new member, unless it is transferred upon death to

their rightful successors, who can request their admission as members within three months of the occurrence, following the general requirements stipulated in the Law. Otherwise, they will have the right to receive the corresponding claim assessment, however, the repayment may be postponed until a new member replaces the departing member in their rights and obligations.

In our opinion, although the new Basque regulation explicitly recognises the right-of-use model, it lacks a legal framework that adequately addresses the specific features of this housing model, particularly in terms of affordability. Consequently, its expansion is unlikely to match the pace observed in other regions that have implemented protective regulations. The only exception to this is the requirement for non-profit entities, as stated in the third additional provision of Law 3/2015, of 18 June, on housing in the Basque Country.

From reading the norm, we can conclude that the approved regulation contains those elements that must serve to guarantee that housing is affordable, remaining outside the market rules, both in the event of a partner's withdrawal, as well as in the event of the company's dissolution, while offering a clear regulatory framework that offers the necessary legal security to the cooperative, its members and third parties that contract with it.

5.3. The modification of the Law on Cooperatives of La Rioja

Law 4/2001, of 2 July, on Cooperatives of La Rioja has been amended²⁷ to incorporate a new class of cooperatives, right-of-use housing cooperatives, regulated in articles 129 ter and 129 quarter.

These cooperatives are defined as those that retain full ownership or any other right over the land and/or building and provide their members with private use of the homes as their habitual and permanent residence at cost price. Along with these private-use facilities, the Law makes reference to common and shared-use spaces and facilities. Both are managed, administered, maintained and improved by the cooperative, which is considered the final consumer and for tax purposes, it is considered a consumer cooperative.

The legal norm establishes the characteristics of these cooperatives: the members of these cooperatives can be specific collective partners (major, functional diversity, etc.) or general; these cooperatives must provide services to satisfy the collective needs of their members and meet the requirements for cooperatives configured as other non-profit entities; the right of use of the member over the homes or premises susceptible to private use is configured as a right of a personal and corporate nature, not real, and is not transferable by acts *inter vivos* or *mortis causa*, except in the cases and procedures contemplated in this law and defines the cohabitation units formed by the members.

The Law also imposes limitations: the ownership or any real rights over the dwellings cannot be awarded to the members; in the event of dissolution, the dwellings and other facilities susceptible to private use must be transferred to another cooperative of the same type, to the entities that group them or to other non-profit entities whose social object is affordable housing on a transfer-of-use basis; they cannot be

²⁷ This modification has been carried out by Law 1/2019, of 4 March, on Urgent Economic, Budgetary and Fiscal Measures for the year 2019 of the Autonomous Community of La Rioja.

transformed into any other type of company, or into any other type of cooperative and they cannot carry out horizontal division, except in exceptional cases.

Finally, the contributions to the capital and other obligatory contributions that the using members must make are regulated, limiting them to 30% of the costs of the promotion; they must make the periodic payments agreed upon by the cooperative's bodies; and new partners cannot be forced to make contributions greater than the old ones.

From reading the norm, we can conclude that the approved regulation contains those elements that must serve to guarantee that housing is affordable, remaining outside the market rules, both in the event of a partner's withdrawal, as well as in the event of the company's dissolution, while offering a clear regulatory framework that offers the necessary legal security to the cooperative, its members and third parties that contract with it.

5.4. Canarian legislation on cooperatives

The Autonomous Community of the Canary Islands has been the last to legislate on cooperatives. Until just a few months ago, Canarian cooperatives were subject to state law. With the enactment of Law 4/2022 of 31 October, Canarian cooperatives have their own law.

The first formulation of the draft law coincided with the emergence of several cooperative initiatives in the Canary Islands operating under the right-of-use system, albeit in the early stages of development.²⁸ This undoubtedly served as a motivation for the legislator in the Canary Islands to address this phenomenon. Although, like the Basque one, the Canarian legislator limits its regulation to only some aspects of these cooperatives.

Article 116, which addresses the *inter vivos* transfer of cooperative housing assigned as property and includes a pre-emptive right and right of first refusal for the cooperative, includes a specific provision for right-of-use housing cooperatives. In such cases, the article prohibits the *inter vivos* transfer of the right of use and enjoyment. Instead, when a member departs, the cooperative must take possession of the right and subsequently transfer it to other members in strict order of seniority, with a few exceptions: (i) when the transfer of the right of use takes place between spouses decreed or judicially approved in cases of separation or divorce; (ii) if so stipulated in the bylaws, in cases of justified voluntary or compulsory cancellation, in favour of the members of the cohabitation unit.

Likewise, the provision contains a special rule for cases of transfer *mortis causa*, allowing the transfer of the right of use to the heirs of the deceased member, after their admission as members, if they meet the general requirements and so request it within the legal deadline. If the successors in title do not apply for membership, they shall be entitled to a refund of the assignee's contribution. The Law also provides that if there are several successors in title, the cooperative may require that the right to apply for membership be exercised by only one, and the bylaws may provide that the transfer may only take place in favour of other members of the deceased member's cohabitation unit.

Although this Law regulates some specific aspects of this type of cooperative, with the corresponding legal security for members, it has not included any of the protective (and restrictive) rules that serve to

²⁸ This modification has been carried out by Law 1/2019, of 4 March, on Urgent Economic, Budgetary and Fiscal Measures for the year 2019 of the Autonomous Community of La Rioja.

avoid speculation and that we have found in other legal rules analysed.

5.5. Valencian legislation on cooperatives and the new Law on Collaborative Housing²⁹

The Valencian legislator has opted to regulate cooperative housing by means of a special law, Law 3/2023, of 13 April, on Collaborative Housing in the Valencian Community, published in the Valencian Official Gazette on 19 April 2023, coming into force twenty days after its publication.³⁰

This regulation is the first attempt to establish a comprehensive and inclusive framework for collaborative housing, with a specific focus on housing developed through cooperative societies. It encompasses various aspects of this housing and cohabitation model, including technical, construction, and financial aspects. It also specifies the types of entities eligible to undertake such projects, limited to non-profit associations and housing, consumer or multi-purpose housing and consumer cooperatives. These entities must additionally fulfil the criteria outlined in the cooperative regulations to be recognized as non-profit organizations (as stated in Article 3.1 of the Law).

This limit, as well as the use of a *lex specialis*, outside the Cooperatives Act, is in line with the nature of this rule. In effect, this law aims to promote this housing model. This can be seen from the first section of Article 19, entitled “Promotion measures”, which states that “the regional and local authorities have the authority to implement measures aimed at giving effect to the constitutional right to decent, suitable, and affordable housing through policies that promote and manage collaborative housing directly or through non-profit organisations”.

The regulations encompass various measures that apply throughout different stages of these projects, starting from the initial phases, including the provision of advisory services to citizens regarding collaborative housing, and promoting and facilitating access to housing through rehabilitation and development initiatives. Additionally, the regulations address financing aspects, such as offering guarantees and providing tax relief within the jurisdiction's authority. Notably, contributions made towards financing construction for housing under the right-of-use model receive the same tax treatment as the acquisition of a primary residence (Article 10.11), while fees for use are subject to the same tax treatment as rental income (Final Provision Three). The regulations also facilitate the acquisition of public land, including the direct transfer of building lease rights. Furthermore, direct financial assistance can be granted to users and entities regulated under the Law.

The law also provides special aid for collaborative housing cooperatives under a right- of-use model that

²⁹ The legal norm analyzed is based on the aforementioned study: *Viviendas Colaborativas: estado actual en la Comunidad Valenciana*, ALGUACIL MARÍ, M.P., SAJARDO MORENO, A., ALEGRE NUENO, M., GRAU LÓPEZ, C.R. and MERINO GARRIDO, F., Valencia, 2021, Ed. Aula de Emprendimiento en Economía social y Sostenible Universitat de València and Diputación de Valencia, in <https://fecovi.es/documentacion/publicaciones/9-Libro-Viviendas-Colaborativas-estado-actual-CV.pdf>.

³⁰ The Second Vice-presidency and Regional Ministry of Housing and Bioclimatic Architecture commissioned the team of the Aula Empresocial of the University of Valencia to prepare a basic document analysing the specific legal and fiscal aspects to be considered for the regulation and promotion of senior, junior, and intergenerational collaborative housing to draft the corresponding regulatory text, a study mentioned in note 12. Based on this study, the Parliamentary Group Unides Podem presented the proposal for a law on collaborative housing in the Valencian Community (RE number 61,744), as well as the request for processing by urgent procedure, published in the Official Gazette of the Valencian Parliament (Boletín Oficial de les Corts Valencianes) number 283 of 26 October 2022.

are classified as being of social interest.

In order to be eligible for these measures, the right-of-use projects must meet the requirements of the Law, both in objective aspects, relating to the building, and in subjective aspects, relating to the entities owning the building and their partners.

The regulation defines its scope of application both subjectively and objectively (Art. 3). It defines collaborative housing as a residential building or complex “whose sole ownership belongs to an entity owned by its users, whose management is shared, adopting the form of a non-profit cooperative or non-profit association”, and must incorporate, at least: (i) dwellings or premises intended for private use, (ii) common elements of the building, and (iii) spaces or premises designated for common use, which serve various functions related to residential use and the provision of community and social services. The latter must have a minimum surface area of 20 % of the total (with a reduced requirement of 10 % for rehabilitation or acquisition of pre-existing buildings). The Law also establishes the basic building requirements to be met by these dwellings (arts. 5 to 9), relating to their functionality, safety, habitability, design, and quality,³¹ and contains some special rules regarding distribution, minimum dimensions of communal spaces or the intended uses.³²

The Law regulates the framework applicable to entities owning collaborative housing, which must be expressly stated in their bylaws. First, they must be non-profit entities; their purpose must be to provide accommodation, communal spaces and, where appropriate, complementary services for members and for those who live with them. The corporate purpose of these entities may encompass various activities, which are listed as illustrative examples. The transfer of housing to non-member third parties is restricted, with a maximum limit of 20 % of the total housing units. In the case of commercial premises, the bylaws may allocate a portion for businesses or social activities. Additionally, a minimum of five members or associates is required for the establishment of such entities.

The regulation sets several limits, including the prohibition for the cooperative to grant ownership or any other limited right in rem over the dwellings to the members. This prohibition extends to the building lease and applies regardless of the entity's title over the building, whether it is freehold or any other possessory right. It establishes that members have the right to use their dwellings privately and the common elements for community use, indefinitely, unless the entity's right is time-limited. This right of use is classified as a corporate and highly personal right, cannot be considered a right in rem and is non-transferable between members and to third parties, except in cases of *mortis causa* or *inter vivos* transfer to other members of the member's cohabitation unit. In such cases, the heirs or successors must meet the conditions to become a member as outlined by the Law. Finally, the person interested in acquiring membership must contribute to financing the construction with contributions to the share capital or the equivalent social fund, but these are limited *ex lege* to 30 % of the cost of acquiring, renting, or developing the residential collaborative housing complex. In addition, members must pay the periodic non-

³¹ Among other stipulations, it is required that at least half of the private units must include a kitchen. Additionally, the communal spaces or premises intended for the provision of community and social services, such as a kitchen, dining room, laundry room, healthcare room, or other similar spaces, must be adequately sized to promote personal autonomy and emancipation of the residents.

³² It is worth mentioning that, concerning the communal spaces, there is a requirement for at least one room to have a minimum surface area of 25 m², allowing for a square of 3.50 m² to be inscribed within it (except for laundries and communal bathrooms). Additionally, there is an obligation to have a room designated for meetings.

refundable fees set by the bodies of the cooperative or association, to cover the expenses derived from the financing, amortisation, maintenance and improvement of the dwellings and other facilities.

In addition to the above restrictive rules, the Law contains certain special rules to be applied by cooperatives that own collaborative housing (Art. 15).

The first of these is to specify that they may be housing cooperatives, consumer cooperatives or multi-purpose housing and consumer cooperatives. The regulation incorporates another special rule that supersedes the general provisions of the Law on Cooperatives. This rule establishes a specific system for joining, leaving, and transferring contributions within the cooperative. As a result, the cooperative's bylaws can outline the conditions mentioned earlier, such as restricting the process to other members of the member's cohabitation unit and potentially requiring a minimum seniority. If the right to use collaborative housing is held by multiple members, they are expected to designate a single person among themselves to represent them at general assemblies, with the right to speak and vote. The bylaws may regulate the figure of the temporary member and the legal reserve, established in accordance with cooperative legislation, can serve as collateral for loans taken by the cooperative for the construction or renovation of the building. The Training and Promotion Fund has various purposes beyond those outlined in cooperative legislation. These include organizing cultural, social, recreational, welfare, health, sports, and similar activities for the benefit of the building's occupants and the surrounding area, as well as the promotion and dissemination of collaborative housing.

Finally, the Law specifically addresses collaborative housing of social character (Art. 16) to comply with the provisions stated in Article 107.2 of the Treaty on the Functioning of the European Union, as well as introducing additional requirements if the owner of the collaborative housing is a cooperative (Art. 17). It is worth highlighting that these entities are only permitted to transfer the entire building or a portion of it to other similar entities or the Valencian government. In the event of dissolution, the building, residential complex, or any remaining assets must be transferred to a non-profit organization with similar objectives or to the regional government.

6. Conclusions

As observed, the regulation of right-of-use housing cooperatives can be approached from various perspectives, some of which lean towards granting ownership, as seen in the regulations of the Basque Country or the Canary Islands. However, we believe that such approaches may not effectively contribute to the advancement of the new model, which predominantly revolves around monetary considerations in today's context.

It has been shown that one of the added value elements provided by this cooperative model is to maintain the affordability of the home throughout its useful life, as the cooperative is the sole owner of the entire building. For this reason, it seems necessary that the legal regulations impose this ownership regime in perpetuity, since contemplating it only in the bylaws is not a sufficient guarantee, neither for the members, nor for third parties who contract with the cooperative, nor for the administrations, taking into account that the bylaws can be modified at any time by an agreement of the assembly. In this sense, after analysing the content of the new Spanish laws, it seems that the ones that will fulfil this purpose most effectively

are the Balearic Law, the Law on Cooperatives of La Rioja and the Valencian Law on Collaborative Housing.

In addition, the three legal norms require the creation of these cooperatives as non-profit entities (so that the profits cannot be distributed among the members, but must be reinvested in the cooperative itself), they limit the contributions to the capital that the members must subscribe and pay (between 30% and 35% of the total cost of the promotion), and they require that the amount of the monthly fees or rents that they must pay be agreed upon by the sovereign body, the general assembly.

Likewise, these laws restrict or prohibit the subletting of dwellings, they expressly say that the member does not hold a right over the dwelling separate from his status as a member, but enjoys this right of use precisely because he is a member of the cooperative; they prohibit the transformation of the right of use into individual property and the horizontal division of the building and even their transformation into another type of company is prohibited or limited. In addition, in the case of the Balearic Law, as an additional guarantee, it requires that the above limits be registered in the Land Registry, in order to be known by third parties.

We believe that a more suitable approach is to adopt a specific regulation tailored to the unique features and objectives of cooperative housing, as exemplified in the legislation of the Balearic Islands or Valencia. These regulations consider factors like affordability, the model of coexistence, and shared governance. They may even impose certain limitations on individual autonomy to ensure the development of projects that are anti-speculative and promote economic, social, and environmental sustainability. These regulatory limits are in response to requests from the sector itself, which demanded legal certainty and mechanisms to protect the model. The rules analysed have been the subject of open processes, in which the right-of-use cooperatives in each region have participated.