BASQUE LEGISLATION ON COOPERATIVES IN LIGHT OF THE NEW BASQUE COOPERATIVE LAW

Aitor Bengoetxea Alkorta[1], Itziar Villafáñez Pérez[2]

Abstract

On 20 December 2019, Law 11/2019 was approved, on Basque Cooperatives, the current regulation for these organisations in their applicable territorial field, in other words, the Basque Autonomous Community. The analysis of this law is highly interesting, whether taking account of the importance and referential nature of the Basque cooperative movement, or of the new features and clarifications introduced by said Law, which may certainly be controversial. This work reviews the legislation applicable to Basque cooperatives, highlighting the new features introduced by the new law.

[1] Aggregate Professor of Labour and Social Security Law. Director of GEZKI (Institute on Social Economy and Cooperative Law) University of the Basque Country "Gizarte Ekonomia eta bere Zuzenbidea" Research Group, IT 1327-19 aitor.bengoetxea@ehu.eus

[2] Associate Professor of Commercial Law, Researcher at GEZKI (Institute on Social Economy and Cooperative Law), University of the Basque Country. "Business ethics in the different expressions of Commercial Law" Research Group, IT 1146-16 itziar.villafanez@ehu.eus

KEY WORDS: Cooperatives law; Basque Country; general provisions; constitution and registration; members; governing bodies; economic regime; statutory and structural changes; dissolution and liquidation; cooperative categories; cooperation between cooperatives, cooperatives and the public administrations; Higher Council of Basque Cooperatives.

ABBREVIATIONS

BCL (Basque cooperative law)

CCL (Capital Companies Law)

CPOPIP (Cooperative Promotion and Other Public Interest Purposes)

CRF (Compulsory Reserve Fund)

HCBC (Higher Council of Basque Cooperatives)

RBCL (Regulation of the Basque Cooperatives Law)

1. INTRODUCTION

Law 11/2019, of 20 December, on Basque Cooperatives (Basque Cooperatives Law, BCL), came into force on 30 January 2020. The new law has been enacted by virtue of the exclusive competence of the Basque Autonomous Community with respect to cooperatives (art. 10.23 of Organic Law 3/1979, of 18 December, on the Basque Statute of Autonomy).

It is important to underline the interest of the new law, not only because of the new features it introduces, but also because Basque cooperativism, and particularly worker cooperatives, are a reference of world cooperativism, given their dynamic nature and their social and economic weight.

Technically speaking, the new Basque Cooperatives Law amends and revises Basque cooperative legislation. While the law is obviously based on its regulatory background[3], there is no general observation of substantial changes in legislative policy, or in the legal model of the Basque cooperative. Even so, we must highlight, as we will see during this study, that the new law goes further than mere revision, introducing a number of new features that carry a certain amount of weight.

The main law to be revised is, without a doubt, Law 4/1993, of 24 June, on Basque Cooperatives, which has been in effect for more than 25 years. The new law's statement of purposes underscores the need to

[3] Such as Decree 58/2005, of 29 March, including the Regulation of the Basque Cooperatives Law (RBCL), part of whose content is currently binding.

revise the different legislative texts born around Law 4/1993, in order to systematise Basque cooperative legislation and offer legal certainty to the interpretation and application of said regulations. The period from the moment Law 4/1993 came into effect, more than 25 years ago, has included, among other interesting new features, the boom in economic globalisation, which has obliged cooperatives to adapt to the situation. It is therefore advisable to technically update cooperative legislation in order to bring it into line with contemporary cooperative dynamics, and to offer legal certainty, both to internal relations between the cooperative and its members, and with respect to non-member third parties.

As reference parameters for proceeding with said update, the new Basque cooperative law has taken into account the evolution of comparative law in the commercial and cooperative areas.

The process of drawing up the law has been laborious. In 2017 a draft was presented and discussed by the Higher Council of Basque Cooperatives (HCBC), a public body made up of representatives of the Basque Country, of the cooperative federations, and of the Basque universities). In 2018 the bill was submitted to public consultation. In 2019 the bill was presented in the Basque Parliament and, after the relevant discussion at the parliamentary headquarters, on 20 December 2019 the law was finally approved, with a vote in favour by four Parliamentary groups (the Basque Nationalists; Euskal Herria Bildu; the Basque Socialists; and the Basque People's Party), and the abstension of another parliamentary group (Elkarrekin Podemos).

The challenge to be addressed consisted of adapting cooperative legislation without losing the essence of the cooperative identity, an identity which the International Co-operative Alliance (ICA), a non-governmental organisation which represents the cooperative movement worldwide, summarised in its definition of 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.* At this point, we should mention the very positive fact that the new law includes, for the first time, an explicit reference to the ICA, and to the cooperative principles and values enumerated by the organisation, as the universal framework providing the inspiration for Basque cooperative legislation.

Also worthy of positive appreciation is the fact that the new law includes the cooperative in the context of the social economy, in keeping with Law 5/2011, of 29 March, on Social Economy, which highlights the cooperative as the main reference of the type of companies making up said economic sector, based on the idea of placing priority on persons over capital.

The law contains 4 titles[4], including 16 sections, whose principal aspects and new features we explain below.

2. GENERAL PROVISIONS

The cooperative concept remains unchanged with respect to the stipulations of Law 4/1993: *The cooperative is that company which develops an enterprise which has the priority purpose to promote the economic and social activities of its members and to satisfy their needs with the active participation of the same, observing the principles of cooperativism and attending to the community in the area around it.* (art. 1.1).

What is innovative and, as we understand, highly appropriate, is that the new law places the Basque cooperative in the framework of the ICA cooperatives, when it establishes that *the cooperative will have to adjust its structure and operation to the cooperative principles of the International Cooperative Alliance, which will be applied in the framework of this law* (art. 1.2).

We believe that it is highly appropriate for the structure and activity of Basque cooperatives to adapt to the principles of the ICA, which summarise the essence of universal cooperativism, and this precautionary measure can act as a guarantee against false cooperatives, when a pseudo-cooperative strays from the principles delimiting the true cooperative nature.

Said principles also serve to limit the type of economic activity of cooperatives, which can be of any kind, except when expressly forbidden by the law due to incompatibility with the cooperative principles (art. 1.3).

Also underlined is the necessary autonomy of the cooperative with respect to all kinds of institutions, public or private. In fact, this is the fourth cooperative principle.

A minimum social capital of 3,000 euros is established, fully paid up from the moment the cooperative is constituted (art. 4). The amount seems reasonable; it is the same as was required previously and coincides with the sum required for limited companies.

As in Law 4/1993, the registered address of cooperatives subject to the BCL must be located within the Basque Autonomous Community, at the place where the activities are preferentially carried out with their members or where both the administrative and business management are centralised (art. 3). Remember that according to Final Provision 1 the BCL area of application covers cooperatives with their registered

[4] The cooperative society; special provisions; cooperatives and the public administration; and cooperative associationism.

address in the Basque Autonomous Community which proceed with their principal cooperative activity in that territory.

With respect to the scope of the cooperative activity, when article 1.1 indicates that *its priority purpose will be to promote the economic and social activities of its members*, it is allowing cooperative operations with non-member third parties, a possibility expressly stipulated in art. 5, *with no other limitations than those established by the law and the cooperative articles of association*, meaning that adaptation to the respective legal limits of the different types of cooperative will be required.

3. CONSTITUTION AND REGISTRATION OF BASQUE COOPERATIVES

3.1. Constitution of the cooperative

No major new introductions have been made to the section on constitution of the cooperative, which revolves around the promotors who make up the constituent assembly, and the articles of association that said assembly must approve.

The cooperative will be constituted by means of public deed, which must be executed within two months counting from the date of the constituent assembly, and shall be recorded in the Basque Cooperatives Register, at which time it will acquire legal personality (art. 11).

As interesting new features, regarding the minimum content of the articles of association, we must underscore the *guarantees and bodies established to respect the members' right to information* (art 13.1 o). This is an appropriate inclusion, in order to guarantee the condition, indispensable for the cooperative to function correctly, that members receive sufficient information of their cooperative's activities.

Also included, as another fitting new feature, is the stipulation that *cooperatives with more than 50 members shall draw up a model to prevent offences by the cooperative, as well as establishing the mechanisms required for its monitoring. Equally, specific means must be incorporated to guarantee that the cooperative is an environment free of sexist violence* (art. 13.1 q).

3.2. Basque Cooperatives Register

In keeping with the previous section, constituting a cooperative requires that it be registered in the Basque Cooperatives Register the moment it will acquire legal personality.

Thus, *the Basque Cooperatives Register is a public register, assigned to the Basque Government department holding competence in labour matters* (art. 15).

Registration of the principal recordable actions will have constituent nature (constitution, merger, division, dissolution, reactivation and transformation into cooperatives). In all other cases registration in the register will have a declaratory nature.

There is one new feature, in keeping with the current state of technology, whereby the Register is obliged to promote the use of electronic means in its relations with citizens, and with the organisations interested in accessing its data (art. 16.3).

4. MEMBERS

4.1. Member categories

Both natural and legal persons may be members of Basque cooperatives (art. 19.1), including the public administrations and their instrumental bodies (art 19.7), although in all cases account must be taken of the particularities which each category of cooperative may imply in this respect.

The current BCL maintains the different member categories recognised by Law 4/1993. A distinction is therefore made between cooperative members, collaborators, inactive or non-user members and shareholders with voting right.

Cooperative members are those people whose condition of member is directly related to effective participation in the cooperative activity, whether as a worker or as a user (art. 19.3). In other words, these are members who carry out the cooperative activity. These include members who work for the cooperative (not in worker cooperatives, art. 21) and the worker members of worker cooperatives, whose cooperative activity consists of providing their personal work in the cooperative, and to whom we refer below.

Together with the above, as previously indicated, Basque legislation, following the trend of cooperative legislation in general, has gradually recognised other categories of members whose connection is not mainly based on development of the cooperative activity, such as collaborating members[5] (art. 19.5), inactive or non-user members[6] (art. 31), and shareholders with voting rights[7] (art. 19.6). By way of a new feature, an indication is made whereby the articles of association may regulate the situation of a person who takes leave of absence and has temporarily ceased activity (art. 31.4). Regarding these member categories (although the BCL says nothing in the case of members on leave of absence in art. 31.4) we

[5] Natural or legal persons, public or private, who, without being able to fully proceed with the cooperative purpose, may collaborate in achieving said purpose.
[6] Those who, for any justified cause, and having the minimum seniority established in the articles of association, stop using the services provided by the cooperative or no longer proceed with the cooperative activity, particularly due to the retirement of members who work for the cooperative or member workers.
[7] Minority members of mixed cooperatives.

underline the limitation of votes to which they may have the right at the general assembly, in order to guarantee that the majority of the votes correspond to the cooperative members (also in art. 37.4, which does in this case refer to members on leave of absence).

Also allowed, to a limited extent, are fixed-term employment relationships, which deserve special attention in the case of member workers (in worker cooperatives) or members who work for the cooperative (not in worker cooperatives, art. 26.2), inasmuch as the law has considered these necessary with a view to covering economic needs which are temporary and not contradictory to the nature of cooperatives.

4.2. Acquisition and loss of member status

The articles of association will establish the necessary requirements to acquire member status and acceptance or denial will not be decided for causes representing discrimination in relation to the social object (art. 20). Remember that to acquire cooperative status, members must have the capacity to develop the cooperative activity which, on the other hand, will be largely related to the category of cooperative in question.

Based on the voluntary, open nature of cooperatives, members have the right to voluntarily resign at any time, notwithstanding the obligation to give due notice (which cannot be more than 3 months for natural persons and 1 year for legal persons) or the eventual duty of permanence (which cannot be longer than 5 years) indicated in the articles of association. Failure to comply with such duties will entail the consideration of unjustified resignation, a qualification which will also come into effect when the member intends to proceed with activities which compete with those of the cooperative or when other cases anticipated in the articles of association occur (art. 26). Furthermore, on losing the requirements to be a member, their resignation will be mandatory, which can equally be justified or non-justified (art. 27). Furthermore, in the cases of very serious offences as stipulated in the articles of association, an agreement can be adopted as to their expulsion (art.28).

The current BCL brings almost nothing new with respect to acquiring and losing member status. Here emphasis must be placed on the duty of the administrators to formalise the resignation within 3 months of receiving notice; the resignation will be justified in the event that said deadline elapses without qualification (art. 26.6).

On the other hand, the current BCL maintains the possibility of suspending or forcing the resignation of worker members or members who work for the cooperative (not in worker cooperatives), for reasons of an economic, technical, or organisational nature or due to production-related matters or situations of force

majeure, (currently art. 30), extending the authority to make a decision of this kind to the Governing Council if so established in the articles of association. In such cases, it permits the refund of required capital contributions by means of monthly payments over a period of up to 2 years (previously, both voluntary and compulsory contributions had to be returned immediately).

4.3. Rights and obligations

Cooperative legislation details the obligations (art. 22) and rights (art. 23, and specifically the right to information in arts. 24 and 25) applicable to members; here we must remember that these are also binding under the corporate disciplinary regulations of the articles of association – with the new BCL preventing the sanctioning of members for infringements not anticipated in the articles of association[8] (art. 29). This is a question clearly impregnated by the nature of these organisations and their governing principles, while it should be noted that the rights and obligations are not tied to capital contributions, but to the actual members and to the cooperate activity.

Among other questions we can underline the right and obligation to participate in cooperate activity, in the terms established in the articles of association, and the right to obtain cooperative dividends, where appropriate. Law 4/1993 already indicated that the articles of association should stipulate the modules or minimum norms of participation, and that, in the event of justified cause, the administrators could relieve the members of said obligation as appropriate. Under the current BCL, this participation can be effectively produced by means of albeit limited participation, when so anticipated in the articles of association, in other organisations with which the cooperative cooperates or participates and in which it has a special interest connected to its corporate purpose. This is not really a new feature in the legal system, given that it was a possibility already anticipated in the RBCL (art. 1.1). The latter also clarifies that the legal references to participation in the cooperative activities could have a long-term basis for the purposes of its measurement (art. 1.2 RBCL).

The current BCL maintains the duty of loyalty for members, forbidding the carrying out of activities which compete with the cooperative's corporate purpose, unless authorised, and establishing the duty of confidentiality with respect to information whose disclosure may be harmful to the cooperative. Also basically maintained, notwithstanding that stipulated in relation to the content of the articles of association, is regulation of members' right to receive information, giving them the right to access the

[8] Previously, minor offences could be stipulated in the Internal Regulations. The new BCL introduces a number of changes with respect to corporate disciplinary regulations; thus, as the start date for calculating the statute of limitations for offences, it indicates the date on which the offence was committed (and in the case of continual or permanent offences, the date on which the offensive behaviour ended), while previously it was the day that the directors became aware of the offence and, in any event, twelve months after the offence was committed. Thus, in this point the legislation offers greater guarantees to the members.

company's most relevant documentation and to request information and clarifications on different questions, limiting the cases where information can be denied.

With respect to the governing bodies, attending meetings of the general assembly and other bodies is not only stipulated as a right, but also as an obligation[9]; the same applies to positions for which they were elected, which they must also accept unless they have a justified cause for refusing.

Finally, with respect to the economic regime, the duty of paying contributions to the share capital is required in the conditions stipulated, while the possibility of resignation entails the right to refund of such contributions in the terms indicated below. Furthermore, allocation of the corresponding losses must be assumed, an aspect to which we will also return at a later date.

5. GOVERNING BODIES

The BCL considers the necessary cooperative bodies to be the general assembly and the administrative body, as well as the supervisory body in cooperatives with 100 members or more. Likewise, the articles of association can regulate another series of bodies anticipated in the law (such as the governing council and the appeal committee) and can also establish others (art. 32).

The new BCL expressly includes the duty of cooperative bodies to strive to achieve a balance between members and to establish measures in regard to gender equality and work-life balance, a duty which can be extended to their structures of association (art. 32.4).

5.1. General assembly

a) Concept and competences

The general assembly is constituted as a meeting between the members convened to deliberate and reach agreements on the matters falling within its authority; obeying the agreements of the general assembly is mandatory for all members. It has the exclusive right to reach agreements on the questions anticipated by the BCL[10], and the provision of Law 4/1993 remains in place inasmuch as the general assembly is

[9] Legal obligation which, although it can be understood from the point of view of the principle of the democratic control of cooperatives by their members, is nevertheless surprising, given that it is a well-known fact that this is an obligation which is largely ignored. In fact, as indicated below, legislation itself recognises the low attendance of general assemblies by members to be a problem, particularly in certain kinds of cooperatives, whose regulations include a third call for such meetings.

[10] a) Appointment and dismissal of persons belonging to other governing bodies and the implementation of liability action against them; b) Appointment and dismissal of accounts auditors; c) Examination of company management, approval of the annual accounts and of the distribution of profits or allocation of losses; d) Establishment of new compulsory contributions, of the interest to be yielded by contributions and by membership or periodical payments; e) Issue of different types of funding; f) Changes in the articles of association; g) Constitution of second-degree cooperatives and similar organisations, as well as merging and separation between them (delegable competence); h) Merger, division, transformation and dissolution of the

allowed to debate on all matters of cooperative interest, but can only reach mandatory agreements in matters not considered by the BCL to be the exclusive competence of another administrative body (art. 33). This fundamentally reinforces the position of the administrative body.

b) Categories of assemblies, how they are convened, constituted and function

The general assemblies will be ordinary (mainly convened to examine the company management, approve the annual accounts and make decisions as to the distribution of profits and allocation of losses, without prejudice to the inclusion of other subjects) and extraordinary (art. 34).

Without prejudice to the potential plenary assembly, convening the meeting corresponds to the administrative body[11]. The ordinary general assembly must be convened within the first 6 months from the date of the fiscal year (with respect to this, the new BCL has introduced a small change, given that the previous version referred to the deadline for convening the meeting as being the date on which it was convened and not on which it was held, meaning that the actual date of the meeting is more precise). The announcement will be made public between 10 and 60 days prior to the meeting date and the law, like its previous version, offers several ways to convene the meeting in order to ensure that all members receive notice (announcement posted at the company headquarters and at the centres in which it goes about its activity, individual communications, announcement in newspapers with widespread circulation in the case of cooperatives of 500 members or more), also placing emphasis on the use of new technologies, such as an announcement on the corporate website and the potential telematic management of a notice system for members (art. 35).

Generally speaking, the assembly will take place in the official company premises, although exceptions are allowed; in order to enable the participation of members, the current BCL expressly anticipates participation by videoconference or similar system in the case of members who are at a geographical distance. The assembly will be validly constituted, in the first call to meeting, when the majority of the votes are present and, in the second call, 10% of the votes or 100 votes. The possibility of a third call to meeting, anticipated in the previous version of the BCL for consumer and agricultural (and food) cooperatives, currently extends to education cooperatives, when the assembly can be held no matter how many votes are present and represented, leaving the interval anticipated in the articles of association between the second and third call (art. 36). The law's statement of purposes justifies the measure based on the participatory logic and sociological reality of these cooperatives.

company; i) All decisions representing, according to the articles of association, a substantial change in the economic, organisational or functional structure of the cooperative; j) Approval of or changes in the cooperative's internal regulations; k) All other agreements established by the law.

[11] Without prejudice of the power of the members or the supervisory committee to press for a meeting in the legally established terms.

Also with a view to enabling the cooperative to function, when it has more than 500 members or circumstances arise which seriously and permanently prevent the presence of all members at the general assembly, is the continued possibility of functioning by means of an assembly of delegates, elected at preparatory meetings (art. 40).

c) Agreements

Basque legislation generally respects the cooperative principle of "1 member, 1 vote" in first-degree cooperatives although, in keeping with the tendency of cooperative legislation, a plural or proportional vote is allowed, given that the voting rights of legal members who are cooperatives, companies controlled by the latter and public bodies can be proportional to the cooperative activity or to the complementary services in the framework of inter-cooperation. At the same time, limits are placed on the maximum number of votes that can be held by non-cooperative members (a third of the total votes; remembering that non-cooperative member votes are also limited), with the statutory regulation also anticipating the duty to abstain in the case of conflicting interests. The current BCL also expressly anticipates, in the line we have been indicating, voting by means of telematic procedures (art. 37).

As a general rule, agreements will be adopted by more than half of the validly cast votes, requiring a majority of two-thirds in the event of agreement on transformation, merging, division and dissolution of the cooperative, provided that the number of votes present and represented are fewer than 75% of the total cooperative (art. 38).

Agreements taken at the general assembly will be recorded in the minutes (in the terms of art. 39), and can be contested in accordance with art. 41 when they are contrary to the law, to the articles of association or when they harm, to the advantage of one or several members or third parties, the cooperative interests. Regarding this latter question, with a view to ensuring the legal certainty of the traffic of these organisations (and considering that the specific aspects of the cooperative are not compromised), the current BCL has chosen to bring its regulation closer to that stipulated in the Capital Companies Law (CCL)[12] (for example, by eliminating the distinction between void and voidable agreements, or by extending the expiry period for actions to 1 year, rather than 40 days, the period stipulated in the previous law, which coincided with that stipulated for associations), to which it also refers in certain aspects, without prejudice to the typical particularities of these companies, such as the possible intervention of the supervisory committee. The occasional change is introduced in this point, such as the reduction in the percentage of member votes required to request suspension of the agreement in the document instituting the proceedings (which previously stood at 20% in all cases, a percentage which remains in place for cooperatives of less than 10 members, but is reduced to 15% in those of up to 50 members and to 10% for

[12] Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Capital Companies Law.

the remainder), which we highlight for its implicit recognition of (and endeavour to adapt to) the problems of member participation and involvement, which generally increase with the size of the cooperative.

5.2. Administrative body

a) Concept, competences and form

The new BCL contains a wider range of new features with respect to the administrative body, some of which are certainly worthy of note.

According to art. 42.1, the administrators are the body exclusively responsible for managing and representing the cooperative and also exercise all powers not expressly reserved by the law or the articles of association to other corporate bodies. Once again, we must note the extent of the competences held by this body.

Following cooperative legislative tradition, the administration will correspond to the governing council, a body of collegiate nature, with the articles of association establishing the number of members (or, where appropriate, according to the new legal text, the minimum and maximum number, with the general assembly having the task of establishing said number in each case, although there must be at least 3 members; art. 47.1). Exceptionally, when the number of cooperative members is no greater than 10, the articles of association can anticipate the existence of a sole administrator (art. 43.1). Basque legislation has therefore chosen to continue without including (except for the case of small cooperatives) the possibility of naming two or more administrators who act with joint faculties (each being able to act independently), or joint Administrators (who must act together).

b) Composition

This body must also be made up either completely or in the majority of members, permitting in the case of the governing council that part of its members be elected from among non-members, although to a limited extent (art. 43.2; which currently raises the limitation from a quarter of its members to a third), thereby enabling the professionalisation, even if partial, of this body. The members will be elected for a period of between 2 and 5 years, remembering that they are obliged to accept the position and that refusing it is not a decision they can make of their own accord. Concerning this latter point, we must stress that the new BCL establishes the duty to furnish reasons for refusing the position and their submission in writing, a justification with regard to which the governing council or, where appropriate, the general assembly or the appeal committee will come to a decision. It also clarifies the effects of non-justified refusal, in which case compensation could be demanded from the administrator (in general, arts.

46 and 47, which develop these aspects). As a new feature, co-option is allowed, i.e. the temporary appointment of members by the governing council itself in the case of a minority number of vacancies, when no replacements are available (art. 43.7). Similarly, the new BCL makes limited inroads to the system of incapacities and prohibitions, basically including a series of technical improvements, such as clarification that the prohibition of minors will only affect those who have not been emancipated, or the provision on persons condemned for certain crimes or affected by legal incompatibilities (art. 44).

With respect to the administrative body, the new BCL seeks to underline the incorporation of gender equality criteria, given that, as well as continuing to permit the articles of association to enable composition of the governing council in such a way as to reflect circumstances such as its varying geographical implementation, the different activities developed by the cooperative, or the distinct categories of members and the proportion existing between them, establishing the corresponding assignation of positions, it must also include express reference to the balanced representation of women and men (art. 47.6).

c) Adopting agreements and modus operandi

As a general rule, agreements adopted by the governing council will be decided when more than half of the attendees vote in their favour. Each director will have one vote (with the chair holding a casting vote), although in certain cases a favourable qualified majority of at least two thirds of the votes is required (art. 48; which currently clarifies that blank votes and abstentions will not count). The new law expressly anticipates participation in the governing council by means of videoconference or a similar system, a measure which is not however new, but was already mentioned in RBCL art. 19. The agreements adopted by the administrative body can be contested in accordance with art. 52.

Unless forbidden by the articles of association, either an executive committee or one or more managing directors can be appointed (art. 48.5). With a view to increasing the degree of professionalism among the governing council, the secretary does not have to be a member or board member under the new law (art. 47.2; in Law 4/1993, said position had to be held by a board member).

However, here the most interesting changes correspond to the duties of diligence and loyalty, bringing them into line with the capital companies law, which has also been the object in the last decade of important changes and developments in the matter[13]. On the one hand, we highlight the circumstance of having decided to dedicate a specific article to the duties of the administrators, which, while it can be considered as somewhat limited, particularly when compared to the CCL regulation in this matter, must

[13] On changes referring to the cooperative administrative body, briefly in IRASTORZA and LÓPEZ, 2020, who applaud the measures, understanding that they respond to real needs to modernise and professionalise these companies, particularly taking account of the difficulties that have appeared in recent years, without relinquishing their essential values and principles.

be approached from the angle that this question previously had no separate regulation, having been no more than a mention included when regulating their responsibility. We therefore appreciate a systematic improvement, as well as the assigning of greater importance to the duties inherent to the position of administrator.

On the other hand, the contents of these duties approach those of capital companies, on imposing the discharging of their duties with the degree of diligence exercised by a reasonable business person, given the nature of the position and the functions attributed to each one (eliminating the provision of Law 4/1993 whereby the duty of diligence must be estimated with more or less rigour depending on whether or not payment is received for the position). It also imposes the carrying out of their position with the loyalty of a faithful representative, working with good faith in the cooperative's best interests, and being unable to exercise their powers for purposes other than those for which they were granted. Express mention of the duty to secrecy in regard to confidential data is maintained, while conflicts of interest with the cooperative are expressly regulated (developing the duty of abstaining from proceeding with activities which compete with those of the cooperative or represent a conflict with its interests and their dispensation), as well as the protection of business discretion in the area of strategic and business decisions (art. 49). Nevertheless, this is an approach limited to the CCL. Thus, no express mention is made of questions such as how to demonstrate appropriate dedication, the right and obligation to compile information on cooperative matters and the duty to know their situation or, above all, the system of self-contracting (beyond operations arising from their condition of member), or other issues related to potential conflicts of interests by the administrators and, where appropriate, by people related to them. We believe it would be interesting to develop these subjects, provided that account is taken of the typical characteristics of these companies, and that a balance is maintained when regulating the different aspects related to them[14]. However, all of the above does not necessarily imply losing the essence of cooperatives, but rather developing their regulation with a view to clarifying certain relevant aspects of their legal system; this said, we must remember that the duties of diligence and loyalty are inherent in the position of administrator, independently of whether or not they are expressly stipulated in the law, and of whether or not all of their expressions are regulated. This said, as we have defended on other occasions, the question is not necessarily to establish a more rigid system for administrators, given that all of the aforementioned must not be incompatible with taking account of the particularities of the cooperative administrative body and its composition[15].

The regulation of these duties is complemented by arts. 51 and 52, on the responsibility of members and exercising of the corresponding actions. Thus, the administrators will be held jointly and severally liable

[14] In this respect, we advocate not assigning excessive complexity to cooperative legislation.
[15] See GRIMALDOS, 2013 or VILLAFÁÑEZ, 2016.

for harm caused by actions contrary to the law or to the articles of association, or by those carried out in breach of the duties inherent in the position, with the new law clarifying that for this to occur there must be a combination of deceit and misconduct. Mention should be made of the express extension of this responsibility to de facto administrators, a new feature of the current BCL, defined as *both the person who, without having been appointed administrator, effectively carries out the functions corresponding to the position and, where appropriate, the person under whose instructions the company administrators act*, excluding the creditors who provide financial support to the cooperative establishing a series of conditions or requirements, unless proof exists to the contrary. Equally noteworthy, as a new feature included by the BCL, together with certain adjustments of a technical nature, is the obligation to return to the cooperative all wealth unjustly obtained as a result of an eventual infringement of the duty of loyalty.

The possibility of remunerating the position is also the object of legal development in the new BCL (art. 45), similarly clearly inspired by? the current text of the CCL, starting with its gratuitous nature (without prejudice to repayment of the expenses originated by their position) but allowing it to be remunerated. However, to pay said remuneration it must be expressly authorised in the articles of association, together with the criteria for establishing such remunerations, with the general assembly having the task of establishing their annual amount (Law 4/1993 stopped at affirming that the articles of association or, failing these, the general assembly, could assign remunerations to the board members). Furthermore, it adds that the remuneration must bear reasonable proportion with the importance of the cooperative, with its economic situation at any given time and, above all, with the effective services provided by the administrators when fulfilling their position. With the objective of reinforcing transparency in this matter, all of the aforementioned must figure in the annual report[16].

5.3. Supervisory committee and other bodies

a) Supervisory committee

This is a body specific to cooperatives, which comparable cooperative legislation generally envisages with different names and functions (e.g. intervention; arts. 38 and 39 of Law 27/1999, of 16 July, on cooperatives[17]). Under Basque legislation (arts. 53 to 56) this body will be mandatory in cooperatives with 100 or more members, and optional in the remainder. Without directly intervening in the company management, the committee is assigned important powers of information, being able to revise the cooperative's annual accounts and books (note that the new BCL reinforces this body's power of control

[16] On the payment of cooperative directors (including the possibility of taking into account whether or not the position receives payment when establishing the due diligence), see GARCÍA ÁLVAREZ, 2015.
[17] Spanish law (not applicable to cooperatives subject to the scope of application of the BCL).

over the accounting media used and proposals made in regard to the results of the year), supervise and qualify documents of representation and solve doubts or incidents on the right of access to general assemblies, having the power to convene the latter in the cooperative's interests when the administrators have failed to do so, contest company agreements, inform the general assembly of questions put to them, invigilate the process of choosing and appointing the members of the other bodies, and suspend administrators involved in procedures of legal incapacity or prohibition.

It will have at least 3 members, a possibility in principle limited to cooperative members, although the articles of association can allow up to half of its members to be non-cooperative members who meet the appropriate requirements of reputation, professional qualification and technical or business experience in relation to the body, as well as the inclusion of a representative of the salaried employees with a work contract. Its period of duration will be established in the articles of association and cannot coincide with that of the administrators, a measure seeking to achieve greater independence between the two bodies. Generally-speaking, the modus operandi of this body will be as established in the articles of association or in the internal regulations.

b) The social committee

This is an optional body which can be provided for and regulated by the articles of association; it has the task of representing worker members (in worker cooperatives); or members who work for the cooperative (not in worker cooperatives), in both cases they are the exclusive members of the body, with the basic functions of informing, advising and consulting administrators in the aspects that affect the working relations of the worker members and members who work for the cooperative (not in worker cooperatives), or, where appropriate, of the salaried employees (art. 57). The new BCL eliminates the limitation of this body to cooperatives with more than 50 worker members or members who work for the cooperative (not in worker cooperatives), a limitation which was unjustified.

c) The appeal committee

The appeal committee is a body which can be envisaged in the articles of association. It has the power to review, on request by an affected member, the penalty agreements adopted in the first instance within the cooperative for serious or very serious offences and, in certain cases, non-disciplinary agreements. It will be made up of full members who meet the requirements of seniority, cooperative experience and aptitude stipulated in the articles of association, obeying the regulations established by the law and the articles of association (in art. 58). The new BCL makes no changes in this respect.

6. ECONOMIC SYSTEM

a. Share capital and other financing models

a) Share capital contributions: categories and legal system

According to the BCL, the cooperative share capital will be constituted by its members' contributions to its net worth, accredited by means of registered certificates, which will not have the consideration of marketable securities, or by means of a shareholding book. The total maximum contribution by each member is generally limited to a third of the share capital, with the legally envisaged exceptions (art. 60).

The law maintains the traditional distinction between compulsory contributions, necessary to become a member (which may vary for the different categories of member or according to their natural or legal condition, or for each member, in proportion to the commitment or potential assumed use of the cooperative activity; regulated in art. 61), and voluntary contributions (which can be accepted by the company bodies in the terms of art. 62).

Since 2006, Basque legislation has also distinguished between contributions with the right to refund in the event of resignation, and contributions whose refund can be unconditionally refused by the assembly or governing council, as stipulated in the articles of association (art. 60.1)[18]. This is a classification which responds to the problem arising from introduction to the legal system of the International Accounting Regulations, given that the right to the refund[19] of contributions means that they would be accounted for as financial liabilities. In the case of contributions whose refund can be rejected, said accounting effect would be avoided[20]. Furthermore, also for reasons of financial stability, when in a financial year the amount of contribution returns is greater than the percentage of share capital established in the articles of association, new refunds may be subject to the favourable agreement of the governing council (art. 60.2).

The introduction of this classification was accompanied by certain complementary regulations, such as the necessary agreement of the general assembly for the compulsory transformation of the contributions into those whose refund can be unconditionally refused (and the possibility, justified, of resignation by the dissenting member), as well as preferential remuneration, priority refund in the event of the company going into liquidation, or some kind of particularity with respect to the transformation of contributions in cases where the owners of the contributions whose refunds have been refused were to have resigned. The new BCL introduces a number of new features in this respect, such as the need to change the company

[18] Classification introduced in Law 4/1993 by Law 8/2006, of 1 December, making a second amendment to the Basque Cooperatives Law, which has gradually been incorporated into the other cooperative laws in Spain.
[19] In fact, it would make more sense to refer to the liquidation of contributions than to their refund, given that, to establish the amount of money to be refunded to the member, account must be taken of the losses assigned or to be assigned, the effect of potential updates, and eventual deductions to be made in the case of unjustified expulsion and dismissal.
[20] Regarding the incidence of the new accounting regulations (particularly IAS 32) on cooperatives, see, among others, VARGAS, 2007.

articles of association when the capital contributions are transformed and the possibility that the articles of association can envisage the duty to reject refund of the contributions when their repayment means that the cooperative will have insufficient coverage of the ratio or reference established.

When the refund is not rejected, the maximum deadline for its payment will generally be 5 years (art. 66, which currently also anticipates refund due to a reduction in the share capital or in the cooperative activity, an aspect already envisaged in the RBCL).

The contributions can yield interest, with the legal interest being limited to the amount of money plus 6 points, with said payment being conditioned to the existence of sufficient net excesses or unrestricted reserves to satisfy it (art. 63). Added to this is the update of the contributions in the terms of art. 64, whereby the capital gain could be allocated to updating the capital or to increasing the reserves (except in the case of the existence of uncompensated losses). Without prejudice to being an open company and of variable capital, the transmission of contributions is regulated both *inter vivos* and *mortis causa* (art. 65).

b) Other financing models

In order to financially strengthen these organisations and to enable the development of their business projects, cooperative legislation envisages the possibility of using means of financing other than capital contributions, permitting myriad manners, an aspect with which special care must be taken in order not to violate the cooperative principles, particularly referring to their democratic control by the members. Thus, art. 68.4 anticipates the issuing of bonds, participating shares, shared accounts and voluntary financing by members or third parties by means of any legal modality, with no right to vote, whose recompense can be total or partially established according to the cooperative results and to the deadline and conditions established.

The BCL expressly regulates the possibility of establishing admission and periodical quotas, which will not be added to the share capital and will not be refunded and which, like capital contributions, can be different for members (art. 68.1 and 2).

Reference is also made to the delivery of goods by members or the providing of services for managing the cooperative and, in general, payments to obtain the cooperative services, commonly known as “economic management mass”, in reference to which Basque law explains that they do not include the cooperative share capital or its net worth, meaning that they cannot be seized by its creditors (art. 68.3).

We will particularly stop for a moment at modes of subordinate financing (regulated in art. 60.6; special shares as a modality of these, in art. 67). These are financing operations which, as their name suggests, rank behind all common lenders when it comes to debt priority. Furthermore, when their maturity does not occur until liquidation of the cooperative they will have the consideration of share capital (although,

unless otherwise agreed to, the capital contributions system is not applicable to them), and they can be refunded or acquired in portfolio by means of financial backstop guarantee mechanisms equivalent to those established for equity interests or shares in capital companies or in the terms established in the regulations (the system of subordinate contributions with consideration of share capital is developed in RBCL art. 10). These are contributions which can have a fixed, variable or participatory yield, which will be represented by means of shares or book entries, which can have the consideration of negotiable instruments, which will be preferentially offered to members or salaried employees, and which will not attribute the right to vote at the general assembly or to participate in the administrative body.

The leading Basque cooperatives (such as Eroski and Fagor) have made effective use of this financial instrument, whose commercialisation has been questioned, inasmuch as these are complex, high-risk financial instruments, and as clients would arguably not have been given sufficient information[21]. This is what prompted the 2019 BCL to include, with a view to protecting investors and consumers in matters of financial investment, that *once sufficient information has been overseen and approved by the competent economic authorities with a view to authorising their issue, the responsible organisations established by the competent supervisory body will guarantee the reception of said information by third party non-member purchasers*[22].

6.2 Results of the financial year: determination, allocation and accounting aspects

a) Determination of the results and distribution of surpluses

Basque cooperative legislation generally follows the accounting regulations and criteria established for trading companies in relation to the determination of surpluses, with the particularities established for these companies containing the occasional specific regulation (e.g. with respect to deductible items for the determination of net surpluses, art. 69.2).

Contrary to what happens with most Spanish cooperative laws, which generally establish a differentiation in the results of the financial year based on their origin, whose destination or allocation differs (thus, in spanish legislation: cooperative, extra-cooperative and extraordinary results; arts. 57 and 58), the BCL allows for the joint accounting of all results and, therefore, the same treatment for all of them. Based on

[21] On this question, MARTÍNEZ BALMASEDA, 2015. Different legal rulings dictated on the commercialisation of this kind of financing have considered the complaints made by the purchasers against the commercialising financial organisations, especially taking account of the purchasers' profile (normally consumers, without the necessary financial knowledge to give their valid consent). Here, for example, we have Sentence 20/2014, of 27 January, dictated by Bilbao Commercial Court no. 1.

[22] The BCL statement of purposes indicates that, with respect to the subordinate financing operations submitted to the competent financial authority, *it should be remembered that, for their subscription, the current requirements must be fulfilled, guaranteeing sufficient, clear and understandable information. An obligation to inform must be observed by the organisations providing investment services in order to meet the requirements of transparency and informative rigor in regard to consumers wishing to purchase said financial instruments.*

the aforementioned, the available surpluses will be allocated to the cooperatives' specific contributions or funds: the Compulsory Reserve Fund (CRF), intended to consolidate, develop and guarantee the cooperative, regulated in art. 71), and the Contribution for Education and Cooperative Promotion and Other Public Interest Purposes (CPOPIP, regulated in art. 72), according to the percentages established by the law and the articles of association (as a general rule, at least 20% and 10% respectively). The remainder will be at the disposal of the general assembly, which can distribute it as follows: return to members in proportion to the cooperative activity; assignment to the voluntary reserve funds, which will be distributable or non-distributable; and, where appropriate, participation of salaried employees (not members) in the cooperative results, without prejudice to its recording in the accounts as an expense (art. 70).

Neither the CRF (to which the eventual deductions from compulsory contributions to the share capital will be also allocated, in the event of resignation by the members and admission fees) nor the CPOPIP (which will also benefit from the members' economic penalties) can be distributed among the members; nor, in the case of the latter, can they be seized, given that only the obligations contracted to fulfill its purposes will be met (also in art. 59.1).

The new BCL barely introduces anything new to this point, although account must be taken of the changes introduced by Law 6/2008, of 25 June, in relation to the CPOPIP (previously known, in line with the other Spanish cooperative laws, as the Fund for Education and Cooperative Promotion). The new name reflects the legal amendments introduced to said fund, which on the one hand clarified its nature (it is not an actual cooperative fund, but a compulsory contribution to one or several of the legally anticipated purposes, which better explains why it cannot be seized), and on the other hand extended its possible purposes (including the training and education of members and salaried employees on cooperativism, cooperative activity and questions not related to the work position; the promotion of intercooperative relations; the promotion of matters related to education, culture, professional subjects and care in the social environment and society; and the dissemination of cooperativism in that society; the promotion of Basque language use; and the promotion of new cooperative societies). The current BCL adds amongst the possible purposes of public interest the training and education of members and salaried employees in order to foster an effective policy for advancing towards equality between women and men in cooperative societies.

b) Allocation of losses and system of responsibility

One particularly controversial issue with respect to the cooperative legal system is the system of members' responsibility, especially in relation to the system of allocating losses within such organisations. To address this subject, our basis must be the fact that limited or unlimited responsibility

for corporate debts does not constitute a typical feature of cooperatives, meaning that in this respect the legislative options are varied, as a comparative study of cooperative legislation demonstrates. This said, part of the doctrine understands that the eventual limited responsibility for company debts will be without prejudice of the losses allocation system, distinguishing between responsibility for external debts (which will be limited, where appropriate) and for internal debts due to the assigned losses (which can be unlimited). One element taken into consideration for this purpose is the potential connection of the losses to the cooperative activity, understanding that the losses generated in development of the cooperative activity would in fact correspond to its members[23]. This is a complex issue which has been approached in different ways by the different cooperative laws, an analysis which exceeds the purpose of this work.

Regarding Basque cooperative legislation, it had already been decided in Law 4/1993 to opt for the limited responsibility of members, even in the case of resignation, underlining in its statement of purposes that this was a mandatory rule[24]. This said, the anticipated allocation of losses to the members prompted a questioning of the true scope of said limitation, with the result of diverse doctrinal positions. According to part of the doctrine, the system of allocating losses had to be interpreted together with the members' limited responsibility, understanding that these would be losses that could be allocated to the capital, always taking into account the particularities of cooperative legislation in this respect (notably, the participation of members in the results depending on their share in the cooperative activity). The bankruptcy proceedings of the Fagor Electrodomésticos S.Coop. cooperative in 2013 revived doubts as to the interpretation of this issue, due to the possibility that the members would have to personally respond for the millions of loss accumulated by the organisation, which did not finally happen[25].

This said, one of the aspects of the current BCL worthy of note, although it makes no truly substantial changes to the system of responsibility and allocation of losses, is precisely that it endeavours to clarify, with more forceful wording if possible, that it follows the criterion supported by the aforementioned part of the doctrine. Thus, on the one hand, with the new wording of current art. 59, express reference is made to the universal responsibility of the cooperative, thereby stressing that said cooperative, as an independent legal person, has its own net worth, and that said net worth must therefore respond to the

[23] Following this criterion, art. 69 of the Comunitat Valenciana Cooperative Law (Legislative Decree 2/2015, of 15 May), for example, envisages the allocation to members of losses arising from cooperative activity with the members (and not of all losses). The same idea is followed in art. 61 of the Madrid Community Cooperative Law (Law 4/1999, of March 30).

[24] The 1982 Basque Cooperative Law indicated that: *1. Unless an express provision exists in the articles of association, the members' responsibility in regard to company debts will be limited to their subscribed Capital contributions, whether or not they are paid up. 2. The articles of association can also establish the joint or joint and several nature of the responsibility. In the event that no express mention is made of this matter, the responsibility will be considered as being joint in nature* (art. 4).

[25] Nevertheless, and although it may come as a surprise, in the Fagor Electrodomésticos bankruptcy procedure, the question of members' liability was not raised, and the option was not brought up by the creditors or the bankruptcy court (at least formally), meaning that there is no court decision in this respect. Regarding the different doctrinal positions, and in relation to law 4/1993, see MARTÍNEZ BALMASEDA, 2014. Furthermore, arguing that the cooperative system of assigning losses cannot detract from the limited liability of members regulated in the law itself, among others (and also especially referring to Basque legislation): GADEA, 2012 or VILLAFAÑEZ, 2014.

company debts (safeguarding the amount of the CPOPIP). At the same time, it maintains reference to the limited responsibility of members to the subscribed share capital, and to the fact that, once the amount of the contributions to be refunded has been established, resigning members will have no responsibility whatsoever with respect to debts contracted by the cooperative prior to their resignation. The new BCL clarifies, however, that all of this must be without prejudice to the responsibility to meet the obligations assumed with the cooperative which do not disappear with the loss of member status.

On the other hand, regarding regulation of the allocation of losses (art. 73), the essential regulation remains in place, introducing certain adjustments to the body of regulations, making use of the CRF for this purpose more flexible, and underlining that the allocation of losses to members must not interfere with their limited responsibility. This means that losses can be allocated to the compulsory reserve funds and, in a limited fashion, to the CRF (with the maximum being the average percentage of the amount assigned to the legally compulsory funds in the last 5 years of positive surpluses, although, as a new feature in cooperative legislation, when the CRF represents more than 50% of the share capital, the amount exceeding said percentage can also be used to compensate losses). Any sums not compensated by means of the aforementioned must be allocated to members in proportion to their cooperative activity (which will be applied directly, either by means of deductions in their contributions to the capital or of other financial investments, or by charging them to returns over the following 5 years. In the event that uncompensated losses remain, these must be satisfied by the member, with the new BCL increasing the deadline to 1 year from the 1 month envisaged in Law 4/1993, thereby enabling fulfillment of this obligation). Losses can also be allocated to a special account, for amortisation set off against future positive results within no more than 5 years.

The new BCL adds that, once the deadline established has elapsed without compensation, said losses will be satisfied by means of new contributions agreed to by the general assembly or by means of the new contributions required to maintain the condition of cooperative member, with the members being obliged to resign when their contributions fall below the minimum established in the articles of association and they fail to make the new contributions. This latter clarification coincides with that envisaged in art. 61.e (also in Law 4/1993), when it indicates that if, due to the allocation of losses or economic penalty, the capital contribution of members were to fall below the minimum amount stipulated for this purpose in the articles of association or, failing this, by the general assembly, the affected members will have to make the necessary contribution until reaching the stipulated amount in order to maintain their member status. In the same line, in relation to the refund of contributions, the new BCL (art. 66.3) clarifies that the losses charged to resigning members will be up to the limit of their capital contributions.

If the cooperative is insolvent, Spanish bankruptcy proceedings will apply[26].

c) Company documentation, accounting and accounts auditing

According to art. 74.1, Basque cooperatives must keep, in order and up to date, the following books: a) Register of members; b) Register of share capital contributions; c) Register of the minutes of company bodies; d) Inventory and balance sheet book and Daily ledger; and e) Any others required by other legal provisions.

Generally speaking, said organisations are subject to commercial company regulations in these aspects, taking account of their particularities (as in, for example, Order EHA/3360/2010, of 21 December, approving the accounting regulations for cooperative societies; or in the BCL itself, e.g. the duty to deposit the annual accounts with the Basque Cooperatives Register) (arts. 75 and 76). These are questions to which the new law makes a series of minor changes, more technical in nature, with a view to adapting the text of the law to accounting regulations and corporate legislation in these areas, and to clarifying the odd aspect, such as the fact that the administrators must produce the annual accounts within no more than 3 months from the end of the financial year. It includes a reference to the obligation of having an external audit carried out on the annual accounts and the management report when the directors fail to meet the deadlines established in the regulations (referring, at least, to the net business turnover, the total amount of the assets according to the balance sheet and the average number of jobs resulting from the Auditing Law[27] or its implementing regulations). It also stipulates, in the event that the audit is requested by a minority of the members, that the latter must pay for its costs (without prejudice to their refund in the event of detecting substantial irregularities or errors in the accounts). The obligation to appoint a legal advisor is maintained when the annual accounts must be submitted to an external audit (figure regulated in art. 77).

Furthermore, for organisational reasons, cooperatives can have sections which develop, within the corporate purpose, specific economic-social activities with autonomy of management, a possibility recognised as a general norm by the different cooperative laws. The BCL specifies that the sections must keep their independent accounts, without prejudice to the general cooperative accounts, all of which will have no effect on the company's general and unitary responsibility and will not alter the system of powers assigned to the administrators. The sections must be envisaged and regulated in the articles of association (art. 6).

[26] Law 22/2003, of 9 July, Bankruptcy.
[27] Law 22/2015, of 20 July, Auditing.

7. STATUTORY AND STRUCTURAL CHANGES

The system of changes in the articles of association remains the same in the new Law, requiring agreement by the general assembly (with the exception of a company change of address within the same municipality, which can be agreed upon by the administrators; art. 79), according to the requirements stipulated in art. 78 with respect to convening the general assembly, publicising the changes and the members' right to separation.

On the other hand, the BCL dedicates different articles to mergers (arts. 80 to 87), division (art. 88) and transformation (arts. 89 and 90), with respect to which interesting new features are introduced, on authorising structural changes not previously envisaged[28].

With respect to mergers, it allows the cooperative to amalgamate either by means of a merger between several cooperatives with a view to constituting a single new cooperative, or by means of one or more cooperatives being absorbed by another that already exists, emphasising, among other questions, that all of the compulsory funds of disappearing cooperatives will be added to those of the new or absorbing cooperative[29]. The new BCL, as well as introducing certain technical improvements with respect to mergers, contains a new regulation on special mergers. While Law 4/1993 limited this possibility to the merger between employee-owned companies and worker cooperatives and between agricultural cooperatives and agrarian processing companies (assumptions in which the absorbing or resulting company is a cooperative), the current BCL permits civil and trading companies or organisations of any kind to merge with cooperatives, by means of absorption (where the cooperative can be either absorbing or absorbed) or by means of constituting a new company. In the same line, the current BCL permits the division or segregation of a cooperative in favour of a non-cooperative organisation due, in accordance with the preamble of the law, to the confirmation of its need in business practice. Both in the case of special mergers and of division in favour of a non-cooperative organisation, the CRF, the CPOPIP and other non-distributable funds will be allocated as indicated below for cases of transformation.

With respect to transformation, the BCL refers both to the supposition of a cooperative transforming into a civil or trading company (art. 89) and to the possibility of any civil or trading company, association, group or other kind of non-cooperative organisation becoming a cooperative (art. 90). In the former case

[28] The changes introduced in this area are welcomed in IRASTORZA and LÓPEZ, 2020, who indicate that the new structural mechanisms envisaged offer alternatives to cooperatives in serious difficulties which, thanks to these solutions (previously unviable), will not necessarily be condemned to disappear from the business world.

[29] To do this it will be necessary to draw up the merger project according to the BCL, make the legally required information available to members, for the agreement to be adopted by the general assemblies of each of the cooperatives participating in the merger (to do which the qualified majorities indicated above will be required), and for the agreements to be formalised in a single public deed, which must be recorded in the Cooperatives Register. The right to the separation of members who oppose the agreement (which will be a justified resignation) is recognised, and the right to objection of the creditors is regulated. Without prejudice to the specific aspects envisaged by the BCL for divisions, the latter will generally be governed by the rules regulating the merger.

the possibility of transformation is limited to cases involving a combination *of business needs requiring corporate solutions which are inviable in the cooperative legal system in the opinion of the administrators, who will draw up a report on the subject*, requiring approval by the general assembly in the qualified majorities indicated above. The new BCL maintains the essence of the regulation for transforming cooperatives (requirements, procedure, right to separation of dissenting members), and introduces the occasional change to this point, such as when it eliminates the reference to the supervisory committee with respect to estimating that there is a cause of transformation, or on envisaging that the administrative body's report be communicated to the HCBC, although without it being necessary to obtain their approval (requirement in Law 4/1993). A change is also made to the regulation on transferring non-distributable funds, generally indicating that the CRF and voluntary funds that are non-distributable according to the articles of association must be made available to the HCBC, taking account of the losses pending compensation or potential capital gains of the balance sheet (excluding voluntary reserve funds, with respect to which a specific allocation or application has been established), and the CPOPIP will have the application envisaged in the articles of association, or, failing this, as envisaged for cases of cooperative liquidation.

There is no change to the system of transformation into a cooperative which, for obvious reasons, will largely depend on the regulations of the organisation intending to become a cooperative. We stress that the transformation will not change the system of member responsibility with respect to corporate debts incurred prior to the transformation, unless expressly consented to by the creditors.

8. DISSOLUTION AND LIQUIDATION

The BCL basically maintains the stipulation of the previous law with respect to dissolution and liquidation of the cooperative, regulating the causes of dissolution in art. 91[30], which will generally require agreement of the general assembly in the terms of art. 92.

The stipulation of the previous law is maintained in this point, adapted to the terminology of the Bankruptcy Law. This same adaptation has been made in art. 101 (reference to the application of bankruptcy legislation to cooperatives), and seems to have been intended to indicate that *in the case of bankruptcy proceedings, and provided that the liquidation phase has been initiated* (Law 4/1993 said *in*

[30] Cooperatives can be dissolved for the following reasons: 1) Having completed the term established in the articles of association; 2) Conclusion of the company purpose or the obvious impossibility of fulfilling it; 3) Stoppage or inactivity of the company bodies or unjustified interruption of the cooperative activity for a period of 2 consecutive years; 4) A reduction in the number of members to below the legal minimum, when said situation remains in place for more than 12 months; 5) A reduction in the share capital to below the minimum established in the articles of association, without it being reestablished in a period of 12 months; 6) Merger or total division; 7) Setting in motion of the cooperative liquidation stage in bankruptcy proceedings; 8) Agreement by the general assembly; 9) Any other reason established in the laws or in the articles of association.

the case of bankruptcy) reactivation can only be agreed to if the cooperative reaches an agreement with its creditors (art. 92.5), wording which is rather surprising given that bankruptcy legislation envisages the agreement and liquidation stages as alternatives, with the latter of the two being opened directly on request by the bankrupt party or following failure of the agreement stage, without the formality of an agreement after it has been opened being envisaged. Furthermore, the possible reactivation of the bankrupt party in liquidation is not without conflict, and although on certain occasions a reference has been made to this possibility, it has been for cases where all pending debts have been satisfied (meaning an end to the bankruptcy proceedings due to disappearance of the insolvency)[31]. It would therefore have been more appropriate to eliminate the possible reference to reactivation of the cooperative in bankruptcy liquidation (which would not mean that said possibility was forbidden).

The BCL stops at aspects such as the actual liquidation process (art. 92), the appointment of liquidators (art. 94), their functions and the manner of their transmission (arts. 95 and 96), and the possibility of commissioning an audited settlement, either on request by 20% of the members, or by the Basque Government based on the importance of the liquidation (art. 97).

One of the most important changes introduced by the new law is the possibility of appointing liquidators who are not members. Thus, the general assembly, when choosing liquidators, will do so preferentially (but not necessarily) from among the members, in an odd number. This new feature endeavours to respond to the reality of completely destructured cooperatives and/or those which have no members with the capacity or willingness to proceed with the liquidation tasks. Furthermore, when there are several liquidators, the general assembly will establish their operating conditions (according to Law 4/1993, they had to operate in collegiate fashion).

The regulations on awarding the remaining assets (art. 98) endeavour to reflect the particularities of the economic system of these organisations with respect to the different categories of capital contributions and to the cooperative funds, although in our opinion an opportunity has been lost to improve the wording of this question, in such a way as to guarantee that there can be no mistaken interpretation. This stems from the literal wording of the BCL, according to which, *The remaining assets cannot be awarded or distributed until all company debts have been fully satisfied, their allocation has been carried out and the payment of non-mature credits has been secured. Having satisfied these debts, the remainder of the company assets will be awarded in the following order: a) The CPOPIP will be made available to the HCBC (...).* The wording of this precept can certainly give rise to the understanding that in the case of liquidation the CPOPIP can be used to satisfy the company debts. However, taking account of the character, the purpose and the unseizable nature of the CPOPIP, it must be understood that, also in the

[31] FERNÁNDEZ ABELLA, 2018.

case of liquidation, its amount can only be used to satisfy the obligations incurred to fulfill its purposes, with the remainder being directly made available to the HCBC[32].

Having satisfied the company debts as indicated, it will then be possible to proceed with refunding the capital contributions, giving preference to resigned members who had been refused refund. A priority is also established for the reimbursement of voluntary over compulsory contributions. Once the capital contributions have been paid out, the shares of members in the distributable voluntary reserve funds will be refunded (according to the rules established in the articles of association or by agreement of the general assembly and, failing this, to shares in the cooperative activity) in order, finally, to make available to the HCBC the amount remaining from the liquidated assets and from the CRF[33].

Having completed liquidation and distribution of the company assets, the next step is to cancel entries referring to the cooperative in the Basque Cooperatives Register, although the documentation referring to the company must be kept for a period of 6 years, either stored by the Register or, as a new feature of the current BCL, by the liquidators who assume the duty to keep said documentation. Furthermore, the current BCL expressly allows the document to be stored in electronic format or by electronic means (art. 100).

9. COOPERATIVE CATEGORIES

The law regulates different cooperative categories, while also offering the possibility of constituting cooperatives even if their socioeconomic activity means they cannot be included in the legal enumeration, in which case the regulations of the cooperative category closest to them will apply (art. 102.1). The specific regulations will be preferentially applied to each cooperative category; alternatively, for matters not envisaged by said regulations, the common cooperative regulations will apply (art. 102.3)[34].

Undoubtedly, in the Basque case, the most common category is the worker cooperative[35]. Said cooperatives are born on the initiative of people who form an association in order to create cooperative jobs whereby they proceed with any economic or professional activity enabling them to jointly produce goods and services for non-member third parties (art. 103.1).

[32] See GADEA, 2012 and VILLAFÁÑEZ, 2014.
[33] Remember that, having satisfied the company debts, the liquidators must draw up a final balance sheet together with a plan of allocation for the company assets, according to that indicated above, which, following the compulsory reports, will be subject to approval of the general assembly, an approval which must be duly published and is open to contestation (art. 99).
[34] The types of cooperative regulated by the law, according to their cooperative activity or other criteria such as the corporate purpose, sector or the personal conditions of their members are: worker cooperatives; consumption; education; agriculture and food; community-run; housing; financial; health; services; junior; social integration; and business development.
[35] To take a deeper look at work in worker cooperatives, provided by member workers and employees, BENGOETXEA, 2019; DE NIEVES, 2005; LÓPEZ, 2006.

Once again the law explicitly stresses, like its predecessor, that the nature of the relationship connecting members with their cooperative is associative rather than labour-related (art. 103.1).

The self-management model is maintained to establish the working conditions, with the sole heteronomous legal requirement that payment for work (equivalent to the wage earned by salaried employees) must be at least equal to the minimum wage. Furthermore, the law introduces, as an interesting new feature, the rule that *in any case, the cooperative will respect its own established labour systems, decent working conditions and the minimum labour standards established by the International Labour Organisation* (art. 105.3). This provision, guaranteeing decent work as a minimum standard, can help to combat the labour exploitation by means of false cooperatives.

Just as other cooperative categories can carry out operations with non-member third parties, the work, which constitutes the cooperative activity in worker cooperatives, can be provided by non-member salaried employees. Previously the limit for employees stood at 25% of the total work hours/year carried out by members. The new law increases the threshold to 30%.

The law itself stresses that *the purpose of worker cooperatives is to provide jobs for their members* (103.4). The labour activity of non-members must therefore constitute an exception, and the rise in the maximum threshold heads in the opposite direction with respect to cooperative employment. And this, as indicated in the statement of purposes, *for operational reasons.*

Furthermore, with arguable justification, the list of ways to get around the 30% limit is now longer. Thus, as well as the assumed principle, already included in Law 4/1993, of salaried employees who explicitly refuse to become worker members, and others such as the salaried employees who enter the cooperative for reasons of legal substitution, new cases are added such as employees with disabilities, work placement and training contracts, or employees assigned to the user companies, when the cooperative acts as a temporary employment agency.

Education cooperatives (arts. 109 to 111) hold a great deal of quantitative and qualitative importance in the Basque Country, above all due to the social movement of the *ikastolas*, the Basque schools constituted in cooperative form.

The law anticipates three types of education cooperatives: consumer cooperatives, when the cooperative activity lies with the users of the education service (fathers, mothers, students); worker cooperatives, where the cooperative members are the teaching staff and non-teaching services providers; and the integral cooperative, when the two aforementioned collectives are cooperative members, i.e. both those who provide the education service and those who receive it.

The new law reinforces the figure of the housing cooperative (arts. 117 to 122). This is a model with a peculiar legal system, different from both the system of subsidised public housing, and from the model of non-cooperative private development.

By reason of different experiences resulting from malpractice, the law endeavours to ensure that it is truly the cooperative members who guide the process of building and managing the houses, taking account of the fact that often they don't even know one another. It is therefore expressly established that *in any case, the corporate purpose must be directly developed, at least in its basic aspects, by the cooperative, without prejudice to the work being enabled or complemented in any manner by non-member third parties contracted by the cooperative. Said contracts must be favourably reviewed by the legal advisor of the cooperative* (art. 117.1).

While a management body, external to the cooperative, can exist to give it advice, the bottom line is that it is the cooperative which must drive the real estate development process. Thus, all contracts drawn up between the cooperative and said management bodies must be authorised by a legal advisor, whose action is envisaged to strengthen the protagonism of the housing cooperative. Generally speaking, the opinion of said person is required for all fundamental legal-economic activities to be developed by the cooperative.

Operations with third parties must adapt to the limit, habitual in cooperative law, of 30%.

We must stress the boost of the new law with respect to the secure tenancy formula, similar to the rental of private housing, together with the traditional awarding of homeownership. In this model, the use of which is growing and would appear to have great potential in comparative law, the cooperative owns the houses and rents them to cooperative members.

Regarding transport cooperatives (art. 129), to prevent the malfunctions to have occurred in practice, as well as to clarify legal systems, two different types are envisaged. They can either be worker cooperatives, when the haulier works according to the cooperative format, or services cooperatives, when the cooperative provides services to different companies dedicated to transport activities, who are the cooperative members.

One new category in the law is that of junior cooperatives (art. 132). These are cooperatives for producing goods and services, similar to worker cooperatives, but promoted by students as a training instrument and way to acquire academic knowledge in the context of the education system.

These cooperatives are therefore temporary in nature, limited to the education cycle. In the event of continuing their activity after its promotors have obtained their academic qualifications, they will become ordinary worker cooperatives.

In the case of social cooperatives (arts. 133 and 134), previously limited to the employment of people with disabilities, the space opens to include people in a situation of social exclusion. It is consistent and plausible to offer the cooperative formula to two collectives with a protected employment system: special employment centres, for people with disabilities; and insertion companies, for persons in a situation of social exclusion.

Lastly, we must stress the new business development cooperative (art. 135) as a cooperative instrument for supporting people with entrepreneurial projects, offering support in the shape of guidance, training and tutoring.

10. THE SMALL COOPERATIVE SOCIETY

The small cooperative society was previously regulated in a specific law, and the new law integrates this into its contents (arts. 136-145), with good reason, with hardly any changes.

This is a worker or community cooperative, with a minimum of two and a maximum of ten worker members (worker cooperatives), or members who work for the cooperative (community cooperatives), of indefinite duration.

Small cooperatives, during the first five years from their constitution, can hire salaried employees and worker members for a fixed duration, totaling no more in number than the members working for an indefinite duration. After these five years, the limits to hire employees will be those generally established in this new law, indicated above, in the comment on worker cooperatives.

In any case, the number of employees hired by the small cooperative society can be no more than five.

11. COOPERATION BETWEEN COOPERATIVES: COOPERATIVE ASSOCIATIONISM AND COOPERATIVE INTEGRATION AND GROUPING

Basque legislation also deals with cooperation between cooperatives in its two aspects: cooperative associationism and economic collaboration.

Thus, on the one hand cooperatives will be able to constitute unions (based on the sector of activity), federations (based on the cooperative category), confederations or other formulas of association in order to defend and promote their interests, which will be promoted by the public authorities. The BCL deals with these in its arts. 163 and 164, with a regulation of minimums, in favour of freedom of association, applying, in accordance with its new text, the BCL generally and subsidiarily, and in any case in matters

relating to accounting and auditing (we must also remember the duty to procure the balanced presence of members and the establishment of means to achieve gender equality and work-life balance in their bodies).

Thus, cooperative unions, federations and confederations (which, together with the cooperatives themselves and the HCBC will make up the Basque cooperative movement), will have the function to represent their members, mediate between their associate organisations (or between these and their members), organise advisory and assistance services, foster cooperative promotion and training, collaborate with the Basque Cooperatives Register with respect to the census of societies recorded in said Register, and any other similar matter. To acquire legal personality, they must deposit their memorandum of association in the Basque Cooperatives Register, with the legally established contents. The new Law introduces a few minor adjustments regarding the duty of federations or confederations to include the «de Euskadi» reference to the Basque Country in their name[36].

The BCL develops to a greater extent different categories of economic collaboration, such as business groupings (art. 152), inter-cooperative agreements (art. 153), and business groups (art. 154 LC). The latter tend to base themselves on second-degree cooperatives (arts. 146 to 151), which have as their purpose to *complete, promote, coordinate, reinforce or integrate the economic activity of the member organisations and of the resulting group in the sense and with the extension or scope established in the articles of association*, a modality par excellence of economic collaboration between cooperatives, whose content will be more or less extensive, with the articles of association being determinant in this respect. With respect to the latter, we highlight the possibility that their full members may include, as well as cooperatives of an inferior level and members who work for the cooperative (not in worker cooperatives), all kinds of organisations and legal persons, public or private, whose votes are limited[37]. The BCL stipulates a number of particularities with respect to their economic and organic system, now underlining that the general assembly must be made up of a number of representatives of the member legal persons proportional to the right to vote of each member organisation and, where appropriate, by representatives of the members who work for the cooperative (not in worker cooperatives), and who will be managed in all cases by a governing council, up to a third of whose members can be appointed by the directors elected from among capacitated persons, who may or may not be members of one of the cooperatives in the group.

[36] In the former case, when there is an association between more than 50% of the cooperatives entered in the Basque Cooperatives Register, with an activity accredited before said Register, or when the number of members of the federated companies is higher than said percentage with respect to the total members of the active and registered cooperatives. With respect to confederations, when at least 70% of the Basque cooperatives registered group together, they will be called «Confederation of Cooperatives of the Basque Country».

[37] The number of votes of an organisation which is not a cooperative society cannot be greater than a third of the member votes, unless there are fewer than four members. Moreover, these organisations as a whole cannot hold more than half of the total votes.

The current BCL has introduced a number of amendments worthy of note in this point. On the one hand, it removes from the legal text corporations, whose regulation was based on a dualist management system, given the understanding that, although its usefulness has been demonstrated, it may now turn out to be *constrictive and unnecessary*. This figure was effectively created by Basque legislation with the purpose of meeting the organisational needs of the structure of cooperation between Mondragon cooperatives, although part of the doctrine had already been considered unnecessary, taking account of the extensive scope with which second-degree cooperatives are regulated[38].

On the other hand, the regulatory development of cooperative groups is transferred to the BCL from the RBCL, which already distinguished between cooperative groups by collaboration and cooperative groups by integration, in which there will be a combination of common general directorate and true economic unity[39]. Without going deeper at this time into the regulation on cooperative groups, we must point out that, in any case, we understand that the cooperation structures in which the cooperatives participate must respect the cooperative principles (expressly indicated by the BCL), very particularly their democratic control by the members and their autonomy with respect to other organisations. This is why, without prejudice to the existence of a unitary management and leading organisation at the head of the group, groups cannot be accepted where the cooperatives are hierarchically subject to other organisations, which may not sit well with certain cases in which a group by integration is understood to exist.

Finally, we mention mixed cooperatives, which were incorporated in Law 4/1993, and are regulated among the manners of economic collaboration (art. 155). These are characterised by the presence of minority members whose voting right in the general assembly can be determined, exclusively or preferentially, according to the capital contributed, which will be represented by means of shares or book entries, subject to the regulating legislation of the securities market.

[38] This above all as well, in general, as the models of cooperative integration, ALFONSO SÁNCHEZ, 2000.

[39] The BCL clarifies that economic unity will be presumed to exist when, together with the common general directorate, any of the following situations are met: a) Existence of de facto commercial, financial or patrimonial relations representing an effective dependence of any of the organisations in the group; b) Existence of an agreement of joint responsibility with respect to the exterior in regard to operations directly carried out with non-member third parties by corporate organisations integrated in the group, provided that these are permanent in nature and that the operations in question are necessary and not ancillary with respect to producing their business activity; c) Existence of commitments regarding the periodical contribution of resources calculated according to the income statement of the respective cooperative, when the amounts to be contributed amount to more than fifty percent of the previous net surpluses of each cooperative; d) Existence, between two or more companies in the cooperative group, of relations meeting the requirements that generate the obligation to consolidate accounts, such as those regulated in articles 42.1 and 43 of the Commercial Code. When any of these suppositions occur uniquely with respect to some of the cooperatives belonging to the group, these cooperative societies alone will be considered to be part of a cooperative group by integration.

12. COOPERATIVES AND THE PUBLIC ADMINISTRATION

As a principle which must guide public action with respect to cooperatives, the law states that *the public authorities of the Basque Autonomous Community assume as a function of social interest the promotion, stimulation and development of cooperative organisations* (art. 156.1).

Identification is made of the legitimate representative interlocutor for the cooperative movement, which will be *without prejudice of the existing rules on business representation, the organisation which associates more than sixty percent of the cooperatives recorded in the Basque Cooperatives Register* (art. 156.1).

The alliance proposed between the public sector and the cooperative sector is significant when we read that *the public authorities of the Autonomous Basque Community, with the purpose of developing and improving the public services, will stimulate the creation of cooperatives and their participation in the management of public services* (art. 157.3).

Furthermore, the system of offences and penalties applicable to cooperatives is regulated (arts. 158 a 162), attributing the task of cooperative inspection to the Basque Government Department competent in labour-related matters.

13. THE HIGHER COUNCIL OF BASQUE COOPERATIVES

On the other hand, as we previously indicated, the law establishes that the public administration must foster an associative approach by cooperatives, in order to articulate Basque cooperativism, in such a way that the *federations and confederations, and the Higher Council of Basque Cooperatives, become part of the Basque Autonomous Community cooperative movement* (art. 163.2).

The law regulates said Higher Council of Basque Cooperatives (HCBC), as a singular organisation, public in nature, characterised as the *highest body in the promotion and dissemination of cooperativism, consultative and advisory with respect to the Basque public administrations in all matters affecting cooperativism* (art. 165.1).

The Council is made up of representatives of the Basque Government, the Basque Confederation of Cooperatives (which holds the majority in the Council), of the three Basque universities and, as a new feature, of the three Provincial Councils.

A positive appraisal must be made of the incorporation of the Provincial Councils with a view to strengthening the Council, given that they hold important powers, particularly with regard to taxation, a sphere in which each of the three Provincial Councils holds complete power.

The HCBC catalogue of functions includes the task of cooperative arbitration. Here we find the new feature of the obligation to exhaust the internal cooperative channel, in potential situations of conflict between the cooperative and its members, without prejudice to the subsequent access to arbitration.

CONCLUSIONS

For all of the above reasons, we must welcome the new Basque Cooperatives Law, whether due to the technical improvements made to the legislation, or to some of the amendments introduced. In this respect, we must highlight aspects such as the express reference to the cooperative principles of the ICA, the adoption of non-discriminatory language from the gender perspective, the inclusion of provisions to promote gender equality, measures endeavouring to provide guarantees for the members and their rights, as well as those which endeavour to enable participation in the company bodies, the legal development of the administrators' duty of loyalty, clarification of the system of member responsibility, the provision of new cooperative categories and the legal development of some that already exist, and the mention of decent working conditions and the minimum labour standards of the ILO in worker cooperatives.

This said, as mentioned, there is no lack of controversial or reprehensible aspects in the new Law, whether referring to questions whose regulation could have been clarified or improved, or to certain changes made, such as certain new features referring to the administrative body or the excessive flexibility for hiring employees in worker cooperatives.

BIBLIOGRAPHY

ALFONSO SÁNCHEZ, Rosalía: *La integración cooperativa y sus técnicas de realización: la cooperativa de segundo grado*, Tirant lo Blanch, Valencia, 2000.

BENGOETXEA ALKORTA, Aitor: "Employment in worker cooperatives in the framework of Spanish cooperative law", *International Journal of Cooperative Law*, II, 2019, pp. 72-87.

DE NIEVES NIETO, Nuria: *Cooperativas de Trabajo Asociado: Aspectos Jurídico-Laborales*, Consejo Económico y Social, Madrid, 2005.

FERNÁNDEZ ABELLA, José María: "¿Es posible la reactivación de una sociedad en fase de liquidación a resultas del abono de los créditos concursales?", *LegalToday*, 21 de marzo de 2018.

http://www.legaltoday.com/blogs/sociedades/blog-affectio-societatis/es-posible-la-reactivacion-de-una-sociedad-en-fase-de-liquidacion-concursal-a-resultas-del-abono-de-los-creditos-concursales

GADEA SOLER, Enrique: "La determinación del resultado y la distribución de los excedentes o la imputación de pérdidas del ejercicio económico en las sociedades cooperativas", *Revista de Derecho de Sociedades*, nº 39, 2012, pp. 257-280.

GARCÍA ÁLVAREZ, Belén: "La retribución de los miembros del consejo rector o de los administradores en las sociedades cooperativas", *REVESCO*, nº 119, 2015, pp. 53-76.

GRIMALDOS GARCÍA, María Isabel: "La responsabilidad civil de los administradores de entidades de economía social", en (Eds. Gómez, M. F. y Pardo, M. M.) *Economía social y Derecho. Problemas jurídicos actuales de las empresas de economía social*, Comares, Granada, 2013, pp. 67-93.

IRASTORZA MARTÍNEZ, Irantzu y LÓPEZ LOLO, Raquel: "Acercamiento del régimen de las sociedades cooperativas al de las sociedades de capital. ¿Un cambio necesario para el futuro del modelo cooperativo?", *Diario La Ley*, nº 9582, 26 de febrero de 2020.

LÓPEZ GANDÍA, Juan: *Las cooperativas de trabajo asociado y la aplicación del Derecho del Trabajo*, Tirant lo Blanch, Valencia, 2006.

MARTÍNEZ BALMASEDA, Arantza: "Algunos aspectos jurídico-mercantiles tras el concurso de Fagor", *CIRIEC-España, Revista jurídica de economía social y cooperativa*, nº 25, 2014, pp. 281-312.

VARGAS VASSEROT, Carlos: "La NIC 32 y el capital social cooperativo", *Revista de Derecho de Sociedades*, nº 28, 2007, pp. 101-131.

VILLAFÁÑEZ PÉREZ, Itziar: *Cooperativa y concurso. Estudio de las relaciones jurídicas con sus socios*, Marcial Pons, Madrid, 2014.

VILLAFÁÑEZ PÉREZ, Itziar: "El deber de lealtad y sus concreciones en la legislación cooperativa", *REVESCO*, nº 120, 2016, pp. 121-148.

Court Cases