

# Associated work is not dependent or independent work

*ILO COOP 100 Symposium. Cooperating for social justice and decent work (16-19. 11.2020)*

Gemma Fajardo García

Tenured Professor of Commercial Law  
University of Valencia

▶ The ILO COOP Symposium on the occasion of the 100 years of the organization reminds us of the attention that the ILO has devoted in recent years to cooperatives:

- ILO. *Recommendation 193- Promotion of Cooperatives, Geneva, 2002.*
- ILO. *Guidelines concerning statistics of cooperatives.* 20th International Conference of Labour Statistician, Geneva, 10-19 October 2018

This event is a good opportunity to review these documents and appreciate their contribution in favor of cooperatives and, in particular, of their worker members

▪

## ▶ **ILO. Recommendation 193- Promotion of Cooperatives, Geneva, 2002**

The ILO Recommendation understands the cooperative in accordance with the definition, values and principles of the 1995 Statement of the **International Cooperative Alliance (ICA)** on Cooperative Identity, and establishes a series of recommendations directed to governments, employers, workers and cooperative organizations from all ILO member states in order to **promote cooperatives**, whatever their type, as well as to support their members (*Henry, Guidelines for Cooperative Legislation, 2012, 51*).

-identifies the 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 (section 1).

- recommends that governments establish a favorable legal framework for cooperatives, compatible with their nature and function, and that they encourage the development of cooperatives as autonomous and **self-managed enterprises** (section 6).

People who join a cooperative may have different needs and aspirations, and depending on which of these prevail, we can distinguish different types of cooperatives : cooperatives of producers of goods and services, of consumers and users, of workers, and of multiple stakeholders.

When the predominant interest in a cooperative is to create and maintain jobs, which are presumed to be stable and in good condition, they are called **associate work cooperatives**.

## ► World Declaration on Cooperative Associated Work, ICA, 2005

He differentiates three modes in which labor activity can be developed:

- a) as an **independent work**;
- b) as salaried **dependent work** or subordinate to an employer, or
- c) as **associated work**, where work and management are carried out jointly, without the limitations of individual work or exclusively under the rules of dependent salaried work.

## Characteristics of associated work cooperatives (ACI, 2005, pág.3)

- a) their objective is to create and maintain sustainable jobs, generating wealth to improve the quality of life of worker members, dignify human work, allow **self-management democracy of workers** and promote community and local development;
- b) the free and voluntary adherence of its members is conditional on the existence of jobs;
- c) as a general rule, the work is carried out by the members, which implies that the majority of the cooperative's workers are members and the majority of the members are workers;
- d) its internal regulation is governed by agreements democratically adopted and accepted by all working members,
- e) they must be autonomous and independent, and
- f) “*The **worker-members’ relation** with their cooperative shall be considered as different to the conventional employment for pay and to that of autonomous individual work”.*

## ▶ Charter of the Self-managed Worker (AIDCMESS, 2018)

Associated work **is not individual self-employment** because the members of the cooperative do not work independently, nor do they interact with clients on their own behalf; and

**is not dependent work** because the workers are the owners of the enterprise and those who run it, directly or through the people they have chosen to take over management, in which case, their right / duty of management becomes a right / duty of management control.



## ▶ 2018 Guide on statistics of cooperatives

Guidelines concerning statistics of cooperatives (2018) aims to facilitate the development of a set of statistics on cooperatives that will provide an adequate information base for a wide range of descriptive, analytical and policy purposes.

For these purposes, the Guidelines, following the International Classification of Status in Employment (ICSE-18), *approved by ILO Resolution concerning statistics on work relationships (October 17, 2018)*, **qualifies the worker-members of cooperatives as "DEPENDENT WORKERS"** and distinguishes within this category two **sub-categories: employees and dependent contractors.**

# Classification criteria (ICSE-18)

**TYPE OF ECONOMIC RISK** (Exposure to loss of financial resources and uncertainty about remuneration for work performed)

- A. Workers in employment for pay for time or work performed.
- B. Workers in employment for profit (which also involves risk of losses)

**In the cooperative?** According to cooperative legislation: the worker members can receive advances, and at the end of the financial year, if there are surpluses (excess of revenues over cost on the cooperative transaction), they must be returned to members (cooperative refunds) and if there are losses in member cooperative transactions (they must be covered by members), unless the members, in the bylaws or in the general meeting decide other destinations, and have funds available to cover losses (*SGECOL, Principles of European Cooperative Law, 2017, pp. 89-92*). Worker members of cooperative would be employed by benefits, but do not belong to any of the ICSE-18-R groups.

## TYPE OF AUTHORITY (Control that workers have over the organization of their work)

**A. Independent workers** (12) They own the economic unit for which they work and control (individually) its activity. In the cooperative the control is collegiate, each member has one vote in the general meeting.

**B. Dependent workers** (13) They do not have complete authority or control over the economic unit for which they work, and if they are workers in employment for profit they do not make the most important decision about the activities of the economic unit.

**B.1. Dependent Contractors.** (35) Individual entrepreneurs (or self-employed) who have a commercial contract for the supply of goods or the provision of services (transport contract, agency contract, ...) for or through another economic unit, but do not have much autonomy to organize their activity, and their incomes depend mostly of that relationship (*Trabajador Autónomo Dependiente* o TRADE)

**B.2. Employees.** They have an employment contract (44). They are workers employed for pay (for time or work performed), who do not hold controlling ownership of the economic unit in which they are employed (41). This category includes: "43.b) “worker-members of cooperatives who are paid for time worked or for each task or piece of work done”". What if they are paid from profits?

## WORK IN THE COOPERATIVE

1. There may be workers (members or not) in all types of cooperatives
  - **Worker non members** (they have a work contract and they are dependents. They have the status of **employees**)
  - **Worker-members of worker cooperatives** (the control of the cooperative belongs to the worker members). **Associated work**
  - **Worker-members of other cooperatives.** They share ownership and management with other types of members. They could be considered dependents if as a group they do not have the capacity to determine the conditions under which they provide their work.
2. In the cooperative, the obligation to participate in its economic activity, as a producer, user or worker, is the main consequence of membership, and this obligation is regulated by the bylaws and decisions of its general assembly . No need to make a **contract**, nor is convenient, because it can produce legal uncertainty and discrimination.

3. In associated work cooperatives, worker members have control of the cooperative, decide with their vote (democratically) the conditions of their work, and assume the economic risks of their decisions. Consequently, **they are not dependent workers**, nor employees, nor contractors. But **they are not independent workers** either because their relationship with the market is always through and on behalf of the cooperative, although in many cases they can enjoy considerable autonomy in the development of their work.

4. Nevertheless, in practice we can find cases of **fake worker cooperatives** lacking autonomy, or whose worker members have no possibility of self-management. In these cases, it is not appropriate to qualify or regulate these spurious relationships, but to directly request the disqualification of the cooperative and the application of the of the appropriate legislation.

5. In short, the **ILO classification of types of work** is in principle **insufficient**, the trade-off: dependent workers or independent workers does not cover the entire spectrum of possible employment relationships. And this is what the 2018 Resolution seems to admit when it states that *“The type of authority is used to classify workers as dependent or independent. Since workers within each of these broad categories may, in practice, have greater or lesser degrees of authority and dependence, there is to a certain extent a continuum between dependent and independent work”* (11).

6. We therefore think that the ILO when drawing up the Guidelines on statistics on cooperatives should have considered at least the associated or self-managed work, typical of worker cooperatives, as **a different category to independent work and dependent work**.

## CONCLUSIONS

1. ILO Recommendation No. 193 on the Promotion of Cooperatives has contributed significantly to the promotion of cooperatives and to institutionalize both the definition of cooperative proposed by the ICA, as well as the values and principles that characterize it.
2. The idea of globally measuring the contribution of cooperatives to employment and economic activity will help to make visible the positive impact that the cooperative has on our society, so this initiative can be valued very positively.
3. Finally, we consider that the ILO, due to its relevance to the world of the work at an international level, should commit itself **to recognizing associated work**, as a specific type of work, typical of cooperatives, sign of identity and one of its main strengths; **to favor the self-management** of its worker members by promoting their cooperative training, in order to improve their business management, and **fight against fake cooperatives**.

# Thanks you!



[fajardo@uv.es](mailto:fajardo@uv.es)

R + D + i Project: Social Economy, Self-management and Employment (DER2016-78732-R)  
Financing: Ministry of Science, Innovation and Universities of Spain,  
State Research Agency and European Regional Development Fund (ERDF).