

Cross-border cooperation: A response to the challenges facing agri-food cooperatives in Southern European countries

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Abstract

All agri-food cooperatives share common interests, irrespective of their geographical borders, which should encourage them to undertake inter-cooperation processes as well as to set up transnational cooperatives. This paper has two objectives. The first is to analyze Spanish and Portuguese cooperative regulations and the Statute for a European Cooperative Society to define how to embark on these processes in the two countries while also pinpointing the conflicts that may arise from the different regulations. Secondly, it seeks to ascertain which Spanish and Portuguese cooperatives have had experience in this field and to characterize them through a multiple-case study, including the rationale for the processes, the advantages and the constraints. The results have revealed five cross-border cooperation categories and show that the Statute for a European Cooperative Society has not had the expected success at the EU level, due to its complexity. However, in general, the lack of expected cross-border cooperative

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experiences is not due to legal, language or management issues. It is for different reasons. Firstly, cooperatives think that they can achieve the same objectives through inter-cooperative agreements. Secondly, government policies protect the regional nature of their cooperatives, rather than encouraging them to expand their business and therefore their capacity to respond to current challenges.

KEYWORDS

agri-food cooperatives, European cooperative society, inter-cooperation, mergers, transnational cooperative

1 | INTRODUCTION AND OBJECTIVES

There are various models of cooperatives across the EU. Generally speaking, cooperatives in northern countries, such as Denmark, the Netherlands, Finland, and Ireland (COCEGA, 2019), have concentrated their operations in an increasingly smaller number of large-scale business structures through various kinds of integration processes. By contrast, southern European countries including Spain and Portugal are less advanced in this respect and still have an extremely large number of very small cooperatives.

Agri-food cooperatives play a key role in Spain with their direct turnover accounting for 68% of final agricultural production. There are currently 3,699 agri-food cooperatives in the country with one million members and a turnover of €30.56 billion in 2019 (Cooperativas Agroalimentarias, 2021). These figures mean average turnover per cooperative stands at around €8.26 million, implying that “small business size and the lack of organization and concentration of supply” is still the “main problem of this sector” (Sanchez-Navarro et al., 2023), according to the Spanish Ministry of Agriculture, Food and the Environment in the 2015–20 Spanish National Association Integration Plan. This small scale weakens cooperatives' ability to deliver their main purpose which is to provide sufficient income to farmers and stockbreeders. The situation is much the same in Portugal where there are 391 registered cooperatives (199 agri-food) with a total turnover of €4.05 billion, which means an average of barely more than €10 million per cooperative (SABI, 2021).

Their small size makes them particularly vulnerable when it comes to addressing some of today's challenges. Over and above the already well-known intrinsic problems of small enterprises in a sector with highly concentrated distribution (Bijman, 2018; Grashuis & Ye, 2019; Iliopoulos & Valentinov, 2018), there is also the difficulty of the absence of generational renewal for many farmers. Thus, the ageing of Europe's farmers is one of the greatest challenges facing rural areas in the European Union. In this regard, in 2016, for every farm manager under 40, there were three farm managers over the age of 65 in the EU (European Commission, 2021). When these people stop working, there is often no adequate replacement for them, and this leads to the land being abandoned and to fewer members and less business in many cooperatives. Hence around 30% (or 56 million ha) of agricultural areas in the EU are under at least a moderate risk of land abandonment and in almost half of EU Member States this percentage rises to 50%. This has a number of

environmental implications which could threaten the future of semi-natural habitats, the quality of high nature-value farmland and highly appreciated cultural landscapes (European Parliament, 2020).

This state of affairs is taking a direct toll on agri-food cooperatives, particularly on the smaller ones which, in turn, have an ageing membership and are gradually losing both members and business. This has an extremely adverse effect on their own and their members' earnings due to its impact on fixed costs per unit. Nevertheless, many cooperatives have embarked on strategies to attract young members to mitigate these effects and gain corporate size (European Commission, 2021; Elorz & Molina, 2018).

Given this situation, cooperatives face a pressing need to become more competitive, and this calls for processes including growth, integration, and inter-cooperation coupled with organic growth by attracting members (Mozas et al., 2020; De la Casa & Caballero, 2021).

Decision-making in these processes has to be anchored in the existence of common and/or compatible interests such as the need to boost productivity, improve marketing and distribution, cut production costs, operate in diversified geographical areas, internationalize their business and, in a nutshell, compete in the market and provide their members with sufficient income to match their effort and investment. Accordingly, cooperative models, understood as modes of horizontal and vertical coordination of the value chain, are becoming increasingly diverse, with cost-efficiency and strategic efficiency being key factors in these processes (De Herde, 2023). However, the existence of borders with the consequent variations in regulations, languages and even cultural differences may be a counteracting or curbing factor (Bretos & Marcuello, 2017; Brusselaers et al., 2014).

Currently, there are not that many transnational cooperatives in Europe, i.e., cooperatives which have members outside their borders. The ones that have been set up are mainly in the dairy and fruit and vegetable industries (Bijman, 2014) and, for the most part, they have been set up by large cooperatives based in the northern part of the continent (Bijman et al., 2014).

In addition, cross-border cooperation, through the creation of transnational cooperatives, or via agreements between cooperatives in different countries, has been little analyzed to date and extant research has mostly looked at the most paradigmatic cases involving large cooperatives in the north of the EU (Bijman et al., 2015; Ollila et al., 2014).

Against this background, the purpose of this paper is to further the study of cross-border cooperation between cooperatives in southern Europe, in this case, Spain and Portugal, which, as we have seen, are very different from their Scandinavian counterparts in terms of their business development. This study has been designed as exploratory action research and organized as a multiple-case study, with a dual objective in mind. Firstly, to ascertain the legal options for setting up cross-border cooperatives and their potential constraints. We did this by examining the regulatory framework, including current legislation in both countries, together with European legislation, such as the Statute for a European Cooperative Society (SECS). Secondly, the aim is to study and characterize cross-border cooperation experiences between agri-food cooperatives and other social economy organizations in Spain and Portugal, and to highlight the reasons that have pushed them to cooperate, as well as the problems and drawbacks that have arisen in this relationship. The identification of cases involving cross-border cooperation experiences was carried out by contacting the organizations representing cooperatives in both countries.

The case studies identified five different categories of cross-border cooperation, the reasons behind this, as well as the main constraints and the hurdles to be overcome. In addition, this study shows that although the cooperatives in both countries have similar interests, and similar legal mechanisms at the national and European Union level which could promote this type

of inter-cooperation, these processes are not commonplace. In this sense, the Statute for a European Cooperative Society has not had the expected success at the EU level, due to its complexity. This needs to be revised to promote cross-border mobility from a legal point of view. The above statement can also be applied to cross-border cooperation mechanisms in general terms. This is in line with the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “Building an economy that works for people: an action plan for the social economy”¹ (hereinafter “2021 Communication”), which stresses the need to create the right framework for the social economy to thrive, developing legal and policy frameworks, as well as to support mechanisms and programs that promote cross-border cooperation.

The paper is divided into the following sections: firstly, we explain our introduction and objectives. Section 2 includes the literature research and details the conceptual and regulatory framework enabling the creation of cross-border cooperatives and inter-cooperative agreements. There is not an abundance of specific and recent legal literature on this issue at the international level. Moreover, the main legal cooperation channels envisaged in the European, Spanish and Portuguese regulatory frameworks have been analyzed, paying special attention to the European Cooperative Society (ECS) to identify the different legal channels that enable cooperation and their current degree of deployment in the countries of reference. Section 3 describes the methodology used in the study. Subsequently, Section 4 analyzes the collected data, and Section 5 concludes. Finally, the questionnaire used in the case study interviews is included in an Online [Appendix](#).

2 | CONCEPTUAL AND REGULATORY FRAMEWORK

2.1 | Literature research

Transnationalization and internationalization of cooperatives are two terms that are often associated. However, the internationalization strategies adopted by agricultural cooperatives in Europe have varied. For many decades, cooperatives have expanded internationally through export and investment in foreign distribution networks, either individually or in joint ventures with foreign partners (Bretos & Marcuello, 2017). By contrast, over the last 15 years, an increasing number of cooperatives have expanded internationally by inviting foreign farmers to become members (Bijman et al., 2015), thus turning into transnational cooperatives, i.e., cooperatives which have members in two or more countries (Bijman et al., 2015).

The reasons why cooperatives have embarked on internationalization strategies vary. Bijman et al. (2015) distinguished between external motives that result from changes in the economic and institutional environment, such as increased competition and legislative reform (liberalization of the European and world agricultural product markets, increasing concentration among food retailers, and quality assurance as well as product development), and internal motives, such as poor financial performance (Ebneeth & Theuvsen, 2005), related to better exploiting current resources and capabilities. The latter include resource-seeking, market-seeking, strategic asset-seeking, and efficiency-seeking (Van der Sangen, 2014).

¹ European Commission (2021), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Building an economy that works for people: an action plan for the social economy” [Brussels, 9.12.2021 COM(2021) 778 final] (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0778&from=ES>) (last accessed on: 21/12/2022).

International growth and expansion are usually approached in a variety of ways. Der Krogt et al. (2007) described six types of cooperative strategies: (i) acquisitions, (ii) mergers, (iii) equity participations, (iv) joint ventures, (v) licensing, and (vi) exploratory collaboration agreements. Comparing cooperatives and investor-owned firms (IOFs), the authors concluded that cooperatives prefer to engage in mergers, licensing, exploratory collaborations, and joint ventures, while IOFs mainly focus on acquisition strategies through takeovers and strategic equity stakes.

Whereas internationalization via exports is very common and widely accepted by members, decisions involving investment across borders are more difficult to take and recruiting members across borders raises even more misgivings (Bijman et al., 2015). Thus, the conservative ethos of cooperatives (Chaddad et al., 2005; Li et al., 2015) coupled with integration difficulties due to differences in history, business culture, governance issues when bringing in members from other countries, and language would appear to have influenced the fact that cross-border cooperative initiatives are few and far between.

Nilsson and Madsen (2007) noted the four most common ways of setting up transnational cooperatives: (i) a national cooperative can recruit members in a neighboring country; (ii) cooperatives in foreign countries can be acquired; (iii) a new cooperative can be set up; and (iv) domestic cooperatives can merge. However, research including that of Zaalmink and Lakner (2012), in which four cases of transnational Dutch cooperatives were analyzed, points to a preference for running foreign operations as an IOF instead of a cooperative.

The number of transnational cooperatives in Europe is still small and they are mostly located in northern Europe, especially in small countries where the domestic market might be or become too small for large-scale cooperatives (the Netherlands, Denmark, Austria, and Finland). Here, transnationalization and internationalization have been a way to ensure cooperatives remain viable (Bijman et al., 2015).

The best-known initiatives in this area are mainly in the dairy and fruit and vegetable industries (Bijman, 2014) and involve large-scale cooperatives, some of which are the outcome of cross-border mergers. Paradigmatic cases include Arla Foods, which is headquartered in Denmark and has members in Sweden, Germany, Belgium, the UK, Luxembourg, and the Netherlands, and Friesland Campina which is based in the Netherlands and has members outside its borders in Germany and Belgium (Bijman et al., 2015; Zaalmink & Lakner, 2012).

An analysis of the reasons that lead cooperatives to adopt cross-border models reveals that they are similar to those driven by changes in the industry which force large companies to go international (Nilsson & Madsen, 2007). Thus, one of the major benefits of these processes for cooperatives is the chance to take advantage of different skills and alternative ways of looking at things in different regions (Knickel et al., 2021).

Setting them up also has ramifications at various levels. Transnational cooperatives bring greater organizational complexity, requiring clarification, definition, and equilibrium in the powers of the CEO and board members (Nilsson & Madsen, 2007).

Furthermore, transnational activities in cooperatives are associated with the formalization, professionalization and maintenance of a network of transnational members which makes communication easier and is conducive to greater transnational solidarity (Loukakis & Maggini, 2020).

However, when a cooperative decides to take the plunge and welcome members from another country, there are also a number of challenges and risks attached. The risks involved in setting up cross-border cooperatives are not limited to issues of cooperative law, taxation or competition rules, there are also issues surrounding entrepreneurial culture and language differences.

A solution to these problems must be found. The European Union has already helped by creating European legislation. However, cultural and linguistic problems must be solved within cooperatives (Hakelius, 1999).

The culture of each organization is unique and has an impact on different areas in a cooperative, such as market penetration (Kalogiannidis, 2020), which is a key factor in mergers and agreements between cooperatives (Cartwright & McCarthy, 2022). Here, unexpected problems caused by cultural differences can arise in agreements and integration between organizations and can lead to the failure of these partnerships (BenDaniel et al., 2002; Buono et al., 1985). Thus, culture is a variable that should not be underestimated when aiming to create successful partnerships between cooperatives.

There may also be risk aversion in a cross-border cooperative process. One way to counteract this is to create democratic cooperative structures in which one member has one vote. This type of structure shifts the mindset of the members away from a profit maximisation approach and towards more modest strategies to cater for its members' needs. Another problem which may emerge is the growing diversity of its members which leads to decision-making issues (Bijman, 2016; Iliopoulos, 2014) and can also be an obstacle to more ambitious strategies (Van den Heuvel et al., 2011).

Another factor that may be of concern to members and put a damper on these processes is the potential dilution of income rights in the case of increased foreign membership, although, in the study by Zaalmink & Lakner (2012), this was not a problem for the members in the four cases analyzed.

Acquisitions, mergers and alliances in the transnationalization process additionally bring with them other related risks. Das and Teng (1998) divided these risks into two types: relational risk and performance risk. Relational risk is linked to behavioral issues, information asymmetries, and secondary effects. By contrast, performance risk is linked to unexpected factors such as market changes, commercial setbacks, and R&D uncertainties.

2.2 | Study of the regulatory framework enabling the creation of cross-border cooperatives and inter-cooperative agreements

2.2.1 | The scope for setting up cross-border cooperatives based in Spain or Portugal

Cooperative law is not harmonized in the European Union, which means that different national laws lead to imbalances and obstacles in the creation of cross-border cooperatives.

In the internal market, "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured" (Article 26(2) of the Treaty on the Functioning of the European Union, TFEU), cooperatives benefit from freedom of establishment (Articles 49 and 54 TFEU). In this context, each Member State competes with the others for the creation of cooperatives, and to do so it has to offer a favorable and attractive legal framework.

There are two particular areas where this competition between regulations could become more intense: the process of establishing cooperatives and the tax framework.

This means that when it comes to choosing the headquarters of an organization resulting from cross-border cooperation, the existence of more or less favorable regulations is crucial.

It should be noted that the inputs of Spanish and Portuguese cooperative legislation are very similar. The cooperative principles of the International Cooperative Alliance (ICA) are an

essential cornerstone of these two legislations, and there are no major differences in concepts and practical solutions (Fajardo-García et al., 2017).

Thus, both Spanish and Portuguese legislations provide for various legal channels for cooperative corporate integrations and concentrations, including transnational ones. They implement Principle 6 of the International Cooperative Alliance of “cooperation among cooperatives”, which is also called for at the international level (ICA, 2015, p. 78) since “it is not reduced (...) to the formation of other cooperatives or higher-tier cooperatives (...) but rather encompasses a much wider range of options” (Cracogna, 2021). There are several legal institutions which connect cooperatives to a greater or lesser extent, ranging from forms of economic cooperation to far-reaching kinds of association such as founding a second-tier cooperative or a cooperative group, the merger of cooperatives and, finally, establishing an ECS, the paradigm of a formula for setting up a transnational cooperative.

2.2.2 | In Spanish law

In Spain, there is specific cooperative legislation. This consists of state legislation, Law 27/1999, of 16 July 1999, on Cooperatives (hereinafter “CL”), for cooperatives that operate in several regions, and regional laws, for cooperatives that mainly operate in their own region.

There are no apparent barriers in national regulations in the CL or in the majority of regional regulations to cooperatives which are transnational because they have foreign members, including agricultural cooperatives. The legislation stipulates that it is the cooperative’s bylaws which shall specify the geographical area in which the members’ holdings must be located.² Furthermore, Council Regulation (EC) No 1435/2003, of 22 July 2003, on the Statute for an ECS, also has to be taken into consideration when setting up a transnational cooperative.

The kinds of corporate integration in the agri-food cooperative industry, which might also be used to bring in a cooperative from abroad, can be divided into forms of concentration with no equity connection (second-tier cooperatives, cooperative groups, cooperative corporations, economic interest groupings and temporary business associations), and others where there is an equity connection and which are identified with merger processes (Meliá, 2003; Méliá & Peris, 2017).

Mergers are one of the main avenues of business growth for cooperatives and involve concentrating several organizations into a single entity, despite the difficulties in “the exchange ratio and the recapitalisation of the member’s position” and possible competition law issues (Navarro, 2015). In cross-border mergers (Cano, 2015), “the rules of its individual law shall apply to each company, which is determined in the case of legal persons by their nationality” (Cano, 2018) according to Article 9(11) of the Spanish Civil Code of 1989, whereby “in the merger of companies of different nationalities, the respective individual laws shall be taken into account”. When the intra-EU merger results in a “supranational company” (Cano, 2018), the system envisaged for the ECS will apply to the cooperative firms.

The second-tier cooperative or federated cooperative is the most widely implemented form of legally recognized cooperative integration in Spain (Meliá, 2003; Méliá & Peris, 2017). It acquires legal personality through its entry in the Register derived from its incorporation or merger,

²With similar provisions in the regional regulations of Galicia, Castile-La Mancha, and Extremadura, although not in the regulations of Andalusia.

including intra-EU transnational legal personality or one in which cooperatives from other countries are involved.

The cooperative group is made up of cooperative societies “and the parent organization which exercises powers or issues instructions” which bind these cooperatives “in such a way that there is a unity of decision-making within the scope of those powers” according to the CL. It is defined by the contractual tenor of the integration agreement, the approval of the inclusion in the cooperative group and the commitments undertaken which may affect aspects such as management, administration, and governance. It can also provide a means of transnational cooperative integration.

2.2.3 | In Portuguese law

The Portuguese legal system and, in particular, the Portuguese Cooperative Code (PCC) enacted by Law 119/2015, of 31 August, also provides for various legal options for corporate integration and concentration for cooperatives.

However, not all of them can be part of cross-border cooperation processes; second-tier cooperatives, which result from the grouping of cooperatives at the regional or national level, seem to be excluded from this option (Articles 102–107 PCC).

Article 8(1) of the PCC says that “cooperatives can associate with other legal persons as long as the association complies with the cooperative principles of autonomy and independence”. The law, therefore, permits the association of the cooperative with domestic or foreign cooperative or non-cooperative legal persons (associations, foundations, civil code partnerships, companies or others). This association may (or may not) take the form of the creation of a new legal entity (Meira, 2019).

Upholding the cooperative’s autonomy and independence is a necessary condition for its association with other legal persons (Article 8(1) PCC). This idea of autonomy and independence refers to the cooperative principle of autonomy and independence (Article 3 PCC) and seeks to ensure that the association of the cooperative with other legal persons does not jeopardise either the independence of the cooperative, its democracy or the control of its members. In particular, this refers to autonomy in the solvency of the cooperative (which might be compromised if the cooperative were to assume unlimited liability) and autonomy in the management of its operations and assets.

Unlike the Spanish legal system, the PCC does not provide any rules on cooperative groups. Therefore, bearing in mind Article 9 of the PCC, which stipulates the application of the Companies Code in all matters not expressly provided for in the Cooperative Code while respecting cooperative principles, some consideration has to be given to the kinds of coalitions compatible with cooperative principles which Portuguese cooperatives can enter into. Cooperatives are not allowed to form what is known as corporate groups, i.e., ones whose establishment is anchored in the use of any of the legal instruments which the Companies Code has specifically laid down for this purpose. The rules governing these legal instruments are exceptional in nature and consequently cannot be applied by analogy. Thus, as far as Portuguese cooperatives are concerned, “groups” only means *de facto* corporate groups, i.e., ones in which the power of management held by the parent company over its subsidiaries does not come from a legal instrument setting up the group but rather from contractual legal instruments or other sources such as majority holdings, members’ agreements, inter-company contracts and economic and dependent relationships. However, in all these cases, the cooperative is barred from group relationships that result in any form of “subordination” of the cooperative to the interests of other organizations. Indeed, the

cooperative principles of autonomy and independence and democratic member control prevent the cooperative from being a controlled entity in a group of companies governed by another legal person (Meira, 2021).

Finally, there is the merger of cooperatives as laid down in Article 109 of the PCC, which says that the merger of two or more cooperatives into a single cooperative can take place in two ways: merger by setting up a new cooperative, when two or more merged cooperatives are wound up with all their rights and obligations being transferred to a new cooperative; or merger by acquisition, when one or more merged cooperatives are wound up and all their rights and obligations are transferred to the pre-existing acquiring cooperative. This rule concerns domestic mergers. However, as noted above, Article 9 of the PCC specifies referral (notwithstanding any essential adaptations) to the Companies Code in all matters not regulated in cooperative law, and this means the legal system laid down in it for cross-border mergers can be applied. The rules of the Companies Code governing cross-border mergers (articles 117-A to 117-L) result from the implementation of the Tenth Directive, Directive 2005/56/EC of the European Parliament and of the Council, which was repealed and codified in the Companies Directive, Directive (EU) 2017/1132, (also called the Company Law Codification Directive) on cross-border mergers of limited liability companies. In the case of an intra-EU merger where a supranational cooperative society is set up, the ECS system will apply as discussed in what follows.

2.2.4 | Statute for an ECS

The Council Regulation (EC) No 1435/2003, of 22 July 2003, on the Statute for an ECS, is the most suitable legal mechanism for setting up a transnational cooperative largely because of the scope envisaged in it and notwithstanding its shortcomings “which yield a very vague form” (Vicent, 2003 ; Guichard, 2006). When determining the law applicable to the ECS, and insofar as it is not regulated by the SECS, the ECS’s registered office is especially important as shown in the system established in the SECS, criticized as “complex” (Vargas 2014), and also when determining the law applicable to the process of incorporation and merger.

This statute is anchored in the idea of promoting productive and entrepreneurial structures on a European scale by enabling a formal framework for cooperation between cooperatives in more than one European Union member state.

The formation of an ECS is governed by the SECS and the cooperative law of the state in which it has its registered office. Under Article 2 of the SECS, an ECS may be set up in five ways, all involving the participation of at least two parties governed by the laws of two different Member States.

An ECS may be formed as follows:

- (i) By five or more natural persons resident in at least two Member States;
- (ii) By five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State;
- (iii) By companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State, which are governed by the law of at least two different Member States. Where an ECS is constituted of cooperatives, it is a second-tier cooperative (recital 9 of the Preamble).

Other types of constitution are also envisaged:

- (iv) By the conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if it has had an establishment or subsidiary governed by the law of another Member State, for at least two years;
- (v) By a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States.

Formation by conversion is regulated, albeit only incipiently, in Article 35 of the SECS. Conversion entails a change in the competent law, which is no longer the national law where the cooperative has its registered office, and the SECS applies. However, Article 35(2) says that the registered office may not be transferred from one Member State to another at the same time as the conversion is effected, which means that national law applies otherwise.

Article 19 of the SECS says a merger can be carried out either as a merger by acquisition or by the formation of a new legal person. In the first case, the acquiring cooperative takes the form of an ECS, winding up the existing cooperatives and transferring all their assets and liabilities to the former (Article 33(1)). In the second case, the new legal person takes the form of an ECS, winding up the merged cooperatives and transferring all the assets and liabilities to the ECS (Article 33(2)).

It has been argued that the ECS Regulation system might “extraordinarily enhance the range of regulatory solutions from which the initiative can choose” (Vicent, 2003). However, the fact is that many years after its entry into force, it has not been widely accepted, as noted in the Commission’s 2012 Report³ hereinafter “2012 Report”), which identifies a number of reasons including the choice of a certain type (national or ECS) based on taxation which is not regulated in the ECS Regulation. Other negative drivers are the lack of incentives (Vargas, 2014); the difficulty in creating and managing an ECS; lack of awareness about the ECS; set-up costs; “the complex procedures to be followed” (2012 Report, section 4.4); the minimum capital requirement (€ 30,000) for natural persons; arrangements for the involvement of employees (De la Casa Quesada & García Jiménez, 2018); cooperatives which are rooted in their local territory (2012 Report, section 5), and the lack of systematic, technical and legal clarity due to the repeated reference in the ECS Regulation to the laws of the Member States where the ECS has its registered office and the difficulty of applying the system of sources of the ECS Regulation and, consequently, of the applicable legislation (Benavides, 2018). This “dependence” on Member State regulation prompted the Commission to announce “that it might present a proposal to simplify the Regulation” to strengthen its autonomy and simplify its use (Benavides Velasco, 2018) coupled with other actions to raise awareness of the benefits of the ECS (Fici, 2014).

In this context, it might be appropriate to simplify procedures, without prejudice to the legal guarantees provided at the national and EU level. In addition, it should be remembered that the first axis of the recent Commission’s 2021 Communication centres on creating the right framework for the social economy to thrive, and on developing legal and policy frameworks. Moreover, it is also worth highlighting the OECD Recommendation on Social and Solidarity Economy and Social Innovation, OECD/LEGAL/0472, which highlights the contribution of the social economy

³ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2012), *The application of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)*, COM/2012/072 final */ (available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0072:FIN:EN:HTML>) (last accessed on: 15/7/2022).

to the effectiveness of regional and local development in different ways. It encourages Members to design enabling legal and regulatory frameworks promoting “internationalisation strategies of social economy organizations through information sharing, international cooperation, and regulations that facilitate trans-border activities and partnerships with international firms” (OECD, 2022). Similarly, the “Decent work and the social and solidarity economy” Report prepared for the International Labour Conference, 110th Session, 2022, highlights that “representatives of SSE units can participate in cross-border social dialogue mechanisms, notably in regional integration communities” (ILO, 2022).

2.2.5 | Inter-cooperative agreements between Spanish and Portuguese cooperatives

Cooperatives from different countries can also use other mechanisms for economic partnership through inter-cooperative agreements which are less restrictive than the ones described above (Morillas & Feliú, 2018). These agreements are based on economic partnership and include forms of “joint ventures, whether inter-cooperative or with other companies” (Morillas & Feliú, 2018) ranging from incorporating companies, groupings, consortiums and associations and entering into agreements to signing other inter-cooperative agreements with other cooperatives. These agreements “are merely cases of temporary collaboration” which do not restrict decision-making autonomy (Morillas & Feliú 2018).

These inter-cooperative agreements are recognized in Spanish law. In Portuguese law, and as mentioned above, Article 8(1) PCC authorises association between cooperatives and other legal persons which allows cooperatives to take part in consortiums, joint ventures or a grouping of enterprises, or to enter into inter-cooperative agreements.

3 | METHODOLOGY

This study was designed as exploratory action research and organized as a multiple-case study. In case studies, a real-time phenomenon is explored within its naturally occurring context, given that this context can make a difference (Kaarbo & Beasley, 1999). This method has proved to be an appropriate way to explore areas where research studies are scarce (Cepeda & Martin, 2005).

The work was conducted in several stages. Firstly, a study of the conceptual framework was carried out. This was conducted by reviewing the relevant literature and by studying the European, Portuguese and Spanish legal frameworks, enabling us to establish the first of this paper’s goals, namely, to ascertain the legal options for setting up cross-border cooperatives and their potential constraints. Typical legal methodologies, such as the logical analysis of regulations, the comparative law method and the hermeneutic method as a qualitative method for legal research, were used to assess the extent to which cross-border cooperation legal mechanisms can be applied to cooperatives today.

The second stage involved the research cycle, which included planning, data collection, data analysis, and critical analysis, as proposed by Cepeda & Martin (2005). The characteristics of the cases to be analyzed were defined in the planning phase, and so as to address transnational cooperation comprehensively, it was analyzed both in the form of transnational cooperatives, i.e., cooperatives with members outside their borders, and inter-cooperative agreements between cooperatives in different countries. The methods for collecting, recording, processing and

analyzing data were defined, including the semi-structured interview approach chosen for the cases (Appendix I).

Interviews were carried out with the managers of the national organizations representing Spanish agri-food cooperatives (Cooperativas Agroalimentarias) and those in the regions bordering on Portugal (Andalusia, Castile and Leon, Extremadura and Galicia) to identify the cases. In Portugal, contact was made with CONFAGRI (Confederação Nacional das Cooperativas Agrícolas e do Crédito Agrícola de Portugal, CCRL) as the body representing Portuguese agricultural cooperatives. The information provided by both sources was complemented with information from the national and local media, as well as from the specialised agri-food press. This resulted in the identification of 10 cases of associative social economy organizations: nine cooperatives and one agricultural processing company (SAT)⁴ which had members in the neighboring country or which had operational agreements with them. Eight were identified in Spain and two in Portugal.

Once the cases had been pinpointed, data collection through semi-structured interviews was conducted with the managers or chairs of these cooperatives to map out the cross-border cooperation model, the rationale underpinning it and its limitations. The interviews were conducted online, using the Teams application. These data sources were supplemented with company websites and news and media interviews about the cross-border activity of cooperatives to enable data triangulation (Yin, 2014).

The questionnaire was split into four parts:

- (i) Identifying the scope of cross-border cooperation (supplies or services to members, marketing, investment in joint R&D and innovation, etc.) and the business sector.
- (ii) Describing the cooperation model (inter-cooperation agreements, recruitment of members, partners, etc.) and the rationale for the relationship.
- (iii) Problems and drawbacks that have emerged or constrain this relationship.
- (iv) Future options for further cross-border collaboration.

4 | ANALYSIS

4.1 | Assessment of the legal framework which can enable cross-border cooperation

The regulatory framework shows that there is a legal environment that provides security and certainty for cross-border cooperation between cooperatives both in the European Union in terms of the ECS and also in Spain and Portugal. However, it is a patchy and cumbersome regulation which may discourage these processes. Furthermore, these processes have to consider the choice of a particular legal system which will govern the lifetime of the cooperation, especially those involving major integration such as mergers, and this is particularly important in relation to the application of specific administrative and taxation regulations. A more harmonized legal system would furnish an incentive for cross-border cooperation by affording appropriate protection to the parties concerned. Consequently, no cross-border cooperation takes place in the absence of concrete

⁴ Agricultural processing companies (SAT) are social economy organizations, which bring together agricultural producers. Their regulations are laxer than those of cooperatives in certain aspects, such as the system for members joining and leaving, and the decision-making process in economic agreements, which is based on the share capital subscribed by each member and not on the principle of one-member one-vote.

circumstances in which distinct economic benefits may be derived from it (Bijman, Pyykkönen, & Ollila, 2012). In other cases, taxation, administrative, cultural and other barriers can put a damper on cross-border cooperation, particularly in transactions such as mergers with a greater equity commitment.

4.2 | Characterization of cross-border cooperation in the identified cooperatives

The consultation process with the organizations representing Spanish and Portuguese cooperatives identified ten cross-border operations (Table 1).

The geographical scope of the cooperatives in Spain is the regions of Andalusia, Castile-Leon, Galicia and Extremadura close to the border. In Portugal, it is the north and the Alentejo.

Four of them are large companies (DCOOP, SAT TROPS, COBADU and LACTOGAL), with turnovers ranging from €138 million to €1,021.021 million. Four are medium-sized cooperatives (COPRECA, OVIPOR, UCANORTE and COOPERATIVA GANADERA SIERRA SAN PEDRO) with turnovers ranging from €17 to 22 million, and one of them is a small organization (HORSAL), with a turnover of €4.4 million. Finally, there is one organization representing cooperatives (COOPERATIVAS AGROALIMENTARIAS DE GALICIA).

The business areas which underpin these activities between producer cooperatives are the fruit and vegetable sector and the livestock sector (marketing livestock and supplying fodder to members).

The cases were analyzed and divided into five categories (table 1).

The first category was made up of organizations with members outside their borders. Only three of the cases analyzed came under this category, and only one of the three had Portuguese members (SAT Trops), whilst the other two (COPRECA and DCOOP) had Spanish members who had invested in Portugal and owned shareholdings in that country. The second category comprised organizations with collaborating or associate members (“asociados”, in Spanish legislation) outside their borders.

The third and fourth categories were cooperatives that had permanent or one-off inter-cooperative agreements. Finally, the fifth category referred to companies that chose to create IOFs in which organizations from both countries have a shareholding.

4.3 | Description of the cases

4.3.1 | Cases analyzed which had members outside their borders

SAT TROPS

SAT TROPS is an agricultural processing company and a social economy company (not cooperative) which brings together producers and has 70 farmer members in Portugal. It is the largest Spanish avocado and mango trader with 3,300 Spanish growers. It was the first transnational producers' organization in Andalusia, is the current market leader, and has a growing number of Portuguese members. The interview was conducted with its General Manager, who told us that the inclusion of Portuguese members came about at the behest of the actual Portuguese producers, who saw an opportunity to obtain better prices for avocados, thanks to SAT TROPS' size and access to markets. The excellent trading results have increased the number of Portuguese

TABLE 1 Cooperatives and agricultural processing companies analyzed

Associative social economy organizations	Sector	Organization type	Turnover (million €)	Type of cross-border activity
With members outside their borders				
COPRECA (Spain)	Livestock	First-tier cooperative	19.1	It has a Spanish member with livestock holdings in Portugal.
DCOOP (Spain)	Multi-activity	Federated Cooperative	1,021	It has members in France (AGRIAL) and one large (non-cooperative) member in Portugal (inter alia).
SAT Trops (Spain)	Tropical fruit (avocado and mango)	Agricultural processing company (SAT). International producer organization	138	80% of avocado producers in Portugal are members.
With associate members outside their borders				
Cooperativa Ganadera Sierra de San Pedro (Spain)	Livestock	First-tier cooperative	19	They have collaborating partners (non-members) in Portugal with which they have annual agreements for marketing their produce.
With permanent cooperation agreements				
OVIPOP (Spain)	Livestock	First-tier cooperative	22	Agreements with three cooperatives in Portugal to supply feed to their members and market their livestock.
COBADU (Spain)	Manufactures animal feed	First-tier cooperative	398	Inter-cooperation marketing agreements
UCANORTE (Portugal)	Agricultural	Agricultural cooperatives union	17	Cooperation agreement with DELAGRO (Spain) to set up a central purchasing body

(Continues)

TABLE 1 (Continued)

Associative social economy organizations	Sector	Organization type	Turnover (million €)	Type of cross-border activity
With one-off cooperation agreements				
HORSAL (Spain)	F&V	First-tier cooperative	4.4	They buy product directly from Portuguese producers to add to their range.
Cooperativas Agroalimentarias de Galicia (Spain)	Representative organization of Galicia		–	It has agreements with CONFAGRI, the organization representing Portugal's cooperatives, for joint investment in R&D and innovation
Have set up IOFs between the companies in both countries				
LACTOGAL (Portugal)	Dairy	Holding company owned by coops	597	Has created a company owned by Lactogal (Portugal) and CAPSA Food (Spain), a producer organization.
Representative organizations:				
Cooperativas Agroalimentarias de España				
Cooperativas Agroalimentarias de Extremadura				
CONFAGRI: Confederação Nacional das Cooperativas Agrícolas e do Crédito Agrícola de Portugal, União de Cooperativas Entre Douro e Minho e Trás-os-Montes				

members to 70, encompassing 80% of Portugal's avocado producers, and accounting for 25% of SAT TROPS's total production.

In addition to marketing its products, this company gives its members technical advice and sells supplies to them at below-market prices. Although initially the Portuguese growers had to transfer their produce to SAT TROPS' headquarters in Malaga (Spain), they later set up a supply warehouse in Portugal to improve member services and trained a Portuguese specialist to manage it. In the words of the General Manager: "The growers trusted the experience of our Spanish specialists, whose know-how is highly valued in Portugal, but we chose to train a Portuguese specialist in SAT TROPS, and little by little he has gained the members' trust, given that apart from being physically close to them, he can bridge the language barrier. It was the right decision, as this person not only has the technical know-how, but also has very good social and interpersonal skills which are ideal for the job". The General Manager told us that although they are trying to set up a fertiliser (supply) shop in Portugal for their members, "different plant protection legislation, as well as various bureaucratic delays, have meant that we have not yet obtained permission to operate", and this has prevented them from opening the shop. As a result, fertilisers are still being sent to Portuguese members from SAT TROPS in Spain.

DCOOP

This federated cooperative is the largest Spanish agri-food cooperative and the second largest in terms of export volume. Its members are companies, of which the vast majority are cooperatives. In turn, these are owned by 75,000 farmers and livestock breeders. Its main line of business is oil and table olives, although it also operates in the supplies, arable crops, wine, milk, pork, nuts, and beef industries. The interview with the General Manager revealed that "the firm is fully committed to growth, as a way of optimising its operations and improving access to certain markets, and in this area business alliances and the search for partners outside its borders play an essential role". Although they do this mainly through participation in subsidiary companies, they also have partner cooperatives, as is the case with AGRIAL, a French cooperative that DCOOP supplies with goat's milk.

In the specific case of Portugal, DCOOP also has a partner, but it is not a cooperative and, as mentioned above, it is not Portuguese either. It is a large Spanish owner of olive holdings that has invested heavily in Portugal and has a high volume of production there. It markets its table olives and now also its olive oil through DCOOP.

COPRECA

This is another cooperative in a similar situation. It is a first-tier livestock cooperative based in Extremadura which has 400 members, one of whom is a Spanish member with holdings in Portugal. The firm's General Manager told us that they do not have Portuguese members because their statutes do not allow it, as members are required to own farms in Extremadura. However, one partner has invested in farms in Portugal and sells Portuguese production to the cooperative. On the other hand, the differences in food safety legislation between Spain and Portugal mean that cattle entering Spain from Portugal must spend nine months in a feedlot before they can be slaughtered and marketed, which makes management difficult. As in the previous case, it seems that the supply of products from members outside Spanish borders is the result of investment initiatives by the cooperative's own members, who invest in farms in Portugal, rather than the cooperative's own strategy of attracting members from outside its borders, although according to the General Manager, this could be a starting point.

4.3.2 | Cases analyzed which had associate members outside their borders

COOPERATIVA GANADERA SIERRA DE SAN PEDRO

This is a first-degree livestock cooperative, with 400 members, which is in turn a member of the second-tier cooperative COBADU, which was also reviewed in this study. The interview was conducted with the General Manager. Its interest in sourcing Portuguese cattle is because of lower purchase prices, although they also pointed out that these prices are increasing. To this end, it has chosen to develop the figure of the “associate member”, with whom an annual supply agreement is signed, which can be renewed every year. Associate members do not contribute capital, do not vote in general assemblies, and do not participate in profit sharing, but they do participate in the rest of the cooperative’s activities and services in the same way as members. When asked why these associated firms do not go one step further and become members, the General Manager stated that “it would be the natural way to go, and both the cooperative and its current members would welcome this, but they do not join because they might lose subsidies that are awarded for members production in a limited geographical area”.

4.3.3 | Cases analyzed that based cooperation on permanent inter-cooperative agreements

There are also cooperatives which had stable business operations with Portugal under inter-cooperative agreements. This was the case of the following:

OVIPOOR

This is a livestock cooperative that supplies fodder and markets the livestock of its producer members. An interview was held with the General Manager who informed us that its cross-border expansion model is based on reaching agreements with other Portuguese cooperatives under which it supplies feed to its members and adds their livestock to its sales network. Portugal is the logical place for the cooperative to grow, and although “we could have expanded by setting up a company there, we rely on the appeal of the OVIPOOR model to attract partners from across the border to sign agreements with us and thus take advantage of their local infrastructure”. They have been extending this model and currently have long-term agreements with three cooperatives: ACOS, Associação de Agricultores do Sul, Cooperativa Agrícola Do Guadiana, and PACOOP: Coop de produtores de Porco Alentejano. The reasons that have led them to this expansion are the loss of members that they are suffering, together with the lack of replacement members, and the limited room for growth that they have in Spain. On the other hand, in the words of the General Manager, “in Portugal, associative and cooperative organizations are not as embedded as in Spain, and livestock farmers are finding that they like the way OVIPOOR works, which is why the inter-cooperative agreements are proving to be popular”. These agreements enable both organizations to cut costs, increase the added value of their farmers’ production and enhance the quality of their animals. The General Manager said that it is easier to leverage local cooperative structures and companies already in place in Portugal and their relationship with their producers than to set up a transnational cooperative, which would involve the transfer of members and would bring with it the cost of building up direct relations with them from scratch.

COBADU

This is a first-tier cooperative, whose main business is the manufacture of compound feed, as well as the marketing of its members' cattle, sheep, pig and milk products. COBADU operates mainly in Zamora, Salamanca, Valladolid, Avila, and Leon, but also has facilities and members in the province of Caceres and operates in the area of Portugal close to the province of Zamora. It has over 1,300 clients in the neighboring country and has established several agreements with cooperatives based in Portugal and in the Azores. In the words of its Chairman, "COBADU has not considered bringing in Portuguese members because its interest in Portugal is purely commercial, and it achieves its objectives through inter-cooperative agreements".

There are other examples of inter-cooperation such as UCANORTE (Portugal) and DELAGRO (Spain). UCANORTE is a cooperative group that has centralised its purchasing of seeds, fertilisers, technical advice, etc. to help its members become more competitive. UCANORTE was set up over 40 years ago. One of the milestones in its history was when it became part of AGROS in 1997, which brought more notoriety to the cooperative. In 2015, it signed a protocol with DELAGRO (federated Spanish cooperative) to set up a central purchasing body to supply their members with inputs at lower prices.

4.3.4 | Cases analyzed which based co-operation on one-off inter-cooperative agreements

There are cooperatives which choose to do business with farmers and stockbreeders on a less regular basis with no agreements and just occasionally, at times when market circumstances warrant. This is the case of HORSAL, a vegetable growers' cooperative in Galicia. Its Managing Director explained that they do not have a stable cooperative relationship with Portuguese cooperatives or other partners, although they do sometimes buy Portuguese produce from cooperatives, at specific times, to cover supply shortfalls and specific orders. When asked whether they would choose to make these agreements permanent, they replied that they would not, because their product portfolio has a strong regional identity (they sell Galician produce). Although they would be delighted to have members in Portugal, they understand that their market, which focuses on Galician products, would be reticent to accept this change. The Managing Director also saw difficulties in bringing the two business cultures together. In this sense, he pointed out that the business culture and the member-cooperative relationship are different in Spain and Portugal: "Portuguese producers are much more speculative and expect the maximum price in each season, although they accept the possibility of incurring losses in some cases. Conversely, Spanish members prefer stability, on the basis that the cooperative has permanent customers, although they know that, in some years, they could have obtained better prices if they had sold their products to other customers. This difference in business culture makes it difficult for Portuguese members to join the cooperative.";

Cooperativas Agroalimentarias de Galicia (AGACA). This organization represents Galician agri-food cooperatives (Spain) and has regular cooperation agreements with CONFAGRI, the organization representing Portugal's cooperatives, set up to jointly undertake innovation projects that bring efficiency improvements for the members of the cooperatives they represent. They jointly participate in innovation projects in areas such as digital marketing and the social value of cooperatives. CONFAGRI has also entered into agreements with Unión de Cooperativas Intercoop (Castellon-Valencia), Confederación de Cooperativas Agroalimentarias de España, Cooperativas Agroalimentarias de Euskadi and Cooperativas de Castilla la Mancha.

4.3.5 | Organizations controlled by cooperatives that have created IOFs in which organizations from both countries (Portugal and Spain) have shareholdings

LACTOGAL and CAPSA Foods

Another model is cooperatives or organizations controlled by cooperatives or their producers that have decided to set up a limited liability company with other cooperatives as shareholders. This is the case of a large Portuguese company called LACTOGAL, which was created out of the association of three of the largest milk cooperatives in northern Portugal. It is a holding company owned by the three cooperatives and also has shares in other firms (Meira, 2019). LACTOGAL has already chosen to expand its operations into Spain where it has created a company to strengthen its position in the Iberian market (IBERLECHE). IBERLECHE was an investee of LACTOGAL and CAPSA Food, which is a Spanish IOF controlled by Central Lechera, an agricultural processing enterprise owned by Galician stockbreeders.

IBERLECHE

IBERLECHE currently has three factories in Spain in A Coruña, Bilbao and Madrid. It has no logistics or Sales Department in Spain. These factories are used by LACTOGAL to market milk in Spain under private labels and to sell to large retail outlets.

4.4 | Reasons for undertaking cross-border relations

The cooperatives gave various reasons for undertaking these processes, but they all hinged on gaining size and reducing costs (through joint purchasing or increasing marketing volumes), carrying out joint innovation projects, adding to the range of products on offer, and harnessing their members' trade channels. All of them agreed that geographical proximity is an excellent opportunity for expansion and business growth, thereby ramping up the cooperative's operations.

4.5 | Problems and drawbacks constraining these cross-border relations

Various constraints were identified. Some cooperatives, especially livestock cooperatives, noted differences in food safety regulations between countries which mean that livestock from some origins has to be treated before entering Spain, as is the case with the bluetongue vaccine for cattle which is compulsory in Spain but not in Portugal. They also pointed to the greater administrative burden associated with the entry of these products compared to those of Spanish members. However, in general, most of the cooperatives did not see major food safety issues as legislation is largely harmonized.

Another of the constraints cited by some cooperatives is the difference in business culture between the enterprises in the two countries. Thus, some cooperatives argued that Portuguese producers are used to trading more speculatively by contributing more or less production to the cooperative depending on market circumstances, at the cost of not getting satisfactory prices for their produce in some years. In contrast, Spanish cooperatives tend to insist on exclusive deliveries and assure their members that their produce will be sold at more constant, secure prices.

They contended that it has been hard for the Spanish cooperatives to guide their members in this respect and that recruiting members with a different business culture can pose problems in terms of managing the marketing of their output.

None of the cooperatives mentioned language barriers or legal or taxation differences as a problem, taking the view that although having members or production on the basis of agreements abroad entails more administrative work, it is not a major concern. However, SAT Trops, which has a strong member base in Portugal, did highlight language barriers, insofar as they make it difficult for members to develop trust in the company and feel part of it. They have solved this issue by hiring Portuguese employees who have been trained in all aspects of growing techniques at SAT Trops. They understand that “proximity, good service and the good prices paid to members” are the way to earn their trust.

Another barrier mentioned was the red tape involved in opening establishments to improve services for members in the neighboring country, which sometimes goes beyond what is reasonable given the legal framework, perhaps due to fear of foreign competition, which slows down the process.

In terms of legal limitations, Spanish cooperatives pointed out that a Spanish agri-food cooperative can only accept producer-members from outside its borders if its bylaws allow it to do so. Since the bylaws of the vast majority of cooperatives geographically restrict their members' holdings to their region, these bylaws would have to be amended prior to including these members. However, they agreed that this would not be sufficient grounds to hold these processes back if they were financially worthwhile.

Another limitation pointed out, in this case by SAT Trops, was the delays and complexity of obtaining transnational producer organization status. They said that they applied for it in 2013 but did not obtain it until 2018, largely due to the lack of communication between the government departments in the Autonomous Region in which the company is domiciled, and the Spanish and Portuguese governments. However, this recognition is necessary because Portuguese member farmers are not allowed to be direct members of a Spanish producer organization, implying there must be recognition for transnational producer organizations.

There are also tax differences that affect member-cooperative invoicing, and even cultural differences, stemming from the fact that agri-food cooperatives are less widespread in Portugal, which means that the member-cooperative or SAT relationship is understood as a trading exchange, whereby the member sells to the cooperative, and not a corporate relationship, whereby the product is delivered to the company for its subsequent sale. These differences have led to a number of tax inspections, due to a lack of understanding of how cooperative members are paid.

Conversely, all the cooperatives identified the Spanish regulations governing aid to cooperatives as a hindrance to transnational growth, and even to growth within Spain when it goes beyond the borders of a region since in many cases this aid is tied to geographical considerations. They complained that these conservative regulations which bind them to their local area are restricting the growth of many cooperatives and, furthermore, prioritise regional aspects rather than financial criteria which, at the end of the day, are what will make the cooperatives' sustainable and their members' business operations profitable.

4.6 | Future prospects for greater cross-border cooperation

All the cooperatives concurred that there is a pressing need to move forward in processes which will enable them to gain in size so as to counteract some of the problems already identified in this

study, including loss of members and production, imbalances in the food chain between supply and demand and, more recently, the rise in the cost of inputs as a result of inflation.

All of them attached great importance to growing beyond national borders, in this case, Portuguese borders. However, for the most part, they considered the prospect of doing so through direct member entry to be much more unlikely due to differences in business culture and because they think that there are other simpler ways, such as inter-cooperative agreements, which enable them to achieve economies of scale without the drawbacks and hazards of including new members. Moreover, they believe that it is more feasible to use these agreements as a preliminary step to get to know each other better before taking the plunge and including new members. This was the case of DCOOP with AGRIAL, a French partner which it had been working with under agreements for several years, and which eventually led to a closer relationship between the two, with AGRIAL joining DCOOP.

5 | DISCUSSION AND CONCLUSIONS

The main contribution of this study is that it addresses a hitherto unexplored area of research, namely transnational cooperative cooperation and the creation of cross-border cooperatives between cooperatives in the south of the EU, which are very different in terms of size and development from those in northern Europe, where these processes are more common. Moreover, this study takes a legal-economic approach, establishing five different categories of cross-border cooperation.

Cross-border cooperation gives substance to cooperatives' freedom of establishment enshrined in the Treaty on the European Union. Although there is no harmonization of cooperative legislation in the EU, there are no significant differences in concepts and practical solutions between the Spanish and Portuguese legal systems.

Spanish and Portuguese legislation provides various legal mechanisms for the integration and business concentration of cooperatives, including transnational ones. However, not all of them are suitable for framing a cross-border cooperation project. Of the mechanisms presented, the establishment of an ECS and inter-cooperative agreements are the most appropriate for framing cross-border cooperation projects between Spain and Portugal.

This study shows that cooperatives in the Iberian Peninsula do not use the ECS to cooperate across borders. The introduction of the ECS statute in 2003 has not had the expected success at the EU level. The legislative technique underlying the ECS statute is complex and needs to be revised to promote cross-border mobility from a legal point of view. In this context, it is important to recall that one of the lines of action of the "2021 Communication" is focused on creating the right framework for the social economy to thrive.

Currently, the most common legal and business form used to frame cross-border cooperation is inter-cooperative agreements. This highlights the importance for cooperatives of the 6th cooperative principle, whereby "cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional, and international structures".

It should be stressed that the fact that more cross-border cooperative experiences are not taking place is not due to legal, language or management issues. The reason is that they are not seen as necessary since they can achieve the same objective by means of inter-cooperative agreements, which they also use as a first option to approach other cooperatives and their members. In the

medium term, if the experience is positive, these agreements may lead to greater cooperation, as has occurred with DCOOP.

Lastly, the constraint most widely acknowledged by the cooperatives is the interest of the various governments (regional or national) in protecting the regional character of their cooperatives, so that in the end they give priority to maintaining the main link with the region (normally their headquarters), rather than allowing them to expand their business and therefore their capacity to respond to current challenges. Not surprisingly, overcoming resistance to change and localism has been identified as one of the main challenges facing cooperatives in Spain (Giagnocavo & Vargas-Vasserot, 2012; Meliá et al., 2021).

Creating cross-border cooperatives can be a good solution, but for them to be successful there must be clear benefits for all the parties involved. These benefits might be the acquisition of cheaper goods or simply a way to internationalize. If there are no clear benefits, there are no incentives to create such cooperatives. This idea was validated in the data collection carried out with the organizations representing the cooperatives and is in line with the literature review (Der Krogt et al., 2007).

Another aspect that was mentioned by some of the representatives of the cooperatives interviewed was the cultural gap. The cultural differences between cooperatives or in general between farmers in two countries can be a problem or an issue in the existence and success of partnerships between cooperatives. This conclusion is in line with the studies by BenDaniel et al. (2002), Buono et al. (1985), Cartwright & McCarthy (2022) and Kalogiannidis (2020). This is compounded by problems arising from the delays in procedures and permits for the creation of transnational organizations, sometimes due to a lack of communication between authorities within a country, and between countries, and sometimes due to misgivings about the opening up of organizations labelled as “foreign”.

This reality should serve as a starting point for greater communication and coordination between the authorities of the different EU Member States, as well as for the coordination of public policies to move towards the creation of larger cooperatives, capable of tackling today's challenges from a stronger position, overcoming local and regional protectionist attitudes, in order to enhance the sustainability of these enterprises and of their farming and stockbreeding members.

Therefore, although the size of the cooperatives can influence the creation of cross-border cooperatives, as there are more of them in the north of Europe than in the south, we think this solution is valid for southern European countries, including Spain and Portugal, as a way for cooperatives to grow and obtain benefits of scale. There is a legal framework for doing this and it should be leveraged in cases when it is financially possible to improve the competitiveness and sustainability of cooperatives, as well as the ability to deliver appropriate returns to their members. Likewise, public policies should be guided by these principles and shun approaches which prioritise local or regional concerns over making cooperatives more sustainable. This will enable them to achieve a size to operate efficiently which, given the small size of many cooperatives in the south of Europe, is essential if they are to survive.

Despite the study's contribution, it has some limitations. The first limitation is the scarcity of existing literature in the field of transnational cooperative cooperation and the creation of cross-border organizations, which is totally non-existent among small cooperatives, which are a majority in southern Europe. Secondly, it was difficult to identify cooperatives with experience in this field, as there are no publications on the subject, which meant that we had to contact the organizations representing cooperatives in both countries. Therefore, the cases identified do not represent the entire population, although they have enabled us to establish five different

categories of behavior when dealing with transnational cooperation which, when analyzed separately, can serve as a starting point for future studies.

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