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Worker Cooperatives and Industrial Democracy in Ireland: Historical Perspectives, Legal Frameworks, and Pathways for Growth

Abstract

Worker cooperatives, firms owned and democratically administered by their workers, provide a robust type of industrial democracy with significant historical foundations in Ireland and the European Union (EU). This article analyses the progression of worker cooperatives within these circumstances, mapping their emergence as reactions to social inequity, economic disruption, and the pursuit of fair working standards. It rigorously examines the legal frameworks governing worker cooperatives in Ireland and the EU, emphasizing the obstacles presented by fragmented law, restricted access to financing, and insufficient support mechanisms.

Notwithstanding governmental support for cooperative principles at the EU level, worker cooperatives constitute a rather insignificant industry. This article examines obstacles to expansion, such as cultural prejudices against conventional corporate methods and insufficient understanding of cooperative governance. Utilizing successful models from nations such as Spain and Italy, it delineates plans for development, including adjustments to Irish and EU law, augmented financial assistance, and education about the advantages of cooperative enterprises.

This article presents a historical and legal study that highlights the capacity of worker cooperatives to mitigate economic inequality and promote industrial democracy in Ireland and the EU. It desires focused governmental measures to fully realize the sector's groundbreaking potential.

Keywords: employment, Ireland, worker cooperatives

Introduction

Despite Ireland's historically limited industrial sector, prevalence of numerous micro-enterprises, and elevated unemployment rate, which starkly contrasted with the United Kingdom, the mid-twentieth century witnessed the emergence of an "emulation effect," rendering industrial democracy a popular concept. It has been contended that the discourse on industrial democracy in Ireland mostly stemmed from the pressures of British industrial existence, and the expanding goals of the major trade unions. Consequently, it had by then enjoyed little influence on the broader populace. This did not imply that there existed no connections to other contemporary social and political events on those islands. Conversely, the mere utterance of the term "participation" elicited several connotations, both positive and negative, instantaneously. In all sectors of social life, calls emerged for more engagement in deliberating and resolving pertinent industrial issues. It was perceived that, these goals possessed little-to-no immediate impact on the "industrial democracy movement," although, collectively, they posed a significant threat to conventional corporate practices throughout other aspects of social life. However, elements of the principal trade unions, though not alone in Ireland, had developed a skepticism towards profit-sharing plans and some aspects of workers' control, due to past experiences that suggested that these initiatives may have undermined union influence.¹

Lagging behind many other countries, the first workers' cooperative in Ireland was established in Dublin in 1956; nevertheless, the industry did not see significant growth until the 1970s, when many "phoenix" or "crisis" cooperatives were created in response to impending industrial cutbacks. Numerous workers' cooperatives that developed in the 1970s sought to sustain struggling enterprises, and ultimately collapsed. Nonetheless, at least one of these cooperatives, Crannac Furniture, persisted into the late 1990s.²

It follows that the worker cooperative sector in Ireland is distinctly limited and clearly undeveloped. A survey indicated that of the 82 worker

¹ Basil Chubb, James Dunne and Timothy Hamilton, 'Industrial Democracy: Its Background and Implications' (1969) 58 *Studies: An Irish Quarterly Review* 135 <<https://www.jstor.org/stable/30088673>> accessed 23 December 2024.

² Bridget Carroll, 'Facing Crises: Challenges and Opportunities Confronting the Third Sector and Civil Society', Ninth International Conference of the International Society for Third Sector Research (ISTR) (2010) <https://cdn.ymaws.com/www.istr.org/resource/resmgr/working_papers_istanbul/carroll_wp10.pdf> accessed 29 December 2024.

cooperatives established by 1998, 46 were either dissolved, in the case of CRO registered enterprises, or ceased to be classified as cooperatives. Among the 36 surviving firms, eight were identified as worker cooperatives; however, five of these companies did not adhere to certain fundamental requirements typically associated with worker cooperatives, such as a pre-requisite membership of three and nearly all of workers being members. This research encompassed all eight cooperatives in its conclusions. Of the rest, 23 had been privatized, four were incapable of being recognized by their business name or location, and the fate of the last firm, while still technically operational, was undetermined by researchers. Michael Gavin noted that, from 2000, several worker cooperatives had been established with assistance from a grant provided by the Workers' Co-operative Fund of the Irish League of Credit Unions. An examination of the data indicates that 26 firms received this funding. However, many of these were later privatized or dissolved. This particular investigation discovered a total of 19 worker cooperatives. Nonetheless, Gavin highlights that the aforementioned challenges in recognizing worker cooperatives may result in an incomplete representation. This analysis indicates that the worker cooperative sector in Ireland is feeble and seems to have significantly diminished since the last official data released by the Co-operative Development Unit in 1998.³

The present legal dichotomy of employee participation in Ireland

As outlined by the Workplace Relations Commission, the industrial relations framework in Ireland is fundamentally voluntary. There is consensus that the terms and conditions for workers are optimally established through a system of unforced collective bargaining among an employer or employers' association, and one or more trade unions, while not featuring state involvement. The State's involvement in industrial relations in Ireland has primarily been limited to facilitating collective bargaining, by legislating for institutions that aid in resolving conflicts among employers and employees.⁴

³ Michael Gavin and others, 'The Worker Co-Operative Sector in Ireland: Current Status, Future Prospects' (2014) 47 *Journal of Co-operative Studies* <https://hubble-live-assets.s3.eu-west-1.amazonaws.com/uk-society-for-co-operative-studies/file_asset/file/270/2014_JCS_47_2_GavinEtAl-141.pdf> accessed 22 December 2024.

⁴ 'Industrial Relations' (Workplace Relations Commission 2012) <https://www.workplacerelations.ie/en/what_you_should_know/industrial_relations/> accessed 23 December 2024.

The current status of collective bargaining in Ireland has reached an unprecedented low. Collective bargaining is viewed as a means of distributing abundance and preserving the equilibrium of power among market participants; however, Ireland is the sole Western European EU member lacking binding collective-bargaining laws, resulting in limited collective bargaining coverage. The economist Michael Taft elucidates that this has also contributed to Ireland's dearth of industrial democracy, placing it in the lowest ranks in worker representation and participation in economic decision-making.⁵ As of 2024, Ireland is positioned in the lower half of Eurofound's industrial democracy ranking.⁶ The government was compelled to promote collective bargaining only after the EU Directive on Adequate Minimum Wages necessitated its transposition into Irish law.⁷

One major obstacle to the proliferation of worker cooperatives in Ireland may be the existence of an array of legislation and schemes that encourage the adoption of alternative variants of employee ownership, participation and control, which are widely practiced.⁸ According to the researchers Ceri Jones and Patricia Murphy, while there is not any legal obligation for board participation in the private sector, many segments of the public sector are governed by law that grants members of the staff the capacity to hold board seats. Some private organizations have established volunteer work council-type entities, but these are very uncommon. The procedures established in 2006, according to the EU directive on information and consultation, provide legislative protections for worker information and consultation liberties in Ireland. The Employees (Provision of Information and Consultation) Act 2006 implements the provisions of EU Directive 2002/14/EC into Irish law. However, the Act is applicable only to businesses

⁵ Akshay Sharma and Nivrati Gupta, 'The Crippling State of Collective Bargaining in Ireland' (Kcl.ac.uk21 June 2021) <<https://blogs.kcl.ac.uk/kslreuropeanlawblog/?p=1609>> accessed 23 December 2024.

⁶ Michael Taft, 'Stumbling at the Threshold: Democracy in the Irish Economy' (2024) 113 *Studies: An Irish Quarterly Review* 488 <<https://muse.jhu.edu/pub/420/article/948129>> accessed 23 December 2024.

⁷ Brian O'Donovan, 'Ireland Expects to Meet EU Deadline on Workers' Rights' RTÉ News (15 November 2024) <<https://www.rte.ie/news/ireland/2024/1115/1481006-workers-rights-directive/>> accessed 23 December 2024.

⁸ 'Employee Share Schemes' (Citizens' Information Board2018) <<https://www.citizen-sinformation.ie/en/money-and-tax/tax/tax-on-savings-and-investments/employee-share-option-schemes/>> accessed 22 December 2024.

employing more than 50 individuals, and there does not exist any real presence of a culture of worker co-determination in the private sector.⁹

The Irish Worker Participation system, established by the Worker Participation (State Enterprises) Acts of 1977 and 1988, alongside additional pieces of legislation, is considered distinctive within the English-speaking realm. It bears some resemblance to the German system of employee representation on boards, but had been limited to state-owned industries as well as other governmental entities.¹⁰ TASC, an Irish think-tank, note that the objective of the Worker Participation Acts was to incorporate elements of the stakeholder perspective into corporate governance, embodying the concept of the corporation as a “social institution.” The backers of this system asserted that this initiative would enhance industrial relations, augment workplace democracy, and serve as a counterbalance to “economic liberalism.” The formation of a Worker Directors Group in the Irish Congress of Trade Unions (ICTU) was also anticipated to enhance inter-union ties. The original seven enterprises were designed to serve as a “test bed,” with plans for the concept to be extended into the public sector, and, maybe, the private sector in the years to come. The 1977 act was first implemented for Aer Lingus (and Airlinte), Bord na Mona, B&I, The Irish Sugar Company, CIE, ESB, and Nitrigin firearm. At that point, the act included a total of 50,000 workers. The act also mandated the election of worker directors. The elections for such were to be conducted by the use of secret ballot and proportional representation. Electors were required to be at least 17 years old, and have been employed by the firm for a minimum of one year. Candidates would have to be at least 17 years old, under 66, and hold a minimum of one year of employment with the firm. The function of the labor union was contingent upon its recognition for collective bargaining activities. In 1983, the Postal and Telecommunications Services Act expanded measures for worker directors to An Post and Telecom Eireann, which were also formed under the Act. Furthermore, the 1988 act included Aer Rianta and the National Rehabilitation Board onto the roster of semi-state entities with worker directors. This legislation also facilitated the establishment of sub-board participatory frameworks in 35 state businesses. These protocols must be implemented at the initiative of a trade union or via a large proportion of

⁹ Ceri Jones and Patricia Murphy, ‘Worker Participation – Ireland’ (Europa.eu18 July 2013) <<https://oshwiki.osha.europa.eu/en/themes/worker-participation-ireland>> accessed 23 December 2024.

¹⁰ ‘Worker Participation on Boards’ (Rosalux.de3 May 2013) <<https://www.rosalux.de/en/news/id/6749/worker-participation-on-boards>> accessed 22 December 2024.

the enterprise's workers. The act was intended to avoid excessive prescription of the structures to be implemented. It stipulated the participation of the following features: an usual exchange of perspectives and details between administration and staff members regarding issues outlined in their contract, and prompt communication of choices that may significantly impact employees' assets; distribution of information and perspectives to all workers resulting from the participatory arrangements. While some public entities and agencies have included worker directors onto their boards, this has been done on an "ad hoc" basis as opposed to systematically. The Labour Services Act 1987 mandated the nomination of worker directors to the board of FAS, whereas the Court Service Act 1998 specified the inclusion of worker directors in the Court Service. The implementation of worker directors in Ireland has been said to need many years to stabilize. The non-worker directors regarded the new system with skepticism and often omitted worker directors during their first appointments, even conducting private discussions in their absence.¹¹

The Worker Participation (State Enterprises) Acts of 1977 and 1988 pertaining to Telecom Éireann were amended by Section 10 of the 1996 act stipulating that the number of employee directors appointed under these acts shall not surpass one third of the number the minister is otherwise authorized to appoint according to the company's articles of association. This clause aimed to facilitate the nomination of directors to the Telecom Éireann board by the KPN/Telia partnership. The Worker Participation (State Enterprises) Order, 1996 (S.I. No. 405 of 1996), issued by the Minister for Enterprise and Employment under the Worker Participation (State Enterprises) Acts of 1977 and 1988, stipulated that Telecom Éireann shall have 12 directors, including two designated as employee directors. The lawyer Eamonn Hall points out that this order annulled the conditions of the Worker Participation (State Enterprises) Order, 1988 as they pertained to Telecom Éireann. The Telecommunications (Miscellaneous Provisions) Act 1996 (Expiration of Terms of Office) Order 1996 (S.I. No. 409 of 1996) stipulated the expiration of the terms of office for two staff directors. Section 10 of the Telecommunications (Miscellaneous Provisions) Act 1996 provides for alternative directors. According to section 10(9) of the 1996 act

¹¹ 'Good for Business? Worker Participation on Boards' (TASC 2012) <https://issuu.com/tascpublications/docs/worker_directors_final130712?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Flight%2Flayout.xml&showFlipBtn=true&proShowMe%2Ftrue&proShowSidebar=true> accessed 22 December 2024.

an individual designated by the minister as an alternative director could come to and engage in discussions of the directors of Telecom Éireann, but would not be entitled to voting rights until the director for whom they are a substitute is absent.¹²

Additionally, the Finance Act of 1982 established a framework for private companies with an authorized profit-sharing program to allot shares to workers, that may be free from income tax under specific circumstances. An employee may receive shares through this authorized program, subject to a maximum yearly limit. Dividends collected by workers for granted shares are subject to income tax in the usual manner. Once shares are given to a person, they must be retained in a trust formed for that purpose, and the participant must consent to the trustees retaining their shares for a designated retention term.¹³

A long standing example of such is the Save as You Earn (SAYE) scheme. SAYE employee share plans consist of a Save As You Earn certified contractual savings scheme, as well as an authorized savings-related share option arrangement. Under this arrangement, a corporation allocates share options to its workers and directors. Those involved will enter into a formal savings agreement with a third-party banking organization, often for a duration of three, five, or seven years. Individuals can put away between €12 and €500 monthly. Upon conclusion of the savings term, workers and directors may use their choice to purchase stock in the firm, with payment derived from their SAYE savings profits. The resulting profit from exercising this option is exempt from income tax.¹⁴ The legislation pertaining to SAYE and certified contractual savings schemes can be obtained in sections 519A to 519C Taxes Consolidation Act 1997, and Schedules 12A and 12B of the Taxes Consolidation Act 1997.¹⁵

Another illustration is Ireland's Key Employee Engagement Programme (KEEP). The specifics of the Key Employee Engagement Programme were delineated in the Finance Bill 2017, which was subsequently passed within the same year. The KEEP program is designed to facilitate and enhance

¹² Eamonn Hall, 'Communications' (1996) 10 Annual Review of Irish Law 77.

¹³ 'Guide to Profit Sharing Schemes' (Revenue.ie) <https://www.taxfind.ie/binaryDocument/pdfs/http___www_revenue_ie_en_tax_it_leaflets_it62_pdf_20160421233015.pdf> accessed 22 December 2024.

¹⁴ 'Share Based Remuneration' (Commission on Taxation and Welfare 2022) <<https://assets.gov.ie/234151/44fbc527-c416-45de-9fb9-63fee6cao7ef.pdf>> accessed 22 December 2024.

¹⁵ 'What Is a SAYE Scheme? Here Is All You Need to Know.' (Hyland Johnson Keaney3 May 2023) <<https://hjk.ie/saye-scheme/>> accessed 22 December 2024.

tax efficiency for small and medium-sized enterprises in granting share options to employees. Gill Brennan, head of the Irish Pro Share Association, stated that the main obstacle preventing SMEs from providing share ownership or partial ownership to key workers was the tax liability incurred upon granting shares, which the staff member was unable to liquidate, effectively requiring them to pay tax on an intangible asset. The KEEP initiative was launched to enhance the competitiveness of SMEs, particularly in comparison to the UK.¹⁶ According to the Tax & Duty Manual, KEEP related legislation from the 2017 Act is contained in section 128F of the Taxes Consolidation Act 1997.¹⁷ A similar, and more extensive type of initiative also appears in the state sector. A 2014 legal article, written by Eva Barrett, explains that the ESB, a state-owned corporation, is mostly held by the Irish government, with the Minister for Finance possessing 85 percent and the Minister for Communications, Energy and Natural Resources having 10 percent of ESB shares. The balance of 5 percent is held by an Employee Share Ownership Trust.¹⁸ One major example of these concepts in practice involves Aer Lingus, the partially state-owned airline. The Aer Lingus Act 2004 implemented the Employee Share Ownership Plan (ESOP) established by the government and associated trade unions at Aer Lingus, and provided a legislative structure to enable any private sector involvement, should the government pursue such an initiative. Section 6, to enable ESOT board participation, the conditions of which had been previously established by the parties, and when required, third-party board representation, allowed for the whole or in part dis-application of the Worker Participation Acts 1977 and 1993 from the company, the departure of directors upon such dis-application, and the minister's authority to select new directors to fill the resulting vacancies. Section 7 delineates employee ownership programs

¹⁶ 'Key Employee Engagement Programme "Gets It 85% Correct"' RTÉ News (20 October 2017) <<https://www.rte.ie/news/business/2017/1020/913870-key-employee-engagement-programme-gets-it-85-correct/>> accessed 22 December 2024.

¹⁷ 'Key Employee Engagement Programme', Tax & Duty Manual (Revenue 2021) <<https://www.revenue.ie/en/tax-professionals/tdm/share-schemes/Chapter-09-20211231151829.pdf>> accessed 22 December 2024.

¹⁸ Eva Barrett, 'Getting the Price Right – Could a Reintroduction of Temporary Price Controls Solve the Problem of Increasing Renewable Energy in Ireland While Simultaneously Guaranteeing Affordable Electricity to Domestic Consumers?' (2014) 37 Dublin University Law Journal 21 <https://www.academia.edu/7021967/_Getting_the_Price_Right_Could_a_reintroduction_of_temporary_price_controls_solve_the_problem_of_increasing_renewable_energy_in_Ireland_while_simultaneously_guaranteeing_affordable_electricity_to_domestic_consumers> accessed 22 December 2024.

and their procurement of shares in the organization. Section 8 elucidates that section 60 of the Companies Act 1963, which forbids a company from providing monetary support for the acquisition of its shares, is inapplicable to any assurances issued or financial commitments made by the company regarding the disposal of shares. Furthermore, it does not pertain to any financial arrangements related to the acquisition of shares by an Employee Share Ownership Trust (ESOT).¹⁹

The law firm Arthur Cox has advocated for the establishment of an employee-ownership trust system for non-state companies in Ireland, modelled after what they called the “successful” Employee Ownership Trust (EOT) program in the United Kingdom. The request was included in a proposal to Ireland’s Department of Finance, as an element of a public consultation over share-based compensation. The company asserted that Ireland cannot anymore rely only on a low corporate tax rate to entice multinational corporations, and must enhance its provisions in domains such as personal taxation. They claimed that this enables business owners to transfer ownership to workers by creating a trust that assumes controlling interest of the firm. In this system, the trustees possess ownership of the firm and are obligated under the trust’s provisions to use their position for the advantage of all workers. A corporation functioning under an EOT framework is not owned and governed by the shareholders themselves, but rather by the trustees of the EOT, as articulated by Arthur Cox.²⁰

Also historically popular in Ireland was the notion of “enterprise partnership.” The enterprise partnership in Ireland was an institutional manifestation of a wider, maybe worldwide, tendency for a demonstration of competitive togetherness. However, the movement prioritizes competitiveness and organizational effectiveness above equity, as well as improving social conditions for staff and broader society. Consequently, as Paul Teague accentuates, such a practice of enterprise partnership could not be practically considered as a manifestation of traditional industrial democracy.²¹

As noted by Darren Dahl in *Forbes*, although the prevalence of employee stock ownership plans has increased, they may not be suitable for all

¹⁹ ‘Administrative Law’ (2004) 18 Annual Review of Irish Law 1.

²⁰ ‘Call for New Share Scheme for Employees’ Law Society of Ireland Gazette (2021) <<https://www.lawsociety.ie/gazette/top-stories/2021/07-july/top-finance-executives-face-tougher-regime>> accessed 22 December 2024.

²¹ Paul Teague, ‘Social Partnership and The Enterprise: Some Lessons from the Irish Experience’ (2004) 2 European Political Economy Review 6 <<http://aei.pitt.edu/6047/1/teague.pdf>> accessed 23 December 2024.

organizations, particularly smaller enterprises with fewer than 50 employees that may find the paperwork and expenses of establishing an ESOP daunting. Consequently, numerous firms in the USA adopted the worker cooperative model as a feasible alternative.²² However, numerous governments implement regulations that provide tax advantages to ESOPs, but not always for cooperatives. Moreover, almost all advantageous tax considerations are allocated to the financial dimensions of employee ownership. Although worker involvement receives little, if any, public policy backing or tax benefits, research indicates that it is more crucial to the productivity formula than ownership by workers. This result is particularly significant given the advantageous tax status of ESOPs which is occasionally utilized as an antitakeover tactic, and not as a means to disseminate share ownership, generate capital, or enhance productivity. Cooperatives seem to provide a distinct array of benefits to its members compared to Employee Stock Ownership Plans. Although cooperatives are often smaller than other ownership structures, they do not inherently function within a dysfunctional spectrum. Moreover, while using “crude” approximations for employment contentment, all metrics indicated that cooperatives exhibited higher levels of satisfaction with work compared to Employee Stock Ownership Plans. This correlation between job satisfaction rankings across ownership models likely reflects similar ratings for all metrics of worker engagement.²³

Around a third of firms in Europe were predicted to undergo ownership transfer during the course of a decade, with a growing number of these transfers occurring outside the existing owner’s familial circle. Employees possess a distinct stake in the long-term prosperity of their organizations and often hold a comprehensive grasp of their respective businesses. Yet, they frequently do not have the requisite financial resources and assistance to assume control and operate a corporation. Meticulous and incremental planning of employee transfers structured as worker cooperatives may enhance chances for longevity. A 1994 Commission Recommendation (N° 94/1060/EC of 7-12-1994 OJ L 385 of 31-12-1994 p. 14) urged Member States to facilitate the conveyance of enterprises to workers by diminishing taxation on capital gains from share transfers to employees, eliminating

²² Darren Dahl, ‘For Some, Worker Co-operatives Emerge as an Alternative to ESOPs’ *Forbes* (14 August 2016) <<https://www.forbes.com/sites/darrendahl/2016/08/14/for-some-worker-co-operatives-emerge-as-an-alternative-to-esops/>> accessed 22 December 2024.

²³ Patrick Michael Rooney, ‘ESOPS, Producer Coops, and Traditional Firms: Are They Different?’ (1992) 26 *Journal of Economic Issues* 593 <<https://www.jstor.org/stable/4226572>> accessed 22 December 2024.

registration fees, or providing tax incentives or deferrals. Subsequent evaluations of this recommendation in 1998 and 2002 highlighted the insufficient advancement by Member States in this domain. It is important to highlight the Commission's Communication from July 2002 on the topic of Framework for the Promotion of Financial Participation of Employees in the Capital or Profits of Their Company. One variant of these plans involves linking employees to business outcomes collectively and consolidating resources into a workers' cooperative, which may act as a potential origin of finance for an acquisition by the employees. The Commission urged Member States to investigate measures that promote systems facilitating employee takeovers.²⁴

Cooperative law in Ireland

A cooperative society may be established as an industrial and provident organization or may instead register as a corporation under the Companies Acts in Ireland. Although not explicitly a cooperative statute, a feature in the *International Handbook of Co-operative Law* articulates that some entities seeking to form cooperatives in Ireland have seen the IPS Acts' framework as more advantageous than the conventional corporate structure.²⁵ Historically, entities in Ireland were deemed to be cooperatives if they were enlisted under the Industrial and Provident Societies' Acts. The original acts (the first of which was enacted in 1893), shaped by the pre-independence Westminster legislature's "laissez-faire" approach during that period, provided considerable latitude regarding the inclusion of components in a society's charter. According to Connell Fanning, no mandatory provisions were required to be included in the company statutes.²⁶

The rules governing a cooperative under the IPS Acts function similarly to the memorandum and articles of association of a registered company, forming a contractual agreement among the society's members, as well as between the members and the society itself (as outlined in the 1893 act

²⁴ 'EUR-Lex-52004DC0018-EN' (Europa.eu2024) <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52004DC0018>> accessed 22 December 2024.

²⁵ Bridget Carroll, 'Ireland' in Dante Cracogna, Antonio Fici and Hagen Henry (eds), *International Handbook of Co-operative Law* (Springer 2013) <https://link.springer.com/chapter/10.1007/978-3-642-30129-2_21> accessed 24 December 2024.

²⁶ Connell M Fanning, 'Ireland: Industrial Co-Operatives' [1982] *The Performance of Labour-Managed Firms* 141.

Section 22). These rules effectively constitute a form of private law, created by the members. It is noted by Eamonn Carey that the prevailing IPS Acts provided minimal guidance on the substance of this “law,” beyond outlining a list of issues that the rules must address. Consequently, it could be argued that the most significant form of “cooperative legislation” in Ireland over the last 150 years had been the rules and practices that cooperatives had independently chosen to implement.²⁷ The Irish legislation that has existed contemporaneously stipulated that a society’s regulations must include provisions for the nomination and dismissal of a management committee, managers, or other officials, together with their appropriate duties and compensation. As had been practiced amongst the few successful Irish worker cooperatives in the 1970s and 1980s, the “General Assembly” of members determines the management committee, which thereafter picks the managers. In the few examples of Irish workers’ cooperatives, it is typical for the manager to be a member of the cooperative; regardless, external factors could occasionally compel the management committee to choose a professional manager, such as a need for obtaining grant assistance. While the legislation does not mandate the convening of annual general meetings or regulate the voting rights of members, the practices of different societies dictate otherwise. These entities facilitated yearly general meetings.²⁸

According to a 1980 report by the Economics & Social Research Institute’s Robert O’Connor and Phillip Kelly, that while cooperatives may be founded under several legal frameworks, they believed that new workers’ cooperatives ought to be founded via the Industrial and Provident Societies Acts, unless there existed a compelling rationale for choosing an alternate framework. Numerous seasoned cooperators believed that adaptable law was vital, as members’ objectives significantly differ based on conditions; the Industrial and Provident Societies Acts offer this versatility. The regulations established by a society must be explicit, especially concerning members’ investments in the cooperative.²⁹

²⁷ Eamonn Carey, ‘Co-Operative Identity – Do You Need a Law about It?’ (2009) 42 *Journal of Co-operative Studies* 49 <https://hubble-live-assets.s3.eu-west-1.amazonaws.com/uk-society-for-co-operative-studies/file_asset/file/545/s6-Carey-125.pdf> accessed 24 December 2024.

²⁸ ‘Prospects for Workers’ Co-Operatives in Europe’ (Commission of the European Communities 1984) <<http://aei.pitt.edu/33684/1/A218.pdf>> accessed 23 December 2024.

²⁹ Robert O’Connor and Phillip Kelly, ‘A Study of Industrial Workers’ Co-Operatives’ (ESRI 1980) <<https://www.esri.ie/system/files/media/file-uploads/2012-08/BS19.pdf>> accessed 22 December 2024.

Contemporary workers' cooperation in Ireland

Cian McMahon of St. Mary's University notes that a small number of worker cooperatives still exist in Ireland, and he promotes worker cooperatives as a viable alternative to conventional corporate practices in contemporary Ireland. He also contends that worker participation in all cooperative societies is essential for them to be recognized as authentic cooperatives, in alignment with the movement's ideals and historical context as self-help groups for laborers. Moreover, he elucidates that the demands for worker inventiveness and adaptability at the technological forefront of economic production today indicates that the cooperative model possesses a comparative advantage, as decentralized and democratic management frequently facilitates their achievement. The current social and economic landscape of Ireland, he believes, provides an appetite for such advancement.³⁰

One leading example of a worker cooperative in Ireland at present is the Great Care Co-op. It is Ireland's first initiative to form a cooperative for care workers in the home care industry. The Great Care Co-Op, established by an ensemble of committed migrant women, symbolizes optimism in a sector beset by numerous issues, including inadequate compensation, exploitative behavior, and racial prejudice. Following its establishment in 2017, the Great Care Co-op has diligently championed a more egalitarian and just form of care delivery. This cooperative is dedicated to transforming care delivery by adhering to ideals of respect, dignity, and self-determination, alongside an uncompromising dedication to improving their standard living for elderly individuals in various districts. Financial assistance not only promotes the growth of their services but also allows the cooperative to provide enhanced working conditions and increased financial remuneration for its primarily female staff.³¹ The Great Care Co-op, as a worker-owned enterprise, is governed by its care-workers, who participate on the coop's board and several committees, and making high-level judgments on the organization's operations and strategy. The Great Care Co-op is structured as a decentralized network of local centers, where choices are taken by care-workers and their personnel on-site, eliminating the requirement for excessive oversight by

³⁰ Cian McMahon, 'Co-Operatives and the Future of Work in Ireland' (2019) <https://www.tasc.ie/assets/files/pdf/ensuring_good_future_jobs.pdf#page=45> accessed 29 December 2024.

³¹ 'Empowering Care: Ireland's First Care Workers' Co-Op' RTE.ie (14 March 2024) <<https://www.rte.ie/lifestyle/living/2024/0314/1437893-empowering-care-irelands-first-care-workers-co-op/>> accessed 22 December 2024.

higher authorities. This method has its foundation in a Netherlands-based social company named Buurtzorg, which translates to “neighborhood care” in Dutch. The Irish government had formed a standalone Commission on Care for Older People to provide suggestions on possible future policies. Analysis put forward by Alice Toomer-McAlpine indicates that this represents a significant chance to include worker cooperatives into debate and legislative discourse on social care in Ireland.³²

An article published by RTE, Ireland’s national broadcaster, suggested that such a model could serve as the ideal platform for care in Ireland. This is partially because of a staff recruitment crisis in the Irish care sector. Currently, the hiring and maintenance of the existing workforce pose significant obstacles to home care delivery, exacerbated by departures stemming from an ageing labor force, inadequate compensation and working conditions, unstable agreements, rivalry from competing industries, and insufficient career advancement prospects. Carers interviewed for a study said that their wisdom was disregarded by hierarchical organizational systems, and that intense time constraints resulted in “conveyor-belt care,” where elderly individuals were merely viewed as a series of chores to be completed. Instead, the article, written by Caroline Crowley and Carol Power, suggested that a worker cooperative framework could prove to be a viable alternative to the existing form of private and State governed care services.³³

Legal recognition of Irish workers’ cooperatives

We should be reminded that the term “worker cooperative” is utilized arbitrarily to describe enterprises that are cooperatives of capital, labor, or a combination of each. As a prerequisite, two things need to be distinctly differentiated: worker-capital control and worker-leadership. In certain situations, worker ownership might prove essential to achieve worker leadership; nonetheless, it’s the latter that provides the behavioral benefits

³² Alice Toomer-McAlpine, ‘Irish Co-Op Brings Home a New Model of Social Care’ (Co-operative News 25 July 2024) <<https://www.thenews.coop/irish-co-op-brings-home-a-new-model-of-social-care/>> accessed 22 December 2024.

³³ Caroline Crowley and Carol Power, ‘Could Care Co-Operatives Be an Answer to Home Care Crisis?’ RTE Brainstorm (25 March 2024) <<https://www.rte.ie/brainstorm/2024/0325/1439809-ireland-home-care-older-people-care-co-operatives/>> accessed 22 December 2024.

attributed to “worker cooperatives.” Nonetheless, while the intention frequently involves worker-leadership, it is typically worker ownership that is executed, leading to several challenges for worker cooperatives. The clash that arises among shareholder interests and worker interests significantly contributes to the downfall of worker cooperatives. Consequently, Connell Fanning asserts that, in Ireland, it is essential to clarify the objectives and rationale from the beginning, and to structure the firm accordingly.³⁴

The International Labour Organisation Recommendation 2002 (no. 193) urges countries to provide an appropriate setting for all forms of cooperatives. There exists an administrative deficiency in this context in Ireland. The Department of Business, Enterprise and Innovation has been conducting an evaluation of the Industrial and Provident Societies legislation and regulation, which governs the majority of cooperatives, for an extended period. Securing bipartisan endorsement for worker cooperatives would be advantageous. Excessive expectations may be imposed on worker cooperatives about their potential accomplishments. Bridget Carroll and Fiona Dunkin articulate that they need to be permitted to function as standalone, self-governing entities and embrace a variety of structures, irrespective of the advantages of asset locking. The comparatively low number of worker cooperatives may be attributed to various internal and external barriers rather than their inefficiency. The format is undoubtedly an alien notion for plenty of individuals in contemporary Ireland. A substantial knowledge deficit exists. It is essential to acknowledge the social and economic worth of cooperatives’ contributions overall. The prevailing business model receives substantial backing, whereas there is limited explicit encouragement for the emergence of worker cooperatives.³⁵ In 2015, reacting to the rise of the gig economy in the EU and elsewhere, the ILO adopted a newer, Resolution 204 which referred to strategies for transitioning from the irregular to the regulated economy. This aims to establish a new international labor benchmark to provide safeguards for all workers in the shadow economy. As outlined in a research paper by Pat Conaty, Alex Bird and Cilla Ross,

³⁴ Connell Fanning, ‘Some Issues Concerning the Founding of Labour Directed Firms’ (ESRI 1983) <<https://www.esri.ie/system/files?file=media/file-uploads/2012-10/MEMO161.pdf>> accessed 22 December 2024.

³⁵ Bridget Carroll and Fiona Dunkin, ‘Economic Democracy and Worker Co-Operatives: The Case for Ireland’ (Research Gate9 April 2019) <https://www.researchgate.net/publication/342212628_The_Society_for_Co-operative_Studies_in_Ireland_in_conjunction_with_SIPTU_presents_SEMINAR_PROCEEDINGS_Economic_democracy_and_worker_co-operatives_the_case_for_Ireland> accessed 22 December 2024.

such a suggestion identifies cooperatives, as well as additional “social solidarity” business entities, as integral to the move towards structured firms that provide stable and dignified employment.³⁶

It is worthwhile to recall that, as far back as 1987, then Minister of State at the Department for Industry and Commerce, Seamus Brennan TD, told a Seanad Éireann (Irish Senate) debate, which had been discussing the Sixth Report of the Joint Committee on Small Business, that the committee recognized five categories of cooperatives, and focused the majority of their discussions on worker cooperatives and community cooperatives. The creation of FÁS, he stated, would decrease the amount of state entities engaged in assisting worker cooperatives, and therefore alleviate any misunderstanding stemming from the proliferation of state institutions in this domain. He reminded those presented that the Programme for National Recovery acknowledged the need to foster the creation of worker cooperatives under appropriate conditions. He emphasized that those who belonged to worker cooperatives may sometimes struggle to recognize their dual roles as both workers and shareholders, and that they were not in a “us versus them” scenario. This was especially true in what he termed “phoenix” scenarios, when a workers’ cooperative assumed control of an otherwise defunct enterprise. This sort of challenge, he claimed, necessitated ongoing instructional programs for all participants. He observed that the limited sum of cooperatives established by that time, together with their scope and the areas in which they operated, suggested that it would need a lengthy period to effectively cultivate a sustainable and growing worker cooperative industry.³⁷

The idea of tailoring Irish legislation to support the foundation of workers’ cooperatives had been touted in recent years. In June 2019, when the Industrial and Provident Societies (Amendment) Bill 2018 was put

³⁶ Pat Conaty, Alex Bird and Cilla Ross, ‘Working Together: Trade Union and Co-Operative Innovations for Precarious Workers’ (Co-operatives UK 2018) <http://base.socioeco.org/docs/cuk_and_cc_-_working_together_final_print-quality.pdf>.

³⁷ ‘Sixth Report of the Joint Committee on Small Business – the Development and Management of Small Business Co-Operatives: Motion’ (1987) 117 Oireachtas Debates <<https://www.oireachtas.ie/en/debates/debate/seanad/1987-11-18/6/?highlight%5B0%5D=co&highlight%5B1%5D=operatives&highlight%5B2%5D=worker&highlight%5B3%5D=co&highlight%5B4%5D=operatives&highlight%5B5%5D=worker&highlight%5B6%5D=co&highlight%5B7%5D=operatives&highlight%5B8%5D=workers&highlight%5B9%5D=co&highlight%5B10%5D=operative&highlight%5B11%5D=co&highlight%5B12%5D=operative>> accessed 22 December 2024.

to scrutiny at a debate by the Oireachtas' Joint Committee on Business, Enterprise and Innovation, then Senator, Dr. James Reilly, declared that:

"The point has been made that when they start, they start small. Perhaps then some of the concerns raised could be addressed by some of the terms and conditions for exemptions. In other words, the number of members in a co-operative would be influenced by its turnover. As the co-operative gets bigger, the minimum number has to increase. This Bill seeks to ensure that a workers' co-operative can start and benefit from co-operative status such that innovation and enterprise is not limited only to those who have money to invest. We need to encourage the worker-owned co-operative principle, which is a good principle."³⁸

Since then, as underlined by Anca Voinea, a major attempt to reform cooperative law in Ireland has been undertaken. The General Scheme of Co-operative Societies Bill 2022 sought to update and streamline existing cooperative law. The bill would supersede the prevailing Industrial and Provident Societies Acts from 1893 to 2021.³⁹ According to Ireland's *Law Gazette*, the Co-operative Societies Bill would mandate registered societies to comply with an expressly defined cooperative spirit and specifically facilitate the establishment of cooperatives. This would constitute the inaugural item of law that addressed cooperatives unequivocally.⁴⁰

According to Padraic Kinsella, Bryan Bourke and Elaine Morrissey, writing on the General Scheme of the Co-operative Societies Bill 2022, the existing corporate governance framework, perceived as lenient, was also deemed inadequate and failed to sufficiently safeguard the needs of cooperatives, their members, or external parties. Although cooperatives are inherently different from contemporary businesses, they eventually

³⁸ 'Joint Committee on Business, Enterprise and Innovation Debate - Tuesday, 25 Jun 2019' (Oireachtas.ie2019) <https://www.oireachtas.ie/en/debates/debate/joint_committee_on_business_enterprise_and_innovation/2019-06-25/3/?highlight%5B0%5D=worker&highlight%5B1%5D=co&highlight%5B2%5D=operatives&highlight%5B3%5D=law&highlight%5B4%5D=worker&highlight%5B5%5D=co&highlight%5B6%5D=operatives> accessed 22 December 2024.

³⁹ Anca Voinea, 'Irish Co-Ops Share Views on Co-Operative Societies Bill' (Co-operative News3 March 2023) <<https://www.thenews.coop/irish-co-op-apex-raises-concerns-with-ministers-over-co-operative-societies-bill/>> accessed 22 December 2024.

⁴⁰ 'First Specific Legislation on Co-Ops Proposed' (Law Gazette2022) <<https://www.lawsociety.ie/gazette/top-stories/2022/november/first-specific-legislation-on-co-ops-proposed>>.

constitute a corporate entity. Numerous elements of sound practice delineated in corporate law apply to cooperatives, either immediately, or with modifications. The bill would update the Industrial and Provident Societies Act 1893 by introducing contemporary corporate governance, reporting on finances, and compliance standards. A number of sections addressed directors, members, registrations, meetings, and resolutions. To provide uniformity and clarity, these rules largely replicated those of the Companies Act 2014 (CA 2014) but were modified as necessary to accommodate the unique features of cooperatives. The bill aimed to establish a more stringent regulatory and governance framework, offering enhanced guarantees to members, workers, and creditors of any cooperatives. It was also hoped to enhance the appeal of cooperatives for investment.⁴¹

During the initial pre-legislative scrutiny meeting, which took place in the Joint Committee on Enterprise, Trade and Employment, the Department indicated that the General Scheme would not explicitly accommodate workers' cooperatives. The legislation aims to be adaptable, serving a diverse array of categories without detailing provisions for any particular sector, thereby permitting modifications through the cooperatives' own regulations. The committee advocates for the reinstatement of the Co-operative Development Unit (CDU) to offer impartial counsel, instruction, and assistance to cooperatives. It was intended to assist family enterprises in transformation and succession. During the 1990s, the CDU actively sought to assist family-owned enterprises facing succession challenges in transitioning to worker cooperatives. It was notably effective in this regard. The committee advised that more attention should be directed towards enacting legislation permitting employee takeovers of enterprises in instances of succession planning or management. The committee advises that more attention be directed into the legal definition of a worker cooperative. It also questioned the absence of a mechanism to establish a succession model enabling employees to acquire their firms. The department evaluated the problems and their resolution in other parts of Europe. The suggested law aims to include a wide range of entities, without expressly targeting any specific industry or kind of cooperative activity, including worker cooperatives or social businesses. The proposed law is comprehensive

⁴¹ Padraic Kinsella, Bryan Bourke and Elaine Morrissey, 'General Scheme of the Co-Operative Societies Bill 2022' (Vlex.com2023) <<https://justis.vlex.com/vid/921633354>> accessed 22 December 2024.

and facilitative in character. It is also intended to provide benefits in the years to come.⁴²

Separate to establishing a new cooperative, there are obstacles hindering enterprises from switching to workers' control in Ireland. The Worker Co-operatives and Right to Buy Bill, introduced into the Seanad (Irish Senate) in 2021, as suggested by Gerard Doyle, might possibly alleviate many of these problems; however, it is yet to be advanced to the Dáil (lower house).⁴³ As mentioned in a debate pertaining to the Finance Bill 2021, a recommended new section 597AB was considered for inclusion into the Taxes Consolidation Act 1997, to provide an exemption from capital gains tax on the transfer of an ordinary firm into a workers' cooperative.⁴⁴ The Worker Co-operatives and Right to Buy Bill 2021, which would have amended the Industrial and Provident Societies Act 1893, was moved to the Second Stage of the Seanad following its introduction, but, in fact, has not moved at all since that period.⁴⁵

Financial barriers facing workers' cooperatives in Irish law

It is important to highlight that, in some instances, Irish law governing state support for community initiatives and social enterprises mandates that the funded groups must not allocate profits. The predominant structure used by firms in the social sector in Ireland is the "company limited by guarantee." Conversations with Pobal concerning their funding distribution revealed that Pobal has urged cooperatives to transition to companies

⁴² 'Joint Committee on Enterprise, Trade and Employment: Report on the Pre-Legislative Scrutiny of the General Scheme of the Co-Operative Societies Bill, 2022' (Houses of the Oireachtas 2023) <https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_enterprise_trade_and_employment/reports/2023/2023-05-03_report-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-co-operative-societies-bill-2022_en.pdf> accessed 22 December 2024.

⁴³ Gerard Doyle, 'Co-Op Care – the Case for Co-Operative Care in Ireland' (Jesuit Centre for Faith & Justice 2022) <<https://www.jcfj.ie/wp-content/uploads/2022/11/Working-Notes-91.pdf>> accessed 22 December 2024.

⁴⁴ 'Finance Bill 2021: Committee and Remaining Stages' (2021) 281 Oireachtas.ie <<https://www.oireachtas.ie/en/debates/debate/seanad/2021-12-14/20/?highlight%5B0%5D=worker&highlight%5B1%5D=co&highlight%5B2%5D=operatives&highlight%5B3%5D=workers&highlight%5B4%5D=co&highlight%5B5%5D=operative&highlight%5B6%5D=workers&highlight%5B7%5D=co&highlight%5B8%5D=operative>> accessed 23 December 2024.

⁴⁵ 'Worker Co-Operatives and Right to Buy Bill 2021' (Oireachtas.ie 19 May 2021) <<https://www.oireachtas.ie/en/bills/bill/2021/94/?tab=bill-text>> accessed 22 December 2024.

limited by guarantee, lacking share capital, as they believe this aligns with the legislation governing the money that they allocate. The EU Commission (2004) acknowledges that cooperatives need equitable conditions relative to other types of companies. This does not imply that cooperatives require special treatment; rather, it suggests that while formulating laws, member states ought to strive for equitable conditions alongside other types of enterprises with whom cooperatives fight in a contemporary market economy. Cooperatives ought to operate without the constraints and responsibilities imposed on other types of enterprises. However, the EU Commission (2004) states that meticulously crafted regulation may mitigate some limitations associated with the cooperative model, including restricted access to investment capital.⁴⁶

T.J Flanagan, CEO of the Irish Co-operative Organisation Society (ICOS), commented that workers' cooperatives frequently struggled due to the apparently harsh business realities, instead of their legal framework. He stated that ICOS had dedicated much effort to examining the gig economy to determine the feasibility of uniting those trapped inside that system under a workers' cooperative framework. Flanagan declared that, based on his observations, he did not believe there was any deficiency in the law that led to the lack of success of these initiatives. He instead believed that it was merely a matter of commerce. Nevertheless, he maintained the potential for the inclusion of other instruments, such as tax breaks, to facilitate continued development of the industry.⁴⁷

There has, nonetheless, been a push to allow for the Mondragon model to be facilitated in Ireland. In contrast to the mostly labor-intensive and capital-deficient worker cooperatives in Ireland and Britain, the Mondragon cooperatives are highly innovative and comparatively capital-intensive. They have identified methods to get sufficient equity and debt financing at an acceptable rate while adhering to Co-operative Principles. As outlined by Briscoe and Ward, of the Centre for Co-operative Studies at University College Cork, Ireland, the Mondragon model effectively addresses the issue of equity dilution. In Mondragon, the need for a significant primary investment, combined with the notion of individual capital accounts (ICAs) effectively addresses the issue of share dilution that has troubled most

⁴⁶ 'Ireland's Co-Operative Sector' (Forfás 2007) <<https://www.serni.ie/wp-content/uploads/2021/03/Ireland-s-Co-operative-Sector.pdf>> accessed 22 December 2024.

⁴⁷ Ian Curran, 'Ireland's €9.7bn Co-Op Sector to Get Boost from "Long-Awaited" Legislation' (The Irish Times 2023) <<https://www.irishtimes.com/business/2023/02/15/long-awaited-historic-bill-could-boost-97bn-co-op-sector/>> accessed 22 December 2024.

prospective worker cooperatives. In the Mondragon system, the admission of a fresh participant does not diminish the individual equity interests of existing members. Their shares are meticulously safeguarded inside their designated ICA. The new member contributes more money, without diminishing the equity of current members. Furthermore, new members assert no rights to funds amassed by persons before. Their only assertions are to the profits allocated throughout their tenure of employment.⁴⁸

Similarly, Gerard Doyle has noted that a major enabler for cooperative development would be to legislate to acknowledge the capacity for worker cooperatives to establish indivisible reserve funds.⁴⁹ However, The Department of Enterprise, Trade and Employment in Ireland stated that the definitions of a legal reserve and indivisible reserve were ambiguous, and could sometimes be used interchangeably. The department reasserted its aim to implement a facilitative measure that promoted the cooperative spirit of businesses established under a new act without being too restrictive. Consequently, it was planned to advance as outlined in their consultation; nevertheless, they also clarified that cooperatives may choose to exceed the suggested legal reserve requirements if they desired, and may include suitable provisions in their own constitutions.⁵⁰ As emphasized by Deirdre Hosford, indivisible reserves guarantee that worker cooperatives would remain insulated from the private economy, ensuring that a portion of profits and any residual value be allocated to a core cooperative institution in Ireland to facilitate the growth of different cooperatives.⁵¹

⁴⁸ R Briscoe and M Ward, 'The Competitive Advantages of Co-Operatives' (UCC Centre for Co-operative Studies 2000) <<https://www.ucc.ie/en/media/research/centreforco-operativestudies/publications/BriscoeWard,2000TheCompAdvBookwithoutcovers.pdf>> accessed 22 December 2024.

⁴⁹ Gerard Doyle, 'A New Epoch for Worker Co-Operatives in Ireland – an Outline of the Factors Required for Their Implementation and the Opportunities to Address Precarious Employment' (Technological University Dublin 2022) <<https://www.neroinstitute.net/sites/default/files/2022-06/Gerard%20Doyle%20TU%20Dublin%20presentation%202B%2014%20June%2022.pdf>> accessed 22 December 2024.

⁵⁰ 'Reform and Modernisation of Legislation Regarding Co-Operative Societies: Policy Response to Issues Raised in Public Consultation' (Department of Enterprise, Trade & Employment 2022) <<https://enterprise.gov.ie/en/publications/publication-files/reform-and-modernisation-of-legislation-regarding-co-operative-societies-policy-response-to-issues-raised-in-public-consultation.pdf>> accessed 22 December 2024.

⁵¹ Deirdre Hosford, 'Reforming the Irish Economy – The Co-Operative Way' (Magill 2012) <<https://magill.ie/society/reforming-irish-economy-%E2%80%93-co-operative-way>> accessed 23 December 2024.

Furthermore, Irish competition law aims to guarantee that firms function in transparent and competitive marketplaces, fostering constructive rivalry and equitable trade practices. It seeks to avoid actions that negatively impact competition, which could result in other enterprises suffering financial losses and perhaps failing due to a competitive disadvantage. It was established to safeguard consumer interests, ensuring access to optimal goods and prices, while guaranteeing equitable compensation for the appropriate product. However, Rebeca Harvey, writing in an article titled “Co-Ops vs Competition Law,” explains that cooperatives are also governed by the seven pillars of cooperation, which may run into conflict with key principles of competition law. The sixth concept, cooperation among cooperatives, emphasizes how cooperatives optimally benefit their members and reinforce the cooperative movement by collaborating via local, national, and worldwide frameworks. The sixth tenet illustrates the two-fold character of cooperatives. They serve as business organizations engaged in the exchange of products and services, as well as social entities comprised of members who maintain positive relationships with fellow cooperatives. They collaborate with other cooperatives to generate prosperity for the majority, rather than individual wealth for a select minority, by means of unrestricted commercial adversaries.⁵² Imelda Maher, writing in the *Irish Jurist*, has highlighted that agricultural cooperatives in Ireland, by means of EU Regulation 26/62 (as it related to Articles 85 and 86 of the EEC Treaty), previously, and with success, sought to gain exemptions from contemporary competition law. In *Kerry Co-operative Creameries Ltd v. An Bord Bainne*,⁵³ despite the High Court of Ireland acknowledging that the regulation conferred exclusive authority upon the Commission to exempt agricultural arrangements from competition rules, it ultimately determined that a “prima facie” case existed for the exclusion of the cooperative rules from Article 85(1), thereby rendering the article inapplicable. On appeal, the Supreme Court adopted a different perspective, viewing the subject as one of jurisdiction. In light of the High Court’s ruling that the regulation tacitly exempted cooperatives from the scope of Article 86, the Supreme Court submitted an Article 177 reference to explain the link between the regulation and Article 86. The regulation was a convoluted legislative document that was challenging to comprehend, suggesting that the High Court

⁵² Rebecca Harvey, ‘Co-Ops vs Competition Law’ (Co-operative News2 July 2021) <<https://www.thenews.coop/co-ops-vs-competition-law/>> accessed 22 December 2024.

⁵³ [1991] ILRM 851

ought to have issued an initial reference. This ruling has additionally been subject to criticism for reversing the legislative hierarchy by permitting a kind of secondary law, the regulation, to supersede the directly applicable Articles 85 and 86. The High Court further aimed to omit the arrangement from Article 85 based on the utilization of the regulation, despite the fact that only the Commission had the ability to exempt contracts of this kind. Furthermore, despite the referral under Article 177, the European court did not deliver a decision on this matter.⁵⁴

Workers' cooperatives, on the other hand, have little such protection in Irish or EU law. On the contrary, workers' cooperatives, specifically those created by worker buy-outs, have clashed with EU regulations in other Member States. In dispute, shortly after the involvement of Italy's industries' group, *Confindustria*, the *Legge Marcora* framework for WBOs was halted in the late 1990s because of a verdict by the European Union, soon before Italy's entry into the Eurozone. The ruling determined that the *Legge Marcora* scheme violated EU competition regulations, as the EU concluded that the Italian state was providing an inequitable benefit to WBO cooperatives by allowing a 3:1 ratio of capitalization and start-up funds relative to workers' investments in the acquisition, pursuant to the original L. 49/1985 structure. Marcelo Vieta notes that, as a result of this verdict, a revision of the *Legge Marcora* law, L. 57/2001, was enacted on 5 March 2001, including two significant new provisions. Article 7, section 1 now restricts the state's allocation of *Legge Marcora* monies from the "Special Fund" to a 1:1 financing ratio with workers' payments, which employees are required to repay over a period of 7 to 10 years. Article 17, Section 5 now allows WBO worker cooperatives to engage a *socio finanziatore* (financing member) who will join the cooperative for this funding period. The *socio finanziatore* may be any legal body, cooperative, or other organization with "financial interests" in the cooperative, as opposed to the "mutualistic interests" characteristic of conventional Italian cooperative members.⁵⁵ This template could be more widely applied in EU cooperative law, for application in Member States, such as Ireland. It has been argued in the *International Journal of Labour Research* that trade unions need to forge coalitions with the cooperative movement within EU member states

⁵⁴ Imelda Maher, 'The Implementation of EC Competition Law in Ireland: The Transition to a New Statutory Regime' (1993) 28/30 *Irish Jurist* 21 <<https://www.jstor.org/stable/44026382>> accessed 29 December 2024.

⁵⁵ Marcelo Vieta, 'The Italian Road to Creating Worker Co-operatives from Worker Buy-outs: Italy's Worker-Recuperated Enterprises and the *Legge Marcora* Framework' (Euricsa 2015) <https://base.socioeco.org/docs/wp-78_15_vieta.pdf> accessed 29 December 2024.

at a national level to press for legislative reforms, and the establishment of financial mechanisms that promote the formation of worker cooperatives. Recognizing the significant obstacle employees have when contemplating the potential acquisition of their workplaces, they need to be offered a fair opportunity to submit an offer in the case of a facility shutdown or company relocation. This is not a romantic concept, but one that has now also been realized in France.⁵⁶

An economic research feature, created by Alan Lockey and Ben Glover, suggests that making competition practices more flexible for workers' cooperatives in the context of service procurement could also be considered. Following the global financial crisis of 2008, the municipal leaders of Preston, England, UK, opted to implement the now-renowned "Community Wealth Building" model that, alongside other initiatives, advocates for the advancement of worker cooperatives, and a localized contracting strategy involving such firms. Importantly, prior to the occurrence of Brexit, the "Preston" procurement strategy successfully adhered to the strict competition laws of the EU. Supporters of Community Wealth Building assert that logistics activism, by explicitly aiming to enhance such variety of a local enterprise and financial ecosystem, may, in fact, foster greater competitiveness. Ultimately, completely impartial control is merely a myth, and several proponents of free enterprise have highlighted that excessively cumbersome procurement practices in the commercial world are typically mostly advantageous to the largest of corporations and established vendors, at the expense of expanded market competitiveness. This could, they believe, provide the impetus for worker cooperatives to possess greater capital access.⁵⁷

Conclusion

The personnel of cooperatives and legislators seemingly align with the pertinent observations in the realm of politics regarding the Irish state's apparently longstanding lack of encouragement for the formation of

⁵⁶ Pierre Laliberté, 'Trade Unions and Worker Co-operatives: Where Are We At?' (2013) 5 International Journal of Labour Research <https://base.socioeco.org/docs/wcms_240534.pdf#page=57> accessed 29 December 2024.

⁵⁷ Alan Lockey and Ben Glover, 'The Wealth Within: The "Preston Model" and the New Municipalism' (Demos 2019) <<https://www.sheffieldtribune.co.uk/content/files/wp-content/uploads/2019/06/june-final-web.pdf>> accessed 29 December 2024.

worker cooperatives and related social enterprises. This is demonstrated by the dissolution of the worker cooperative unit (situated in FÁS), as well as the little consideration leaders have given, until recently, to revising Industrial and Provident Society law. It is believed that, during the period of economic growth in Ireland known as the “Celtic Tiger,” the cooperative unit lacked substantial tactical significance from the viewpoint of FÁS.⁵⁸

As affirmed in the *Irish Journal of Sociology*, worker cooperatives in Ireland cannot operate efficiently while lacking a robust legal framework that defines their legal standing, and additional support mechanisms such as the development of entrepreneurship, training for leaders, market analysis, availability of loan financing and grant assistance, inter-cooperative communication, and association formation. It is important to emphasize that the worker-owned concept exists inside a philosophical structure that emphasizes the intrinsic democratic values of their practice, which may, under certain conditions, provide tactical underpinnings for dramatic social transformation.⁵⁹

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⁵⁸ Gerard Doyle, ‘Socialising Economic Development in Ireland: Social Enterprise an Untapped Resource’ (TUD 2018) <<https://arrow.tudublin.ie/cgi/viewcontent.cgi?article=1021&context=beschspart>> accessed 29 December 2024.

⁵⁹ Stephen Nolan, Eleonore Perrin Massebiaux and Tomas Gorman, ‘Saving Jobs, Promoting Democracy: Worker Co-Operatives’ (2013) 21 Irish Journal of Sociology 103.

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