

APRECIÇÃO DA CONFAGRI

- **Projecto de Lei n.º 356/XIII/2.ª, do PCP** – Procede à primeira alteração do Código Cooperativo assegurando o efectivo respeito pelos princípios cooperativos da ACI
- **Projeto de Lei n.º 75/XIII/1.ª, do BE** – Exclui a existência de membros investidores e assegurando a democraticidade do funcionamento das cooperativas procedendo à primeira alteração do Código Cooperativo , aprovado pela Lei n.º 119/2015, de 31 de agosto , assegurando o cumprimento do artigo 82.º, n.º 4, alínea a) da CRP

**PROJECTO DE LEI N.º 356/XIII/2.^a
DO GRUPO PARLAMENTAR DO PARTIDO COMUNISTA
PORTUGUÊS
VISANDO PROCEDER À PRIMEIRA ALTERAÇÃO
DO CÓDIGO COOPERATIVO DE 2015**

A CONFAGRI – Confederação Nacional das Cooperativas Agrícolas e do Crédito Agrícola de Portugal, CCRL, estrutura de cúpula representativa do universo cooperativo agrícola e do crédito agrícola de Portugal, associando, através das suas filiadas, cerca de cinco centenas de cooperativas do sector agrícola e do crédito agrícola, e representando um volume anual de negócios largamente superior a sete mil e quinhentos milhões de euros, tomou conhecimento de uma iniciativa legislativa do Grupo Parlamentar do Partido Comunista Português, datada de 7 de Dezembro de 2016, e visando proceder a uma alteração ao Código Cooperativo, aprovado pela Lei n.º 119/2015, de 31 de Agosto.

Sem prejuízo de uma pronúncia mais aprofundada que a CONFAGRI não deixará de apresentar quando ouvida – como espera que venha a suceder – na competente Comissão Parlamentar que aprecie esta Projecto de Lei, a CONFAGRI expressa, desde já, uma primeira posição de princípio quanto a esta iniciativa legislativa.

Relativamente às alterações preconizadas pelo Grupo Parlamentar do Partido Comunista Português, elas traduzem-se, substantivamente, em:

- suprimir a admissibilidade do voto plural nas cooperativas de primeiro grau;
- suprimir a possibilidade de as cooperativas admitirem no seu seio membros investidores;
- suprimir a limitação de mandatos introduzida em 2015 para o cargo de presidente do órgão de administração das cooperativas.

A primeira reserva que a CONFAGRI expressa relativamente a esta iniciativa legislativa relaciona-se com a sua *oportunidade*. Na realidade, pretender alterar o Código Cooperativo dezasseis meses depois da sua entrada em vigor pode ser entendido como uma manifestação de desrespeito por um princípio de estabilidade legislativa que – sobretudo quando estamos a tratar de diplomas estruturantes, como é, para o sector cooperativo, o seu Código – importa salvaguardar.

Mas, para além desta questão, entende a CONFAGRI dever, acima de tudo, reiterar a sua identificação com as duas principais inovações introduzidas no Código Cooperativo de 2015 e que agora se pretendem eliminar – o chamado “*voto plural*” nas cooperativas de primeiro grau e a admissão da figura de-“*membros investidores*”.



Diga-se, em primeiro lugar, que nenhuma destas soluções é imposta às cooperativas, antes é, pela Lei, dada liberdade para as adoptarem - ou não - nos seus Estatutos. E é desta forma, e não impondo soluções ou proibições por força de lei, que se salvaguarda e defende a autonomia do sector cooperativo.

Destaque-se, em segundo lugar, a extrema prudência do legislador do Código Cooperativo de 2015 na criação de limites que, com razoabilidade e sem esvaziar de conteúdo as soluções criadas, impeçam que, quer o “*voto plural*” nas cooperativas de primeiro grau, quer os “*membros investidores*”, possam por em causa o princípio cooperativo da gestão democrática pelos cooperadores. Soluções que, refira-se, colheram genericamente a aprovação da CONFAGRI.

Por outro lado, só por desconhecimento da actual situação do sector cooperativo, em Portugal e no mundo, se pode assumir que a eliminação do “*voto plural*” e dos “*membros investidores*” é sustentada pela defesa dos Princípios Cooperativos, definidos pela Aliança Cooperativa Internacional.

Na realidade, esta organização de cúpula do movimento cooperativo a nível mundial, porque não está alheia à expressão do movimento cooperativo nos diferentes países, às suas necessidades e aos desafios com que se confronta, publicou em 2015 as “*Notas de Orientação para os Princípios Cooperativos*” – documento original “*Guidance Notes to the Co-Operative Principles*”.

E lendo estas “*guidance notes*” para os segundo – “*controlo democrático pelos membros*” – e terceiro – “*participação económica dos membros*” – princípios, constatamos a aceitação por parte da Aliança Cooperativa Internacional destas duas realidades, o voto plural e os membros investidores, reconhecendo a existência, em muitos países, de realidades cooperativas que são identificadas como “*multi-stakeholder primary co-operatives*” ou “*hybrid primary co-operatives*”. E referindo expressamente:

“Nestes tipos de cooperativas, podem ser adequadas diferentes ponderações ou proporções de direitos de votos para diferentes categorias de membros.”.

Aliás, no espaço europeu em que Portugal se integra, a União Europeia, é um facto que 12 países, dos 27, admitem membros investidores, e 17 admitem – com maior ou menor extensão – o voto plural em cooperativas de primeiro grau.

Não pode igualmente a CONFAGRI deixar de manifestar a sua total concordância quanto às alterações pretendidas para os n.ºs 4 e 6 do artigo 29.º, do Código Cooperativo, suprimindo a actual limitação legal à eleição do Presidente do órgão de administração das cooperativas.



Sempre defendeu a CONFAGRI que se trata de uma matéria na qual não cabe à Lei impor soluções *fechadas*, cabendo às cooperativas, regular esta questão em sede estatutária da forma que tiverem por mais adequada aos seus interesses.

Lisboa, 31.01.2017

PROJECTO DE LEI N.º 75/XIII/1.ª
DO GRUPO PARLAMENTAR DO BLOCO DE ESQUERDA
VISANDO PROCEDER À PRIMEIRA ALTERAÇÃO
DO CÓDIGO COOPERATIVO DE 2015

A CONFAGRI – Confederação Nacional das Cooperativas Agrícolas e do Crédito Agrícola de Portugal, CCRL, estrutura de cúpula representativa do universo cooperativo agrícola e do crédito agrícola de Portugal, associando, através das suas filiadas, cerca de cinco centenas de cooperativas do sector agrícola e do crédito agrícola, e representando um volume anual de negócios largamente superior a sete mil e quinhentos milhões de euros, tomou conhecimento de uma iniciativa legislativa do Grupo Parlamentar do Bloco de Esquerda, datada de Dezembro de 2015 e visando proceder a uma alteração ao Código Cooperativo, aprovado pela Lei n.º 119/2015, de 31 de Agosto.

Sem prejuízo de uma pronúncia mais aprofundada que a CONFAGRI não deixará de apresentar quando ouvida – como espera que venha a suceder – na competente Comissão Parlamentar que aprecie esta Projecto de Lei, não quer a CONFAGRI deixar de, desde já, tornar expressa a sua clara e frontal oposição a esta iniciativa legislativa.

Não se trata apenas de uma questão de oportunidade. Na realidade, pretender alterar o Código Cooperativo dezasseis meses depois da sua entrada em vigor constitui uma clara manifestação de desrespeito por um princípio de estabilidade legislativa que – sobretudo quando estamos a tratar de diplomas estruturantes, como é, para o sector cooperativo, o seu Código – importa salvaguardar.

Para a CONFAGRI trata-se, acima de tudo, de reiterar a sua identificação com as duas principais inovações introduzidas no Código Cooperativo de 2015 e que o Bloco de Esquerda agora pretende eliminar – o chamado “*voto plural*” nas cooperativas de primeiro grau e a admissão das figuras de “*membros investidores*”.

Diga-se, em primeiro lugar, que nenhuma destas soluções é imposta às cooperativas, antes é, pela Lei, dada liberdade para as adoptarem - ou não - nos seus Estatutos. E é desta forma, e não impondo soluções ou proibições por força de lei, que se salvaguarda e defende a tão propalada autonomia do sector cooperativo.

Destaque-se, em segundo lugar, a extrema prudência do legislador do Código Cooperativo de 2015 na criação de limites que, com razoabilidade e sem esvaziar de conteúdo as soluções criadas, impeçam que, quer o “*voto plural*” nas cooperativas de primeiro grau, quer os “*membros investidores*”, possam por em causa o princípio cooperativo da gestão democrática pelos cooperadores. Soluções que, refira-se, colheram genericamente a aprovação da CONFAGRI.



Por outro lado, só um desconhecimento generalizado do sector cooperativo actual, em Portugal e no mundo, pode levar a assumir que a eliminação do “voto plural” e dos “membros investidores” é sustentada pela defesa dos Princípios Cooperativos, definidos pela Aliança Cooperativa Internacional.

Na realidade, esta organização de cúpula do movimento cooperativo a nível mundial, porque não está alheia à expressão do movimento cooperativo nos diferentes países, às suas necessidades e aos desafios com que se confronta, publicou em 2015 as “Notas de Orientação para os Princípios Cooperativos” – documento original “Guidance Notes to the Co-Operative Principles”.

Basta ler as “guidance notes” para os segundo – “controlo democrático pelos membros” – e terceiro – “participação económica dos membros” – princípios, para constatarmos a aceitação por parte da Aliança Cooperativa Internacional destas duas realidades, o voto plural e os membros investidores, reconhecendo a existência, em muitos países, de realidades cooperativas que são identificadas como “multi-stake-holder primary co-operatives” ou “hybrid primary co-operatives”. E referindo expressamente:

“Nestes tipos de cooperativas, podem ser adequadas diferentes ponderações ou proporções de direitos de votos para diferentes categorias de membros.”.

Aliás, no espaço europeu em que Portugal se integra, a União Europeia, constata-se que 12 países, dos 27, admitem membros investidores, e 17 admitem – com maior ou menor extensão – o voto plural em cooperativas de primeiro grau.

Não pode igualmente a CONFAGRI deixar de manifestar a sua total discordância quanto às alterações pretendidas para os artigos 29.º, n.º 4, 61.º, e 69.º, do Código Cooperativo e para a revogação do artigo 20.º do Regime Jurídico do Crédito Agrícola Mútuo, aprovado pelo Decreto-Lei n.º 24/91, de 11 de Janeiro.

Quanto aos artigos 29.º, n.º 4, 61.º, e 69.º, do Código Cooperativo, a CONFAGRI viu com muitas reservas ser aprovado o actual n.º 4 do artigo 29.º, contendo uma limitação à eleição do Presidente do órgão de administração das cooperativas. Defende a CONFAGRI que se trata de uma matéria na qual o Estado não deve ter qualquer tipo de intervenção, cabendo às cooperativas, como entidades de natureza não pública, regular esta questão em sede estatutária da forma que tiverem por mais adequada aos seus interesses. Alargar agora esta limitação a todos os titulares e a todos os órgãos sociais parece-nos uma intolerável ingerência pública na vida do movimento cooperativo, gravemente atentatória da sua autonomia.

Quanto à revogação do artigo 20.º do Regime Jurídico do Crédito Agrícola Mútuo, aprovado pelo Decreto-Lei n.º 24/91, de 11 de Janeiro, pretender agora eliminar a norma que, em vigor desde 2009, regula e estrutura o modelo de governação das caixas de crédito agrícola mútuo – sem se perceber muito bem que solução se preconizaria para as caixas agrícolas a que, até agora, se encontram organizadas segundo os modelos aqui previstos -, afigura-se uma solução sem qualquer fundamento ou consistência técnica e de duvidoso sentido de responsabilidade.

Lisboa, 24.01.2017

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Guidance Notes to the Co-operative Principles



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2nd Principle: Democratic Member Control

2nd Principle: Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

1. Introduction

Democracy is a simple concept: the governance or control of an organisation by its members through majority decision-making. In practice, the democratic governance of any human institution is a complex task. Sound democratic governance of co-operatives is no exception.

The struggle for democratic rights on a political level is a common theme of the history of the last two centuries, and remains so in many parts of the world today. Democracy can usefully be thought of as a set of rights: rights to participate in the government of a state or organisation. The principle of member democratic control was very radical when the first co-operatives were founded in the mid-19th century, particularly its universal application to all members, including women. It predates the extension of suffrage, having no ties to gender or property ownership.

In co-operatives, 'democracy' includes considerations of rights and the responsibilities, which attend such rights. But it also means fostering the spirit of democracy within co-operatives, a never ending difficult, but socially valuable and essential task. One of the key benefits of co-operatives is that they help plant deep democratic roots within the fertile soil of civil society.

It should be recognised that the democratic process, by itself, does not guarantee competence. A key characteristic of all sustainable democratic systems is that democracy needs the protection of sound democratic laws, governance codes, procedures and processes, such as formalised models of organisation and business management. Democracy is also not just linked to voting in elections and general assemblies. It also requires the separation of democratic and executive powers, with checks and balances under the control of members. These should be established through different bodies in the co-operative responsible for the administration of elections, setting governance strategy and overseeing governance audits and governance reports to members.

Since the earliest days of the co-operative movement, this 2nd democratic Principle has been a key characteristic of co-operatives. It is the heart and soul of co-operative governance. Members acting within democratic procedures agreed by them in exercise of their right to voluntary and free association are sovereign. Democratic control by members animates each and every co-operative.

In democratic systems there is a spectrum of democratic engagement: from representative democracy through the election of representatives every few years, through deliberative democracy on major issues, to participatory democracy with continuous engagement of members in day to day decision-making. Co-operatives tend towards the deliberative and participatory end of the democratic spectrum. Members should be engaged in proposing and approving key strategic policy decisions and regularly, in general assembly, holding elected representatives on boards or committees and senior executives to account.

In order to encourage greater levels of participation, some co-operatives use participation incentives. These can be simple, such as the provision of refreshments at meetings, or more complex, such as prize draws or other positive rewards for active members. However, co-operatives should not rely too heavily on incentives. Through the application of the 5th Principle of Education, Training and Information, members should be educated and informed about their rights and responsibilities as members to exercise democratic control of their co-operative. Co-operatives could also use innovative participative mechanisms, for example, electronic participation and voting in general assembly meetings and the development of trainee programmes for young directors to encourage more young people to become involved in their co-operative.

One of the biggest challenges facing co-operatives in implementing the Principle of Democratic Member Control is creating a culture that welcomes and encourages debate, rather than stifles it. Lively challenging debate should be seen as a sign of a healthy democracy that needs to be reflected in the more formal parts of a co-operative's democratic structure, in particular encouraging members to become active members of their co-operative and to put themselves forward as candidates in elections.

2. Interpretation of words and phrases

"Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions." The defining characteristic of a democratic organisation is that its members are the ultimate authority. This sentence emphasises that members ultimately control their co-operative. It also stresses that they do so actively in a democratic manner, through having the right to vote on key strategic policy decisions and to participate in electing the representatives who control their co-operative's day-to-day business activities. The distinction between what are key strategic policy decisions and what decisions are delegated to the elected board is for each co-operative to decide.

"Men and women serving as elected representatives are accountable to the membership." This sentence reminds elected representatives that they hold their elected office in trust for the immediate and long-term benefit of members. Co-operatives do not 'belong' to elected officials any more than they 'belong' to the executives and employees who report to these officials. Co-operatives are jointly owned by their members and all elected officials are accountable for their actions to the membership, at election time and throughout their mandate.

"In primary co-operatives members have equal voting rights (one member, one vote)." This phrase describes the customary rules for voting in primary co-operatives. In 1995 when the Principles were last reformulated, most primary co-operatives had a single homogenous group of members. In these co-operatives the rule for equal voting rights, one member, one vote, is self-evident. In multi-stakeholder or hybrid primary co-operatives different voting systems may, for good reason, need to apply.

"And co-operatives at other levels are also organised in a democratic manner". The statement on voting at other than the primary co-operative level is open-ended because co-operative movements themselves are best able to define what is democratic in a given circumstance. This phrase recognises that in many secondary and tertiary co-operatives, systems for proportional voting have been adopted to reflect the diversity of interest, the size of memberships in associated member co-operatives and the commitment among the co-operatives involved in them. The diversity of secondary and tertiary co-operative

organisations is such that the principle is not prescriptive, save that they should be *"organised in a democratic manner"*. Such arrangements should be reviewed periodically to ensure that they remain fit for their democratic purpose. It is usually unsatisfactory if the smallest co-operatives in such arrangements have so little influence that they feel they are disenfranchised.

3. Guidance notes

DEMOCRATIC GOVERNANCE AND ENGAGEMENT

It is important for co-operative democracy to take advantage of technological developments. Advances in modern mobile and internet communication technology are making it easier to develop strategies that actively engage members in a co-operative's democratic processes.

However, the value of members meeting physically in general assemblies before voting should not to be underestimated. Members' interactions with each other – to permit consideration and discussion before exercising their democratic rights to vote on key issues – is a vital part of the democratic process. Democratic engagement of members in accordance with a co-operative's rules and by laws is a qualitative not just a quantitative process.

There is no pre-ordained way to organise the governance of a co-operative. Each co-operative will need to structure its own democratic governance and bylaws to be fit for purpose given the nature of its business, the scale of its operations, its geographical area of operation and national laws¹. The arrangements made should ensure that democratic control by members is real and effective rather than a notional democracy controlled by management or a self-perpetuating elite. In any democracy there is a risk of democratic control being usurped by an elite group and this must be guarded against by actions that respect the rights of all members to participate and be engaged in a co-operative's democratic processes and stand for election. Low levels of participation make it relatively easy for articulate groups, be they staff, middle and senior managers, or electoral groupings, to gain disproportionate control and influence, which is often reinforced by the group then becoming the body that sets the qualifications and rules for elections.

Making membership meaningful and encouraging member participation is a task facing all co-operatives regardless of their size or stage of development. In some co-operatives the sense of members owning and controlling their co-operative enterprise may be diminished if members are too removed from decision making and control without appropriate and effective information sharing, training and educational opportunities and effective channels for member engagement. This risk grows if membership is promoted without new members having the opportunity to understand the nature of the co-operative they are joining or where they are granted membership without making a personal capital investment in the co-operative. Smaller co-operatives or those in their 'start-up' phase may find it easier to make membership meaningful, but making membership meaningful and encouraging member participation is a task facing all co-operatives regardless of their size or stage of development. It is a challenge that reinforces the importance of the 5th Principle of continuous education and training. In large co-operatives, which have subsidiaries and group structures, consideration should be given to ensuring that supervision by the members and accountability to them is global for all organisations

¹ For guidance on appropriate legislation for co-operatives, see Hagen Henry 'Guidelines for co-operative legislation', 3rd edition, 2012, International Labour Organization.

in the group, notably by ensuring that a majority of the board of directors come from member primary co-operatives.

In most co-operatives, membership has traditionally been composed of a single type of stakeholder. Historically, this homogenous nature of members, particularly in consumer co-operatives, was a significant influence when the Co-operative Principles were formulated. New types of co-operatives with multiple stakeholders face a particular challenge and responsibility to make membership meaningful to all their members. The key driver for membership engagement in all co-operatives is the relevance of the co-operative's mutual purpose to meet members' needs and aspirations.

REFLECTING DIVERSITY

Members elected to positions of responsibility in a co-operative should broadly reflect the diversity of its membership. If they do not, positive action needs to be taken to encourage men and women from under-represented sections of the membership to stand for election. If there are barriers to certain groups of members standing for election, such as women, appropriate arrangements should be made to overcome the exclusion of disadvantaged sections of the membership from seeking elected office.

Giving new and younger members education and training opportunities is integral to increasing the number and pool of members willing to stand for election. Quota systems may be considered to ensure that elections produce results that represent the diversity of membership, but they are not a panacea and need to be justified and periodically reviewed.

OPENNESS, TRANSPARENCY AND ACCOUNTABILITY

Openness, transparency and accountability are the watchwords of good democratic governance. Agendas and minutes of meetings of elected committees and boards should be made available to members, online if possible where co-operatives have a presence on the internet.

Commercial sensitivity, regulatory requirements and respect for the privacy of employee records will inevitably place limitations on openness. However, within such limitations co-operatives should ensure that members have an opportunity to discuss and hold the board accountable for key commercial decisions. Where there are sound reasons for keeping matters confidential from the sovereign body of members the reasons for doing so must always be explained and justified to the members.

In the tradition of the Co-operative Pioneers, elected representatives should make available regular statements of account, financial reports and 'state of business' performance reports to members, presented in a way that is accessible to members with no formal financial training. Elected representatives should also regularly, at General Assemblies and other members' meetings, report and account to the membership for their work and actions as elected representatives. Agendas and other information for general assembly meetings should be produced in advance and on time, as required by a co-operative's rules and byelaws, so that members have time to consider matters to be discussed.

Democratic member control is a key differentiating characteristic of co-operatives in comparison to investor or shareholder-owned businesses. A second key characteristic is that their member-owners have a non-speculative stake in the business enterprise run



This state-of-the-art, medical, facility is part of Hospital Barcelona, Spain, which is democratically governed by co-operatives. Scias co-operative, integrated in the Espriu Foundation, governs Hospital Barcelona through an Advisory Board made up of 15 members. Of those 15, 12 represent 166 000 user members and 3 represent 800 worker members.

by the co-operative.² Co-operatives should aspire to the best, open, transparent, and accountable democratic practice. Each co-operative's democratic practices should be subject to diligent critical assessment, which may be achieved through co-operative specific audits.

RECALL AND DISMISSAL OF ELECTED REPRESENTATIVES

A co-operative's democratic rules and procedures should also make provision for the membership to recall and dismiss, by due democratic process, elected representatives who abuse their positions or fail to fulfil their duties as an elected representative.

THE ROLE OF AN OMBUDSMAN OR OMBUDSWOMAN

Larger co-operatives may wish to appoint an independent ombudsman or ombudswoman to deal with members' complaints. Members should be entitled to make complaints about lack of opportunities for democratic participation, or the abuse of democratic process as well as complaints about the co-operative's delivery of services to members.

GOOD GOVERNANCE CODES AND GOOD PRACTICE

During the 1990s following a number of high profile corporate governance failures of large companies, there was a recognition of the importance of good corporate governance. This led to The Cadbury Commission on Corporate Governance in 1992, followed by The Greenbury Commission in 1995 and the Hampel Report in 1998, all of which had a global impact on improving corporate governance best practice. Democratic member control is protected and enhanced by effective co-operative legislation. Where legislation

² Members are stakeholders in a co-operatives as users, workers, residents in housing, learners in school and education co-operatives users of health services, credit or financial services etc.

is not effective it is important that co-operatives have bylaws in place designed to ensure good corporate governance practice. These will include regulations on such matters as conflict of interest rules for elected members and managers, registers of interests, registers of gifts and hospitality given and received, annual board appraisals and board skills audits.

The involvement of elected members in day-to-day business decision-making in co-operatives differentiates co-operatives from other forms of business enterprise. Members of co-operatives have a dual relationship with their co-operative: they are both beneficiaries of the enterprise and also democratically control it. Conflict of interest policy and procedures should not be used to debar elected members from participating in business decisions that affect all members. Elected representatives inevitably have an interest in any decision that affects them and other members. To debar members from participating in such decisions can become an insidious form of demutualisation which leaves key decisions in the hands of unelected executives or unelected appointed or co-opted board members. A member elected as a representative should only be debarred from participating in a decision by conflict of interest rules if their personal interest will lead to the grant of a benefit that is not granted equitably to other members.

A major issue that has been raised in corporate governance codes is the responsibility of boards to consult their members on major business decisions, such as acquisitions, disposals or receipts of transfers of engagements of other co-operatives, which may affect the very nature of a co-operative. Rules and regulations governing such decisions and the requirements for seeking approval or consulting members are best formulated in co-operative statutes or bylaws. If for practical or pragmatic reasons boards are enabled to make such business critical decisions it should be within the framework of a business and risk management strategy approved by members.

The complexity of procedures and governance codes will, of necessity, be determined by the scale and development of each co-operative. A small new co-operative enterprise in an emerging economy will need simpler procedures and less complex governance codes than a larger, more mature co-operative business with thousands or millions of members. A large co-operative business is likely to need a detailed governance handbook. Whether small or large, implementing the basics of good democratic governance codes and best practice will guarantee member sovereignty and members' democratic rights.

Multi-tiered democratic structures have emerged in larger co-operatives that require particular care to ensure that ordinary members retain the democratic opportunity to take strategic policy decisions, elect the board and hold elected representatives to account, even where there are other tiers in the democratic structure through which ordinary members can participate.

Elected members should take care to distinguish the governance responsibility of elected members and officers and the day-to-day business management responsibility of chief executives and senior managers. Elected members ought not to interfere with the day-to-day responsibility of executives to manage a co-operative business efficiently and put member-approved business strategies into effect. Equally chief executives and senior managers ought to respect the rights of members democratically to control their co-operative and take key strategic business decisions. Co-operatives may wish their chief executives and other senior managers to be members of the board, but not in a majority, to ensure that they fully share responsibility for the governance of their co-operative. However, even where senior managers are not full board members they have a duty to advise and guide the board on governance matters and key business decisions.

CODE OF CONDUCT AND ACCEPTING THE RESPONSIBILITIES OF ELECTED OFFICE

Every elected member has an individual responsibility to abide by a code of conduct which spells out their responsibilities and the ethical behaviour required of them. The code of conduct should be part of the co-operative's bylaws, which every elected member is bound to accept and abide by. It should also be published and made accessible to members, employees and the general public.

BOARD COMPETENCE AND SKILLS AUDITS

The democratic process, by itself, does not guarantee that the board of a co-operative will be competent and have the range of skills and expertise necessary to ensure the proper and effective governance of a co-operative, or have the capacity to hold executives to account.

Annual board skills audits are advisable in order to ensure that boards have the collective profile and range of knowledge and skills needed to exercise effective governance control. Where a skills audit identifies gaps in the competence of the board, the gaps may be filled by planned training for board members, by the co-option of non-executive board members with the experience or skills the board lacks, or by positively encouraging members with the skills and expertise needed to stand for election to the board.

EDUCATION AND DEVELOPMENT OPPORTUNITIES AND QUALIFICATIONS

Mainstream business media often comment on what is perceived as the lack of sophistication of governance when a co-operative business fails or runs into difficulty. This is usually attributed to the lack of business expertise of elected boards. While this can be a causal factor, it is not necessarily so and ought not to be used as reason to undermine democratic control by members. To avoid the charge of lack of sophistication, co-operatives should ensure that appropriate training is made available to all directors and committee members. All co-operatives, but especially co-operatives in industries that are subject to government regulation such as banking and insurance co-operatives, may reasonably require members wishing to stand for election to have qualifications that are appropriate to the role they wish to contest as well as demonstrating commitment to the Co-operative Principles and Values.

All co-operatives should consider whether it is appropriate to develop qualifications that are appropriate for members to hold before they stand for elected office. The requirement that candidates for election should hold specified qualifications before they stand for election is to be encouraged and should be approved by the members in general meeting or assembly. However, the requirement for qualifications should not be used as a means of disqualifying members from seeking elected office. Where such qualifications are required and are approved by the membership, members wishing to stand for election should be given training opportunities to gain the qualifications needed.

Where qualifications are required, particularly in regulated or larger co-operatives, it is easier for persons who already hold the qualifications required to take control of a co-operative. This risk of usurpation of control of a co-operative must be guarded against by structured democratic procedures and sound checks and balances, in particular by education and training opportunities for other members.

Historically, some co-operatives have included a purchase or trading qualification designed to show that a candidate has been a regular trading member of the co-operative. Others have replaced this with a capital holding requirement, but this creates the danger that it discriminates against members who have a small capital holding. Other qualifications for office are frequently length of membership of a co-operative, say a minimum of two years, prior to being eligible to stand for election. While these may be useful to prevent hostile takeovers, a balance needs to be struck as to the reasonableness of such rules. Where such rules exist they must be justifiable and approved by the membership in general assembly.

ELECTORAL COMMITTEES

Co-operatives, particularly those with hybrid memberships or larger co-operatives with complex election arrangements or tiered democratic structures, may wish to establish independent electoral committees of members to supervise the election process. This parallels what commonly happens in national elections where independent electoral commissions may supervise elections and validate voting. Where electoral committees are established it is important that electoral committees are responsible for establishing the qualifications required for members standing for office rather than the elected board. The ability of existing office holders on boards or other committees to set and approve qualifications for office is one of the major mechanisms used by elites to maintain their hold on office. It can also be a mechanism used by those who seek to demutualise a co-operative and privatise its assets.

Electoral committees ought not to be appointed by, or accountable to, the current elected board or committee. Members serving on electoral committees should be elected or approved by, and accountable to, the general membership for ensuring that elections are carried out in an open and transparent manner and represent the sovereign will of the membership.

AUDITS THAT INCLUDE DEMOCRATIC GOVERNANCE

Co-operatives are advised to carry out regular internal and external audits that include an audit of democratic governance processes. These will help protect members' democratic rights, ensure that democratic governance accords with best practice and stands up to member and external scrutiny.

There is no prescriptive guidance as to how such audits should be carried out or by whom. In some countries (such as Germany, France and Austria) there are legal provisions and a long and successful tradition for compulsory special auditing of co-operatives. However, as a general rule, the manner of the audit will be determined by the size of the co-operative and the nature of the co-operative's business.

Whether done by members or appointed auditors, the audit should report against relevant external good governance codes and good governance standards. The audit report and any recommendations in it should be made available and considered by all members in general meeting.

Some national co-operative federations or apex organisations and Alliance sectoral organisations have developed standard guidance and procedures for governance audits and democratic health checks that meet the circumstances of their member co-operatives. The advantage of using such standard procedures for carrying out governance audits is that they permit co-operatives to compare their own governance performance with their peers.

There are no set time frames for carrying out a governance audit. Some co-operatives that recognise the need to consistently examine their transparent management and democratic governance processes carry out governance audits every two years. However, co-operatives ought to be concerned if a regular co-operative specific audit that includes a review of democratic governance has not been carried out within the last five years.

A VOICE FOR EMPLOYEES

There are good business reasons why co-operatives may wish to consider giving employees a voice in their democratic governance, especially where employees are not permitted to be members. To do so improves employees' understanding of the co-operative nature of their employer's business and will increase their dedication and commitment to the success of the enterprise. Employees are key stakeholders who want to contribute to their co-operative and see it succeed. It is therefore important that they have a voice within a co-operative's democratic structures, but critically without that voice being able to dominate the democratic rights of other members and stakeholders.

In multi-stakeholder co-operatives where employees are members, the employee's voice will be heard through their democratic right to participate in elections to the board. Other co-operatives may choose to enable employees' work councils or union branches to elect employee representatives to serve on the board. Alternatively, co-operatives may wish members to retain the power to elect employee representatives, on the 'one member, one vote' principle, from employee candidates wishing to stand for election.

There are no prescriptive mechanisms for ensuring that employees have a voice, but with it a co-operative business will be stronger and more resilient.

ENSURING THAT ALL VOICES ARE HEARD

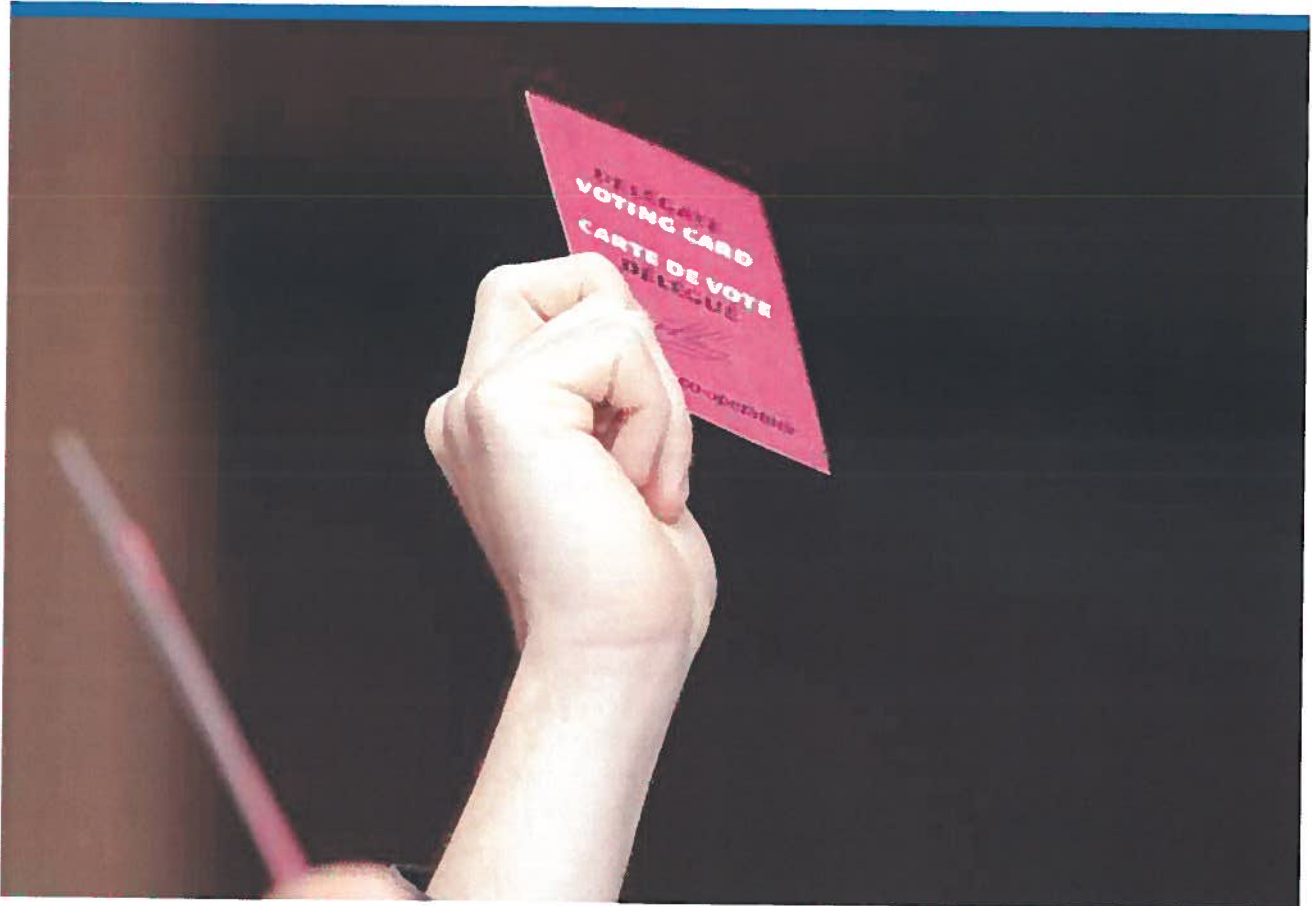
A co-operative risks fragmentation of its business and loss of members if some members feel that their voice is not being heard and that they are not being represented through the democratic process.

Factional elections, where representatives from only one dominant section of the membership succeed, can result in the needs and aspirations of a minority of members not being met. To guard against this, it is best if elected boards represent the diverse views of members.

There is no easy way to guarantee that this will happen in an open democratic system. Members have the responsibility to take account of the risk of disenfranchising minorities when they cast their votes. Boards may also wish to use powers of co-option to ensure that minorities have a voice. Elected members must accept their responsibility to represent the interests of the whole of the membership, not just the majority group which elected them.

SENIOR EXECUTIVES

There needs to be a clear understanding of the democratic rights and responsibilities of the elected board of a co-operative and its focus on the long term enterprise strategy and the role of professional senior management, accountable to the board, entrusted with day-to-day management. Senior executives need to demonstrate their practical commitment to and respect for the principle of member democratic control by the way in which they support and service their co-operative's business decision making. Key strategic policy decisions need to be explained to members clearly, concisely and in a way that the whole membership can understand, with alternative options given where appropriate.



The Co-operators Group Limited is democratically controlled by members. Forty-three corporate members appoint delegates who represent them in the governance of the co-operative. The membership reflects a diverse cross-section of the Canadian co-operative movement, meeting the social, economic, and environmental needs of Canadians.

The presentation of financial and business information to boards and members in general meeting needs to be in a form that complies with legal and regulatory requirements but also in a way that members, especially those elected to serve on boards, can understand to enable them to exercise their governance responsibilities, with alternative options and strategies detailed and presented. The business risks inherent in decisions that need to be made by elected members should be detailed and risk management strategies identified. Senior executives, whether they are a member of the board or not, have a duty to advise boards about what they consider to be the most appropriate business decisions and actions to take but should not simply expect elected members to rubber stamp the decisions they recommend. There needs to be mutual respect for the two distinct roles of the strategic governance responsibility of the board and the day-to-day business management responsibilities of senior executives.

REMUNERATION OF SENIOR EXECUTIVES AND ELECTED BOARD MEMBERS

The remuneration of senior executives and board members ought ultimately to be subject to member democratic control. This guards against excessive executive and board pay, which increases wealth inequality and reduces the economic benefits of co-operative enterprise for co-operative members. Board pay should always be subject to approval by members in general assembly. Where remuneration committees are established to advise on senior executive and board pay, their recommendations about how executive pay

should be set and by whom should be subject to approval or endorsement by members in general meeting.

DEMOCRATIC RENEWAL AND TERM LIMITS

Continuous democratic renewal in co-operatives with new candidates standing for elected office is healthy and should be welcomed. Co-operatives with static boards of the same members who have served for long periods of time risk becoming resistant to change and risk losing the capacity to respond proactively to changes in their business environment. Standing for election against long serving members should not be seen as an implicit criticism or as undermining the status of incumbents, but rather a positive reflection of the desire of the co-operative's other members to contribute to its on-going success.

Open, contested election procedures should be fostered to encourage the most talented members to stand for election. Candidate election statements and hustings help evidence the skills and commitment candidates will bring to their office and will enable members to decide which candidate(s) to vote for.

Fixed terms of office of, say, three or four years with one third/one quarter of the elected board retiring and seeking re-election each year, are recommended to achieve a balance between democratic renewal and the retention of experience. To ensure democratic renewal occurs, it is good practice to set term limits for elected officers, which fix a maximum period of years that an elected member may serve. Such restrictions have become the norm for non-executive directors in publicly listed companies and co-operatives too should lead by example by adopting this as good democratic practice.

THE ROLE OF NATIONAL CO-OPERATIVE FEDERATIONS AND SECTORAL ORGANISATIONS

National co-operative federations or national apex organisations have a special role and responsibility to protect the effectiveness and reputation of the co-operative movement in their country by promoting sound democratic and good governance practice. Global and regional sectoral organisations and regional offices of the Alliance have a similar role and responsibility in promoting good governance standards common to their co-operative business sector. Good governance codes, advice, and training and support from national, regional and Alliance sectoral organisations is particularly important for new co-operatives.

This responsibility is best discharged through the development of good democratic practice guidance, audit arrangements and model governance codes appropriate to national laws. Democratic good practice guidance and governance codes set a standard against which the practice in each member co-operative can be measured and judged. They also provide a means that enables a co-operative's members to compare their co-operative's performance with that of its peers and to set policies that strive for excellence in democratic governance.

4. Matters for future consideration

DEMOCRATIC GOVERNANCE IN LARGE CO-OPERATIVE GROUPS AND MULTI-STAKEHOLDER CO-OPERATIVES

There is great diversity in the size and nature of co-operatives. The emergence of multi-stakeholder primary co-operatives at the beginning of the 21st century with more than one membership group, such as consumers, employees, independent entrepreneurs

and corporate (legal) persons as stakeholders, present new democratic challenges for their members. These co-operatives, which are not permitted in some national legislative systems, require specific arrangements in their rules or bylaws appropriate to their particular nature and function in order to apply this 2nd Principle of Democratic Member Control. In such co-operatives different relative weightings or proportions in voting rights may be appropriate for different categories of members.

Large and diverse co-operatives may inevitably need to consider, adapt and apply new structures for member democratic control in a way that is appropriate to the scale and structure of their co-operative. Whatever structures are created, there is a need to ensure that the essence of this 2nd Principle is respected. Without real and effective democratic member control an essential generic characteristic of our co-operative identity will be lost.

Similar democratic challenges arise in the multi-tiered democratic structures that have emerged in larger co-operatives. A key question is how do such large and complex co-operatives ensure that the democratic rights of all members to take part in board elections and influence strategic business decisions are protected and respected?

Some larger co-operatives with financial capacity have bought former investor-owned companies and are running them as subsidiaries, some in countries other than that in which the co-operative operates. This too raises challenges and questions about the maintenance of democratic member control and whether customers and/or employees of such subsidiaries should be enabled to be members.

MAXIMUM LENGTH OF TERM LIMITS

There is no definite guidance on the maximum length of time a member may serve on an elected board or committee or in a particular elected position, save that setting maximum term limits for elected representatives is good governance practice. Some governance codes set term limits of three years before a representative must stand for re-election, with a maximum term limit of nine years. Others, including the Alliance, have longer maximum term limits: the longest term a person elected may serve on the Alliance Board is 18 years. National co-operative apex organisations may wish to set term limits in their own codes of governance and the Alliance may wish to issue further guidance on this matter in due course after consultation with members.

