

The Study Group on European Cooperative Law (SGECOL): A new Scholarly Initiative

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This note outlines a new academic network named “Study Group on European Cooperative Law” (SGECOL), and the “Principles of European Cooperative Law” (PECOL) project. SGECOL is a European group of co-operative law scholars whose general objective is to conduct comparative research on co-operative law in Europe and increase awareness and understanding of co-operative law within the legal, academic and governmental communities at national, European and international level. SGECOL intends to achieve this objective through research initiatives on co-operative law, beginning with the drafting of PECOL. PECOL will take the form of legal provisions accompanied by explanatory comments. They will be developed on the basis of the existing co-operative law in Europe, focusing in particular on six European jurisdictions (Finland, France, Germany, Italy, Spain, UK). PECOL will not simply summarise and describe the common core of European national co-operative laws. It also aims to present the main general provisions through which the authors believe co-operative law should be formulated so as to provide co-operatives with a definite and distinct legal identity. The PECOL project does not serve a single specific purpose, such as the harmonisation of national co-operative laws. PECOL will be a scholarly work, capable of serving many potential functions, depending on the users’ particular needs.

The Study Group on European Cooperative Law (SGECOL)

This short article is based on a fuller paper which sets out the purpose, plans, structure and intentions of the Study Group as well as more detail on its first research project (Fajardo et al, 2012).

This short article aims to bring the existence of SGECOL and its project to develop Principles of European Co-operative Law (PECOL) to the attention of UK co-operative scholars. This article’s author accepts sole responsibility for its content and accuracy although it draws heavily on the text of the full paper.

On 29-30 November 2011 a group of co-operative law scholars from different European countries met in Trento, Italy at the European Research Institute on Cooperative and Social Enterprises (Euricse). They established the Study group on European Co-operative Law (SGECOL). For more information on Group membership and activities visit <http://www.euricse.eu/en/node/1960>.

SGECOL aims to promote increased awareness and understanding of co-operative law within the legal, academic and governmental communities at national, European and international level through research projects in co-operative law.

This will fill a gap in European legal scholarship. Other private and commercial law subjects have been extensively explored by European groups of experts. Often this has led to suggestions of common European private and commercial law principles. This process has not so far dealt with co-operatives and co-operative law.

European Union Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (the SCE Regulation) which permits the use of a pan-European co-operative structure reflected EU interest in co-operatives at the time of its enactment. However, modest use has been made of the European Co-operative Society (SCE) as its regulatory structure is complex and frequently refers back to 26 different national co-operative

laws (see Fici et al, 2010). Those features of the SCE reduce the autonomy of EU co-operative law from national co-operative law and do not encourage greater scholarly interest in either.

SGECOL plans to remedy this situation with projects designed to favour networking between European co-operative law scholars. Its research projects will explore differences and similarities across jurisdictions and will consider how far common European principles exist or can be developed.

That will involve:

- a) Identifying common problems in the regulation of different types of co-operative.
- b) Discussing precisely how national legal systems and co-operative laws respond to those problems.
- c) Considering the broader approaches of national systems and EU provisions to common problems.
- d) Evaluating those solutions.
- e) Exploring connections between co-operative law and other areas of business organisation law, especially company law, as sources of solutions and theories.

Some regulatory and legal problems faced by co-operatives may be identical to those faced by other business organisations and comparison of co-operative law with the law governing other business organisations will help to identify such areas while also defining key elements of co-operative identity.

SGECOL plans to offer a common language and analytical framework for the purposes of both co-operatives and co-operative law and so to evaluate the effectiveness of different legal regimes in serving those purposes.

Its research projects are intended to stimulate discussion among scholars and co-operative stakeholders on the question of co-operative law convergence in Europe and to facilitate some de facto approximation of European national co-operative laws based on mutual exchange and dissemination of good practice in co-operative regulation.

The work of SCEGOL is in line with the view expressed by the European Commission in its Communication no 18/2004 of 23/2/2004 on the promotion of co-operative societies in Europe (Commission of the European Communities, 2004) which emphasises the need to improve co-operative legislation in Europe by contacts between the national regulators and by common analysis of good or innovative practice. The EU Commission Communication welcomes initiatives from national and European organisations to draft "model laws" as a means of encouraging gradual approximation of national laws governing co-operatives.

This work is also likely to support the co-operative movement in its efforts to gain recognition of the co-operative difference on the part of institutional actors, and to promote the role of co-operatives.

SGECOL intends to achieve its objectives through a number of research initiatives on co-operative law. The first is the drafting of Principles of European Co-operative Law (PECOL).

Principles of European Co-operative Law (PECOL)

PECOL will take the form of legal provisions accompanied by explanatory comments. They will be developed on the basis of existing co-operative law in Europe, focusing in particular on six European jurisdictions (Finland, France, Germany, Italy, Spain, and the UK). PECOL, however, will not simply summarise and describe the common core of European national co-operative laws. Going beyond that, the project aims to present the main general provisions through which

– in the authors' view – co-operative law should be formulated to provide co-operatives with a definite and distinct legal identity vis-a-vis other business organisations.

The PECOL project does not serve a single specific purpose or aim to impose harmonisation on national co-operative laws. PECOL aims to be a scientific and scholarly work, capable of serving many potential functions, depending on the users' particular needs.

The resulting document will not cover all the possible aspects of co-operative regulation, but will concentrate on those aspects that relate to the identity of co-operatives. The focus on co-operative identity, at least in the initial stage of the work, is paramount. Arguably, the main problem in the regulation of co-operatives is providing them with a definite and distinct legal identity vis-a-vis other business organisations. That approach will support the protection of the legal brand and facilitate the shaping of specific policies about co-operatives to ensure fair treatment. That will come about by acknowledging features of the co-operative model which are relevant in formulating policy in areas such as insolvency law, labour law, state aids, public procurement or taxation. If the organisation has features distinguishing it from other business organisations, it may need particular treatment in a particular legal or regulatory context to avoid unfairness and inequity or to facilitate the use of the form to promote particular policy objectives.

In the case of co-operatives, legislators and policy makers are often unaware of the co-operative difference. The co-operative law of a particular European country may not provide co-operatives with a distinct and appropriate legal identity. The fact that co-operative law varies from country to country in Europe, and that the SCE Regulation has only had a limited success does not help to distinguish co-operatives from for-profit investor-owned business organisations.

Those drafting PECOL are conscious that, in any inquiry into "ideal" principles of law or the "ideal" legal identity of co-operatives, subjective views will influence the results. This risk cannot be completely avoided but efforts will be made to limit it by using external objective factors wherever possible to test the principles developed.

The PECOL drafters have identified the following elements whose synthesis will assist in testing the "ideal" legal identity of co-operatives:

- The common European culture stemming from national co-operative laws and EU co-operative law (ie, the SCE Regulation);
- The Statement on the Co-operative Identity in the last version adopted by the International Co-operative Alliance in 1995, and ILO Recommendation no 193/2002 concerning the promotion of co-operatives, which incorporates ICA Principles and goes beyond them.
- Best practice in co-operative articles of association and by-laws.
- And finally business organisation law, particularly company law, to contrast co-operative legal identity with the legal identity of other business organisations.

The PECOL team has members from different countries and legal cultures. That may reduce the influence of subjectivity when the researchers go beyond their national law and to adapt their concepts to a trans-national analysis.

PECOL will be divided into five chapters on the basis of the team's view of areas that are important to co-operative identity:

- 1) Co-operative social object.
- 2) Co-operative governance.
- 3) Co-operative financial structure.
- 4) Co-operative control.
- 5) Co-operation among co-operatives.

Interim reports and the draft PECOL will circulate outside SGECOL among co-operative professionals and representative organisations, as well as non-legal experts, notably economists. PECOL will be eventually published in its full and final version and presented at a final conference of the project.

The idea of establishing European groups of experts with a specific mission of drafting common European principles of law is not new. Although a variety of approaches may be found, the common objective of these initiatives is to lay the foundations for a common European regulation of contracts, torts, companies, etc. This process has not involved co-operatives so far, which is one of the reasons for SGECOL's initiative in this field. PECOL is a scholarly and scientific project. As such it is not specifically intended to promote the harmonisation of national co-operative laws. When co-operatives and co-operative law are the matters at hand, a project like PECOL finds sufficient justification in the promotion of a better understanding of co-operatives and co-operative law.

Notwithstanding their strong presence in the marketplace and their capacity to contribute to sustainable development, co-operatives, as a business structure, are still relatively unknown in some European countries. That is also true of co-operative law.

Therefore, PECOL has been conceived both as a basis for discussion if the issue of unification, harmonisation or approximation of co-operative laws in Europe arises, and as a purely scientific and scholarly work aiming to advance knowledge and understanding of the subject matter under examination. The comments accompanying PECOL may help in this direction.

Being a scholarly and scientific project, PECOL may serve several purposes:

- For researchers, a basis for understanding foreign co-operative laws or undertaking comparative analysis of co-operative law.
- For legislators, a collection of model rules for improving national or EU co-operative laws.
- For policy-makers, a device for better understanding co-operatives and co-operative law.
- For co-operative advocates and representative organisations, an instrument for defending and promoting the distinct identity of co-operatives compared with other business organisations.

SGECOL Membership and Structure

SGECOL operates on the basis that its full members set the research agenda, direct the projects of the group, deliberate on the admission and exclusion of members and other organisational issues. They meet regularly to discuss fundamental issues, trends and developments of co-operative law in Europe. They are in charge of the drafting of PECOL.

However, SGECOL is a team open to all legal scholars from every European country, particularly academics, who wish to contribute to its projects and take part in its initiatives. The category of associate member accommodates this wider group. The maintenance of the status of member, whether full or associate, depends on the member's participation in SGECOL activity.

SGECOL was initially financed by Euricse, which encouraged and supported its foundation, still hosts its secretariat and webpage, and funds the PECOL project. However, SGECOL greatly appreciates support from other organisations and institutions, notably research centres dealing with co-operatives, social enterprises or the social economy, whether as sponsors of single events, like meetings, conferences or publications, or as longer term funders of the group.

The University of Luxembourg supported one meeting in 2012 and the UK Co-operative Group supported the first SGECOL public Seminar linked to Co-operatives United in Manchester in

October 2012 (to learn more visit <http://www.thenews.coop/blog/successful-sgecol-seminar-co-operatives-united>).

Anyone interested in working with SGEVOL can contact Antonio Fici at antonio.fici@euricse.eu

The Author

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Notes

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