

HAGEN HENRÿ
CARLOS VARGAS VASSEROT
(Coordinadores)

UNA VISIÓN COMPARADA E INTERNACIONAL
DEL DERECHO COOPERATIVO
Y DE LA ECONOMÍA SOCIAL Y SOLIDARIA
LIBER AMICORUM PROFESOR DANTE CRACOGNA

AGUILAR RUBIO, MARINA
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Capítulo 5

The distinction between cooperative surplus and corporate profit as an evidence of the non-profit purpose of cooperatives

DEOLINDA MEIRA

*Associate Professor of Commercial and Cooperative Law
Polytechnic Institute of Porto/ Porto Accounting and Business School (ISCAP)*

Summary: 1. Delimitation of the problem. 2. The concept of cooperative surplus. 3. The cooperative refund. 4. similarities of regime between cooperative surplus and corporate profit: 4.1. Basis of similarities. 4.2. The required distribution resolution. 4.3. Limitations. 4.4. The absence of a subjective right to a cooperative refund. 5. Differences between cooperative surplus and corporate profit: 5.1. Different criteria for distribution. 5.2. Cooperative surpluses are generated from transactions with members. 5.3. The indivisibility of assets in the cooperative *versus* the right of partners to share final or liquidation profits in commercial companies. 6. Conclusions. 7. Bibliography.

1. DELIMITATION OF THE PROBLEM

Cooperatives are legal persons under private law that carry out an economic activity that aims, mainly and without profit, to the satisfaction of the needs of its members. Cooperatives are, therefore, said to mainly pursue a mutualistic scope (Fici, 2017; Meira, 2018).

Unlike commercial companies, the aim of cooperatives is not to make profits and then share them out, but to provide its members with direct advantages

in their economy. The cooperative is set up to maximise members' advantages from the transactions they carry out with or through the cooperative. These will translate into obtaining certain goods or services at lower prices than those on the market, selling their products by eliminating market intermediaries, or in higher remuneration for their work (Fajardo, 2015).

A cooperative is a business enterprise which aims to exercise an economic activity, just like commercial companies. However, it is a business entity with many specific features, and two aspects are particularly noteworthy: first, a business aspect, the cooperative as a production or exchange unit operating in the market; and second, the cooperative aspect, i.e. the cooperative as an entity with a mutualistic scope. To be an "enterprise", the cooperative must be in a position to compete with other enterprises present on the market and above all with the profit-making enterprise. To be a "cooperative", it must have specific characteristics which are part of the concept of mutuality (Meira, 2009).

The figure of the cooperative surplus arises from this mutualistic scope and is not to be confused with corporate profit, despite some similarities between the two figures being identifiable. Therefore, this study aims to reflect on the distinction between cooperative surplus and corporate profit and, based on this distinction, to highlight the non-profit purpose of cooperatives.

This study presents a case study since we will use the "Portuguese Cooperative Code" (PCC), approved by Law No. 119/2015, of 31 August, in our analysis. Nevertheless, there is a proximity throughout the world of the Cooperatives' legal frameworks in this issue. Thus, we consider our framework helpful and applicable to other legal systems besides the Portuguese.

2. THE CONCEPT OF COOPERATIVE SURPLUS

The cooperative surplus is the difference between the income and the costs of the activity carried out by the cooperative with its members. It is the amount provisionally overpaid by the members to the cooperative or underpaid by the cooperative to the members in return for their participation in the cooperative transactions (Fajardo & Meira, 2017).

The cooperative's surplus, therefore, results from the cooperative's transactions with its members and is generated at their expense, constituting "the result of a tacit waiver on the part of the members of immediate cooperative benefits" (Namorado, 2005: 183).

Article 2(1) of the PCC states that cooperatives aim to "meet the economic, social or cultural needs and aspirations" of their members. Therefore, the

cooperative's activity must necessarily be oriented towards its members, who are the main beneficiaries of its economic and social activities. This is the aforementioned mutualistic scope of cooperatives.

The pursuit of this objective shall be based on the development of an economic activity in which the cooperative members participate. This participation shall take the form of a reciprocal exchange of goods and services between the cooperative and the cooperators, which are proper to the objective of the cooperative (Vasserot, 2006; Fici, 2017).

Therefore, the cooperator shall not only be obliged to contribute to the share capital of the cooperative, but also to participate in the cooperative activity. In this regard, Article 22(2)(c) of PCC stipulates that cooperators must "generally participate in the activities of the cooperative and provide the work or service which is assigned to them".

The fulfilment of the object of the cooperative will therefore imply that the cooperators deliver goods to the cooperative (this is the case of an agricultural cooperative), produce or manufacture goods or provide services within the cooperative (this is the case of work cooperatives); or pay the cooperative for the goods or services they receive from it (this is the case of consumer cooperatives or housing cooperatives).

It should be noted, however, that the teleological connection between the cooperative and its members should not be understood in an absolute way, i.e. the cooperative should not be considered a closed organisation centred only on its members.

In fact, the mutualistic scope of a cooperative does not imply that it operates exclusively with its members (so-called pure or internal mutuality, in Italian terminology) but that it may also operate with non-members (impure or external mutuality) (Bassi, 1979).

This "external mutuality" means, from the outset, the affirmation of the sociability claimed by the cooperative enterprise. The cooperative will, first of all, meet the needs of its members and, at the same time, spread outwards, spreading its services to those who, although they are not members, have the same needs as the latter. On the other hand, this concept of mutuality will allow cooperatives to become more sustainable, as they will compete in the market with other business entities, offering goods and services to non-members (Meira, 2018).

That is why today there is a consensus, both in doctrine and in cooperative legislation, that, despite its mutualistic scope, the cooperative may not limit its activity to economic relations with its members, i.e., that for the normal

development of the cooperative activity with the cooperators, the cooperative may establish contractual relations with ‘non-members’ (*terceiros*) which, logically, will vary according to the type of cooperative (Meira, 2010).

Although the law does not define what is meant by ‘non-members’, it seems to be agreed in the literature that in the wake of the teachings of Rui Namorado, ‘from the cooperative point of view, ‘non-members’ are those who have a business relationship that is directly related to the performance of the cooperative’s primary objective as if they were members, although, in fact, they are not (Namorado, 2005: 184-185).

As a result, the Cooperative Code, in its article 2(2), established that “cooperatives, in the pursuit of their objectives, may conduct operations with non-members, without prejudice to any limits set by the laws specific to each branch”.

The above shows that cooperatives may have “a prevalently, but not exclusively, mutualistic scope” (Campobasso, 2003) and may develop operations with non-members. However, the results from operations with non-members are not surpluses but profits. For this reason, the legislator has prevented these results from being shared among the cooperative members, either during the life of the cooperative or at the time of its dissolution (articles 99, 100(1) and 114 of the PCC), being fully transferred to indivisible reserves (Meira, 2010).

3. THE COOPERATIVE REFUND

The cooperative surplus may be returned to members in the manner established by article 100(1) of the PCC, which provides that: ‘with the exception of that resulting from transactions with non-members, and after payment of interest on capital contributions and appropriation to any legal or statutory reserve, the annual net surplus may be returned to the members.’

This precept states unequivocally that only cooperative surpluses resulting from transactions between the cooperative and its members can be returned to members. Conversely, economic results from transactions with non-members may not be distributed to members. The basis for this legal regime lies in the fact that, in cooperatives, income from business with non-members is legally regarded as profit and not as a true cooperative surplus, since it does not fall within the scope of the mutualist activity.

Cooperative refunds, which are understood here as the technical means whereby surpluses are assigned to members, are actually a deferred distribution of these same surpluses. This means that, after balancing and calculating net

income, members of a cooperative are given back something to which they have been entitled since the beginning of the financial year. Cooperative refunds operate as a retrospective correction by which surpluses - the difference between prices charged and costs, or the difference between net income and advances paid for labour, accurately calculated at the end of each financial year - are returned to those who generated them (Fajardo & Meira, 2017).

4. SIMILARITIES OF REGIME BETWEEN COOPERATIVE SURPLUS AND CORPORATE PROFIT

4.1. BASIS OF SIMILARITIES

In the legal regime of the cooperative surplus, similarities with the legal regime of corporate profit can be identified, which are based mainly on the fact that Article 9 of the PCC, on the subsidiary law applicable to situations not provided for in the Cooperative Code, establishes the possibility of recourse -as long as the cooperative principles are not disregarded, to the Commercial Company Code (CSC), in particular to the provisions applicable to public limited companies-. This reference to the CSC must, however, meet two conditions: on the one hand, the solution reached cannot disrespect the cooperative principles, and, on the other hand, within the space provided by the Commercial Company Code, priority must be given to the provisions applicable to public limited companies (Frada & Gonçalves, 2009).

4.2. THE REQUIRED DISTRIBUTION RESOLUTION

As in commercial companies concerning corporate profits (articles 31, 250(3) and 386(1) of the CSC), the rules do not determine an automatic distribution of the surplus and, therefore, the distribution shall not take place without a resolution of the general meeting to that effect. If the bylaws are silent, such a distribution resolution must be passed by a majority of votes cast since this is the rule for the approval of most resolutions (article 40(2) of the PCC; and article 386 of the CSC, applicable under article 9 of the PCC) (Domingues, 2009).

Therefore, the cooperative refund shall designate the part of the distributable surplus that the general meeting decides to distribute among the cooperators. It is essential for its payment that there be a resolution to promote the respective distribution, which the previous approval of the accounts shall precede (Meira, 2009).

It is only with the resolution of the cooperative to distribute that the surplus shall be converted into a right of cooperative refund, and the cooperative member shall become the holder of a credit right on the cooperative. As it is true that the right to a cooperative refund only exists from the resolution of the general meeting approving the distribution of the surplus, this means that, after such approval, any resolution of the general meeting to condition, restrict or revoke the said distribution shall be deemed null and void. In line with what Paulo de Tarso Domingues argues about the right to dividends in commercial companies (Domingues, 2009), we also consider that the right to a cooperative refund, originating from the cooperator status, is autonomous from it, taking on the nature of an extra-corporate right, and therefore cannot be affected against the will of the cooperator (Meira, 2009).

4.3. LIMITATIONS

However, the right to the cooperative refund shall be a *sui generis* extra-corporate right, just like the right to corporate profits, and may be subject to limitations (Santos, 2003). This happens when the cooperator has not fully paid their contribution to the share capital and is in default. In this situation, the cooperative refund shall not be paid back. However, there may be compensation for the capital debt (article 27(4) and (5) of the CSC, applicable subsidiarily to cooperatives under article 9 of the PCC) (Meira, 2009).

4.4. THE ABSENCE OF A SUBJECTIVE RIGHT TO A COOPERATIVE REFUND

As in company law, which places special emphasis on the lack of a subjective right to the actual distribution of profits, in cooperative law it must also be said that inclusion among a cooperative members' rights of the right to a cooperative refund (article 100 (1) of the PCC) does not imply recognition of an (actual) right to have part of the cooperative surplus allocated to a cooperative refund in favour of the cooperator. The use of the words 'may be returned to the cooperators' by the legislator highlights the possibility that the right to cooperative refunds may be waived by a resolution of the General Meeting.

It should be noted first and foremost that in the case of cooperatives, a percentage of the cooperative surplus for a financial year will revert to the legal reserve (article. 96 (2) (b) of the PCC) and to the reserve for education and training (article. 97(2)(b) of the PCC), as well as for the payment of interest on shares (article 100 (1) of the PCC). Only after these allocations and payments have been made is it possible to calculate the cooperative refund (article 100 (1) of the PCC).

Moreover, partners in commercial companies may not receive any monies or goods in the form of profit where there are reserves to be created or rebuilt (articles 32 and 33, CSC). In the same way, it is not possible to distribute surpluses in cooperatives ‘before the deduction of any losses from previous financial years or, if the legal reserve to compensate for these losses has been used up, before the reserve has been rebuilt to the level prior to its use’ (article 100 (2) of the PCC). In other words, the legislator prevents the distribution of surpluses when and insofar as it is necessary to cover losses carried over or to rebuild the legal reserve. In this way, the law consecrates a mandatory regime of coverage of losses under which the surplus for a financial year is allocated primarily for this purpose (Meira, 2009).

As in commercial companies, with regard to corporate profit (articles 31, 250 (3), and 386 (1), CSC), in the case of cooperatives the rules do not establish the automatic distribution of surpluses as a return (cooperative refund), and distribution can therefore not take place without a resolution of the General Meeting. When not provided for in the statutes, resolutions to allocate surpluses must be passed by a majority vote, given that this is the regulation for the approval of most resolutions (article 40 (2) of the PCC and article 386 CSC, applicable pursuant to article 9 of the PCC).

Thus, where results for a financial year are positive, the discretionary power of the General Meeting to decide how to allocate surplus becomes clear. On the one hand, the General Meeting may decide freely between distribution among members and the formation of reserves: the General Meeting may have the opinion that the policy of constituting reserves as a means to finance the cooperative (the major obstacle to distribution) is much more convenient from the point of view of the members and the cooperative. On the other hand, the General Meeting may decide on the temporary retention of a part of cooperative refunds (‘deferred return’), to remedy issues of limited equity (Costa, 1981). This deferment is in the form of a loan by the member to the cooperative, and the member must therefore provide his or her consent (article 294 (2) CSC, applicable by a remission of article 9 of the PCC).

This is in line with the principle of the member economic participation (article 3 of the PCC), which lists three possible destinations for surpluses: (i) ‘the development of cooperatives’; (ii) ‘support for other activities approved by membership’; and (iii) ‘the distribution of surpluses for the benefit of the members in proportion to their transactions with the cooperative.’ It follows from this that a return is one of three destinations accepted by the legislator when there is a surplus to be returned, and there is also the possibility of combining either all three destinations or just two of them (Cracogna, 2018).

The right to a cooperative refund is, therefore, a derogable right on the part of a member of a cooperative; however, the nature of this right is limited by the general principle of the abuse of rights. Members cannot be refused a cooperative refund without further justification, and refusal cannot be based on extra-social grounds. Were this to happen, the members of the Board of Directors might be subject to actions for liability. The General Meeting, in compliance with general contractual principles - namely the principle of good faith - must justify its decision not to distribute a surplus in the form of cooperative refunds. Thus, the decision to retain cooperative surpluses as assets of the cooperative must be based on 'social interest', particularly on the self-funding needs of the cooperative. It follows that a resolution of this type will be invalid if the majority of cooperative members use their vote to pursue extra-social interests and simultaneously harm the interests of the cooperative (Meira, 2009).

This lack of a subjective right to the cooperative refund has consequences of a tax nature. In fact, given the above considerations, the decision of the Portuguese tax legislator to consider the surplus as part of the assets and results of cooperatives seems logical. As long as a resolution for the payment of the surplus to the cooperative members is not formalised, the cooperative may use these surpluses by allocating them to new investments or other purposes (Aguiar & Meira, 2017).

However, while it is true that the cooperative law does not require cooperatives to return the surplus to the cooperative members, nor does it allow if there are losses carried forward from previous years, it is equally true that the same law leaves a very large margin for the cooperative bylaws to regulate this matter. In effect, Article 16(2)(e) of the PCC provides that "the bylaws may also include: (...) the rules for distribution of surpluses (...)".

Therefore, although the law does not establish any obligation for the cooperative refund, nothing prevents the bylaws from establishing such an obligation, provided that the limitations on the establishment of legal and education and training reserves, as well as on the coverage of losses under the terms mentioned above, are complied with.

5. DIFFERENCES BETWEEN COOPERATIVE SURPLUS AND CORPORATE PROFIT

In order to understand the specificities of the right to cooperative refunds clearly, it is necessary to distinguish between cooperative surpluses and profits, or between cooperative refunds and dividends.

Indeed, even though cooperative refunds and dividends share the common feature of being sums that are periodically distributed among members/shareholders, they are not equivalent, and have significant differences.

While dividends are a portion of the profits that is distributed among shareholders, cooperative refunds are not distributable profits, but cooperative surpluses: that is, mutual benefits generated by management of the cooperative.

5.1. DIFFERENT CRITERIA FOR DISTRIBUTION

One of the primary distinguishing features between cooperative surpluses and profits relates to the criteria for their distribution.

In commercial companies, dividends must be paid in proportion to the shares held by each shareholder. In a cooperative, the surplus generated by each member is a result of the business done with the cooperative and is in proportion to a mutualist exchange whereby each member is due a return (a cooperative refund) in proportion to this exchange.

Profits are intended to remunerate a shareholder's investment, and are therefore distributed in proportion to that member's share of the capital, whereas a cooperative surplus is not intended to remunerate capital, but only to compensate members to the same extent as they have contributed to the generation of the cooperative surpluses.

Distribution of cooperative refunds among members is proportional to the business concluded by each of them with or for the cooperative during a given financial year. Since the surplus results from business between the cooperative and its members, and is thus generated by cooperative members, it is understandable that when a return (a cooperative refund) arises, it is made in proportion to the volume of this business, and not to the number of shares each member holds.

The distribution of surpluses in proportion to the business carried out with the cooperative, and not on the basis of participation in share capital, owes its *raison d'être* to the fact that these surpluses represent the cooperative benefits that a member has obtained in precise proportion to the services provided by the cooperative that he or she has used: that is to say, the proportion of the returns allocated to him or her will be in direct relation to the use of these services (Cracogna, 2018).

Apart from the general guidelines enshrined in article 3 regarding a distribution of surpluses ‘benefiting members in proportion to their business with the cooperative’, we find no substantial explicit criteria in the PCC governing the distribution of cooperative surpluses. When referring to the distribution of surpluses, article 100 of the PCC, merely states that they ‘may be returned to the members’, and in the legislation applicable to the various types of cooperative, we find only general guidelines, and no explicit criterion for the distribution of surpluses. In relation to cultural cooperatives, Decree-Law no. 313/81 of 19 November 1981, states (in article 8) that distribution will be ‘proportional to the work of each member’ and that it must comply with ‘the criteria defined in the cooperative’s statutes or internal regulations.’ In the case of worker cooperatives, Decree-Law no. 309/81 of 16 November 1981 stipulates (in article 9) that after calculation of surpluses, ‘payments made in advance to members’ should be deducted before the distribution of any surplus. Finally, article 9 of the Law governing service cooperatives (Decree-Law no. 323/81 of 4 December 1981) states that in service cooperatives, surpluses will be distributed in proportion to each member’s work, according to criteria defined in the statutes and/or internal regulations of the cooperative. In accordance with article 100 of the PCC, after the calculation of surpluses, payments made in advance to members must be deducted before distribution of the surplus.

This means that the legislator has merely outlined general guidelines regarding the allocation of surpluses, and has given cooperatives and their members the task of defining the criteria for allocating surpluses through their bylaws, in internal regulations, or at general meetings of the cooperatives (Meira, 2009).

5.2. COOPERATIVE SURPLUSES ARE GENERATED FROM TRANSACTIONS WITH MEMBERS

Unlike cooperatives, commercial companies are not created to do business with partners but to obtain benefits through the establishment of business relations with parties from outside the companies. In commercial companies, therefore, profits are obtained in the market, in transactions with customers, and outside the universe of their members.

Conversely, in cooperatives, as Hans-H. Münkner recalls: ‘any surplus accrued from transactions with member-customers at the end of a financial year is not the result of efforts to accumulate profit in the cooperative enterprise at the expense of the member-customers who () would then try to make profit out of themselves.’ (Münkner 1986: 75). The example of worker

cooperatives serves as a paradigm for surpluses which are the result of the work of members and are distributed in proportion to the work performed. In the same way, the assertion is fully valid for other types of cooperative: if there is a surplus, it means that the member paid or received an amount above or below market price, thus abdicating any immediate mutual advantage.

To sum up, in commercial companies, economic advantage is generated at the expense of others, while in cooperatives it is generated at the expense of their own members.

5.3. THE INDIVISIBILITY OF ASSETS IN THE COOPERATIVE *VERSUS* THE RIGHT OF PARTNERS TO SHARE IN FINAL OR LIQUIDATION PROFITS IN COMMERCIAL COMPANIES

In a cooperative, we cannot speak of final or liquidation profits (those which result from the excess of assets over liabilities at the end of the liquidation of the company), as in commercial companies (in the latter, the right to share in profits includes the right of members to share in final or liquidation profits). Considering that one day the commercial company may have an end, the right to distribute profits (Article 21(1) (a) of the CSC) includes the right of the partners to participate in the final or liquidation profits.

One of the specific features of the economic regime of cooperatives is the distinction in the cooperative assets between divisible and indivisible. The distributable part of the assets shall consist of the part of the assets corresponding to the share capital which each member has brought into the cooperative and, subject to certain conditions, the part which may correspond to the member of the voluntary reserves which the cooperative may establish. The indivisible assets shall include the assets corresponding to the legal reserve and the cooperative education and training reserve, the reserves provided for in the complementary legislation applicable to the different branches of the cooperative sector and the reserves established with results from operations with non-members (Meira, 2009; Cracogna, 2018). These reserves cannot be distributed among the members (Article 99 of the PCC).

The regime of indivisibility of such reserves shall apply both during the life of the cooperative, when the cooperative member leaves the cooperative, by resignation or otherwise (Article 89(2) of the PCC) and when the cooperative assets are liquidated (Article 114 of the PCC). Thus, a part of the cooperative assets can never be appropriated individually, and it shall maintain its cooperative nature, even if the cooperative disappears, without

any new cooperative entity succeeding it. In this sense, doctrine speaks of the existence, in the cooperative, of a “collective” asset (Vicent Chuliá, 1994: 7).

One of the reasons for this regime stems from the principle of disinterested distribution, which is based on the fact that the main purpose of a cooperative is not to make a profit by increasing capital to be distributed among members but to build up a collective asset which will benefit current and future members of the cooperative and, in the event of its dissolution, the cooperative movement.

Upon liquidation of the cooperative’s assets, article 114 (2) of the PCC stipulates that any amount of the legal reserve that is unaffected by the need to cover losses for the financial year and cannot be used for a different application ‘can move, with the same purpose, to a new cooperative entity to be formed following the merger or division of the cooperative in liquidation’. Article 114 (3) of the PCC has established, however, that ‘where the cooperative in liquidation is not succeeded by a new cooperative entity, the application of the balance of the mandatory reserves will be allocated to another cooperative, preferably from the same city, to be selected by a federation or confederation that represents the main activity of the cooperative.’ Article 114 (4) goes even further, providing that ‘the provisions of numbers 2 and 3 of this article will apply to the reserves established, pursuant to article 98 of this Code, to liquidation if the statutes say nothing,’ which means that this regime may also cover voluntary reserves if the statutes are silent (Meira, 2009).

Another reason is the need to comply with the principle of voluntary and open membership (Article 3 of the PCC). Any distribution of the mandatory reserves among the cooperative members would be incompatible with this principle, which could only be observed if all the cooperative members renounced a part of the net surplus of the assets, given that these reserves mainly comprise a percentage of the surplus. Otherwise, the members who remained in the cooperative until the time of liquidation would be the only ones to benefit from the mandatory reserves established with the surpluses generated by members who had left the cooperative in the meantime. Even on the assumption that no cooperator had resigned from the cooperative until it was liquidated, any distribution of these mandatory reserves among the cooperators, in the absence of analytical accounts showing the contribution of each of them to the establishment of these reserves, would cause losses to the founding cooperators to those who joined the cooperative later. Therefore, when resigning from the cooperative, cooperative members shall not have the right to receive a part of the mandatory reserves (Article 89(2) of the PCC). When the cooperative is dissolved, the net assets of the cooperative corresponding to those reserves shall not be distributed among

cooperative members (Article 114(2) and (3) of the PCC). This regime will avoid speculative resignations (Llobregat Hurtado, 1990: 376).

Another argument against the possibility of distribution is based on the particular nature of these reserves (Articles 96 and 97 of the PCC) and the fact that results from transactions with non-members may also integrate them. Now, as we have seen, the results from operations with non-members are profits and, therefore, the Portuguese cooperative legislator prevented these results from being shared among the cooperative members, either during the life of the cooperative or at the time of its dissolution (articles 99, 100 (1), and 114 of the PCC) (Meira, 2018).

6. CONCLUSIONS

As their main purpose, cooperatives do not have a profit-making scope but a mutualistic one.

The social object of a cooperative is closely linked to the satisfaction of its members' economic, social and cultural needs. Cooperatives do not have an objective of their own or autonomous concerning their members. Still, they are an instrument for satisfying the individual needs of the cooperative members, who work, consume, sell and provide services within the cooperative and through it.

The aim of the cooperative is not to make profits and distribute them. The aim of the cooperative is to maximise the advantage that members obtain from the operations they carry out with or through the cooperative.

In other words, cooperatives do not distribute direct economic or financial gains to their members, but surpluses, which are nothing more than returns made to the cooperator of what is already his, *a priori*.

So, the cooperative surplus arises from the mutualistic scope of cooperatives. It is the amount provisionally overpaid by the members to the cooperative or underpaid by the cooperative to the members in return for their participation in cooperative transactions.

Profits are obtained in the market, in transactions with customers, and outside the universe of the members. They are intended to remunerate a shareholder's investment and are, therefore, distributed in proportion to that member's share of the capital.

The cooperative surplus is not intended to remunerate capital, but only to compensate members to the same extent as they have contributed to

the generation of the cooperative surpluses. So, distribution of cooperative refunds among members is proportional to the business concluded by each of them with or for the cooperative during a given financial year.

The Portuguese cooperative law forbids the main purpose of profit but not the carrying out of profitable operations. This is the case when the cooperative carries out operations with non-members. However, in order to preserve the mutualistic purpose, it shall be prevented that the profit derived from such operations be shared among the cooperative members, either during the life of the cooperative or on its dissolution, and transferred in full to indivisible reserves.

The existence of indivisible assets in the cooperative, as a projection of the principle of disinterested distribution, is also evidence of the non-profit purpose of cooperatives.

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