



# Fake worker cooperatives and measures adopted by the public authorities in Spain to combat them.

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# What do we understand by false cooperative?

- They are entities formally constituted as cooperatives but do not share their own aims (meeting the needs of their members in the best conditions). They have been set up for other purposes (avoiding risks, customer loyalty, saving costs), but they want to take advantage of their legal status or of the aid received by cooperatives.
- Recently, fake worker cooperatives have been created in order to avoid the application of the norms that regulate both autonomous work and dependent work.

# What is a workers' cooperative (CTA) in Spain?

- According to Spanish legislation, the CTAs are those cooperatives that aim to provide their members with jobs, through personal and direct effort, part-time or full-time, through the common organization of the production of goods or services for third parties (art. 80.1 Act 27/1999).

# What differentiates the worker member from other workers?

- The worker member of a cooperative is not an autonomous worker
- The worker member of a cooperative is not a dependent worker (employee).

# The worker member of a cooperative is not an autonomous worker

- An **autonomous worker** is an individual entrepreneur, but who develops his activity "personally and directly", although he also employs other workers (Law 20/2007 Autonomous Work Statute). The autonomous worker acts in the market "in his own name" and therefore assumes the risks and responsibilities of his activity.
- The **worker member is not an autonomous worker** because, although he can enjoy great autonomy in the provision of his work, his relationship with the market "is not done in his own name", but "in the name of the cooperative" and therefore is this, which assumes the consequences and responsibilities of the activity in the first place. The worker member is not an entrepreneur.
- **In spite** of not being self-employed workers members can join the Social Security as an autonomous worker (RETA).

# The worker member of a cooperative is not a dependent worker (employee)

- The worker member does not work for another person (employer) for a salary.
- As a member of a cooperative, has the right and duty to participate in the cooperative activity (working), and in the control of the management of the cooperative. The cooperative is a model of self-management. In this case, the cooperative is managed by its workers.
- Therefore, it is the worker members who, in a general meeting, must agree on their rights and obligations and these must be shown in the bylaws and internal regulations for their knowledge. The law expressly recognizes that the relationship of the worker member with the cooperative is associative and not an employment relationship.
- The worker members does not work for others because he does not generate for his work the right to a salary, but rather, the right to a distribution of benefits (like any other industrial or work partner).
- This is compatible with the right to receive "advances" on account of the final result of the fiscal year (surplus). If there are no positive results, its distribution does not proceed, so the worker member assumes part of the business risk, in addition to responding with his capital from the debts of the cooperative.
- Despite not being employed workers, the law allows worker cooperative members to join the Social Security Regime as "assimilated to employees" (RGSS).

# The worker member is an associate worker...

... that it shares with its partners the management and the business risk of the cooperative, and that, although they may enjoy more or less autonomy at work, their link with the market must always be done "in the name of the cooperative".

# Workers' cooperatives and service cooperatives

- In the **workers' cooperative**, its members are workers who develop the cooperative activity, which will consist in the production or mediation of goods and services for third parties (market).
- In the **service cooperative**, its members have the status of entrepreneurs or professionals (including the autonomous worker), who each develop their own economic activity, on their own and "in their own name". But at the same time, they are users of the services offered by the cooperative, in order to facilitate their activity or improve their results. The cooperative in this case does not provide services to third parties, but to its own members.
- In some cases, the business model may evolve from CTA to service cooperative and vice versa. In addition, as the CTA enjoys greater benefits and advantages, the tendency is for workers to constitute CTAs.
- The law requires that the members of a workers' cooperative "organize in common" the production of goods and services. Therefore, they can have greater autonomy when developing their work. The important thing will be that their relationship with the market is always done "in the name of the cooperative".



# Cases of fake cooperatives...

- In the billing sector.
- In the meat sector.
- In the transport sector.

# Billing cooperatives

- They are cooperatives constituted as workers' cooperatives, which have opted in their bylaws for the general social security system (RGSS), and whose members act as autonomous offering services to their clients, on behalf of the cooperative, and normally with an eventual character.
- These are cooperatives that offer their members a series of management and intermediation services typical of a service cooperative: contract and invoice third parties, and manage the partner's payments (taxes, SS).
- But the professional activity is not done in the name of the member who provides it, but on behalf of the cooperative. This contracts and bills the third party, and charges the member a commission for the service provided.
- The formalization of the cooperative as a worker cooperative allows the member not only to "invoice without being autonomous" as these companies announce, but to take advantage of the "RGSS as a part-time worker", which allows him to quote Social Security only for the days that he declares worked, which would not be possible in the RETA (autonomous)

# Cooperatives that cede their workers (members) to meat companies

- These are cooperatives whose worker members provide their work in the facilities of other companies (of the meat sector) through the signing of a contract for the provision of services, between the cooperative and the meat company.
- The cooperative has not been established as a Temporary Work Company (Law 14/1994), which is possible in Spain, and does not meet the guarantees required of them.
- Being a workers' cooperative, it also does not have to comply with the minimum requirements of labor regulations, and its worker members can also opt for the RETA (autonomous), which reduces social costs.
- However, despite the fact that the cooperative seeks to comply with the requirements that allow a company to cede its workers, the truth is that it can not prove that it has an economic activity of its own. Its only activity is to yield to the working members.

# Cooperatives of transport

- There are transport cooperatives that bill most of their income to a single client (shipper), who in turn is the owner of the vehicles whose use the cooperative hires.
- These cooperatives are integrated with two types of members, some that lead the management of the cooperative (working members), and others (collaborating members) who are the drivers.
- The law defines the collaborating member as a member that collaborates with the cooperative (contributing capital or resources), but it can not participate in the main activity. In order for their power in the cooperative to be inferior to that of the cooperator members, their voting rights are limited by law.
- This legal figure is being used in violation of the cooperative law, in transport cooperatives and other cooperatives to abuse certain groups of workers. These can not have control of the cooperative, but they are treated as if they were working members, insofar as they are not guaranteed the minimum labor rights and are subject to the RETA.

# Measures adopted by the public authorities in Spain to combat false cooperatives

- In Spain, the Work Inspection is responsible for monitoring and demanding compliance with the rules governing cooperatives; and the Administration in the matter of employment can sanction the cooperatives for the infractions committed, even being able to "disqualify" a cooperative, which is cause for its dissolution. On the other hand, there is no longer the possibility of temporarily intervening a cooperative when the interests of partners or third parties are jeopardized.
- Recently, with the crisis and the high unemployment, false cooperatives have proliferated. These are denounced mainly by the unions.
- These, denounce the cases before the Inspection, impel demands of workers before the courts, call strikes, demand to submit the cooperatives to the collective agreements and pressure the Government to modify the legislation in order to subject the workers to labor rights or at least, restrict the right of self-management of the cooperative if it has more than a certain number of partners (10 or more).
- The public administration has disqualified some cooperatives, which have then entered into a contest or have been dissolved.
- And several laws (in Catalonia, Castilla y León and Extremadura) have incorporated measures to guarantee that if a CTA develops most of its activity for a client, it must apply to its working members conditions equivalent to at least the collective agreement of the sector or work center of the company in which the members provide their services, who must be affiliated to the RGSS as assimilated to dependent workers.
- The legislator, instead of favoring cooperative self-management through the training and cooperative education of its working members, and through the internal and external control of the cooperative, has opted for regulating fake cooperatives at the moment.

Thanks for your attention!

- Mulțumesc pentru atenția acordată!

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