

Business Transfers to Employees under the Form of a Cooperative in Europe

Opportunities and Challenges

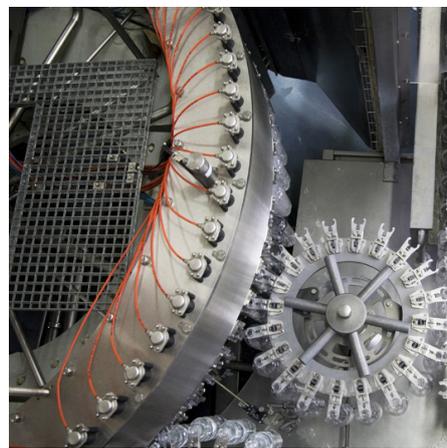


Table of contents

Business transfers to employees in Europe	3
Transfers of sound companies without a successor	5
Employee buyouts of enterprises in crisis	6
Survival rate of enterprises transferred to the employees	11
Cooperative characteristics facilitating business transfers to employees	13
Legal environment facilitating business transfers to employees	15
Financial and support services for business transfers to employees	17
Third parties' contribution to business transfers to employees	19
Conclusions and policy recommendations	20

Cover: Those pictures, taken by the photographer Lydie Nesvadba, represent the 50,000 cooperatives and other employee-owned enterprises active in industry, services and crafts from our network. The images show the activities in the four cooperatives filmed in the documentary "Together. How cooperatives show resilience to the crisis", produced by CECOP – CICOPA Europe.

Business transfers to employees in Europe

The study *Business Dynamics: Start-Ups, Business Transfers and Bankruptcy*, published by the European Commission in 2011, estimates that 450,000 enterprises, providing 2 million jobs, are being transferred in the EU every year. The EU may lose approximately 150,000 of these enterprises each year, representing 600,000 jobs, because their owners retire, set up a new business or seek other opportunities, but cannot find anybody to take over their firms.

If we add to that data the amount of bankruptcies¹ or business failures in which at least part of the activity is profitable, the potential of saved enterprises and jobs is even more important, especially in the current economic and social context.

More than a thousand cooperative enterprises from the CECOP network² are in fact the result of businesses that were going to close down and that have been transferred to, or bought out by the employees, and re-established under the worker cooperative form.

Worker cooperatives' key mission is to create and maintain sustainable jobs, in a strong local development and wealth generation perspective¹. Their members are the employees of the enterprise, who thus jointly decide on the major entrepreneurial decisions and who elect and appoint their own leaders (boards of directors, managers, etc.). They also decide on how to share the profits with a twofold aim: a) to provide a fair remuneration, in the form of returns based on the work done (in fact an adjustment of the price of remuneration), and b) to consolidate the enterprise and its jobs over the long term by building reserves. Finally, in abidance by the international cooperative standards², worker cooperatives promote worker-members' information and training, a prerequisite to develop the autonomy, motivation, responsibility and accountability required in an economic world which has become increasingly insecure.

1. CICOPA (2005), *World Declaration on Worker Cooperatives*, available on www.cicopa.coop

2. International Cooperative Alliance, *Statement on the Cooperative Identity*, available on www.ica.coop, and incorporated in ILO Recommendation 193 on the Promotion of Cooperatives, available on www.ilo.org

Generally speaking, two main scenarios leading to this form of establishment of a cooperative have been observed:

- Retiring owners with no successor, heir or family member willing to take over the enterprise: the enterprise is handed over to the employees; the employees then convert it into a worker cooperative;
- Employee buyouts of enterprises in crisis (failure or bankruptcy): enterprises at risk of closure or after closure, which are bought out by their own employees who then convert them into a worker cooperative.

The practice of business transfers to employees³ in Europe is rather heterogeneous. France, Italy and Spain are the EU countries where it is most widespread, whereas more isolated cases can be found in other countries, such as the UK and Finland. It

¹ Even though the study "Business Dynamics: Start-Ups, Business Transfers and Bankruptcy" indicates that among business closures, bankruptcies account only for approximately 15% (p.114)

² The CECOP network represents around 50,000 cooperative enterprises in 17 European countries

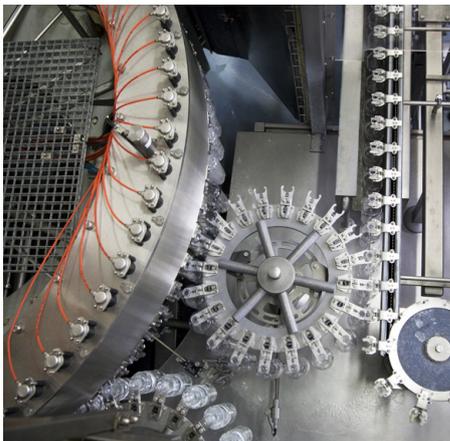
³ We will use in the text "business transfers to employees" for two different scenarios: transfer of sound enterprises to the employees and employee buyouts of enterprises in crisis

appears that the main factors explaining why business transfers to employees are more common in some countries than others are:

- ▣ a legal framework adequately protecting and promoting worker cooperative enterprises;
- ▣ a high level of organisation and consolidation of worker cooperatives in federations;
- ▣ policy measures facilitating business transfers to employees.

For example, CECOP French member Confédération Générale des Scop (CG Scop) and its regional bodies have accompanied 76 successful business transfers to employees in 2010, and 52 in 2011: the transfer of sound enterprises without a successor and employee buyout of enterprises in crisis⁴. More than one thousand jobs were saved in those enterprises in only two years, without mentioning all the upstream, downstream and surrounding local economic activities that have also been maintained.

Even in the countries where businesses transfers to employees are more common, there is an untapped potential for them to be substantially increased; however, a big stumbling block is the generalized lack of knowledge on this matter amongst professionals (eg lawyers, accountants, courts etc), enterprise owners, and the employees themselves about this scenario. Certainly, business transfers to employees are not always a viable solution, and this is why a proper diagnosis and then adequate follow up and guidance for the employees are crucial elements for the success of such projects.



⁴ Data includes conversion of associations in cooperatives

Transfers of sound companies without a successor

According to a document published by the European Commission, the number of enterprises in Europe that are not transferred for reasons other than economic ones, is around 63%.⁵

As the experience within the CECOP enterprise network has revealed, the scenario of sound enterprises without a successor being handed over to their employees is usually less traumatic for both the owner and for the employees than an employee buyout after an enterprise closure. The economic situation of the enterprise is not necessarily difficult, which facilitates the transformation: the ownership change can be anticipated and prepared, even years in advance. Generally, the owner is the one who takes the initiative for the transfer. In some cases, the manager (if different from the owner) keeps his/her function and the employees gradually get used to the idea of taking on the responsibility of ownership.

Besné Mécanique, Loire-Atlantique , France

Besné Mécanique, located in Loire-Atlantique and active in precision engineering, was created in 1980. In 2004, forced to retire for medical reasons, the owner then aged 55 started to look for an acquirer but not to anyone. A merger and acquisition advisory firm suggested him to contact the Regional Union of Worker Cooperatives for a business transfer to the employees. The employees were invited by the owner to consider the transfer plan and 80% of them voted in favour of it.

But behind Besné Mécanique there was an intricate structure: a holding and an operating company, shares in other companies and a subsidiary. A very sophisticated legal and financial project had to be developed by the Regional Union of Worker Cooperatives and the financial assistance unit of the national Confederation of Worker Cooperatives, CG Scop, together with the employees. Financial instruments created by CG Scop (Socoden and Spot) were engaged as well as the participation of the French Institute for the Development of Social Economy (Ides) and the Crédit Coopératif and Crédit Agricole banks in order to make the transfer under the worker cooperative form possible. The retiring owner has also decided to take a minority financial participation in the new established worker cooperative.

Today the worker cooperative Besné Mécanique employs 76 persons, compared to 54 employees in 2005. The key figures of the enterprise since the beginning of the crisis in 2008 show a rather solid financial situation: the turnover in 2012 was 19% lower than in 2011 but 27% higher than in 2009. Leverage (capital to debt ratio) has maintained itself at around 1 to 3 since 2008. The working capital has been increasing steadily and now allows the business to face all its cash flow needs.



Besné Mécanique, France

⁵ "Business Dynamics: Start-Ups, Business Transfers and Bankruptcy", published by the European Commission in 2011, p.106

Employee buyouts of enterprises in crisis

This second scenario of enterprise buyouts usually occurs during a crisis period leading to enterprise closure and is usually not prepared in advance with the employees. These are enterprises that have been or are about to be placed in liquidation because of a crisis (management or sectoral crisis, general economic or specific crisis) and which, in order to prevent their closure, are transformed into a worker cooperative by transferring the assets to a newly-created worker cooperative.

In 2012, company insolvencies in the UK were running over 7% higher than in 2011 (at around 17,000 businesses), 40% of them because of poor management prior to insolvency. This represents potentially 7,500 enterprises that, on economic ground, could be saved.⁶

In 2011, one of the hardest years for many European enterprises since the crisis broke out in 2008, the profitability expectations of many owners seemed to be negative or insufficient, with doubts about maintaining the activity, leading them to look for an acquirer or, in some cases, to transfer the ownership to their employees.⁷ Whereas those enterprises may not be considered sufficiently profitable by external investors, they can still be sufficiently profitable for the employees to the extent that they enable them to preserve their jobs and provide them with the prospect of a long term economic activity.⁸

After a commercial court publishes an acquisition bid, the employee buyout is filed and is often in competition with bids by external or third parties. Here again, the quality of the employees' bid is directly linked to the level of support and consulting they have received, usually from cooperative federations. A fact which is undeniably linked to current economic and unemployment concerns from public authorities is that we have recently noticed more favourable attitudes from commercial courts in France for employee buyout proposals rather than external bids (in particular extra-European) because of the strong local embeddedness which a cooperative enterprise can guarantee, with no delocalization of the activity, jobs and skills.⁹

Some extra-European countries, like Argentina or Brazil, have put in place preferential rights to employees in order to give them the best conditions for a takeover bid for an enterprise facing closure. The logic behind this "right to bid" is to consider employees not as creditors but investors and residual claimants, leading to the argument that employees should be given the opportunity to consider the purchase of the enterprise to preserve their jobs and entitlements if this is their wish.¹⁰ The French government is currently preparing a bill on social economy which is also supposed to include preferential rights for employees willing to buyout their enterprise and establish a worker cooperative.

Buyouts of an enterprise in crisis, such as in cases of liquidation, requires a very quick reaction and a speedy financial mobilisation of the employees, something which is usually very difficult to take place without the support of cooperative federations or



Cooperative Celulosas y Papel, Spain

⁶ Anthony Jensen, "Saving business through worker co-operatives. A strategy for employee buyouts in the context of insolvency", published by Co-operatives UK, 2012, p.3

⁷ Adrian Zelaia "Spain: Entrepreneurial Cooperation in the Regions" in A. Zevi, A. Zanotti and A. Zelaia, "Beyond the Crisis : Cooperatives, Work, Finance", CECOP Publications, Brussels, 2011, p.130

⁸ *Idem*, p.125

⁹ The recent case of employee buyout and the establishment of the worker cooperative SET (Smart Equipment Technology), located in Haute-Savoie, is particularly relevant here

¹⁰ Anthony Jensen, *Ibid.*, p.5.

dedicated entities. Very often the employees are the last ones to be informed about such procedures. The conversion of enterprises in crisis into economically sustainable cooperatives requires a precise diagnosis. In addition, the earlier the diagnosis can be established, the more successful and sustainable the restructuring can be.

Celulosas y Papel, Andalusia, Spain

A successful example of a failed enterprise transformed into a worker cooperative is Celulosas y Papel, located in Mollina, rural town of 5,000 inhabitants in Andalusia, in the South of Spain. In February 2010, after the bankruptcy of CEDEMOLL, an enterprise active in the production of cellulose and paper for more than 25 years, 4 former workers decided to invest their unemployment benefits and buy out the enterprise under the worker cooperative form. Today Celulosas y Papel has 9 permanent employees and the turnover has doubled in two years (2010-2012) from 730,000 euros to 1,999,000 euros. The support of CADE Estrategias - Andalusian center for enterprise development promoted by the Federation of Worker Cooperatives of Andalusia (FAECTA) - and the Andalusian government have been crucial for the successful transformation of the enterprise into a cooperative.

“EMPLOYEE OWNERSHIP THROUGH WORKER COOPERATIVES SOLVES WHAT THE INTERNATIONAL ASSOCIATION OF RESTRUCTURING, INSOLVENCY AND BANKRUPTCY PROFESSIONALS DESCRIBES AS AN INTRACTABLE PROBLEM IN INSOLVENCIES, WHICH IS MARGINALIZING OF EMPLOYEES THAT ARE 'OFTEN THE LIFELOOD OF THE ENTERPRISE', THE LOSS OF THEIR EMPLOYMENT AND THEIR ENTITLEMENTS”.

ANTHONY JENSEN, IBID., P.3

WHY SHOULD AN OWNER CONSIDER TRANSFERING HIS/HER ENTERPRISE TO THE EMPLOYEES

- ❑ The enterprise owner, willing to sell his or her business at the market price, may believe that by selling it to those who know the enterprise well - the employees – he/she will be able to obtain the desired price. Because of the current economic crisis, after having experienced an extremely positive period, the takeover of companies in the form of leveraged buyouts (LBO) no longer make it possible to obtain high values. In fact banks are increasingly cautious about LBOs, because of high enterprise values and an excessive amount of debt.
- ❑ The other possibility is that the enterprise *per se* does not have a high value in the absence of its owner/founder and that maintenance of its value depends on the buyer's ability to retain the know-how and markets and, in certain cases, only the employees can ensure that the value is maintained.
- ❑ A third scenario could be the handover to the employees in order to prevent the company from being sold to a competitor. Very often, the founder or the owner does not want to see the enterprise he/she has built or developed to fall into the hands of a competitor, which is often the case.¹

¹ François Soulage "France: an Endeavour in Enterprise Transformation" in A. Zevi, A. Zanotti and A. Zelaia, Beyond the Crisis : Cooperatives, Work, Finance, Brussels: CECOP Publications, 2011, p.177

ADVANTAGES OF ENTERPRISE TRANSFERS TO EMPLOYEES¹

- ❑ For the owner, the transfer of the enterprise to the workers is a guarantee for viability of the economic activity and jobs. In the case where the owner has been the founder of the activity, the emotional dimension in the will to maintain the activity can even be higher.
- ❑ The transition is gradual and smoother, with less negative consequences. In this sense, the enterprise can preserve its history and identity.
- ❑ More than any external investor or buyer, the employees are familiar with the functioning of the enterprises, with different customers, etc. Their motivation is important as they want to preserve their jobs.
- ❑ Collaboration with clients, banks and suppliers is not interrupted.
- ❑ It is beneficial for public authorities: development and growth is maintained in the territory and it goes against economic desertification of some regions.

¹ From the guide La reprise d'entreprise par les salariés en coopérative. Guide transnational www.les-scop.coop

THE ADDED VALUE FOR THE EMPLOYEES IN ESTABLISHING A WORKER COOPERATIVE

- ❑ Jobs are saved at least for the worker-members of the cooperative, even though, generally speaking, not all the jobs can be maintained after the transition.
- ❑ The worker cooperative form ensures that less elements which may weaken the financial stability of the enterprise, such as capital remuneration, are present; at the same time, worker-members are motivated by the cooperative results as limited returns are granted in the form of refunds based on the work done.
- ❑ The double identity of worker and owner of the enterprise that characterizes cooperative worker-members reduces the “ownership risks” since the worker-members both own and control the enterprise and are usually protected by their employee status.
- ❑ Support structures, services and financial support provided by the cooperative federations (see later in the text).

WHAT ARE THE OBSTACLES FOR BUSINESS TRANSFERS TO EMPLOYEES

- ❑ The transition « taboo » or emotional obstacle for some enterprise owners to prepare the transition especially when they are the founders of the activity, but this is the case for business transfers in general, not only to employees.
- ❑ Complexity of the transmission procedures and a lack of knowledge amongst the owner and professionals advising him/her.
- ❑ Legal and taxation obstacles related to changes in the enterprise legal form. In some European countries the possibility to alter the legal form of an enterprise in order to facilitate the transfer process does not even exist.¹

¹ The European Commission's study Business Dynamics indicates that in 28 out of 33 European countries surveyed in the study it is possible to alter the legal form of an enterprise in order to facilitate the transfer process

RISKS OF BUSINESS TRANSFERS TO EMPLOYEES INTO A COOPERATIVE

- ❑ Considering the generally limited equity capital which ordinary enterprise employees are able to invest, debt – if there is any – and thus leverage (capital to debt ratio) might be high for the worker-members. The new established cooperative needs to quickly establish a capital stock in order to reduce such leverage.
- ❑ Especially in today's context, previous profitability of the businesses does not ensure future prosperity. Profitability, which is generally conditioned by the need to repay the debt due to the takeover and the subsequent limit on investment, must therefore be even more important than in conventional enterprises. This is why less indebted enterprises are often those that cope better with the crisis.
- ❑ Workers can be ill prepared to lead and manage the enterprise.

WHEN THE BUSINESS TRANSFERS TO EMPLOYEES UNDER THE COOPERATIVE FORM ARE MORE LIKELY TO SUCCEED

- ❑ The transferred or bought out enterprise has no financial difficulties.
- ❑ Experience has proven that business transfers to employees are usually more successful in the case of labour-intensive activities mobilizing lower capital, like for example in the service sector, and in the case of activities where the degree of collaboration among employees is high (eg. ICT, consulting, creative activities, etc). Mobilizing human intelligence is facilitated by the cooperative structure since the takeover of an enterprise by its employees or the employee buyout in the form of a cooperative is from the very beginning a group action more than an individual action.¹
- ❑ When, in the previous enterprise, trade union representation could be ensured, making it possible for trade union representatives to inform the employees about the transformation processes in a timely manner.
- ❑ The chief executive assists in the early stages of the development of the cooperative.
- ❑ The cooperative results allow growth to be financed and a substantial amount of profits and incentive payments to be distributed, enabling the workers to quickly reimburse their loans.²
- ❑ The conversion of enterprises in crisis into healthy cooperatives requires a precise and early diagnosis. This is absolutely key to the success of the conversion cases. In addition, the earlier the diagnosis can be established, the more successful and sustainable the restructuring is likely to be.

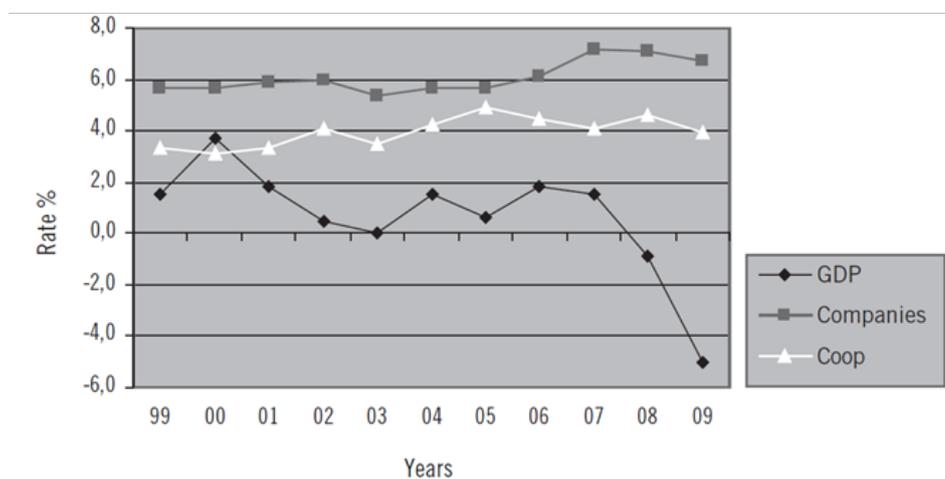
¹ *Ibid.*, p.183-184

² *Ibid.*, p.185

Survival rate of enterprises transferred to the employees

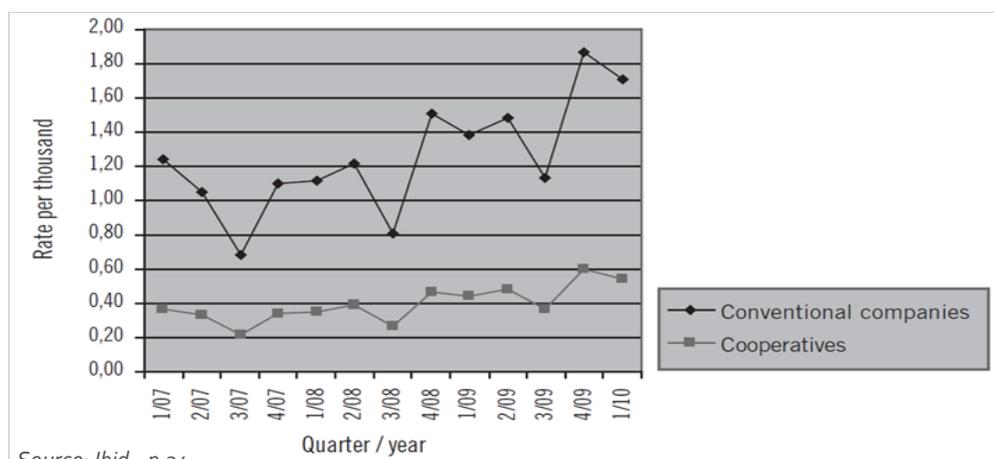
In general, worker cooperatives show higher survival rates than conventional enterprises.

GDP TREND AND MORTALITY RATE OF ENTERPRISES AND COOPERATIVES (ITALY)



Source: Antonio Zanotti, "Italy: the Strength of an Inter-Sectoral Network" in "Beyond the Crisis: Cooperatives, Work, Finance", p.32

ENTERPRISE BANKRUPTCIES (PER THOUSAND) – FOR EACH QUARTER FROM 2007 TO 2010 (ITALY)



Source: *Ibid.*, p.34

Thanks to their specific ownership, governance and capitalisation model, worker cooperatives and social cooperatives¹¹ have a specific capacity to adapt to change, maintain jobs and economic activities even when being at risk, while, at the same time, pursuing their social mission (creating sustainable jobs, labour integration, or providing social, health, educational and environmental services to the community). Their governance model helps them anticipate and prepare restructuring processes in time, in association with the employees and the different concerned stakeholder-members of the cooperative. This ensures adequate and sustainable restructuring solutions and minimises the negative social impact of restructuring processes.

¹¹ We call here "social cooperatives" cooperatives providing social services or labour integration to vulnerable workers

Enterprises transferred to their employees in the form of a worker cooperative often show particularly high survival rates over time.

SURVIVAL RATE FOR COOPERATIVES RESULTING FROM BUSINESS TRANSFERS IN 2012 (FRANCE):

	Survival rate with- in 5 years	Survival rate within 3 years
All French enterprises (INSEE ¹ data)	50 %	66 %
All cooperatives affiliated to CG Scop ²	66,1 %	82,5 %
<i>Transfer of sound enterprises into cooperatives</i>	82,1 %	90,5 %
<i>Transfer of enterprises in crisis into cooperatives</i>	61,0 %	80,2 %

Source: CG Scop

Generally speaking, business transfers to employees have succeeded in maintaining jobs and even creating new ones after the transformation process. It should be mentioned that, often, not all the existing jobs can be maintained in the process of transformation, but an important number of new jobs have then been created over time.

PrimePac Solutions, Wales, UK

When Budelpack International, a Dutch owned packaging company, closed down in 2005, 19 staff members decided to invest their redundancy payment into setting up a worker cooperative, PrimePac Solutions. With manufacturing jobs on the decline in Wales, the employees were keen to preserve their livelihoods and keep jobs in the local area. The Wales Co-operative Centre provided legal and business planning advice and has helped the newly established enterprise access funding from Co-operative and Community Finance, Finance Wales and the Welsh Assembly Government.

PrimePac Solutions makes bottles, sachets and tubes with clients including leading brands in the health and personal care sector. Since 2005, PrimePac Solutions has doubled the number of jobs and today 22 of the employees are members of the cooperative. Its turnover has increased from £370,000 in 2006 to £3.8 million in 2012. "Establishing our business co-operatively means that all employees feel that they can become masters of their own destiny and develop our company into a real success story for South Wales", says Steve Meredith, Managing Director of PrimePac Solutions.

Cooperative characteristics facilitating business transfers to employees

Some characteristics that are specific to worker cooperatives can help explain why enterprises transferred to their workers in the form of a worker cooperative often show particularly high survival rates over time.

► WORKERS' FINANCIAL PARTICIPATION AND CAPITAL ACCUMULATION

According to the 3rd cooperative principle, the members of a cooperative contribute equitably to the capital of the enterprise, through financial participation, which can be either symbolic or more substantial, but always confers an equal participation in ownership without indenting the second cooperative principle, namely democratic member control. The fact that each member holds a portion of the share capital of the cooperative makes each member responsible for the future of his/her own enterprise, (which for worker-members means his/her own future and the sustainability of his/her job), and therefore members are more prone to assume risks for the growth and recovery of the enterprise.

Another aspect of this 3rd cooperative principle is that a limited part of the annual surplus is redistributed to members *not* as a dividend based on their contribution in share capital but as a year-end adjustment of the price of the transactions between the cooperative and its members, which, in the case of cooperatives among workers, is an adjustment of the worker-members' remunerations; another part of the annual surplus is usually earmarked for a reserve fund, which is the common property of cooperatives (see below).

The strong trend towards capital accumulation shown by cooperatives reveals its usefulness in times of crisis. The financial reserves which were built before the crisis allow cooperatives to go beyond the short-term emergency measures mentioned above (such as temporary wage reductions etc.) when the crisis comes, and adopt measures oriented towards the long-term, such as investment in technology or other structural changes in the production process.

► INDIVISIBLE RESERVES

The third cooperative principle also states that "members allocate surpluses for (...) developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible"¹²: reserves are a general practice in all cooperatives in the world, regardless of their different purposes and activities. These reserves are an essential measure to ensure the financial sustainability of the enterprise: they compensate for the structural limitation of share capital in cooperatives, and protect them against debt and market volatility. There are cooperatives which, having experienced a strong growth over years, have built amounts in reserves that are much higher than their share capital. The above principle mentions indivisible reserves: in some EU countries (such as France, Italy, Spain, Portugal, and the UK relating to a specific type of enterprise¹³), the indivisibility of reserves is legally mandatory, even after the liquidation of the enterprise. In such countries, in the case in which the cooperative is closed down, the reserves are transferred to an institution promoting cooperatives, such as a cooperative development fund.

¹² ILO Recommendation 193 on the Promotion of Cooperatives, Annex, available on www.ilo.org

¹³ Called Community Interest Company (CIC)

Indivisible reserves are a key way to express that cooperatives are cross-generational enterprises, which, in turn, partly explain their sustainability and the sustainability of jobs within them. Furthermore, they can act as a deterrent against take-overs by external acquirers, who cannot claim control over such funds.

Legal environment facilitating business transfers to employees

An adequate legal environment facilitating business transfers in general, and to employees in particular, is essential. Public mechanisms and measures stimulating enterprise transfers or buyouts can be of great support to employees willing to takeover or buyout the enterprise.

ONLY 16 EUROPEAN COUNTRIES HAVE IMPLEMENTED MORE THAN 50% OF EUROPEAN COMMISSION RECOMMENDATIONS FROM 2006 REGARDING THE LEGAL AND FISCAL FRAMEWORK TO FACILITATE BUSINESS TRANSFERS.

“BUSINESS DYNAMICS: START-UPS, BUSINESS TRANSFERS AND BANKRUPTCY”,

The Italian Marcora Law

At the time of industrial crisis that Italy was facing in the 1980's, the Italian government passed a bill in 1985, called Marcora Law, establishing a mechanism by which risk capital is invested in conventional enterprises being transformed into cooperatives or, according to 2001 amendments of the law, also in existing cooperatives. The Marcora law has enabled the establishment of a fund, Cooperazione Finanza Impresa (CFI) – see below – whose supervision has been entrusted to the three Italian cooperative confederations.

The Spanish *Pago Unico*, or the single unemployment benefit payment

Worker-owned enterprises in Spain have the option of receiving 3 years of unemployment benefits in a lump sum, which is called unemployment capitalisation or single unemployment benefit payment (*pago unico*). This provision enables an individual to transfer his/her unemployment benefits to the capital of a cooperative or a *sociedad laboral*¹⁴ that he will be joining as a worker-member, either with the aim of establishing a new cooperative or *sociedad laboral* or joining as a member of an existing cooperative or *sociedad laboral*.¹⁵ This provision is also used by employees willing to buyout the closing enterprise and to transform it into a worker cooperative.

The new French law facilitating business transfers to employees

The French Government is currently preparing a bill on Social and Solidarity Economy and a specific set of measures is announced in favour of worker cooperatives, and notably business transfers to employees under a form of a worker cooperative. A preferential right to employees in the buyout of enterprises is foreseen, as well as training for courts in charge of bankruptcies and professionals dealing with business transfers. The creation of a status for new worker cooperatives that foresee the constitution of a transitory status, that will make the creation or transformation of enterprises by its workers easier, is also planned.

¹⁴ The Spanish *sociedades laborales* share with worker cooperatives the central feature of being constituted by worker-members, and likewise lay a strong emphasis on generating sustainable employment. They are also part of the CECOP-CICOPA Europe network of enterprises

¹⁵ Adrian Zelaia, *Ibid.*, p.133

According to the European Commission's study on business dynamics, special taxation measures for transfers to employees were reported by the 6 following countries: Denmark, France, Greece, the Netherlands, Serbia and Slovenia¹⁶.

¹⁶ "Business Dynamics: Start-Ups, Business Transfers and Bankruptcy", p.103.

Financial and support services for business transfers to employees

The effectiveness and sustainability of business transfers to employees is the fruit of a considerable level of expertise in the organisations specialised in dealing with them, including the national and regional cooperative federations with their advisory and training services, the non-banking instruments of the cooperative system, and cooperative banks.

► THE “NETWORK EFFECT”

In fact, the most essential reason for successful business transfers to employees under the cooperative form is the “network effect”. “This network effect consists of the existence of an advisory environment and substantial financial arrangements. This means that the buyers are always accompanied by specialists, connected with the cooperative movement, when they have to appear before the Commercial Court and submit a takeover plan. This network effect, which is developing particularly in certain regions of France in connection with the Regional Unions of Cooperatives, demonstrates its full efficiency when sporadic sectoral crises occur during which poorly capitalized SMEs have difficulty in resisting and in which solutions involving takeovers as a cooperative had been seen to enjoy an extremely favourable outcome. Such a network effect does not exist outside the world of cooperatives because other enterprise networks are not based on a determination identical to that of the cooperatives in defending their specific characteristics. The same effect can be found in the desire to have financing instruments that are specific to them. In order to set up these instruments, worker cooperatives and their members accept a considerable financial sacrifice in order to be able to pay contributions that allow mutualized capital to be accumulated. It is thanks to this mutual capital that the cooperative movement, through its instruments, can participate in the takeover of ailing enterprises, alongside other investors such as IDES, while accepting a higher level of risk than a traditional investor would be able to accept.”¹⁷

► FINANCIAL NON-BANKING INSTITUTIONS AND INSTRUMENTS FROM THE COOPERATIVE MOVEMENT

Worker cooperatives usually face unfavourable attitudes from banking institutions and very demanding requirements and access conditions when applying for credit and loans. Beyond the fact that the banking or near banking sector is reluctant to grant them credit, their difficulties in accessing venture capital are also related to:

- their profit distribution system which gives priority, in the allocation of the profits, to the granting of returns to members (calculated on the basis of the type of relation between the members and the cooperative, not on the remuneration of capital) and to the indivisible reserve funds;
- their control system, which accords very limited power, if any, to external shareholders (only in certain countries does national legislation provide the possibility for conventional external investors to have an aggregate power equivalent to a maximum of 33%, provided the general assembly of the cooperative approves such structure, which is seldom the case).

Those difficulties have encouraged worker cooperatives and their federations to put

¹⁷ François Soulage, *Ibid.*, p.189.

in place specific financial instruments in order to respond to their needs. In some countries, national laws oblige cooperatives that have positive results to transfer a percentage of their surplus to solidarity funds¹⁸. Those funds are managed by the cooperative federations which provide, more than just financial support, advisory and follow-up services in different fields such as business transfers to employees, but also cooperative start-ups and enterprise development. They intervene through different financial instruments, such as subordinated loans, risk capital, participatory certificates, or guarantee funds. Some of them are entirely dedicated to cooperatives active in industry and services (such as CFI in Italy and Socoden in France), while others are also involved in other cooperative sectors (such as Coopfond and Fondosviluppo in Italy).



An interesting example in this field is **Cooperazione Finanza Impresa (CFI)** in Italy, created in 1986 by the three Italian cooperative confederations (Confcooperative, Legacoop and AGCI) through the Marcora Law, with the specific objective to provide financial support to cooperatives established through business transfers to employees. During its first period of activity, between 1986 and 1997, CFI invested approximately 80 million euros in the equity capital of 160 worker cooperatives set up by workers of enterprises in crisis. Since 2003, CFI has also been financing start-ups, development, consolidation and re-positioning projects in existing cooperatives. From 2003 till 2009, CFI carried out 41 interventions. Of this amount, 51% was provided in the form of participation in the equity capital, 6% to underwrite convertible bonds and 43% in the form of loans. CFI's equity capital has reached 83.7 million euros in 2012 and its total assets are around 106.8 million euros. Between 2008 and 2012, 13 new business transfers to employees have been implemented, saving more than 300 jobs.¹⁹

Industria Plastica Toscana, Italy

An example of business transfer to employees linked to the Marcora law and to CFI is the Industria Plastica Toscana, an Italian worker cooperative located near Florence and established in 1994 upon the initiative of some employees of the former Italian Plastics Industry, who took over the enterprise and transformed it into a worker cooperative following its bankruptcy. The cooperative is active in the production of shopping bags and sacks for the retail and distribution market. CFI provided the cooperative with financial assistance and its consulting in two different periods: in 1996, it provided 2 million euros under the term of the Marcora Law; and in 2009, after a change in the Italian legislation declaring the progressive ban of plastic shopping bags from the market, the cooperative decided to produce biodegradable shopping bags. This change entailed the adoption of new technologies requiring an investment of 2 million euros, which was provided by CFI together with other financing institutions from the cooperative movement, as well as two banks. Thanks to this financial assistance, the cooperative's turnover increased by 230% between 2007 and 2010.

¹⁸ In Italy 3%

¹⁹ Data available on www.cfi.it

Third parties' contribution to business transfers to employees

THE ROLE OF TRADE UNIONS

In 2003, ANCPL, one of the Italian federations representing cooperatives active in the industry and construction sectors, organised a conference on employee buyouts and one of the main themes to emerge was the lack of information among workers and trade unions about this scenario. This was further endorsed by a trade union leader who admitted that, in his own experience, he had always "... been inclined to consider the transfer of a company over to the workers as a last resort solution, once all of the other avenues had been explored and exhausted".²⁰

This statement could be applied to other countries. The lack of awareness and collaboration of trade-unions in transformation processes does certainly not facilitate business transfers to employees. Trade union representatives could have a major role in anticipating and facilitating business transfers to employees; in particular, they could inform the employees in advance about the transformation processes.

Nuova Bulleri Brevetti, Italy

Some successful conversions of enterprises in crisis into a cooperative are the result of a lengthy fight led by the trade unions. This is the example of the Italian cooperative Nuova Bulleri Brevetti, established in 2010, having taken over the running of Bulleri Brevetti srl after an 18 month trade union-led struggle. Bulleri Brevetti was an historical Italian enterprise that had reached a leading position in the manufacturing of machine-tools for the wood industry (from electronic etching to laser cutting). In 1996, the enterprise became part of the Sicar group, which decided to close the Bulleri Brevetti plant in 2009 in order to concentrate its activities in two other companies of the group. The employees then initiated trade union action in order to prevent the closure of the plant. They achieved their objective through the creation of the new cooperative, Nuova Bulleri Brevetti.¹

¹ *Ibid.*, p.59 (footnote)

²⁰ Antonio Zanotti, "Italy: the Strength of an Inter-Sectoral Network" in A. Zevi, A. Zanotti and A. Zelaia, "Beyond the Crisis : Cooperatives, Work, Finance", CECOP Publications, Brussels, 2011, p.58

Conclusions and policy recommendations

The various dimensions of local/regional development (economic, social, environmental and regional impact) and the fight against economic desertification of European regions is a solid argument for strongly advocating the promotion of business transfers to employees, not only in crisis scenarios, but also in cases of healthy enterprises that are going to close down definitively because there is no successor.

The European Commission (EC) adopted a Communication on a new European approach to business failure and insolvency²¹ in December 2012 with the intention to create a more business-friendly environment, for example, by improving the efficiency of national insolvency laws including the length and costs of the period of discharge from bankruptcy. The EC simultaneously adopted a proposal for the modernisation of the Regulation on insolvency proceedings²², aimed at ensuring cross-border recognition of the rescue of enterprises. The "Entrepreneurship 2020 Action Plan"²³ published in January 2013 made business transfers one of its priority actions.



But the EC's main approach of business transfers - "an entrepreneur passes on his or her business to a single acquirer" - is not completely in line with the variety of types of business transfers that can be found in Europe. In the "Entrepreneurship 2020 Action Plan", a whole set of measures are presented for "honest failed entrepreneurs" and second chances for the latter. In the study "Business Dynamics: Start-Ups, Business Transfers and Bankruptcy", published by the European Commission in 2011, "second chance" is presented as a business re-start of a formerly bankrupt or failed entrepreneur.²⁴ What about a second chance for enterprises with a profitable activity?

Despite the variety of types of business transfers that can be found on the ground, if the EU concentrates mainly on the fate of one single person (the "failed entrepreneur") and on measures needed to provide a second chance to the latter, it will miss out other sustainable ways of preventing businesses from disappearing, like family business transfers and business transfers to employees, and specific policies and measures which these specific modalities require.

Another surprising fact is that, until 2004, the EC had consistently hailed business transfer to employees as an important and viable modality of business transfers in various recommendations and communications dealing with the topic. Since 2004, business transfers to employees have not been mentioned any more in EC documents, which is in contrast with the increasing development of such experiences.

Successful business transfers also save jobs and thus prevent employees from the risk of unemployment and in some cases social exclusion. They also create a favourable environment for new jobs: in fact, the 2008 Communication "A Small Business Act for Europe"²⁵ indicates that more new jobs are created in successfully transferred enterprises than in start-ups. Considering the fact that enterprises transferred to their employees in the form of a worker cooperative often show particularly high survival rates over time, EC and Member States should not address business transfers mainly as a career perspective for one individual - the failed entrepreneur - but as an economic and employment solution for European citizens and regions at large, which is particularly relevant in the current situation of massive job losses and enterprise closures. Preventing as many enterprises as possible from closure is in the core interest of the EU and its regions: local wealth and skills are maintained and social exclusion is avoided.

²¹ COM(2012) 742 final

²² COUNCIL REGULATION (EC) No 1346/2000

²³ COM(2012) 795 final

²⁴ "Business Dynamics: Start-Ups, Business Transfers and Bankruptcy", p.149

²⁵ COM(2008) 394 final

WE ADDRESS SOME RECOMMENDATIONS TO THE EUROPEAN COMMISSION AND THE MEMBER STATES

→ When promoting and adopting measures in favour of business transfers, the European Commission and Member States should promote all types of business transfers, including business transfers to employees. Especially in the current situation, the EU can ill afford to deny successful experiences of economic activities maintained on its territory and jobs being saved.

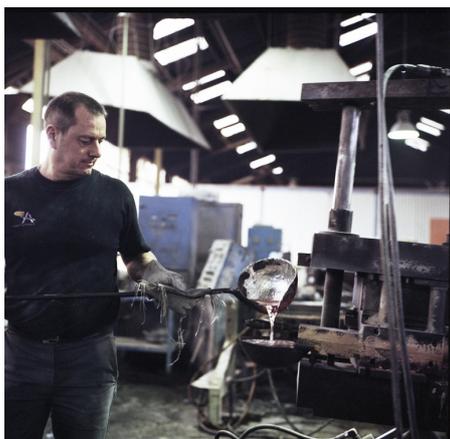
→ Very often, the problem encountered in business transfer to employees is the lack of knowledge about this business scenario amongst business owners, employees, concerned professionals (lawyers, accountants, etc.) and within the judicial system. Training for professionals would thus be essential in promoting this practice. Better knowledge about cooperatives should also be promoted in trade unions and among persons and structures whose mission is to provide information about the creation or transfer of businesses.

→ The conversion of enterprises in crisis into economically sustainable cooperatives requires a precise diagnosis. In addition, the earlier the diagnosis can be established, the more successful and sustainable the restructuring will be. The authorities at all levels should cooperate with the cooperative system in carrying out early diagnoses of enterprise crises and feasibility studies on their transformation into cooperatives. Trade Unions should also be associated in these processes.

→ Preferential rights should be given to employees in order to give them the best conditions for a takeover bid for an enterprise facing closure.

→ Direct financial mechanisms aimed at helping employees invest in enterprises in crisis or without successor in order to engineer business transfers to employees, in particular under the cooperative form, are strongly encouraged. Mechanisms such as unemployment benefits or any other type of benefits available for redundant workers should be available for employees willing to use them as capital for takeover bids for their enterprise facing closure. Worker-owners of the newly established cooperatives should not shoulder the liabilities resulting from the failed company. Training in cooperative management and governance for the future worker-owners should also be promoted.

→ Specific state aid provisions in coordination with fiscal policy should be adopted in favour of saving and developing economically sustainable activities that are threatened by closure, in particular through business transfers to employees.



About CECOP

CECOP - CICOPA Europe is the European confederation of cooperatives and other employee-owned enterprises in industry and services. It groups national federations in 17 EU countries, which in turn affiliate approximately 50,000 enterprises in those sectors employing 1.4 million workers. 10,000 are social cooperatives, employing around 270,000 workers.



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