

Call for proposals

Good practices on addressing pseudo-cooperative practices in labour intermediation

1. Background

1.1. Cooperatives and their contribution to social and economic development

Cooperatives are autonomous associations of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. Cooperatives are important social and economic actors both at national and global levels, with 1,217.5 million members around the world. Employment in or within the scope of cooperatives concerns more than 279 million people, almost 10% of the total employed population in the world. Out of this figure, 27.2 million work in cooperatives, including around 16 million cooperative employees and 11.1 million worker-members. Employment within the scope of cooperatives, comprising mainly self-employed producer-members, concerns over 252.2 million people, the vast majority being in agriculture.¹

All cooperatives must be guided by the following principles that support the social and people-focused nature of their activities:

- Voluntary and open membership
- Democratic member control
- Member economic participation
- Autonomy and independence
- Education, training and information
- Cooperation among cooperatives
- Concern for community

Cooperatives can play a key role in confronting growing inequalities, unemployment, social exclusion and environmental challenges generated under the current growth and globalization model. Cooperative jobs tend to last longer, offer a sense of connection to people, and are better distributed between urban and rural areas (even outside agriculture) than the average. Among the different forms of cooperatives, worker cooperatives have the potential to counter non-standard forms of work toward preserving workers' rights.

1.2. The case of pseudo-cooperatives

There are cases when the cooperative model has been abused by unscrupulous individuals or groups of individuals to advance their own interests deviating from and/or in contradiction to cooperative principles. These "pseudo-" cooperatives may be established to disguise employment relationships, taking advantage of the governance structure of worker cooperatives -where the members are workers and owners at the same time- to circumvent labour laws, resulting in abuses of cooperative regulations and labour codes and violations of workers' rights. Such cooperatives that are not actually driven, owned and controlled by their members have been reported across countries from Brazil and Georgia to Italy and India.²

¹ Eum H. *Cooperatives and employment second global report*, Brussels, 2017.

² See for example: FAO. 2014. *Agricultural Cooperatives in Eurasia*, FAO Regional Office for Europe and Central Asia Policy Studies on Rural Transition No. 2014-3; ILO. 2014. *Trade unions and worker cooperatives: Where are we at?*, International Journal of Labour Research; and Coutinho, et al. 2010. *Cooperatives: An important tool for economic and social inclusion*.

The following practices have been noted both in the private and public sectors to mask the employment relationship between the employer and the worker, resulting in the denial of basic labour rights such as the minimum wage, social protection and benefits, proper working conditions and unionization, among others:

- 1) Registering a company as a worker cooperative, where members are not real members but employees;³
- 2) Practicing illegal transfer of workers by forcing a company's workers to become members of a cooperative;⁴
- 3) In times of austerity and privatization, instances of cooperatives being "encouraged" to be formed by laid-off public sector workers have been noted in a number of countries. This practice consists of firing and rehiring workers as "cooperative member workers"; and
- 4) Using the cooperative as a labour intermediary by registering a large number of workers as "members" and offering their services to third parties.

In these instances, the employers in question falsely refer to the workers as self-employed contractors, even though these latter have not control or authority over the activities of the cooperative that they are claimed to be "members". In some cases, workers' salaries or payments are reduced further by capital share contributions in cooperatives. Instances of such pseudo-cooperatives have been noted in Spain, the Philippines, and in some Latin American countries.⁵

2. Good practices in monitoring and auditing cooperatives

The situation described above has resulted in a negative perception of cooperatives among the public in a number of countries around the world. In many cases, legitimate and real cooperatives have suffered loss of credibility in the face of such abuse of the cooperative enterprise model. In some countries on account of such loss of credibility other institutional forms within the social and solidarity economy are being privileged over the cooperative model. In response to this challenge, ILO constituents and legitimate cooperative movements of countries around the world have devised numerous strategies to monitor and audit cooperatives to avoid such unlawful practices. In some cases regulatory measures have been taken to prevent unlawful practices, in consultation with social partners and the cooperative movement.

ILO Recommendation 193 on the Promotion of Cooperatives, 2002 states that national policies should "ensure that cooperatives are not set up for, or used for, non-compliance with labour law or used to establish disguised employment relationships, and combat pseudo-cooperatives violating workers' rights, by ensuring that labour legislation is applied in all

³ See example for Spain: "Laboro: El fraude laboral de las falsas cooperativas", available at: <http://laboro-spain.blogspot.com/2017/04/falsa-cooperativa.html>

⁴ See example for Spain: "Cuartopoder: Las falsas cooperativas de autónomos: la nueva cesión ilegal de trabajadores, "legalizada"", available at: <https://www.cuartopoder.es/lucha-laboral/2018/05/01/la-nueva-cesion-ilegal-de-trabajadores-legalizada/>

⁵ See for example: International Cooperative Alliance (ICA). 2018. Position paper: "Cooperatives and the future of work"; El País: "Empleo pone coto a las falsas cooperativas de autónomos y obliga a cerrar Factoo", available at: https://elpais.com/economia/2017/08/17/actualidad/1502980859_019100.html

enterprises” and to “define legal obligations of cooperatives in areas such as registration, financial and social audits, and the obtaining of licences”.⁶

Countries in Europe have implemented audit systems for cooperatives to ensure they are complying with the legislation. For example, in France, law n°47-1775 on cooperative status establishes an audit mechanism known as “révision coopérative” intended to verify compliance of cooperatives with the cooperative principles and the interests of their members, and to propose corrective actions. Cooperatives must go through this revision once every five years.⁷

In 2012, Brazil adopted law No. 12.690, providing for the protection of workers’ rights in worker cooperatives. The law defines a worker cooperative as “a society formed by workers for the exercise of their labour or professional activities with common advantage, autonomy and self-engagement to obtain better qualifications, income, socioeconomic situation and general conditions of work” (Art. 2). Although article 90 of the Cooperative law No. 5.764 of 1971 states that “whatever the type of cooperative, there is no employment relationship between it and its associates”, each case has to be analyzed from the angle of its real relationship according to the law of 2012. If there was an employment relationship in reality, it would be the responsibility of the Ministry of Labour to supervise cooperative activities to verify the existence or lack of employment relationships.⁸

In Belgium, the National Cooperation Council was created in 1955 as a response to the emergence of pseudo-cooperatives in the country. The registration with the Council provides the opportunity for cooperatives that follow cooperative principles to set themselves apart from pseudo-cooperatives.⁹

In Italy, in the framework of a national-level initiative led by key cooperative and trade union organizations, provincial and regional observatories on cooperatives have been established to detect and compare phenomena such as pseudo-cooperatives and lack of application of collective agreements. As part of this initiative, there is regular and ongoing dialogue with local and regional bodies of the Ministry of Labour.¹⁰

⁶ ILO: R193 - Promotion of Cooperatives Recommendation, 2002 (No. 193), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R193

⁷ See law n°47-1775 on cooperative status, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000684004>, and CoopFR: “Révision Coopérative”, available at: <https://www.entreprises.coop/revision-cooperative.html>

⁸ See “Nas falsas cooperativas funcionam igual a uma empresa de intermediação de mão de obra”, available at: <https://www.brasildefato.com.br/2016/12/14/nossos-direitos-or-cuidado-com-as-falsas-cooperativas/>; and “Falsas Cooperativas - Fraude na contratação do empregado”, available at: <https://www.direitonet.com.br/artigos/exibir/3640/Falsas-Cooperativas-Fraude-na-contratacao-do-empregado>

⁹ “Measuring the Economic Value of Cooperatives, Mutual Societies and Companies with social purposes in Belgium: A Satellite Account approach, CIRIEC N° 2013/11”, available at: <https://orbi.uliege.be/bitstream/2268/164655/1/WP13-11.pdf>

¹⁰ ILO. 2013. *Trade unions and worker cooperatives: Where are we at?*, International Journal of Labour Research, available at: http://www.ilo.org/actrav/info/international-journal-labour-research/WCMS_240534/lang--en/index.htm

In Spain, the trade unions, UGT and CCOO, have mobilized to condemn workers' exploitation by pseudo-cooperatives in the meat sector. Trade union leaders have had meetings with the Government to request amendments to the legislation, more strict control of pseudo-cooperatives by the public administration, and regular bipartite dialogue between the Government and social actors.¹¹

3. Purpose and scope

The objective of this consultancy is to prepare a report on good practices **in different countries and sectors across the globe** in combatting unlawful practices by pseudo-worker cooperatives. A target audience for the report is the staff of relevant ILO departments and field offices who are working with the ILO constituents in devising response strategies against unscrupulous labour intermediation practices. The report is also expected to inform cooperative organizations about ways they can combat these unscrupulous labour intermediation practices disguised as cooperatives. The goal of the report is to provide them with elements of advice to the ILO constituents, which are inclusive of national cooperative movements and their concerns, taking into account emerging strategies and actions from other countries in countering such unscrupulous labour intermediation practices, including through pseudo-cooperatives.

The report should include the following two parts:

- 1) The negative effects of misusing cooperatives analyzed from the four decent work pillars (employment creation, social protection, rights at work, and social dialogue) and from the competitiveness angle.
- 2) Good practices across the globe aiming at monitoring and auditing cooperatives including but not limited to:
 - Government led initiatives through:
 - o Legislative and policy measures and jurisprudence
 - o National strategies
 - o National committees
 - Workers' organizations led initiatives
 - Employers' organizations led initiatives
 - Cooperative movement led initiatives

These initiatives may include inspection and auditing practices, training of relevant staff, information campaigns, tracking databases, among others.

When possible, these good practices should be categorized according to the four decent work pillars (standards and rights at work, employment creation, social protection and social dialogue) and should also present the impact of their implementation, including joint strategies and actions. While the number of good practices is not specific, the consultant

¹¹ Intensa actividad de UGT y CCOO con la Administración en contra de las 'falsas cooperativas', available at: <https://carnica.cdecomunicacion.es/noticias/26247/intensa-actividad-de-ugt-y-ccoo-con-la-administracion-en-contra-de-las-falsas-cooperativas>

should ensure to present a diverse set of experiences from **countries and sectors in different regions across the world.**

4. Methodology

As a first step, the report should be based on a desk review, focusing on the above mentioned levels i.e. legislative and policy measures, jurisprudence, national strategies, national committees, initiatives led by workers', employers' and cooperative organizations initiatives to monitor and audit cooperatives in order to tackle pseudo-cooperatives, including inspection and auditing practices, training of relevant staff, information campaigns, tracking databases, among others.

The second step consists of phone interviews which will help to reinforce the information obtained from the desk review or obtain new information. The interviews will be conducted with relevant national authorities in charge of cooperatives, representatives of workers', employers' and cooperative organizations (at the national and sectorial levels, including the rural sector when relevant), among other actors identified during the desk review.

5. Deliverables

First deliverable: An inception report, including an annotated outline, the methodology, the list of countries and a work plan, in English is submitted by 7 December 2018 for ILO's review

Second deliverable: A draft report in English is submitted by 15 February 2019 for ILO's review.

Third deliverable: A final draft report in English is submitted by 8 March 2019 for ILO's final review.

6. Number of days and timeline

The total estimated number of days for this consultancy is **30** and will take place between 15 November 2018 and 22 March 2019.

7. Qualifications, experience and competencies

- Advanced degree in law, economics and other social sciences
- Demonstrated experience in undertaken global comparative studies on cooperative legislation and policies, and/or labour intermediation practices, and/or pseudo-cooperatives practices;
- Given the global nature of the study, the consultant should have an excellent command of English and working knowledge of at least one of the other two other official languages of the organization (French and/or Spanish);
- Proven track record of drafting clearly and concisely;

- Ability to analyse a variety of subject matters with an understanding of the interrelationships between the subject(s) under review and the existing legislation and practice.

8. Application process

Candidates interested in this consultancy are invited to submit a technical proposal (not exceeding 10 pages) which should include: i) CV of the person who will undertake the study; ii) presentation of the different tasks to be undertaken and timeframe; iii) suggested methodology; iv) detailed financial proposal. At least one copy of a similar study developed under a previous contract should be included as annex (this will not be counted within the 10 pages limit).

Submissions should be sent to coop@ilo.org no later than **5 November 2018**