

THE THORNY ISSUE OF VOLUNTEERING IN BELGIAN COOPERATIVES



SABINE GARROY
SABINE.GARROY@ULIEGE.BE
UNIVERSITY OF LIÈGE (BELGIUM)



OUTLINE

- **Volunteering**
- **Cooperative**
- **Volunteering in cooperative: when?**
- **Thorny issue : why ?**

VOLUNTEERING

- *« An estimated 1.5 million Belgians devote part of their free time, voluntarily and unpaid, to helping others for a specific purpose. This voluntary commitment generally meets a social need that is not met by the private sector or public authorities, or that the latter are unable to meet for financial reasons. Without the commitment of volunteers, certain sectors and activities could hardly survive. » (Doc. parl., Chambre, 2003-2004, n° 51-0499/001, p. 4)*
- Legal status for volunteers: Act of 3/07/2005
- *« volontariat »* = subset of voluntary work (*« bénévolat »*)

VOLUNTEERING

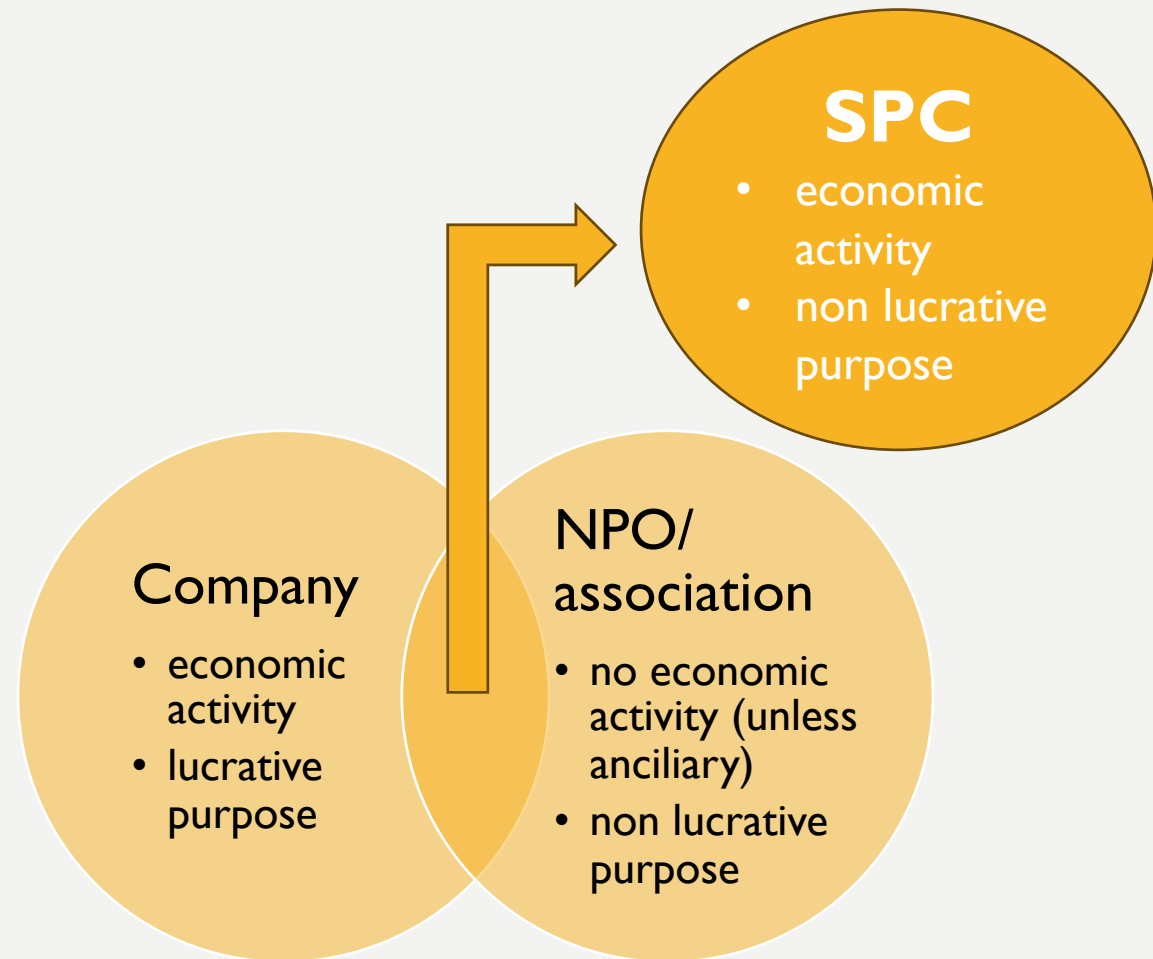
- Legal status of volunteers (i.a.)
 - Liability insurance
 - Reimbursement of real expenses or flat-rate expenses
 - Reimbursement $><$ salary
 - \Rightarrow No taxation for volunteer (tax law)
 - \Rightarrow No subject to social security contributions (social security law)

COOPERATIVE

- Cooperative in Belgium
- Two periods
 - Before the Code of companies and associations (CCA)
 - Since CCA

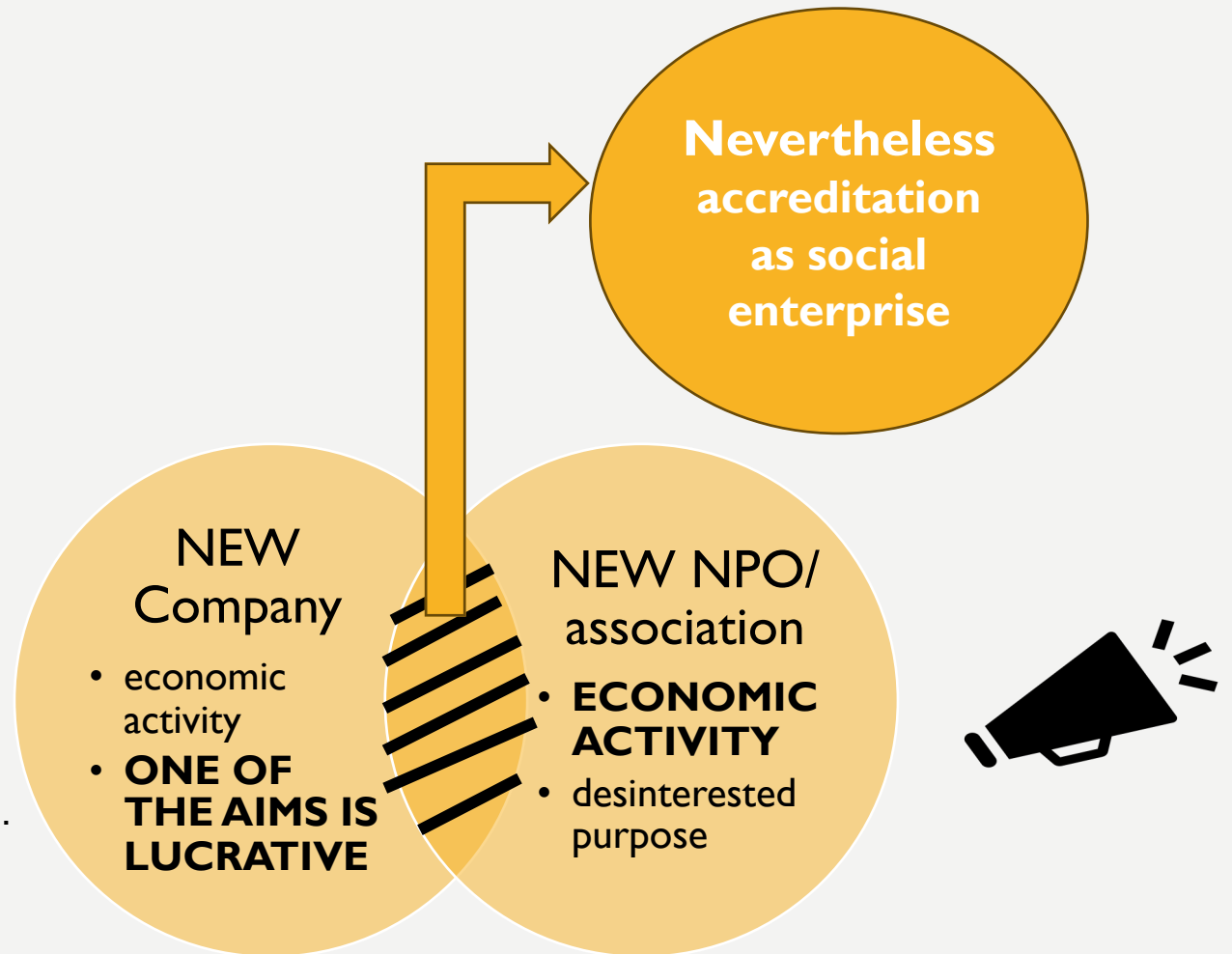
COOPERATIVE

- Cooperative in Belgium before CCA
- Commercial company (1873)
 - Number of partners and contributions variable
 - Shares are non-transferable to third parties
- Flexible framework
 - False and true cooperatives
 - Accreditation for true cooperatives
 - Tax advantages
- Social purpose company (SPC)
 - Variant >< legal form
 - Autoconstitution
 - 85% of SPC = cooperatives



COOPERATIVE

- Cooperative in Belgium since CCA
 - CCA = ?
- Company
 - Variable number of partners
 - « Cooperative purpose »
- Still a accreditation for cooperatives
- No more SPC
 - New system of accreditation
 - Only available for cooperative
 - Accreditation as social enterprise
 - Permitted cumulation of these accreditations...
 - ...but strange



COOPERATIVE

- From 1873 to 2019...
- A same concern in Belgium : how to provide a legal framework for cooperatives?
- The same mistakes :
 - No suitable regulations
 - Now: copy-paste of SRL regulations

VOLUNTEERING IN COOPERATIVE

- When?
 - Citizen cooperatives
 - Cooperative supermarkets



THORNY ISSUE : WHY?

- Legal requirements for volunteering (Act of 3 July 2005):
 - Volunteer: any natural person working for an « ad hoc » organization.
 - « *ad hoc* » organization: any de facto association or legal person under public or private law, **not-for-profit**, which calls upon volunteers

=> Question: is a cooperative a non-profit organization?



THORNY ISSUE : WHY?

- Context



THORNY ISSUE : WHY?

- **Corporate law:** debate
 - Definition of company (art. 1:1 CCA) : one of its purposes is to distribute OR procure for its members a direct or indirect profit
 - Direct profit: dividend
 - Indirect profit: economy
 - Legal requirement for cooperative (art. 6:40 CCA) :
 - Each share participates in the profit or liquidation surplus
 - Specific status only for cooperative accredited as social enterprise (art. 8:5 CCA)?
 - Cap for dividend, respected if no dividend
 - Liquidation surplus devoted to social purpose
 - « *lex specialis derogat legi generali* »

THORNY ISSUE : WHY?

- **Tax law** : recent evolution
 - Requirement (since 1999): NPO submitted to tax on legal persons (>< corporate tax)
 - NPO can be submitted to corporate tax
 - Circular of 3/01/2023:
 - Whether NPO is subject to corporate tax or tax on legal persons is irrelevant
 - « *the NPO must pursue a **disinterested aim, and there can be no enrichment of members*** ».

THORNY ISSUE : WHY?

- **Labor/social security law :**
 - From a social point of view:
 - It is essential for the application of the law on volunteers that the organization pursues a **disinterested aim** and that there is **no enrichment of members**.

THORNY ISSUE : WHY?

- **Remaining question: is a cooperative a non-profit organization?**
- Disinterested aim and no enrichment of members
- Tax law – income taxation:
 - Two requirements – mandatory provisions in the articles of association – to be qualified as NPO
 - 1) a prohibition on the distribution of dividends
 - 2) the disinterested allocation of liquidation surplus..
- Can it be the same for volunteering?
 - Not sure
 - is an indirect benefit sufficient to lose non-profit status?
 - is access to a cooperative supermarket an indirect benefit?

THORNY ISSUE : WHY?

- To be continued...

Many thanks for your attention !