ICA-EU Partnership
Legal Framework Analysis
Regional report: Europe

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International Co-operative Alliance

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I. INTRODUCTION

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- acquire general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organisations, notably the for-profit shareholder corporation (the sociedad anónima lucrativa in Spanish; the société anonyme à but lucratif in French).
- to evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore "cooperative friendly" or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).
- to provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of "cooperative friendliness", which is to say, to make the legislation more favourable to cooperatives, also in consideration of their specific identity.

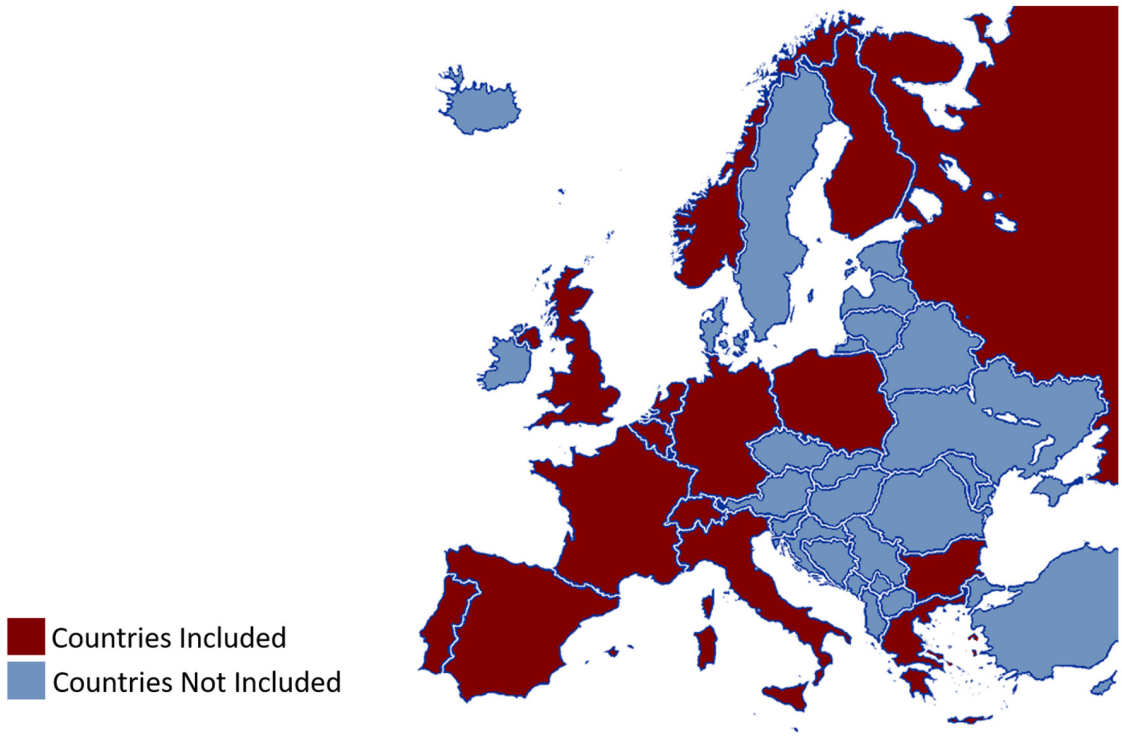
This regional report was written by Ifigeneia Douvitsa (Ph.D.), regional expert for the European region, with input and support from John Emerson of Cooperatives Europe and Jeffrey Moxom of the ICA, who worked collaboratively with the national experts listed below to coordinate the production of the national reports for the region. Dr Douvitsa wishes to acknowledge the valuable feedback of the Chairman of the ICA Cooperative Law Committee (CLC), Dr. Hagen Henry.

II. OVERVIEW OF COUNTRIES COVERED: EUROPE

The regional report is prepared following the completion of **16** national reports drafted by the national experts for the legal frameworks analysis research, which are listed below (Figure 1):

- Belgium – Thierry Tilquin and Maïka Bernaerts
- Bulgaria – Teodora Kuzmanova
- France – Ifigeneia Douvitsa with David Hiez
- Finland – Adj. Prof. Hagen Henrÿ
- Germany – Prof. Hans-H. Münkner
- Greece – Ifigeneia Douvitsa
- Italy – Emmilio Emmolo
- Malta – Dr. Antoine Naudi
- Netherlands – Ger van der Sangen
- Norway – Julie Nåvik Hval
- Poland – Piotr Zakrzewski
- Portugal – Deolinda Meira and Maria Elisabete Ramos
- Russia – Victoria Kutko
- Spain – Isabel-Gemma Fajardo García
- Switzerland – Regina Natsch
- United Kingdom – Cliff Mills

Figure 1 **"Map of countries under study in the European region"**



For the production of the regional report, the national reports listed above were used as a source of reference. A number of reports also contain input provided by member organisations, who gave feedback on recommendations and best practices where applicable. In addition, the regional report took also into account the International Handbook of Cooperative Legislation, as well as the findings of the study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society.

III. REGIONAL COOPERATIVE LAW:

I. Regional Context

The European legislator introduced the European Economic Interest Grouping (Regulation 2137/1985) and the European Company (Regulation 2157/2001) to facilitate cross-border cooperation in Europe. As the regulations above were tailored to the needs and traits of other types of enterprises, they were not perceived as adequate for cross-border cooperation between cooperatives, nor for initiatives that wished to undertake cross-border activities under a cooperative form.[1]

Following a long-term request from the cooperative movement, the European legislator introduced the European cooperative society, with the enactment of the Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society, for which the EC Directive 72/2003 on the participation of workers in the European cooperative society was also enacted. The above legal form may be established by individuals, legal entities (including cooperatives) or a combination of individual and legal entities of at least two European member states, that aim to satisfy their members' needs rather than the return on capital investment.

According to its art. 80, the regulation stipulates that it [...] "*shall be directly applicable in all Member States*", which had to make any necessary adaptation to their national legislation before August 18th 2006.[2] In a few cases, such as in Germany and Belgium, the national experts noted that the regulation for the European Cooperative Society, although it does not include provisions for national cooperatives, has nonetheless influenced the national legislator and led to reforms of national cooperative laws.

Despite initial expectations, the model of the European Cooperative Society has had limited impact, as the low numbers of European cooperative societies indicate.[3] Reasons for this include its limited promotion within Member States, its complex structure, as well as a constant reference to domestic laws. In addition, for some stakeholders, the minimum capital of 30.000 euros is considered to be an obstacle for initiatives wishing to set up a small sized- European cooperative society, such as among natural persons, to undertake cross border activities.[4] Consequently, the regulation's simplification, further dissemination, and a decrease in the frequent references to domestic provisions, are considered to be some of the necessary changes for improvement.[5]

1 Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society, sec. 4 &5.

2 Report From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions, the Application of Council Regulation (EC) No 1435/2003 Of 22 July 2003 on the Statute For A European Cooperative Society (SCE).

3 According to Diesis, Review of European Cooperative Societies (SCE) project 2012 – 2014, February 2014, p. 6, 45 European cooperative societies have been established, out of which only 10 were noted to have «proper business activities». More recently, according to the European Parliamentary Research Service, as of February 2019, «only two dozen cooperatives have SCE status». See Karakas, C. (2019) Cooperatives: Characteristics, activities, status, challenges, European Parliamentary Research Service (EPRS), Members Briefing, February 2019.

4 Report From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions, the Application of Council Regulation (EC) No 1435/2003 Of 22 July 2003 on the Statute for A European Cooperative Society (SCE)., page 7.

5 Cooperatives Europe, Eurisce, Ekai, Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE), final study, executive summary and Part I: Synthesis and comparative report, 5th October 2010, p. 160 -161.

One year after the enactment of the regulation, the 2004 Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of Regions on the Promotion of Cooperative Societies in Europe was introduced.[6] The aim of the communication was to promote the greater use of cooperatives across Europe and to further improve cooperative legislation in the region. Although the text is a policy document with no legal effect, it is worth mentioning because in many instances, it encourages national legislators to introduce an enabling legal environment for cooperatives and provides guidelines for consideration when drafting or reforming laws applicable to cooperatives.

Another document of no legal effect worth highlighting is the Principles of European Cooperative Law ("PECOL" hereafter). The PECOL was drafted by a group of eminent legal scholars aiming at depicting the 'ideal' legal identity of cooperatives and describing the common core of European cooperative law. To the regional expert's knowledge, the PECOL has already been used as a tool to assist the reform of cooperative legislation in countries such as Portugal and Armenia. In addition, it has been highlighted by a number of national experts, who consider it as a firm basis for the comparison between cooperative laws, a useful tool for their suggested recommendations for reform, and a reference for the documentation of good or best practices for European cooperative legislation.[7]

Apart from the documents highlighted here that focus on the European region, it is important to mention the UN 2001 Guidelines aimed at creating a supportive environment for the development of cooperatives, and the ILO Recommendation 193/2002. These international texts offer a set of guidelines for the national legislator to provide for an enabling legal environment for cooperatives in line with their distinctive identity, and are exhaustive in their coverage of the various aspects of cooperative legislation.

6 Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of Regions on the promotion of co-operative societies in Europe/* COM/2004/0018 final */ Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0018&from=EN Accessed 1 July 2021.

7 Gemma Fajardo, Antonio Fici, Hagen Henrÿ, David Hiez, Deolinda Meira, Hans-H. Münkner and Ian Snaith (eds.), Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge et al.: intersentia 2017.

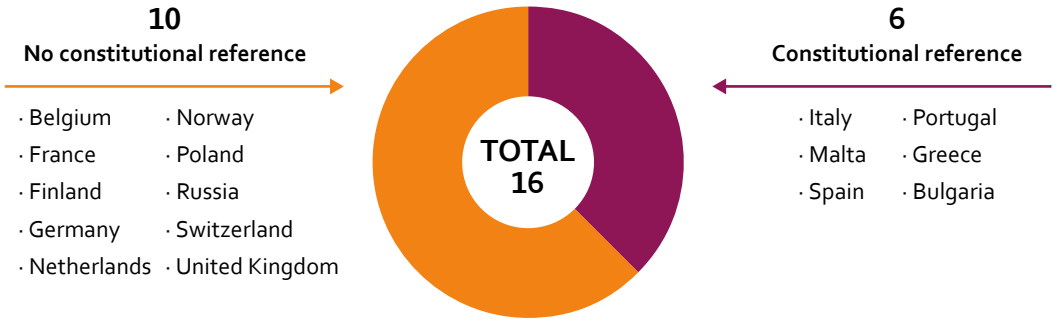
II. Overview of National Contexts

All European countries under study have introduced **specific legal rules** for cooperatives. This demonstrates that cooperatives are a visible type of enterprise for the national legislators. These regulations may be found in separate law(s) on cooperatives (which is the case for most countries studied) or in general laws (e.g., civil codes, codes of companies).

Regarding the **constitutional acknowledgement** of cooperatives, two patterns were detected (Figure 2). On the one hand, there are countries with constitutions in which there are no explicit references to cooperatives, but nevertheless there are general relevant provisions, such as safeguarding the right to form associations in which cooperatives are included. On the other hand, there are a number of countries which, apart from general provisions that may be of relevance to cooperatives, have taken a step further and introduced cooperative specific articles within their constitutions (e.g., Italy, Malta, Spain, Portugal, Greece, Bulgaria).

A common denominator of most of such provisions is the emphasis on the protection and control of cooperatives by the state. Such constitutional reference is considered to safeguard the preservation of cooperatives as a distinctive legal form, as their abolishment would need a constitutional revision. Additionally, it renders visible the cooperative model of enterprise by the supreme law of the country and offers a basis of justification for any measures of support in favour of the cooperatives' development.[8] Usually, these constitutional provisions refer to cooperatives in a general manner and cover cooperatives in all sectors. However, the provisions of the Greek Constitution and certain provisions of the Portuguese constitution refer to specific types of cooperatives, thereby justifying the enactment and preservation of relevant specific cooperative laws. Interestingly, both countries exhibit a high number of special laws on cooperatives, which to a certain degree may be interrelated with their constitutional provisions. In addition, compared with other countries under study, the Portuguese constitution has the highest number of articles dedicated to cooperatives. A noteworthy element included within it is the fact that it safeguards the compliance with the cooperative principles, which is further reflected and specified in the Portuguese cooperative legislation.[9]

Figure 2 "The explicit reference of cooperatives at a constitutional level"



8 For a similar argument made for the Italian constitutional acknowledgement see A. Fici, Italy, Handbook, p. 481.

9 The term «cooperative principles» refers to the ICA principles enshrined in the 1995 ICA Statement on Cooperative Identity

With respect to **what kind of law** the cooperative legislation tends to acquire, three main trends were found:

a. cooperative legislation taking the form of a general law/general provisions applicable to all types of cooperatives, without having any special cooperative laws. This model is being followed by the minority of the studied countries (e.g., Malta, Germany)
b. cooperative legislation taking the form of special laws on different types of cooperatives in the absence of a general cooperative law. Usually, the enactment of special laws is justified on the pursued goal of the cooperative type (e.g., social cooperatives), its activity (e.g., energy, agricultural cooperatives) or the type of membership (e.g., worker cooperatives, such as in Greece, Russia)
c. a combination of the above, which is represented by the majority of the examined countries. In this case, cooperative legislation takes the form of a general law or general provisions on cooperatives that co-exist with special laws or special provisions on cooperatives. The special laws/provisions override the general law/provisions which are applied as supplementary, in the case that a subject matter is not being regulated explicitly in the special laws.

For the majority of countries, as we have seen above, special cooperative laws are a common phenomenon. These laws tend to play a significant role in the legal landscape, as they aim to introduce specific provisions to address the needs of particular cooperative types. Some of the most common cooperative types are agricultural cooperatives, cooperative banks and housing cooperatives. In some cases (e.g., Portugal), special cooperative legislation is also enacted for less common cooperative types, such as education cooperatives, cultural cooperatives and public interest cooperatives. Nevertheless, with their increasing numbers and high level of detail, in some cases they may risk putting the applicability and significance of a general cooperative law into doubt, as in the case of France, for instance. On the other hand, within the selection of countries studied, Portugal remains the sole example where the cooperative legislation is codified under a cooperative code.

ICA principles in the law

As concerns **the cooperative principles**, on one side of the spectrum, there is the unique example of Portugal with a constitutional and legal acknowledgement of the cooperative principles, the non-compliance of which constitutes a reason for dissolution. Next, there are a few countries which make an explicit reference to the cooperative principles in their ordinary laws (e.g., Malta, and most regional cooperative laws in Spain), followed by those countries that only mention the cooperative principles in an explanatory memorandum or in preparatory parliamentary works (e.g., Belgium, Greece, Norway).

References to the cooperative principles have a symbolic significance but, from a legal point of view, they mainly serve as a tool for the legal interpretation of the cooperative legislation by the courts, lawyers, and academics. According to the national experts, the United Kingdom (the UK) and the Netherlands are the two countries under study with no reference to the cooperative principles. In these cases, informal, supervisory norms have emerged, either from the cooperative sector or from other key stakeholders to safeguard compliance with the cooperative principles, such as the voluntary Cooperative Code in the Netherlands or the Guidance of the Registrar in the UK. The latter example demonstrates the importance of complying with the cooperative principles and often leads to finding other ways to address such voids, either by cooperators themselves, or by other authorities involved.

Overall, however, most laws tend to acknowledge the cooperative principles implicitly, meaning that some of their aspects may be reflected in the cooperative's legal definition, as well as in other provisions of the cooperative laws.

III. Specific elements of the cooperative law

I. Definition and objectives of cooperatives

The vast majority of the countries under study have included in their cooperative legislation a definition of a cooperative. In some cases, apart from the general definition, there are also special definitions of various cooperative types that further specify their purpose and activities, based on the cooperative type. On the other hand, in Russia and Greece, there are only special definitions on cooperatives in the absence of a general one, mainly attributed to the overall absence of a general cooperative law. The UK and Finland were the only countries studied where legislation did not offer a definition, according to the national experts. More specifically, the Finnish legislation only highlights certain traits of cooperatives under default rules, whereas the UK does not offer any kind of definition, leaving it to the Registrar and the conditions it sets in its Guidance for the registration of a cooperative as a bona fide cooperative, or as a community benefit society.

Regarding the content of the different cooperative definitions, Portugal and Malta have transferred in verbatim the ICA definition into their legislation, also adding other aspects (notably employment in the case of Malta) as well as stating the compliance to the cooperative principles as part of the cooperatives' definition. An overall dominant feature that emerged from the countries' comparison is the mutual purpose of the cooperative, which is expressed with a different wording in the legal texts (e.g., member promotion, mutual assistance etc.). Except for Switzerland and Norway, where the law focuses on the economic interests of the members, in the remaining countries studied the law refers to economic, as well as social and cultural interests of the members. In some cases, the pursuance of all these interests is on an equal footing, whereas in other cases (e.g., Poland, Germany under the previous legislation, and the Netherlands) the economic interests are the main focus, whereas the social and cultural interests are considered as secondary or optional, or they may be pursued as long they are linked with economic interests or objectives.

On the other side of the spectrum, UK law uses a negative wording when describing the cooperative purpose, not mentioning explicitly what the cooperative's purpose is but rather, what it is not (i.e., profit maximisation). Finland takes a step further by stipulating the member promotion goal under a default rule and therefore permitting cooperatives in their bylaws to pursue any other purpose, not preventing, according to the national expert, the potential for pursuit of profit maximization as a main purpose.

Other aspects that are part of the cooperatives' definition are the variable capital, the variable membership, the autonomy and voluntary nature of the cooperative, as well as an emphasis on the double quality, meaning the participation of members as workers, producers, and/or users in the cooperative's activities.

The element of member promotion in the legal definition of cooperatives indicates that they are expected to transact with their members. Although the issue seems to be left largely to the bylaws to be regulated, in a few cases, it stipulates a legal obligation of the members and a reason for their exclusion, in case they do not transact with the cooperative (e.g., Portugal and in some Spanish laws). In Italy, member promotion renders a criterion in the law for the division of cooperatives between prevalently mutual and prevalently non-mutual cooperatives, and in that manner, obliging the former to mainly transact with their members to benefit from cooperative-specific taxation.

Regarding transactions of the cooperative with non-members, it was noted that in principle they are permitted, if the bylaws allow it. In some countries, conditions and limitations may be found to prevent non-member transactions from becoming the focal point of the cooperative when compared with member transactions. On the other side of the spectrum, we find a number of countries that freely permit transactions with non-members under no conditions or limitations (e.g., Finland, Belgium, Malta). For example, in Switzerland a cooperative may transact exclusively with non-members, as was highlighted by the national expert.

Cooperatives are not prohibited by law to **pursue objectives other than member promotion**, as long as the bylaws permit it. In a number of countries, the legislation has even allowed specific types of cooperatives where the main goal is to pursue the interests of non-members, of the community, or the general interest. Examples include social cooperatives in Italy; social solidarity cooperatives in Portugal; rural cooperatives, cooperatives of social integration, cooperatives of social initiative in Spain, cooperatives accredited as social enterprises in Belgium, social cooperatives for work integration in Finland and Poland, and cooperatives established as community benefit societies in the UK.

In general, a cooperative can undertake any **economic activity** if it is lawful. In some cases, the cooperative legislator explicitly declares that cooperatives can undertake any economic activity or even prohibits any discrimination that is of detriment to the cooperative legal form. Nevertheless, there are still restrictions in certain areas of activity (e.g., in insurance, banking, some activities related to energy provision and distribution and some related to specific professions – such as pharmacies). These restrictions either take the form of preserving activities for specific types of enterprises (from which cooperatives are excluded), or they stipulate specific requirements that cooperatives cannot fulfil (e.g., banking in non-withdrawable share capital). It is not clear what the valid justification behind the above restrictions is, which are contrary to ILO R 193/2002 which states that in sec. 1 that: «*cooperatives operate in all sectors of the economy*" and in sec 7.2 that: "*cooperatives should be treated [...] on terms no less favourable than those accorded to other forms of enterprise and social organisation*".

II. Establishment, cooperative membership and governance

Regarding the **establishment** of cooperatives in the countries under study, it was noted that registration is usually required for the incorporation of the cooperative and the acquisition of legal personality. With a very few exceptions (such as the case of Malta where a cooperative specific register is prescribed by law), cooperatives do not register in cooperative specific registers, but in general registers for commerce or for legal persons.

The Maltese cooperative legislation presents a noteworthy case which provides for a provisional registration of cooperatives. The Supervisory Authority provisionally registers the cooperative for the period of 18 months, permitting the founding members to take all necessary steps to comply with the registration requirements. It then decides whether to cancel the provisional registration or grant it in full.

For the registration process, most laws prescribe for a number of relevant documents to be submitted to the competent authority, separately from the cooperative's incorporation act and bylaws. For instance, in Malta, a feasibility report is also required to be submitted with reference to the economic and practical activities that the cooperative under registration shall carry out. The German legislation foresees for additional measures to be taken to safeguard the new cooperative's resilience and proper functioning, when prescribing for a submission of a pre-registration audit certificate. During the audit, which is carried out by a specialised expert of an auditing federation, the eligibility of the cooperative for admission to the auditing federation is examined, as well as if the interest of the cooperative's members and creditors may be jeopardised.

One other requirement for cooperatives' establishment which is explicitly regulated in the law is the minimum membership. For the countries under study, this varies based upon:

a. the tier of the cooperative (the minimum membership is higher for primary cooperatives compared to those of a higher tier (e.g., federations),
b. whether it consists of physical and/or legal persons (numbers tend to be higher for the former and lower for the latter), and
c. the cooperative type/branch (e.g., a lower number of members is usually required for social and worker cooperatives and a higher number for consumer and service provider cooperatives).

Regarding the **minimum number of members**, in the countries under study the numbers vary between 1 and 10 members. The tendency of decreasing minimum membership in cooperatives has already reached its extreme in Finland and Netherlands, two countries which present an idiosyncratic case where the formation and maintenance of a single-member cooperative is not prohibited by law. This arguably puts the collective nature of the cooperative in jeopardy. Following the above, Norway prescribes for a two-member cooperative; Belgium, Germany, and Portugal for a three-member cooperative and Malta for a five-member cooperative. Numbers tend to be higher in Bulgaria and Sweden (where the minimum number of members is 7) and as Poland prescribes a minimum membership of 10 persons in its general provisions, it requires the highest number of members for a cooperative's establishment.

In case the number of **members becomes lower than the minimum** required by law, in most countries this is grounds for the dissolution of the cooperative. In some countries, the law provides a grace period of one year for the cooperative to increase its membership and comply with the legal requirements on minimum membership.

When it comes to the **admission of new members**, the process stipulated in the laws is rather similar, having the candidate member submit a written application for admission to the competent body of the cooperative, which is usually the management body and in case of refusal, their application may be examined by the general assembly (hereafter "GA") as a form of appeal. Whether the cooperative is obliged to accept the candidate member or not is treated differently from country to country. Based on the national reports, the main trend leans towards the cooperative not being required by law to accept third parties, even if they fulfil the member requirements set in the law and the bylaws. Nevertheless, the refusal needs to be based on reasonable grounds, as the Norwegian cooperative legislator stipulates, or dictated by the activity or social objective of the cooperative, as the Valencian cooperative legislation indicates. Exceptionally, the law in some types of cooperatives under specific conditions obligates non-members to become members (e.g., in the Valencian cooperative legislation, when the number of worker non-members exceeds that of worker members, and for worker non-members with indefinite contracts that work at the cooperatives for more than two years, if requested, they must become members). In other cases, the law may obligate the cooperative to accept new members (as is the case in housing cooperatives that must accept candidate members with the right to premises, or in the case of the general interest housing cooperatives in Germany, which are obligated to accept the members nominated by the local authorities).

Regarding **members and if they may withdraw** from the cooperative, the general rule is that they are usually free to leave the cooperative. Nevertheless, the bylaws may pose certain restrictions to exercising the above right. These restrictions may take the form of:

a. minimum time required between the submission of the departure notice and the termination of membership (e.g., Bulgaria, Norway, Poland),
b. minimum time required of membership (e.g., Malta, Finland),
c. additional conditions, such as paying exit fees (e.g., Netherlands).

In some cases, such as Germany and Switzerland, the legislator permits for extra measures to be taken within the bylaws to safeguard the cooperative's existence from member departure, such as by permitting a payment delay of the member's shares, if cooperative capital decreases below the minimum required by law, or by stipulating penalties to the withdrawing members if their departure causes losses to the cooperative or puts the cooperative's existence in jeopardy. On the other hand, these restrictions cannot under any circumstances lead to the abolishment of the member's right to withdraw from the cooperative. In this context, the legislator in Switzerland, for instance, considers any permanent ban or excessive obstacles to member's departure as null and void.

The **voting power of members** in the GA is explicitly regulated in the countries under study. A few countries introduce the "one member-one vote" norm as a mandatory rule, such is the case of Bulgaria, Russia, Poland for cooperatives with natural persons or natural and legal persons, Greece, Spain, and Portugal for specific types of cooperatives (e.g., worker cooperatives).

For the majority of countries, the one member-one vote norm is introduced as a default rule, whilst permitting plural voting rights as long as the bylaws prescribe it. However, Belgium presents a unique case where the default rule is "one share-one vote", which may be restricted under one member-one vote in the cooperative's bylaws.

Overall, in the countries studied, the legislator may associate the acquisition of multiple voting rights with:

a. the composition of members: such is the case of Poland where plural voting rights are only permitted where cooperatives consist of legal persons,
b. the number of members of the cooperative: e.g., in Portugal up to three votes per member are permitted for cooperatives with less than 50 members and up to five votes per member are permitted for cooperatives with more than 50 members,
c. the tier of the coops: in higher level cooperatives there is usually more flexibility regarding plural voting rights (e.g., Germany and Malta do not impose any limits on plural voting in higher level cooperatives),
d. the branch/type, as mentioned above.

Regarding the **criteria for the attribution of plural votes**, on one side of the spectrum there are countries, such as Portugal, where the mandatory criterion is cooperative transactions. On the other hand, for most countries the acquisition of plural votes based on capital contributions is not prohibited (e.g., Finland, Netherlands, Italy for cooperatives consisting of legal persons).

The law may also impose certain restrictions on plural voting rights, such as by specifying the maximum number of votes per member, setting a maximum percentage of plural votes on the basis of the total number of votes, or excluding plural votes for important decisions taken by the GA with a high majority (e.g., Germany).

Concerning the **governance bodies** of cooperatives, the laws in the countries under study tend to prescribe for three bodies:

a. the GA, which is the supreme body of the cooperative, usually decides on the most crucial matters for the cooperative (such as amendments to bylaws, election of the management body, allocation of annual returns, mergers, conversions, financial accounts, or dissolution of the cooperative). In large cooperatives, the law may also allow for a meeting of delegates or a sectorial GA.
b. a management body ("MB" hereafter) which is responsible for the management and representation of the cooperative,
c. a supervisory body ("SB" hereafter) that supervises the cooperatives and controls the management body.

The laws may permit the bylaws to prescribe for a manager and other committees or bodies, which are usually appointed by the MB.

Many countries have introduced a simplified structure for small cooperatives either under the form of a sole director or/and sole supervisor or by stipulating for a MB and no SB. This structure can be found in Portugal, Germany, Italy, Spain, Netherlands, as well as some cooperative types in Greece, Russia, and Poland.

As for the need to have qualified experts which are usually non-members to help with the management of the cooperative, the legislator responds differently from country to country. On one side of the spectrum, there are countries where the laws foresee only cooperative members as members of the MB, e.g., Bulgaria, Malta, Portugal, and Germany. However, in Malta and Portugal, experts who are non-members may join the SB. In Germany, there is a trend of experts joining the cooperative as "associate members", aiming not to participate in cooperative transactions, but solely to provide their expertise. On the other side of the spectrum, there are countries, such as Belgium, Netherlands, Norway, Poland, and Russia, that allow non-members to join the MB. In some cases, such provisions are accompanied with restrictions to ensure that the majority of the MB members shall be members of the cooperative, for example in Italy, Switzerland and Spain. It is also worth noting another trend, found in a few countries, such as Spain and Greece, where a worker representative may also join the MB according to the conditions set out in law.

III. Cooperative financial structure and taxation

For the vast majority of the countries studied, cooperative laws do not prescribe for any **minimum capital** as a prerequisite for the cooperative's establishment and even in countries that previously have had such provisions (e.g., Portugal, Belgium), they have abolished them, leaving the matter to be regulated in the bylaws. Although a specific minimum capital may not be requested by law, the founding members must justify that it is adequate to serve the scope and activity of the cooperative (e.g., in Norway). On the other hand, most regional cooperative laws in Spain prescribe for 3.000 euros as the minimum capital required for the establishment of a cooperative, which is the same amount as for private limited companies.

Generally, founding members (when establishing the cooperative) and members who join the cooperative, may **contribute to the cooperative capital** with one or multiple mandatory shares, entry fees and voluntary shares, if prescribed for in the cooperative's bylaws. In most cases, the laws do not forbid diverse contributions amongst the members, although the mandatory share tends to be of the same amount for all members. Whether the contributions made by members are linked to the volume of transactions is a matter that tends to be left to the bylaws to regulate. In general, upon member withdrawal or the dissolution of the cooperative, the member is entitled to their subscribed capital, usually at its nominal value.

Except for a few countries, such as Belgium, Norway and the UK, most countries prescribe for the formation of a **legal reserve** and for a minimum percentage of the profits to be allocated to its formation or augmentation. In some cases, such allocation is mandatory until it reaches a certain threshold, e.g., the amount of 2.500 EUR (as in Finland), or the amount of the share capital as a whole or in parts (as in Malta, Poland, Switzerland). A number of countries also prescribe for other funds, which may be mandatory or voluntary and serve particular goals, such as investment, education, training or the overall development and promotion of cooperatives (e.g., Bulgaria, Italy, Malta, Portugal, Spain). It is worth highlighting that in a number of legislations, such reserves are totally or partly indivisible during the lifetime of the cooperative (e.g., Germany, Italy, Netherlands, Spain).

Regarding the **allocation of profit** to members of the cooperative, it is noted that the laws permit it, except for specific cooperative types, such as social cooperatives in Poland or social cooperative enterprises in Greece, where there is a profit distribution constraint. The legislator may mention that such allocation can occur based on members subscribed capital or their transactions with the cooperative. The above matter is either regulated by default rules, which can be overturned in the bylaws, or left entirely to the bylaws to regulate it.

More specifically, there is also the treatment of **patronage refunds**, which concerns profits from transactions with members which are then returned to those same members, in proportion to their transactions with the cooperative. To a large extent, the concept is not addressed within cooperative laws, except in a few exceptions, such as Malta. Consequently, they are not fully distinguished from dividends, which are defined as profits distributed to members based on the subscribed capital, except in a few exceptions such as Spain. However, in Spain, the national expert notes that although the division between patronage refunds and dividends is present in most cooperative laws in the country, there is a tendency of expanding the concept of patronage refunds to other cooperative transactions, thereby including other results and transactions.

When it comes to **investor members**, who participate in a cooperative with the purpose of investing their capital and not to transact with the cooperative, generally only a low number of countries permit their admission, such as Germany, Italy, Portugal, Spain, and the UK. Usually, when allowing the bylaws to accept investor members, the legislators also set restrictions in the form of a maximum percentage of the shares that investor members may acquire (e.g., in Portugal), the votes that they can hold or the number of seats that they can have in the cooperative organs (e.g., Italy, Germany). Such limitations aim to prevent investor members from acquiring a dominant position and significant power in the

cooperative, to the detriment of members or users of the cooperative. It is also worth noting that in Spain, there is the concept of the *socio colaborador* (member-collaborator), who joins the cooperative to submit its capital but is also expected to collaborate with the cooperative in other ways.

Further, the cooperative laws tend to be open and permit cooperatives to use common **financial tools**, such as member loans (e.g., Italy, Norway, Russia). In some cases, the legislators take a step further and prescribe for specific financial instruments. These are usually accompanied by conditions to be fulfilled for their issuance and payment, such as the use of bonus certificates in Malta, the holder of which is entitled to claim payment on the date specified in the certificate, but no earlier than 5 years, for the bonus shares which may not be withdrawn or transferred earlier than 10 years following their issuance. In Portugal, there are investment securities, which prescribe for a compensation based on a fixed and variable rate and for bonds under a fixed rate.

In the case of the **dissolution of the cooperative**, after covering the cooperative's debts and after returning the initial subscribed capital to the members, part or all of the remainder is permitted to be allocated to the members, in some cases. The above issue is regulated either with default rules that can be overturned in the bylaws, or it is entirely left to the bylaws to decide, and even to permit an allocation based on member's capital contributions to the cooperative. On the other hand, the principle of disinterested distribution, although highlighted in sec. 3.2.5 of the 2004 EC communication on the promotion of cooperative societies in Europe[10], is not protected under mandatory rules in most cooperative legislations. An exception to the above trend can be found in a few countries, such as Portugal, Spain, Italy, Malta, and consumer cooperatives in Russia, where the remainder shall be transferred to another cooperative or association of cooperatives, to a fund or a public entity dedicated to the promotion and development of cooperatives. In some cases (e.g. Poland, Switzerland), apart from cooperative purposes, the remainder may also be allocated for social goals under specific conditions. A similar remark may also be made in case of conversion in countries where this is not forbidden by law (e.g., Bulgaria and Poland).

With respect to how cooperatives are treated under **tax law,**[11] in principle, they are mainly subject to the general tax regime in the same manner as other types of businesses. In some cases, the legislator prescribes for special provisions related to cooperatives, such as:

a. tax exemptions or lower tax rates for specific types of cooperatives (such as social cooperatives),
b. full or partial tax deductions of cooperative taxable income,
c. a set of criteria for cooperatives to receive tax advantages.

Nevertheless, the overall trend leans towards tax law not properly and fully enhancing the legal nature of cooperatives, thereby discouraging cooperatives from acting according to their nature. In most countries, the law treats patronage refunds and dividends or divisible and indivisible reserves in the same manner. In certain cases, the applicable tax provisions may lead towards a disadvantageous tax treatment of cooperatives. The case of Poland is a good example, where the phenomenon of double taxation of cooperatives applies for surplus distributed to members for which both cooperatives and members are taxed.

10 See COM/2004/0018 Final.

11 The regional report, drawing upon the information provided in national reports, is mainly focused on cooperatives' tax treatment from the income tax perspective.

IV. Other specific features

From the comparative analysis of the countries under study, it is evident that cooperatives are subject to a general regime of **external control/supervision** (where it exists), in the same manner as any other legal entity or commercial company. In addition, a special regime of control is also prescribed by the legislator for certain sectors of activity (e.g., banking, finance, or insurance), which cooperatives are also subject to when undertaking such activities.

In some cases, the legislation on cooperatives introduces specific provisions regarding the external control of cooperatives and a simplified regime for small cooperatives. The competent authority exercising such supervisory tasks is either the state, public entities, or auditing cooperative organisations, who are authorised to perform such tasks for their affiliated cooperative members. The affiliation to such auditing cooperative organisations may be mandatory (Germany is the sole example within the countries under study) or voluntary (e.g., in Italy, Poland). In the latter case, when cooperatives are not affiliated to an auditing cooperative organisation, then they are usually subject to control by the relevant state or public entities.

Control takes place during the establishment of the cooperative, examining whether all requirements are fulfilled by law, but also periodically by verifying if requirements continue to be met during the lifetime of the cooperative. Apart from the ordinary control described here, the law may prescribe for extraordinary control upon request by, for example, the competent cooperative organ, or a percentage of cooperative members. Control tends to focus on cooperative's observance of the legislation, bylaws and the decisions of the governance bodies, as well as on its financial stability (based on its financial accounts), including through the provision of relevant advice and guidance, to address any shortcomings or infringements.

In a few cases, the legislation may include provisions that interrelate such supervisory tasks with the verification of the cooperative's particular nature. Two examples include prescribing for sanctions in case of an infringement of the cooperative principles (in Portugal), or evaluating management performance based on various criteria, including the promotion of members (in Germany). In some countries, such as Italy and Belgium, a verification that cooperatives act according to their nature is a prerequisite for them to benefit from cooperative specific taxation.

From the above, it may be suggested that the broader picture shows an overall absence of cooperative-oriented control in most countries under study, which is not yet in line with sec.6 (c) of ILO Recommendation 193/2002, according to which governments should provide a supportive policy and legal framework [...] which would "*provide for the adoption of measures for the oversight of cooperatives, on terms appropriate to their nature and functions*".

Regarding **cooperation among cooperatives**, the study suggests that cooperatives are in principle free to associate with other legal entities of a cooperative or non-cooperative nature. Such collaboration may take the form of a contractual relationship or lead to a more permanent structure of forming a new legal entity (or joining an existing one) of a cooperative or non-cooperative nature. In addition, cooperation among cooperatives may be developed horizontally or vertically, aiming at socio-political and or economic purposes.

In the countries under study, as a general rule, cooperatives are free to promote their interests by establishing or joining other organisational legal forms that are regulated by other fields of law, such as civil or commercial law (e.g., associations, companies etc.), or enter into contracts with each other or with other legal entities.

With regards to whether and how cooperative legislation may implement the principle of cooperation among cooperatives, two trends were detected:

a. the absence of special rules for such cooperation, leaving thus the matter to be regulated by other fields of law and the bylaws, which represent the minority of the examined countries (e.g., Belgium, Finland, Netherlands, UK),
b. the enactment of special rules for such cooperation, stipulating the available legal forms, as well as specifying their way of establishment and governance. The latter trend was found in the majority of the studied countries (e.g., Bulgaria, Germany, Greece, Italy, Poland, Portugal, Russia, Spain).

In these countries, cooperation for socio-political purposes (such as representation towards public authorities, advocacy, advice, training and education, conflict resolution among the cooperatives or cooperatives and their members), tends to take different forms than cooperation for economic purposes (pursuing common economic interests for the affiliated cooperative-members); such as federations and confederations (usually in the form of associations) for the former and second-tier cooperatives and cooperative groups for the latter. In practice however, the line between the cooperation for socio-political and for economic purposes is blurred. In Spain for instance, over the years representative cooperative organisations have pursued economic purposes and economic cooperative organisations have represented their cooperative-members in representative bodies.[12] In addition, in countries such as Italy and Spain, the cooperative legislator not only enables such cooperation, but in fact it takes a step further by providing specific incentives to promote it. These incentives may take the form of:

a. the formation of mutual funds from a part of the cooperative's profits, which may be established and managed by representative cooperative organisations,
b. the distribution of the remainder after a cooperative's liquidation to representative cooperative organisations,
c. the delegation of external audit to cooperative organisations,
d. the participation of representative cooperative organisations in consultative bodies, and
e. the provision of tax benefits and subsidies to cover operational costs.

IV. DEGREE OF "COOPERATIVE FRIENDLINESS" OF THE LEGISLATION IN THE REGION

The term "cooperative friendly" is not necessarily perceived in this report as an indicator of a favourable or advantageous treatment of cooperatives, compared to other types of enterprises. Instead, in the view of the regional expert, it is taken here to depict a legal environment that treats cooperatives firstly in accordance with the cooperatives' nature and traits as the ILO Recommendation 193/2002 stipulates in sec. 6, and secondly, on terms no less favourable than other companies and business organisations (sec. 7(2) ILO R. 193/2002). Whether the legislation of a country is considered as cooperative friendly or unfriendly, can not only be limited to the organisational law on cooperatives, but should ideally take also into account how other fields of law treat cooperatives. The legal frameworks analysis research primarily deals with the organisational law on cooperatives as a starting point for the analysis. Future research in cooperative development could consider extending this more systematically into other fields of law.

Based on the national reports reviewed, the vast majority of countries consider the legislation on cooperatives to be **cooperative friendly** to a lesser or greater degree. Nevertheless, in the case of Greece (for several cooperative types), Poland (from the perspective of surveyed member organisations) and the UK (from both expert and the surveyed member organisations' perspectives), the legislation is perceived as rather **cooperative unfriendly**. This may be justifiable, as extended reforms seem necessary

12 G. Fajardo, Spain in: Principles of European Cooperative Law: Principles, commentaries and national reports, p. 603.

to take place in order to address crucial issues, such as the cooperative legislation's fragmentation, the proper acknowledgement of the legal nature of cooperatives, and adequate measures for the state support and promotion of the cooperative model.

Overall, the national experts indicated a number of shortcomings and legal barriers for cooperative development. These are not only associated with the organisational law on cooperatives, but in many cases with other fields of law as well. In particular, in the case of the organisational law on cooperatives, national experts pointed out a variety of general issues, such as:

a. the structure of cooperative legislation: including the issue of fragmentation of cooperative legislation,
b. the nature of cooperative legislation: the flexibility of cooperative legislation is in some cases viewed negatively, when it does not guarantee the legal nature of cooperatives with mandatory provisions and leaves the matter to be regulated in the cooperatives' bylaws (e.g., the Netherlands, the UK),
c. the pace of reform for cooperative legislation: in some cases (such as in Greece) cooperative legislation is too frequently and swiftly reformed, whereas in other countries (such as Norway and Poland), reform has been undertaken too slowly.

National experts also pointed out a number of issues regarding the content of cooperative legislation, associated with:

a. the definition of the cooperative: such as the case of Belgium and Poland where a further clarification and orientation of cooperatives to the purpose of member promotion is needed,
b. the regulation of specific types of cooperatives: such as the case of worker cooperatives in Netherlands, where an enabling legal environment to facilitate their development is highlighted by the national expert,
c. the capital structure of the cooperative: such as the lack of differentiation between patronage refunds and dividends, that would enable a differentiated tax treatment (e.g., Poland and Greece), and the lack of new financial tools (e.g., Poland),
d. the governance scheme of cooperatives: such as the absence of a simplified governance structure for small cooperatives (e.g., Poland), and the prevention of management professionalisation by recruiting qualified persons to join cooperative bodies (e.g., Portugal).

Although the national reports mainly focus on cooperative law, part of their discussion examined issues emerging from other fields of law that have an impact on cooperative development. In particular, tax law, competition law, public procurement and accounting standards were mentioned most often in the national reports, mainly due to the complexity and the lack of clarity of the applicable provisions on cooperatives, as well as the overall neglect of a differentiated treatment of cooperatives when compared with stock companies.

Regarding whether the law provides for incentives for cooperatives, the general picture shows an overall absence in the legal texts. However, when such incentives are provided, in some cases they tend to focus on particular types of cooperatives (e.g., social cooperatives), whereas in other instances, their effectiveness and significance was considered to be limited in practice. One example includes the case of Bulgaria, where the national expert highlights the cooperatives and cooperative unions' one-off fee exemptions regarding their establishment, restructuring, termination, and liquidation. Another example concerns the Netherlands and its public procurement provisions on social enterprises, which may be applicable to cooperatives with a social purpose, but its actual implementation remains limited in practice.

The national experts also discussed the promotion of cooperatives. Based on the findings of the national reports, promotion, rather than being supported or undertaken by the state, is mainly left to the cooperatives themselves and their representative organisations to be addressed.

V. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE LEGAL FRAMEWORK IN THE REGION

This section examines the recommendations for the improvement of national legislation and highlights best practices that were documented by national experts and member organisations. These recommendations cover a broad range: from the organisational law on cooperatives and other fields of law applied to cooperatives, to laws concerning implementation and evaluation.

National experts pointed out key issues within the national reports which include but are not limited to the following points:

a) The recognition of cooperatives at a constitutional level:

The constitutional recognition of cooperatives may increase the visibility of the cooperative model and justify any supportive measures, as previously stated. In this regard, the cases of Portugal and Italy were mentioned as good practice examples. However, in practice it has been shown that the ordinary legislator may demonstrate inertia in translating such constitutional provisions into applicable ordinary laws, as the case of Greece demonstrates, with the absence of adequate support measures for cooperatives, despite the existence of a relevant constitutional clause.

b) The approximation of cooperative law as a reply to tackle fragmentation:

A number of national experts pointed out the issue of fragmentation of the cooperative law. Fragmentation hinders the comprehension, interpretation and application of the law. Depending on the country, the fragmentation may occur due to:

- a high number of special laws in the absence of a general law (e.g., Russia, Greece),
- general provisions that are applicable in principle to all cooperatives, scattered in different legal acts (e.g., Italy),
- a general law with special provisions on certain types of cooperatives and, in addition, separate special laws for special cooperative types (e.g., Poland),
- recognising legislative authority over cooperatives at the regional level which leads to enacting regional laws that regulate cooperatives differently within one country (e.g., Spain).

The national experts have suggested the enactment of a general law on cooperatives to address fragmentation in the case of its absence (e.g., in Greece, Russia), and further highlighted the case of Portugal as a good practice for the codification of the cooperative law to improve consistency in the cooperative legislation. In addition, the Spanish expert argued in favour of harmonising the regional cooperative laws within the country.

c) The enactment and/or reform of rules on special cooperative types

A further point made in the national reports refers to the improvement of the legal rules on special cooperative types. National experts identified the need to enact or reform special laws or provisions on certain cooperative types which are tailored to their needs. Examples include insurance cooperatives, worker cooperatives, and cooperative banks. In this context, a particular concern shared by a number of national experts was in enacting or reforming special laws on cooperatives with a general or social purpose, or expanding the goal of cooperatives to include the pursuit of a social or general purpose.

d) Simplifying the establishment of a cooperative

The need to simplify cooperative law overall is a point of note from the national experts and especially the process of cooperative establishment. In many cases, the establishment of a cooperative is hindered by complex bureaucratic processes and strict conditions. In this regard, the Portuguese case of Cooperative *na hora* (on the spot cooperative), according to which interested parties may form a cooperative on the same day and before a single counter, may offer a good case of simplifying the establishment process. On the other hand, the German expert raises a concern in the argument of

oversimplifying cooperatives' establishment and views the requirement of pre-audit registration (considered as burdensome by some) as a necessary step to guarantee the viability and the overall public image of cooperatives. Therefore, careful consideration is needed in order to introduce a simple, easy and affordable/no-cost process as sec. 6 (a) of the ILO Recommendation 193/2002 demonstrates, whilst at the same time setting proportionate conditions to guarantee the viability and functioning of the cooperative.

e) The abolishment of restrictions that prevent cooperatives from undertaking activities in all sectors of the economy

Such restrictions have been noted in a minority of countries and for certain sectors (such as for instance in insurance, banking, some activities related to energy provision and distribution and some related to specific professions – such as pharmacies). Their justification does not seem clear and needs to be revisited, as some national reports suggest, to enable cooperatives to undertake any type of activity, as. ILO Recommendation 193/2002 states.

f) Addressing the cooperatives' isomorphism with stock companies

Several practices that some laws may enable, such a single-member cooperative, dividing all reserves to members before and after dissolution, distributing profits to members and using financial tools tailored for stock companies, as well as acquiring voting rights based on capital distribution, may be blurring the line between cooperatives and stock companies, thereby contributing to the trend of companisation. To this end, a number of good practices established under various countries were noted, such as:

- the differentiation between patronage refunds and dividends
- the formation of reserves, a part of which shall be indivisible
- the distribution of the remainder after liquidation to the support and development of the cooperative movement
- the formation of vertically integrated cooperative systems in which cooperative-specific audit is provided to the integrated members' cooperatives.

On the other hand, a different approach to the matter above was taken by some national experts and member organisations. They perceive the flexibility that more and more cooperative laws demonstrate, either by remaining silent or introducing non statutory provisions that can be overruled by the bylaws provisions, as a positive step, as it permits tailoring the bylaws to the specific needs of the cooperative. It therefore leaves the protection of cooperative principles to the discretion of cooperators and their bylaws.

Considering the above, the need to maintain a balance seems to emerge, on the one hand by providing cooperators enough autonomy and space to decide their own internal affairs when drafting their bylaws, but at the same time, stipulating guarantees and setting limits within the law that may prevent cooperatives from being approximated to stock companies, and consequently preventing the loss of their particular identity.

g) The governance scheme of cooperatives

Introducing a simplified governance structure for small cooperatives (e.g., Poland) and hiring qualified persons to join cooperative bodies due to their qualifications (e.g., Portugal) were some of the proposals made for the improvement of the governance structure of cooperatives, stipulated by the law.

In addition, the issue of digitalisation and how the law may regulate the use of new technologies in order to facilitate the governance of cooperatives, without compromising member control and data protection, was also another issue mentioned by national experts. Such discussion becomes highly relevant under the current circumstances of the COVID-19 pandemic, where physical meetings were either limited or prohibited, demonstrating how important it is for national legislators to consider the issue.

h) The implementation and evaluation of cooperative law:

Suggestions to improve the implementation of cooperative laws were also made by national experts, such as by harmonising cooperative law with other laws and enacting all necessary legal acts to support the implementation of the cooperative law.

The topic of a cooperative-oriented control is a key issue to be considered by national legislators. This may focus not only on financial matters, but also on member promotion and cooperative principles, as well as preventing the emergence and maintenance of false cooperatives[13], which are key issues for the effective and proportionate implementation of cooperative law provisions.

In addition, regarding the improvement of existing cooperative laws, national experts also argued in favour of a democratic co-construction process, where representative cooperative organisations would participate in the evaluation, development and reform of existing cooperative legislation. In the view of the regional expert, such a process should not remain informal, but needs to be become formal and regulated within the law by prescribing for a competent consultive body consisting not only of governmental officials, but also of cooperative representatives.

i) Other fields of law:

Although the focus of the Legal Frameworks Analysis research is mainly on the organisational law on cooperatives, an issue that emerged during this study referred to other fields of law, such as tax law, competition law, public procurement and accounting standards. The latter fields of law were suggested to introduce simple and clear provisions on cooperatives in line with their legal nature and "*on terms no less favourable than those accorded to other forms of enterprise and social organisation*", as sec. 7(2) of the ILO Recommendation 193/2002 stipulates. Future research is encouraged to shed some light into these preliminary remarks, exploring at both the national and regional levels how these fields of law are intertwined with cooperative law and what kind of impact they may have on the development of cooperatives.

j) Cooperative promotion and support:

At present, the promotion of cooperatives is mainly left to cooperatives themselves and their representative organisations. In this regard, the formation of mutual funds from a part of the profits of cooperatives, which are managed by their representative cooperative organisations, was considered to be a good practice observed in certain countries studied, such as Italy. Apart from by the cooperatives themselves, cooperative promotion could be also further enhanced in other ways, such as the re-establishment of public institutions dedicated to the promotion and support of cooperatives, in which cooperative participation should be represented by a significant number of representatives.

Another measure for cooperative promotion that was suggested by national experts was the enabling of worker buy-outs, meaning the transformation of enterprises that may face financial difficulties into employee-owned worker cooperatives. In this regard, the Spanish and Italian provisions that facilitate ownership transitions were highlighted as examples of good practice to inspire other legislators.

National experts frequently advocated for the incorporation of cooperative studies in the curricula of universities and schools, a recommendation present in the majority of countries studied. National experts also considered addressing the need to train governmental officials and educate policy makers on cooperative-related matters. Both measures are crucial for contributing to the greater sustainability and public understanding of cooperatives.

13 False cooperatives may be defined as initiatives that undertake the form of a cooperative with the sole purpose of exploiting financial and other benefits or/and circumventing labour law or other obligations.

VI. CONCLUSIONS

The Legal Framework Analysis for Europe studied 16 countries from the Western, Eastern, Northern, and Southern part of the region, where cooperatives have had a different historical background and varying degrees of development.

This regional pluralism is undoubtedly reflected in the legal systems of the countries studied and is also visible in the way the national legislators perceive and regulate cooperatives. In particular, some countries experts noted that cooperatives are viewed primarily through the lens of the business enterprise, and actually may encourage similar behaviour and treatment to stock companies (e.g., Norway, Switzerland), whereas other countries focus more closely on their social, cultural and community characteristics (e.g., Italy, Portugal).

Overall, cooperatives are a visible type of business for the legislator, as all countries under study have introduced **specific legal rules** for cooperatives, one third of which have taken a step further and introduced explicit cooperative provisions within their constitutions.

Despite the expected and perhaps commendable pluralism, some common features were noted in the most countries under study, such as:

- the co-existence of general law /provisions applicable in principle to all cooperatives, along with special laws/provisions for specific cooperative types,
- the implicit acknowledgement of the cooperative principles,
- the existence of a legal definition of cooperatives which, in the case of Portugal, took the form of transferring the ICA definition as it is into the legal text,
- the reference to the mutual purpose of the cooperative,
- the enactment of special cooperative types that pursue the social and/or general interest,
- the decrease in the required minimum membership, reaching its extreme in Finland and Netherlands, where the formation and maintenance of a single-member cooperative is not prohibited by law,
- the introduction of "one member-one vote" norm as a default rule and abstaining from prohibiting the acquisition of plural votes based on capital contributions,
- the prescription of a general assembly, a management body and a supervisory body as the cooperative **governance bodies**, which mainly consist of cooperative members,
- the absence of a **minimum capital** as a prerequisite for the cooperative's establishment and its abolishment in countries that previously introduced such provisions (e.g., Portugal, Belgium),
- the **profit allocation to members**, either regulated by default rules which can be overturned in the bylaws, or left entirely to the bylaws to regulate,
- the neglect of acknowledging the concept of **patronage refunds** and consequently distinguishing them from dividends,
- not enabling the admission of **investor members**; an institution which is present in only a small number of countries,
- permitting cooperatives to use common **financial tools** and in some instances even prescribing for specific financial instruments, usually followed with conditions to be fulfilled for their issuance and payment,
- the absence of protecting the principle of disinterested distribution of the remainder after liquidation with mandatory rules,
- the categorisation of cooperatives within the general tax regime and therefore the resulting identical treatment of patronage refunds and dividends or divisible and indivisible reserves, which may be contrary to equal treatment
- the overall absence of cooperative-oriented control,
- the introduction of special rules for cooperation among cooperatives.

With regard to identifying and overcoming existing legal barriers, the national experts highlighted a number of key points. In an attempt to systematise both barriers and recommendations (as Figure 3 strives to do) a four-layer process appears to emerge which involves the following interrelated axes:

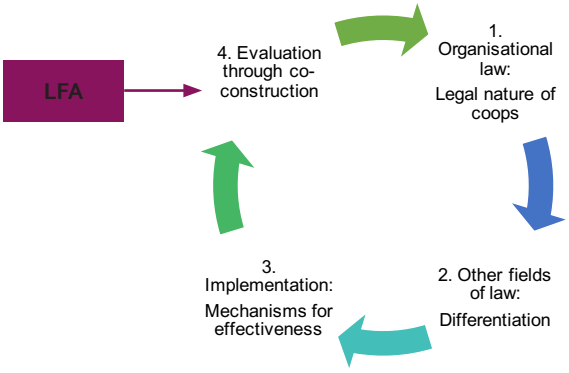
e. the organisational law on cooperatives: this may be considered as the starting point in order to establish a clear profile of cooperatives in the law,
f. other fields of law: establishing a sharp cooperative profile may pave the way to offer a basis of justification for other fields of law to differentiate cooperatives from stock companies,
g. the issue of implementation: even if the legislator introduces an enabling legal environment for cooperatives, this may remain a '*lettre morte*'; therefore, effective monitoring mechanisms, provision of incentives and (re)establishment of public institutions for the promotion of cooperatives, as well as inclusion of cooperative studies in all tiers of education, are necessary steps,
h. evaluation through co-construction: evaluating the legislation through a democratic co-construction process is necessary with cooperative representatives having a say in developing, drafting, enacting, and reforming cooperative law and policy.

A number of the above points were also brought to the fore in the other regional reports of the Legal Framework Analysis research. These include the need to focus on the effective implementation of legislation in the regional report of Oceania or the recommendation to have an adequate tax system for cooperatives in the regional report of the Americas. Therefore, if we strive to look above and beyond the veil or fabric of the existing legal pluralism, there may be a number of emerging common legal barriers and shortcomings across regions, with the potential to inspire and encourage cross-border advocacy initiatives. In this regard, the research may become an enabler, as it provides:

a. information on the status of the cooperative legislation in a particular country/region,
b. recommendations on its improvement from both experts and cooperatives perspective, and
c. good practices from other countries and regions as a source of inspiration for future reforms. In addition, the LFA, if updated periodically, can be a useful tool to monitor the development of cooperative legislation over the years and depict its trajectory in the short and long term.

With regard to the study's limitations, it should be noted that during the development of the Legal Framework Analysis research for the European region, a number of research questions emerged during its study, which exceeded its main focus on organisation law on cooperatives: such as the need for a comprehensive examination on key fields of law, such as on taxation, competition and accounting standards, as well as the recent legal initiatives on social enterprises, social and solidarity economy and their impact on the development of cooperatives. Overall, the European legal landscape of the studied countries depicts a picture of high complexity, deep fragmentation, excessive flexibility - even in key matters of cooperative identity, while embracing two opposite trends. On the one hand, there is the trend of companisation, with the approximation of cooperatives with stock companies, and on the other hand, the trend of socialisation. Socialisation concerns the establishment of social or general interest cooperatives, along with the enactment of social enterprise laws and social and solidarity economy laws, therefore leaving open the question as to where the law stands in the perseverance of the traditional cooperative model and whether and how such transitions may affect cooperative legislation in the coming years.

Figure 3: The life cycle of cooperative legislation



VII. ANNEXES

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Contacts

Further details on the legal framework analysis research and other country reports are available on www.coops4dev.coop

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