LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: FINLAND

ICA-EU PARTNERSHIP

#coops4dev

International Co-operative Alliance

Co-funded by the European Union

TABLE OF CONTENTS

National Expert: Adj. Prof. Hagen Henrÿ

I. Introduction

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. This 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:

- provide 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.

- 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 report presents the main results of research to examine and analyse cooperative law in Finland, its general context and main elements, including how adequate it may be for cooperatives. Finally, conclusions and recommendations for the improvement of the legal framework are considered.

Section II of this report is based upon work authored by Adj. Prof. Hagen Henrÿ, University of Helsinki, Chairperson of the International Cooperative Alliance (ICA) Cooperative Law Committee, supported and coordinated by staff from Cooperatives Europe and the ICA.[1] The latter authored Sections III, IV and V, Section IV with input from the national expert, Section III with inputs from the Finnish ICA member Pellervo Coop Center - a service and lobbying organisation for Finnish cooperatives and forum for cooperative activities.

II. National cooperative law: Finland

i. General Context

Cooperatives are regulated by a special law in Finland, namely the Law on Cooperatives [Osuuskuntalaki], 14.6.2013/421 (hereinafter: the Act). The Law on Cooperative Banks and Other Credit Institutions in the Form of Cooperatives [Laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista], 28.12.2001/1504, pertains to some organisational features specific to these financial institutions. They concern mainly prudential mechanisms. In addition, there is a special Law on housing stock companies [Asunto-osakeythiölaki], 22.12.2009/1599. These companies are to a certain extent comparable to housing cooperatives in other countries. Strictly speaking, the Law on European Cooperatives [Eurooppaosuuskuntalaki], 19.10.2006/906, constitutes another source of cooperative law in Finland. This law provides for the implementation of the European Council Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE), as far as it concerns SCEs registered in Finland and to which the Act applies by default.

The Constitution of the Republic of Finland does not mention cooperatives explicitly. The following laws are those relevant to cooperatives:

- **Law on Cooperatives** [Osuuskuntalaki], 14.6.2013/421
- **Law on Cooperative Banks and Other Credit Institutions in the Form of Cooperatives** [Laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista], 28.12.2001/1504
- **Law on Housing Stock Companies** [Asunto-osakeythiölaki], 22.12.2009/1599
- **Law on European Cooperatives** [Eurooppaosuuskuntalaki], 19.10.2006/906

[1] The text of section II was prepared by Hagen Henry based on previous work published in 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, pp. 137-162. Staff of Cooperatives Europe and the International Cooperative Alliance also contributed directly to the other sections, in accordance with the national expert.

There is no specific, explicit or implicit, reference as such in the Act to the ICA principles (cooperative principles), as laid down in the 1995 ICA Statement on the cooperative identity (ICA Statement).

The Act allows for the formation of one-person cooperatives, for the transferability of membership under certain circumstances, for the tradability of shares and stocks, for the figure of stock-exchange cooperatives and even to determine any objective, including a profit-seeking objective. At first glance, this casts doubts on whether the Act conforms to the cooperative principles. However, these doubts are attenuated because, in addition to the features stipulated in Sections 2 and 3 of Chapter 1, such as liability of the members to further calls or reserve liability [lisämaksuvelvollisuus], variable member share capital etc., the Act contains a number of principles which reflect the cooperative principles and which are detailed throughout the Act. Chapter 1, Section 6, lays down the majority principle [enemmistöperiaate], while the rights of minorities are protected at several instances.

The other principle is the principle of equality [yhdenvertaisuus] (Chapter 1, Section 7). This relates to the equal position of the members and the equality of shares and stocks. It is also repeated and detailed in the following chapters, for example in Chapter 5, Section 14 concerning decisions by the general meeting and in Chapter 6, Section 1 concerning the decisions by the board of directors. Both sections contain principles in the sense that they are subject to specification and modification through the Act or the bylaws. Otherwise, it is not clear whether they are legal principles or mere guidelines for the interpretation of the law.

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

In Finland, the Act does not define cooperatives. It simply states in Chapter 1 Section 2 that cooperatives acquire legal personality through registration, and in Section 3 that the number of members, the amount of shares and the share capital are variable. It also states that cooperatives may in addition have stock capital and stocks and that the assets of cooperatives may be distributed only to the extent permitted by the Act. Elements of the concept of cooperative underlying the Act are however scattered throughout the text, but there is no compact definition.

According to the general classification of economic organisational forms in Finland, cooperatives are “societies”. This is of relevance because a number of laws apply to this category, for example the Law on the information on enterprises and corporations [Yritys- ja yhteisötietolaki], 16.3.2001/244, and the taxation laws. As for the latter, the consequence is that corporate income tax is, in principle, levied on cooperative profit/surplus in the same way as it is on the profit of stock companies.

The Act places great emphasis on the (principle of) autonomy of cooperatives. According to Chapter 1, Section 9 the members may determine their affairs freely through the

bylaws. The Act contains few mandatory rules. The bylaw autonomy goes as far as allowing setting through the bylaws an objective which is that of stock companies, namely the pursuit of profit maximisation (see Chapter 1, Section 5, Chapter 8, Sections 1 and 10, as well as Chapter 16, Section 1).

Given the wide autonomy to regulate through the bylaws of the cooperatives, it is difficult to specify the main legal characteristics that distinguish cooperatives from other legal types of business organisations. The default rules of the Act reflect the generally accepted characteristics, i.e. a distinct objective, voting rights equal per head, distribution of results in proportion to transactions, etc. All of these characteristics may, however, be altered through the bylaws.

As a distinctive feature one might mention that the powers of the members are wider in scope and can – at least in theory – be made more easily effective than those of holders of stocks in a stock company.[2]

With regard to the purpose of cooperatives under the law, Chapter 1, Section 5 specifies the objective of cooperatives as follows: "[...] The purpose of a cooperative shall be to promote the economic or business interests of its members by way of the pursuit of economic activity where the members make use of the services provided by the cooperative or services that the cooperative arranges with the help of a subsidiary or otherwise. The bylaws may determine another purpose." [3]

Determination of whether or not members are promoted is hampered by three facts. Firstly, the Act does not prescribe a specific cooperative audit whereby the question of whether the members have been promoted during the audited period could be answered. Secondly, the Act leaves it to the bylaws to decide whether the remainder of the surplus (as to the confusion of "surplus" and "profit" see below) after deductions for the reserve fund if any, among others (Chapter 16, Section 6), is distributed at all, whether it is distributed to members, what form the distribution takes, and how much of the surplus is distributed. It is held that the surplus belongs to the cooperative. A claim to patronage payments may only be based on a respective decision of the general assembly, which decides upon the proposal by the board of directors (Chapter 16, Section 8). The bylaws may therefore stipulate that all or part of the surplus is paid in the form of patronage refunds, in the form of interest on the paid-up shares or stocks, or in the form of a dividend on shares or stocks. Thirdly, the Act does not distinguish between "surplus" and "profit". [4] It uses the term "surplus" [ylijäämä] to signify the positive result. In practice, this has led to the term "surplus" acquiring the meaning of both "profit" and "surplus". Profits are seen as part of the surplus and may therefore be distributed. This explains the income tax treatment of cooperatives and the further harmonisation of the rules on the distribution of surplus with that of profits in stock companies.

---

[2] A special type of cooperative is the stock-exchange cooperative. The Act defines in Chapter 5, Section 2 as stock-exchange cooperatives those cooperatives whose shares or stocks may be traded on the stock exchange according to the Law on Trading in Financial Instruments [Laki kaupankäynistä rahoitusvälineillä], 748/2012.

[3] Translation by Mr. Hagen Henry, national legal expert for this report.

[4] Possibly, the differentiation between "surplus" and "profit" disappeared with the introduction of the possibility to transact also with non-members. However, the use of the word "surplus" [ylijäämä] by the legislator cannot be seen as a pure linguistic matter, as there is a word for "profit" ["voitto"].

The objective clause establishes an obligation of cooperatives to promote the interests of the members with a corresponding subjective right of members to be promoted. The answer to the question of whether the members have an obligation to use the services of the cooperative is less clear. Where the members run a business themselves, competition law needs to be considered. Should a member not conduct any business with the cooperative (over a longer period of time), this may be reason for the termination of membership. Because the Act itself is silent concerning membership criteria, it gives no answer. Bylaws may provide one.

Transactions with the members are the means to achieve promotion. Legally, membership and transactions are two separate relationships. The Finnish law thus follows the "double relationship theory". The transactions take place between the cooperative and its members directly, or the cooperative "arranges [these transactions] with the help of a subsidiary […]". A systematic reading of Section 5 of Chapter 1 and of Section 12 of Chapter 8 results in applying the definition of subsidiaries as contained in Chapter 1, Sections 5 of the Bookkeeping Act ([Kirjanpitolaki], 30.12.1997/1336), i.e. a subsidiary exists when at least 50% of the shares are held by the cooperative. Chapter 8, Section 12 contains also a positive answer to the question of whether a cooperative may have subsidiaries for purposes other than that of providing services to its members. The purpose clause in Chapter 1, Section 5 does not, however, allow for "pure holding" cooperatives without any economic activities. All other "promotional" measures are voluntary and are being taken sporadically. They underlie merely the equal treatment principle.

Cooperatives may engage in activities/business with non-members and in practice most do so, unless the bylaws determine otherwise, and implied that non-member business supports the purpose of the cooperative, which is the promotion of its members. The Act does not specify any limitation, nor does it set any parameters for the bylaws in this regard or specify whether the services of the cooperative may be provided to non-members on the same conditions as they are to members. Because no consequences would ensue, in terms of taxation or profit/surplus calculation for example, this may be a theoretical matter. In practice, many cooperatives differentiate between member and non-member business by granting bonuses to members. Considering that membership requirements are often minimal, the difference is more symbolic than real. However, it becomes relevant in worker cooperatives, for example, especially when both members and non-members may be workers in the cooperative, as to each group a different set of rules applies.

In regard to other objectives, with the exception of the "Law on Cooperative Banks and Other Credit Institutions in the Form of Cooperatives", there is no organisational law dealing with special objectives, like for example, social objectives. The 2003 Finnish Act on social enterprises ([Laki sosiaalisista yrityksistä], 1351/2003) does however regulate the substance matter of social cooperatives (work integration of disabled and long-term unemployed persons) in a similar manner as do the laws of other countries, such as Italy and Spain. Because Chapter 1, Section 5 states that the members are free to set another objective than the one laid down in the Act, the cooperative may, however, also serve

non-members and the general interest. There are no state restrictions as concerns the activities a cooperative may carry out, provided they are licit.

b) Establishment, cooperative membership and governance

Chapter 2 of the Act regulates the forms and modes of the establishment of cooperatives. A cooperative may be established by one or more persons. The minimum number of members is also one. This is not expressly regulated, but it follows from the deletion of a respective section on the minimum number of founders/members in the previous law (Law 2001/1488), and it is a given for relevant sections of the Act, for example Chapter 5, Section 1 dealing with the meeting of members.

According to Chapter 2, Section 8, the application for registration must be completed within three months from the signing of the incorporation contract. The minimum main content of the incorporation contract according to Chapter 2, Section 2 consists of the following: submission of the bylaws with the contents as prescribed by Chapter 2, Section 3; data on the founding members; their shares; the names of the members of the board of directors; and the names of the auditors and controllers, if any. The details of the registration are regulated by the Law on the Commercial Register [Kaupparekisterilaki], 129/1979. There is hence no special register for cooperatives. It is noted that registration confers legal personality upon the cooperatives (Chapter 1, Section 2 and Chapter 2, Section 9).

Chapter, 2 Section 3 regulates the mandatory contents of the bylaws as follows: indication of the trade name of the cooperative according to the Law on Trade Names [Toiminimilaki], 2.2.1979/128, of the seat of the cooperative in Finland, its field of activity and the financial year, if this is not specified in the incorporation contract (Chapter 2, Section 2). The Act does not suggest any non-mandatory content for the bylaws. The government is empowered to issue model bylaws by decree (Chapter 2, Section 3).

A cooperative may also be established through a merger of cooperatives, including with cooperatives registered abroad, or through splitting, if the usual safeguards concerning especially third-party interests are ensured (Chapters 20-22). Furthermore, practically any other type of enterprise may convert into a cooperative.

Chapter 3 regulates cooperative membership. The Act does not regulate on the personal eligibility criteria for membership; however, the bylaws or the board of directors may set these criteria. Whereas the bylaws may state that any of the other organs of the cooperative (general meeting of members or supervisory committee, if any) can be empowered to decide on a written application for membership to be addressed to the board of directors, the admission procedure and the admission criteria can only be set by the board of directors (Chapter 3, Section 1). The bylaws may establish a right to admission (Chapter 3, Section 1). The Act does not specify the criteria for such a right.

Membership may also be acquired through transfer, if the bylaws so allow: Chapter 1, Section 4. According to the same Section, members may transfer their shares within the limits stipulated in the bylaws. The transfer is tantamount to a resignation. It ends

membership, while the transfer itself becomes effective only if the transferee is admitted as a new member (Chapter 1, Section 4).

Finally, holders of shares or stocks, other than members, are not members despite their having a number of rights similar to those of members, such as, for example, the right to participate in the general meeting, if the bylaws so stipulate, and the right to be informed. The Act distinguishes between members and shareholders or stockholders.

In principle, a member may resign at any time. The bylaws may however stipulate a minimum period of membership, not exceeding three years (Chapter 3, Section 2). In addition, members have an extraordinary right to withdraw from membership, if the general meeting decides to alter their rights to a significant extent or in the case of restructuring (Chapter 5, Sections 21 and 35).

When voting, each member has one vote. The bylaws may grant more than one vote, but any member may have more than 20 times the number of votes of another member only where the bylaws provide that the majority of members must be cooperatives or other legal persons, or where at least one member must be a legal person under public law (Chapter 5, Section 13). This means that in other cooperatives the bylaws may grant plural voting rights and one member may have up to 20 times the number of votes of another member. The Act does not specify the criteria according to which these plural voting rights may be granted. In cooperatives with a low number of members this regulation might conflict with the principle of democracy. Special rules apply in stock-exchange cooperatives, unless the bylaws stipulate otherwise, Chapter 5, Section 13.

GOVERNANCE

The mandatory governance structure comprises the general meeting of members, the members, and the board of directors (Chapter 6, Section 1). In addition, the bylaws may provide for the establishment of a supervisory committee and for the nomination of a manager (Chapter 6, Section 1). The bylaws may also establish additional organs (Chapter 6, Section 25).

The highest decision-making power is vested with the members. This is underlined by the rule establishing the principle of autonomy (Chapter 1, Section 9.) and by the power of the members, based on a respective rule in the bylaws or a unanimous decision by the general meeting, to exercise the powers of the board of directors or those of the manager in cases specified by the members (Chapter 5, Section 3).

The Act uses the term “general meeting” [osuuskunnan kokous] for both the physical general meeting and the unanimous decision-taking in writing without a physical meeting (Chapter 5, Section 1). The former may be in the form of an ordinary or of an extraordinary general meeting. Members with at least 10% of the total number of voting rights may call for a general meeting. If the bylaws so provide, the general meeting may be replaced with a delegate meeting (Chapter 1, Section 6; Chapter 5, Sections 1, and 37-43). [5]

[5] Under certain circumstances the general meeting/assembly of members may be replaced with a meeting of delegates. They are elected by the members. Most frequently this possibility is being used to overcome practical problems involved when a large number of members should come together for the general meeting.

Besides the powers/obligations to deliberate and decide on budget issues, surplus and loss distribution, discharge of the board of directors (Chapter 5, Section 4), election of office holders, matters relating to organisational restructuring and matters the members may request to be dealt with (Chapter 5, Section 6), the main power of the general meeting is that of amending the bylaws (Chapter 5, Sections 29-31 and 34).

In addition to the members, non-member shareholders and stockholders may participate in the general meeting if and as far as the bylaws so stipulate (Chapter 5, Section 7). Non-member shareholders and stockholders have rights to be informed and to ask questions comparable to those of the members (Chapter 5, Sections 22, 23, 25 and 27).

The members of the board of directors, as well as the members of the supervisory committee and the manager, if any, may participate in the general meeting unless the general meeting excludes their participation in a specific case (Chapter 5, Section 11).

In specified cases, auditors and controllers, if any, may attend and speak at the general meeting (Chapter 5, Section 11; Chapter 7, Section 13).

Under specific conditions, the members, like the members of the board of directors, of the supervisory committee and the manager, if any, as well as non-member holders of shares or stocks, have a right to appeal before a court of law against a decision of the general meeting (Chapter 5, Sections 36 and 42; Chapter 24, Section 1). The right of the latter group may be restricted through the bylaws except in cases concerning their shares or stocks (Chapter 24, Section 1 and Chapter 5, Section 32).

BOARD OF DIRECTORS AND MANAGER

The management of cooperatives is vested with the board of directors (board), composed of 1-5 members, unless the bylaws stipulate another number (Chapter 6, Sections 1 and 8). Any matter not within the exclusive power of the general meeting may be – and must be – dealt with by the board.

The board members are elected by the general meeting, unless the bylaws grant this power to the supervisory committee, if any (Chapter 6, section 9). Less than half of the members of the board may be installed through another procedure if the bylaws so stipulate (Chapter 6, Section 9). The Act does not specify what is meant by “through another procedure”. It is held that outsiders may nominate these board members. The Act does not specify whether the board members have to be members of the cooperative. Chapter 6, Section 10 regulates some eligibility criteria for the board members, but it does not answer this question, nor does it lay down any professional qualification criteria for the board members. In principle, at least one member of the board must be a resident in one of the member states of the European Economic Area (Chapter 6, Section 10).

The board may exercise the powers of the manager in specific cases or, if the bylaws so allow, in general (Chapter 6, Section 7). The board may devolve a matter which is within its powers or those of the manager for decision to the general meeting or to the supervisory committee (Chapter 6, Section 7), if any.

In addition to the board, cooperatives may have a manager – member of the board or not – to be appointed by the board, unless this power is given through the bylaws to the

general meeting or to the supervisory committee (Chapter 6, Sections 20 and 21), if any. In principle, the manager must reside within the European Economic Area. The manager is responsible for the current operations of the cooperative (Chapter 6, Section 17). S/he has a right to attend and speak at board meetings unless the board decides otherwise for all or specific cases (Chapter 6, Section 18). S/he must inform the board and its members in a manner that enables them to perform their tasks (Chapter 6, Section 17). Similarly, the board, the members of the board, and the manager must inform the supervisory committee and its members in a manner that enables them to perform their tasks (Chapter 6, Section 22). These rules are of particular importance, given that, in Finland and elsewhere, modern cooperatives, especially those with intensive market links, suffer from a triple information gap. There is usually an information gap between the manager and the board, between the board and the supervisory committee and between the supervisory committee and the members, remedied in part by an obligation of the manager and the board to answer questions of the members during the general meeting (Chapter 5, Section 27).

Supervisory committee. The bylaws may provide for the establishment of a supervisory committee composed of at least three members elected by the general meeting. Board members and the manager may not be members of the supervisory committee (Chapter 6, Sections 1, 21 and 23). The supervisory committee has a dual nature. On the one hand, it is part of the leadership structure (Chapter 6, Section 1); and under certain conditions the bylaws may vest it with management functions. On the other hand, it supervises the work of the board and that of the manager (cf. Chapter 6, Section 21). Its powers are limited to setting broad guidelines, and it may not interfere in everyday operations (Chapter 6, Section 21). As said, the board, the members of the board, and the manager must inform the supervisory committee and its members in a manner that enables them to perform their tasks (Chapter 6, Section 22).

At least as important as granting democratic control rights is the provision to the members of adequate information and knowledge which enable them to exercise their control rights effectively. In fact, the Act establishes a number of rights to be informed, for example basic information on annual accounts must be made accessible to members in due time before the general meeting (Chapter 5, Section 23). In cooperatives with no more than ten members, members have a right to inspect the accounts unless the board refuses this right on grounds that inspection would be detrimental to the cooperative (Chapter 7, Section 14). Members have a right to ask during the general meeting for a special audit (Chapter 7, Section 5). However, especially in the absence of a supervisory committee or a cooperative specific audit, the average member risks not having or understanding this information and knowledge. Education, training and audit are therefore of key importance. The Act does not contain any provision on education and training. Cooperatives are, of course, free to provide education and training and use funds for this purpose. In practice they do so.

Chapter 1, Section 8 establishes the obligation of those in leadership positions [johto] to act in the interest of the cooperative. According to Chapter 6, Section 1, the leadership consists of the board of directors, as well as the manager and the supervisory committee, if any. It is not clear whether the members of the board of directors and of the supervisory

committee have this obligation also individually, as in other instances the Act distinguishes in this respect (see for example Sections 17 and 22 of Chapter 6.).

c) Cooperative financial structure and taxation

The Act contains an elaborate system of rules on the financial structure of cooperatives. The equity is composed of tied-up equity [sidottu oma pääoma] and free equity [vapaa oma pääoma] (Chapter 8, Section 1). The former category consists mainly of the share capital, the voluntary reserve fund and the stock capital. All other funds, as well as the surplus of the current and the preceding financial year, form the latter category. Under specified conditions and safeguarding the rights of creditors, the value of the share capital, of the stock capital, and of the reserve fund may be reduced (Chapter 18, Section 1).

The Act also addresses shares and stocks. In addition to the obligatory minimum of one share per member (Chapter 9, Section 1), the cooperative may issue shares and stocks for members and non-members (Chapter 1, Sections 2 and 3; Chapter 2, Section 1; Chapter 9, Section 2), unless the bylaws exclude this possibility. However, in principle, only members have residual rights. Under certain conditions, the right to acquire shares and stocks may be restricted to specific persons (Chapter 9, Section 5). The cooperative itself may hold shares and stocks, but without any rights being attached to them (Chapter 2, Section 2; Chapter 9, Sections 1 and 2; Chapter 19, Section 1). Shares and stocks may be paid in money or kind [apportti], but not in the form of work or services (Chapter 2, Section 6).

The Act does not specify the minimum value of shares and stocks. It does not limit the number of shares or stocks that a member or non-member may hold; nor does it rule on the proportion of the amount of member versus non-member financing.

The bylaws may stipulate that shares or stocks are of different classes. In this case, the bylaws must specify the difference as far as rights and obligations are concerned (Chapter 4, Section 1). These differences in rights and obligations may pertain, for example, to the subscription price, to the compensation out of the surplus, or to the amount to be refunded upon termination of membership or otherwise.

Neither shares nor stocks grant voting rights in the general meeting (Chapter 4, Section 3), unless the bylaws stipulate otherwise, for all or a specific class of shares or stocks. This means that, in principle, stocks are voiceless (preferred) stocks, as also known in other capitalistic enterprise types. The Act thus maintains one of the main distinctive features of cooperatives, namely the de-emphasis on capital and the reduced influence of investor interests. The voting rights of members who hold shares or stocks in addition to their obligatory share may be determined according to their holding of shares or stocks in the same way as plural voting rights are determined according to Chapter 5, Section 13 (Chapter 4, Section 3).

Shares which have been acquired voluntarily in addition to the obligatory one share may be returned at any time (Chapter 4, Section 1), and they may be transferred. The effects

of the transfer of shares are limited by the rights attached to them at the moment of the transfer, unless the transferee becomes a member or shareholder by decision of the general meeting or unless the bylaws stipulate otherwise. The transfer of stocks may be restricted through the bylaws (Chapter 1, Section 4; Chapter 4, Section 5). Shares may be converted into stocks; stocks may be converted into shares (Chapter 4, Section 1).

With regard to shares, the number of shares and the share capital are variable (Chapter 1, Section 3). This allows for share capital variations; more precisely, for variations in the number of members and/or of the share capital (in the case of fluctuations of the number of members or the members subscribing to and paying for more than the one obligatory share or purchasing voluntary shares) without having to amend the incorporation contract and/or the bylaws.

Shares are registered with their book value, which may differ by class, unless the bylaws require their registration at nominal value (Chapter 4, Section 4).[6] The bylaws may provide for the issuance of shares at nominal value, the subscription price of which may however be higher. In this case, the excess amount may be transferred in part or in total to a free investment fund [sijoitettu vapaa pääoma rahasto] (Chapter 2, Section 4). This allows the cooperative partly to refund paid-up shares without reducing the equity that would otherwise be required by the creditors´ protection rules (Chapter 8, Section 2). The amount paid on shares in excess of the subscription price is not refunded unless the bylaws or the decision on the issuance of shares stipulates otherwise. The refund may also exceed the subscription price, the criteria being, for example, the proportion between shares and surplus or other free equity, unless the bylaws stipulate otherwise.

As mentioned, members must acquire one share as a minimum. They may be required by the bylaws to acquire more shares or stocks (Chapter 9, Sections 1 and 2). The bylaws may allow for the increase or reduction of the number of additional shares or stocks to be acquired by the members. Upon issuance of additional shares or stocks, holders of shares or stocks, members or non-members, have a right to acquire shares or stocks in proportion to the (type of) shares or stocks that they already hold unless the bylaws stipulate otherwise (Chapter 9, Section 4). These additional shares are refundable upon cessation of membership.

[6] "Book value" is the value determined by the rules and regulations on book keeping, whereas the term "nominal value" refers to the value, or rather the price, to be paid for the acquisition of shares.

PROFITS

Distribution of profits. As mentioned, the Act does not distinguish between “surplus” and “profit”. Consequently, and if the bylaws so allow, profit on transactions with non-members may be distributed. The term “profit” is used here to cover both “profit” and “surplus”.

Profit may be distributed among members and non-member shareholders or stockholders according to criteria other than the volume of transactions with the cooperative (this can only apply to members) only if the bylaws so allow and within the limits set therein (Chapter 16, Section 5). Special rules apply in the case of cooperatives with a profit-generating objective (Chapter 16, Sections 1, 5 and 10). The general meeting decides on the distribution and may decide to distribute more than proposed by the board only with the consent of the board (Chapter 16, Section 8).

As mentioned, the claim to patronage payments arises from a respective decision of the general assembly. The Act does not set any criteria for the calculation of the patronage refund. In practice, patronage refunds are calculated in proportion to the price paid on the occasion of the transactions, i.e. quantity and quality are given a price. As mentioned, many cooperatives distribute bonuses in the form of price reductions, which can be interpreted rather as an appropriate differentiation between the treatment of members and that of non-members.

As mentioned, the Act leaves it thus to the members to decide through the bylaws whether profit is distributed, what form distribution takes, and how much of the profit is distributed. The Act leaves it also to the bylaws to decide whether interests and dividends may be paid. The bylaws may therefore stipulate that all or part of the profit is paid in the form of interest on the paid-up shares or stocks or in the form of a dividend on shares or stocks. An exception is the reserve fund. Five percent of the surplus, as shown on the balance sheet, must be transferred to the reserve fund until it reaches the minimum amount of 2,500 euros (Chapter 16, Section 7). Thereafter it may grow without limitation, if the members so decide. The Act does not regulate whether the reserve fund is indivisible, divisible, or divisible under certain circumstances. Notwithstanding possible stipulations in the bylaws, systematic reading of the Act and the rules on taxation gives to understand that the reserve fund is divisible. Upon dissolution, shares may not be paid back at a higher price than subscribed unless the bylaws stipulate otherwise (Chapter 17, Section 1).

STOCKS

Unless otherwise stipulated in the bylaws, cooperative stocks differ from the stocks of stock companies insofar as upon dissolution of the cooperative their holders may only claim back, as a maximum, the amount for which they subscribed the stocks. No refund payments on stocks may be made during the lifetime of the cooperative. It appears that stocks have not been issued by any cooperative so far.

Based on its bylaws, with regard to options and capital loans, the cooperative may issue options for members and non-members to receive shares or stocks (Chapter 9, Section 1; Chapter 10, Section 1). A further financing instrument is capital loans. In the case of

liquidation or bankruptcy, refunds on the loan or interest payments may only be made once higher-ranking claims [7] have been satisfied (Chapter 12, Section 1).

With regard to extraordinary payments and increased member liability, members may be required by the bylaws to make extraordinary payments. These payments are not refundable unless otherwise stipulated in the bylaws (Chapter 1, Section 2 and Chapter 13, Section 1). Such payments may only be required when necessary to cover a need during normal operations of the cooperative.

Finally, for the event of liquidation or bankruptcy, the bylaws may stipulate an additional limited or unlimited, joint and several liability of the members, per capita, share or otherwise (Chapter 14, Sections 1, 11 and 15), called liability to further calls or reserve liability [lisämaksuvelvollisuus]. The obligation extends for one year beyond the end of the financial year during which membership ceased (Chapter 14, Section 3). Members may not offset this obligation against a claim that they may have against the cooperative (Chapter 14, Section 4).

All of the outlined financial instruments are optional, some are variable, and the voting rights attached to them, if any, are not proportional. Their attractiveness is therefore limited. Practice seems to validate this opinion. The legal obligatory reserve fund helps protecting creditors. It may be reduced under strict conditions only (Chapter 16, Section 7). Obligatory premium funds and revaluation funds, to which, among others, non-refundable parts of share prices have to be transferred, serve partly to reinforce the function of the reserve fund.

With regard to taxation, systematic reading of the Act and the rules on taxation gives to understand that the reserve fund is divisible. I.e. the remainder of the assets after having paid off debts may be distributed to the members.

As mentioned, corporate income tax is in principle levied on cooperative income in the same way as it is on the income of stock companies. The reasons flow from a number of rules which have been alluded to throughout this text: first of all, cooperatives are classified as societies [yhteisöt]. Secondly, the generation of “profit” on transactions with members is not calculated differently than that on non-members business (unless one were to consider the bonus payments as such a calculation) and it is held to belong to the cooperative, unless stipulated otherwise in the bylaws. However, to the extent the surplus is paid to the members, it is tax-deductible (Act on the Taxation of Income from Professional Activities, Sections 18 and 27 [Laki elinkeinotulon verottamisesta], 24.6.1968/360), but constitutes taxable income at the level of the members, except members of consumer cooperatives. Interest payments on shares are not tax-deductible, nor are the transfers to the obligatory reserve fund.

[7] The bankruptcy law establishes a ranking of debts according to which they must be satisfied in case, upon liquidation, the assets do not suffice to satisfy all debts.

d) Cooperative external control and cooperation among cooperatives

External control, a complement to internal control, and understood here in the broad sense of control of compliance by cooperatives with the general law applying to their operations and activities as enterprises, as well as with the cooperative-specific rules and principles, divides into general control applicable to all types of enterprise and into cooperative specific audit.

In this sense, registration constitutes an ex ante general control. Cooperatives must register with the registration authority in order to acquire the status of a legal person (Chapters 1 and 2). The decision to register implies an ante factum assessment of the (future) fulfillment of the legal requirements. In addition, a number of acts by the cooperative, its representatives or members that contravene the law are classified as criminal offences or infractions under Chapter 27 of the Act. Furthermore, an entire chapter (Chapter 25) regulates damages to be paid by members, delegates, non-member shareholders or stockholders, as well as the members of the board, the supervisory committee, the manager, auditor or controller, the chairperson of the general meeting and of the delegate meeting in the case of harm caused to each other or to the cooperative, intentionally or negligently. The possible pursuit of these acts and/or related claims by public authorities can be classified as external (indirect) control. Finally, the decision on the accounts taken by the general meeting must be filed with the Registration Authority (Chapter 8, Section 10), which is another element of external control.

As concerns audit, the Act differentiates between auditors and controllers (Chapter 5, Section 4 and Chapter 7), the difference being that the qualification of the former is regulated by the Auditing Act [Tilintarkastuslaki], 13.4.2007, 459 (Chapter 7, Section 9), whereas for the latter no specific qualifications are required by law.

Audit is only required by law if more than one of the following conditions are given for the current and the immediately preceding financial year: the balance sheet exceeds 100,000 euros, the total sales or comparable revenue exceed 200,000 euros or the number of employees has exceeded three on average (Chapter 7, Section 2 in connection with Chapter 2, Section 4 of the Auditing Act). Most cooperatives registered in Finland seem to fulfill at least two of these criteria. The bylaws of cooperatives not falling under the Auditing Act may require auditing. In cooperatives which have no auditor, neither by law nor by bylaws, members who have at least one quarter of the total amount of votes or at least one third of the votes present or represented at the general meeting may request that the general meeting elect an auditor (Chapter 7, Section 5). Should the general meeting fail to do so, an auditor must be nominated upon request of a member by the local authority [8] (Chapter 7, Section 5). Furthermore, members who have the backing of at least one quarter of the total amount of votes or at least one third of the votes present or represented at the general meeting may request the local authority to conduct an extraordinary audit (Chapter 7, Section 15).

[8] "Local authority" is a term used in administrative law. Which authority that is, may change over time.

The Auditing Act regulates the scope of the audit. It does not contain any special rules for cooperatives. Cooperative management audit, social and societal audit, as required by some jurisdictions, is therefore not required by law.

Cooperatives must have a controller, elected by the general meeting, if they do not have an auditor and if they do not exclude control through their bylaws (Chapter 7, Section 7). However, a specified minority of the members may insist on having a controller (Chapter 7, Section 7). Failing this obligation, the controller will be nominated by the local authority (Chapter 7, Section 7).

Interestingly, the qualification criteria for the controller (cf. Chapter 7, Sections 9-11) seem to reflect the cooperative values and principles more than is required for the auditor for whom no cooperative specific qualifications seem to be required.

The Act does not contain any rules on cooperation among cooperatives. Only one rule indirectly alludes to the existence of secondary or tertiary cooperatives, namely Chapter 5, Section 13, which deals with plural voting rights.

General law regulates cooperation among cooperatives. Depending on the type of cooperation, it may take any organisational form, or it may be based on contract. In practice, socio-political cooperation is organised as a two-tier system whereby the second tier is organised as an association. Economic cooperation takes place through central cooperatives.

III. Degree of 'cooperative friendliness' of the national legislation

From the perspective of the ICA member organisation, the cooperative friendliness of the national legislation can be considered to be significantly so, with the Act providing sufficient opportunities for the development of cooperatives. On the basis of its flexibility and comprehensiveness, in the opinion of the contributing member organisation, Finnish national legislation could serve as an example of legislation regulating cooperatives in other countries. However, within the view of the national expert, it is important to note that the law on cooperatives is only one element of the cooperative law. A more in-depth assessment on the "cooperative friendliness" of the Act in relation to the national context would require analysing further other areas of law not already incorporated, or not fully detailed, into the legal framework analysis questionnaire, and the degree to which they may impact the organisation and/or operations of cooperatives. Such areas to be examined more exhaustively might include for example: labor law, (international) bookkeeping and accounting rules/standards, competition law, social security law, court decisions/praxes etc. which would need to be further assessed and incorporated into future studies. Furthermore, as already alluded to, the bylaws of the cooperatives, depending on the extent to which the cooperatives make use of the wide autonomy, can affect the degree to which opportunities for the development of cooperatives are in line with the ICA values and principles.

IV. Recommendations for the improvement of the national legal framework

It can generally be stated that the existing Cooperative Act takes into account the specificities of cooperatives, their diversity, and safeguards the operating conditions of cooperatives. In the view of the contributing ICA member organisation, the position of the members of the cooperative and debt protection are also adequately secured. In addition, there is at present no need for sector-specific special regulation of cooperatives. However, taking into account the points already discussed within this the report, Cooperatives Europe and International Cooperative Alliance research staff, in concurrence with the national expert, highlight the following four points that might be considered:

- Whether it is adequate to allow for the formation of one-person cooperatives appears questionable.
- It could be beneficial to evaluate the impact of the financing possibilities, for example financial instruments which are typical of stock companies, on the cooperative principles, as a basis for further action.
- The understanding of what cooperatives are, the lack of which is commonly shared in many countries, might not be facilitated by using language/terminology which "belongs" to the world of capital-centered

companies, but rather might be facilitated by using terminology which expresses the cooperative difference.

- Unrestricted divisibility of the reserve fund is questionable, in light of the third principle of the International Cooperative Alliance regarding Member Economic Participation[9].

V. Conclusions

In keeping with the points mentioned above, it is important to note that the answers of ICA members have been limited, but coinciding, in general, with the expert's opinion. Painting a more complete picture of the Finnish cooperative law requires further work on bylaw autonomy, as well as exploring other areas such as competition law or labour law, as well as accounting standards, as mentioned. The case of Finland with its wide bylaw autonomy under the Act, which has taken the 4th ICA cooperative principle of autonomy to its maximum, demonstrates how important it would be to include in the study an inquiry into the way the cooperatives themselves put the cooperative principles into legally recognised practice through their bylaws and thus to appeal to the responsibility of the cooperatives to translate these principles into practice.

October 2019

The legal frameworks analysis is a tool developed under the ICA-EU Partnership #coops4dev. It is an overview of the national legal frameworks at the time of writing. The views expressed within this report are not necessarily those of the ICA, nor does a reference to any specific content constitute an explicit endorsement or recommendation by the ICA.

Contact: *legalresearch@ica.coop*

This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of Cooperatives Europe and can in no way be taken to reflect the views of the European Union.

[9] Statement on the Cooperative Identity adopted by the ICA in 1995, as defined here: https://www.ica.coop/en/cooperatives/cooperative-identity