LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: NETHERLANDS

ICA-EU PARTNERSHIP

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I. Introduction

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:

-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 (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 report presents the main results of the research to examine and analyse cooperative law in the Netherlands, 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 - V of this report is based on work authored by Associate Professor Ger J.H. van der Sangen, Tilburg University, and supported and coordinated by staff from Cooperatives Europe and the ICA. The input for Section II – V was partially based on earlier research of the national expert on cooperative law and 'cooperative friendliness'

of the legal framework for cooperatives in the Netherlands.[1] Section III had the benefit of input of the *Nationale Coöperatieve Raad* – a service and lobbying umbrella organisation of cooperatives in the Netherlands – in particular on the use of a voluntary governance code specifically drawn-up for cooperatives.

i. General Context

Apart from mutual insurance companies and B2B credit cooperatives (*kredietunies*), there are no specific regimes for different types of cooperatives in the Netherlands.

The primary source of legislation for all cooperatives is the Second Book of the Netherlands Civil Code on Legal Persons (hereinafter: NCC).[2] However, there is no section in the NCC containing all the provisions on cooperatives as the Second Book of the NCC contains provisions on legal persons in general. Several sections of this part of the NCC are relevant to cooperatives.

Articles and provisions relevant to the cooperative as being a legal person can be found in Title 1 (*General Provisions*) of the Second Book of the NCC. These provisions apply to all legal persons enunciated in Article 3 NCC. In these General Provisions, you may find provisions with regard to the nullity of legal persons, rules on ultra vires transactions, the attribution of legal personality and legal standing in proceeding, provisions on the procedure and annulment of resolutions of its bodies, the grounds and procedures for liquidation and winding-up, as well as some definitions related to corporate groups.

Title 2, on *Associations*, contains provisions on associations in general. This title according to Article 2:53a NCC – save for Article 2:26, paragraph 3 and Article 2:44, paragraph 2 – applies to cooperatives as well as, unless Title 3 on cooperatives and mutual insurance companies provides otherwise.

Title 3 (*Cooperatives and Mutuals*) has been divided by the legislator into two sections: the first on general provisions for all cooperatives (not being SCEs) and mutual insurance companies, and the second section for cooperatives and mutual insurance companies that must apply a statutory two-tier regime providing for a mandatory supervisory board with mandatory co-determination rights for employees.

In Title 4, on private companies limited by shares, there are some specific provisions on the conversion of cooperatives into private companies limited by shares and vice versa (Articles 71/181 and Articles 72/183).

[1] G.J.H. van der Sangen (2010), National Report for the Netherlands. In: Cooperatives Europe, Euricse, Ekai (eds) Study on the implementation of the Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE), pp 779–801, G.J.H. van der Sangen (2013), The Netherlands. In: D. Cracogna D et al. (eds), *International handbook of cooperative law*, Springer, Berlin, pp 541-561, and G.J.H. van der Sangen (2019), The principles of European cooperative law and their impact on future law-making on cooperatives. The case of the Netherlands*, International Journal of Cooperative Law* II (2019), pp 39-56.

[2] Lastly modified on subordinate points for cooperative law on 1 July 2021. Act of 11 November 2020, *Staatsblad* 2020, 507.

Furthermore, Title 7 contains general provisions on domestic legal mergers that apply also to legal mergers between cooperatives and between cooperatives and other legal persons (not being SCEs). In Title 7, section 4 we find general provisions on legal splits that also apply to cooperatives.

In Title 8, section 2, we find the inquiry procedure of the Enterprise Chamber of the Amsterdam Court of Appeal, that applies to cooperatives as well, providing members of the cooperative, trade unions and the public prosecutor the opportunity to request an inquiry into the affairs of the cooperative and into the way the board has conducted its affairs.

Finally, Title 9 contains general provisions applicable to cooperatives on single and consolidated annual accounts and the obligation to disclose them. In summary, the part most relevant to cooperatives in the Second Book of the NCC can be found in the Articles 2:53 up to 63j and, by way of analogy, in the Articles 2:26-52 on associations in general (save for Articles 2:26, paragraph 3 and 2:44, paragraph 2).

The SCE Regulation is implemented by the Act of 14 September 2006, *Staatsblad* 2006, 425. Furthermore, the SCE Directive is implemented in the Act of 17 March 2005, *Staatsblad* 2006, 361, on the Involvement of Employees in European Legal Persons.

The Constitution of the Netherlands does not mention cooperatives. As indicated above, there are no special laws in the Netherlands on specific types of cooperatives save for credit unions – a B2B credit cooperative regulated under the Act on Financial Supervision (Wet Financieel Toezicht) on the basis of Article 2:54o of that Act.[3]

The ICA Principles on Cooperative Identity are neither explicitly nor implicitly referred to in the law. In this respect, it is essential to point out that according to Netherlands law cooperatives are under no obligation to adhere to additional social or civil society principles unless the articles of association stipulate otherwise. The voluntary *Coöperatie Code 2019* of the National Cooperative Council requires member cooperatives to be transparent in the annual accounts on whether they comply with the voluntary code. The code is inspired by the ICA Principles.

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

Article 2:53, paragraph 1, NCC stipulates: *'A cooperative is an association established as a cooperative by a notarial deed. Under its articles of association, its statutory objective must be to provide for certain economic needs of its members under agreements, other than insurance agreements, concluded with them in the business it*

[3] See Act of 3 July 2015, *Staatsblad* 2015, 304 on Supervision of Credit Unions (Wet Toezicht kredietunies) leading to changes in the Act on Financial Supervision as of 1 January 2016.

conducts or causes to be conducted to that end for the benefit of its members.' The quintessential essential element in the legal definition is that the cooperative and its members maintain a patronage relationship by entering into agreements between the members and the cooperative. This sets them apart from the association and the for-profit shareholder corporation.

Therefore, the statutory objective of the cooperative is to provide for certain economic needs of its members. According to Netherlands law, save for the restriction on insurance activities, a cooperative can take up all kind of business activities that the members wish the cooperative to perform, as long as it entails economic transactions with the members that ultimately benefit its members. It is irrelevant how the cooperative promotes the economic interests of its members, either through restitutions or additional payments on transactions or through the distribution of annual profits. The cooperative is also allowed to function as a holding company, provided that the economic interaction through agreements with its members will be executed by one of its subsidiaries. The terms and conditions of the patronage agreements themselves are not regulated by law. As said, a cooperative must benefit the economic interests of its members by engaging in transactions with its members. However, members are not obliged to transact with the cooperative unless the articles of association oblige them to.

According to Article 2:53, paragraph 3 and 4, NCC, a cooperative may expand its business to non-members on the same footing as members, provided that the articles of association explicitly facilitate this option and the total amount of economic interaction with members does not become of subordinate importance. However, this is not an absolute numeral criterion.

A cooperative can also pursue other interests other than member-promotion as long as the patronage to fulfil its economic statutory objective is maintained with the members as well. The cooperative is allowed to pursue other non-economic interests as well, in so far as the articles of associations do not preclude this, and the pursuit of non-economic interests is linked with the statutory economic objective of the cooperative. However, there is no cooperative specifically designed by the legislator for the pursuit of social, general, and/or community interests at this moment.

b) Establishment, cooperative membership and governance

Cooperatives must be registered in the Commercial Register like any other enterprise. However, the registration is not a requirement for the establishment of a cooperative. The cooperative is established as a legal person by a notarial deed. The establishment of a new cooperative requires a minimum of two incorporators, being the first members of the cooperative. Although some legal scholars argue that a cooperative with one single membership does not fall within the scope of the legal definition of the cooperative, the law of the Netherlands allows a cooperative to exist as a legal person in case only one single member remains. In case no member remains, the cooperative may be dissolved (see Article 2:19, paragraph 1, NCC). The creation of a single membership cooperative therefore is not prohibited. Furthermore, the cooperative is under no obligation to recruit

other potential members unless the articles of associations indicate to do so. A cooperative may also be established through a legal merger. However, according to the current regulations on domestic legal mergers in the Netherlands, only pre-existing cooperatives can merge into a new cooperative. Other legal persons wishing to merge with a cooperative need to be converted into a cooperative prior to the legal merger (Articles 2:310 NCC).

As a rule, the board decides on the admission of new members. In case of refusal, the candidate may address the general assembly to scrutinise the boards' decision. However, the articles of association may provide for another procedure (see Article 2:33, NCC). The law on cooperatives (and associations) contains no additional provisions on the admission of new members, leaving incorporators ample flexibility to provide for membership requirements in the article of association, like an entrance fee. Cooperatives are not obligated to accept third parties as members. The 'open door' principle is not a legal rule.

According to the analogue rules on associations, members of the cooperative have the statutory right to leave the cooperative at any time. However, under Article 2:60 NCC, the cooperative may impose certain financial restrictions on membership withdrawal in the articles of association, provided the maximum obligation for the member is defined in the articles of association itself in case of an exit fee to protect the member. In any case, the statutory maximum time restriction on withdrawal is one year.

Article 2:38 NCC contains extensive regulation for voting rights in the general assembly. Although all members are entitled to vote on the basis of the 'one member, one vote' principle by way default, the articles of association may allow a differentiation of voting rights, e.g. related to the value or number of economic transactions for each individual member with the cooperative (see Article 2:38, paragraph 1, last sentence) or related to the capital invested in the cooperative. Secondly, the articles of association may introduce voting rights for non-members. The voting rights of non-members are, however, restricted to the half of the total amount of votes cast by the members in the general meeting. This provision, laid down in Article 2:38, paragraph 3, NCC may be used to adjudicate voting rights to non-member investors.

The internal structure and governance system of the cooperative is very flexible and contains only two statutory organs to be created in the articles of association: the general meeting and the management organ (the board). Save for the statutory two-tier board regime for large cooperatives as laid down in Articles 2:63a and further NCC, a supervisory organ is not imperative. In case a cooperative chooses not to have a separate supervisory organ, the cooperative will be obliged to have its annual financial accounts monitored either by a commission of two members (not being members of the management organ) or by a certified auditor (see Article 58, paragraph 1, read in conjunction with Article 48, paragraph 2, Second Book, NCC).

As previously mentioned, large cooperatives within the meaning of Article 2:63, paragraph 2 NCC – having an equity of € 16 million, a total amount of 100 employees and a works council installed on the basis of its mandatory obligation from the Act on Works Councils – have to create a mandatory supervisory organ with special powers in their articles of association. Notably, this includes the power to veto board decisions on major transactions, as described in Article 2:63j NCC, and the obligation to sign for the annual final accounts. In the statutory two-tier regime, board members are still appointed and dismissed by the general meeting of the cooperative. Members of the supervisory organ in the statutory two-tier regime are appointed by the general meeting based on a proposal by the supervisory organ. While making this proposal, the supervisory body needs to consider recommendations by the general meeting and the works council.

As stated previously, members of the management organ are appointed by the general meeting. However, the articles of association may allow for a different mode, under the condition that members remain in the position to take part in the election of board members through an intermediate procedure. For example, when a cooperative has a very large number of members, the members can choose delegates and these delegates can act as the general meeting (see Article 2:39, NCC). This general meeting then elects directly, or through an intermediate procedure, the members of the management organ. It is also allowed that the elected delegates, acting as the general meeting, elect the members of the supervisory organ which subsequently elects the members of the management board.

With regard to the composition of the management organ of the cooperative, the law of the Netherlands is very flexible. As a default rule, members of the management organ are appointed by members and candidates must be members. The articles of association may allow that board members are not members, e.g. professional managers (see Article 2:37, paragraph 1, NCC). There is no restriction in this respect. Secondly, it is allowed that less than half of the total number of board members will be appointed by non-members (see Article 2:37, paragraph 3, NCC). However, since the law of the Netherlands on cooperatives allows the cooperative to function as a holding company while the actual cooperative enterprise is run by a subsidiary, the appointment of professional management of the subsidiary poses no real obstacle from a legal point of view.

Members of the management board and the supervisory board while performing their duties must act in the interest of the cooperative and its organisation (Article 2:9 NCC). The board of directors has discretion within the boundaries of the statutory objective of the cooperative as laid down in the articles of association to consider other stakeholders' interests if this is in the overall long-term interest of the continuity of cooperative. In this respect, the management organ has the responsibility and obligation to perform all legal duties that apply to legal persons in general. For non-compliance, the board can be held accountable to pay damages to the cooperative (not directly to its members) in case of gross negligence for performing their duties towards the cooperative. Non-compliance with ethical standards, such as those found in the applied *Coöperatie Code 2019*, may

be addressed through the inquiry procedure of the Enterprise Chamber of the Amsterdam Court of Appeal leading to a suspension or dismissal of the board. Additionally, the general meeting or the supervisory board, if present, may table the suspension or dismissal of the board.

c) Cooperative financial structure and taxation

Financial structure

The internal governance of the cooperative follows the pattern of the association regulated in Articles 2:26 NCC and further, and therefore a cooperative has no statutory capital structure. Cooperative law of the Netherlands does not mandate a minimum share capital for the establishment. Hence, there are no legal rules on capital contributions by members. How members contribute to the capital and financing of the cooperative is left to the articles of association. However, it is assumed by the legislator that the cooperative will be funded by equity provided for by its members. In constrast to private companies limited by shares, members are under no obligation to participate in financial arrangements for raising equity unless the articles of association provide otherwise. In case of insolvency or liquidation, the members are jointly and severally liable towards to receiver of the insolvent or liquidated cooperative to pay for the total deficit (Article 2:55 NCC). This regime for statutory liability in case of liquidation may be set aside in the articles of association and be replaced by either a restricted liability to pay for the deficit or a complete exclusion of liability of the members. The restriction or exclusion of membership liability must appear in the name of the cooperative to rely upon it vis-à-vis third parties (Article 56 NCC).

This legal system laid down in Articles 2:55 and 56 NCC does not preclude a cooperative from the introduction of share capital to members in its articles of association. Nevertheless, since the purpose of the cooperative is to foster the economic interests of its members through engaging with them into specific economic transactions, the issuing of shares is commonly related to the (amount of) economic transactions between the cooperative and its members. Although it is not prohibited in generic terms for cooperatives to issue financial instruments, the national expert notes that the issuance of shares providing a return on capital invested by either members or third parties is assumed to be exceptional according to general opinion in legal scholarship and the voting cap for non-members in Article 2:38, paragraph 3, NCC.

Notably in agricultural cooperatives, members are obliged in the articles of association not only to participate in equity funding – either through the retention of the net proceeds or through an obligation to participate in the issuance of shares related to the amount of the economic transaction with the cooperative – but also to participate in financing the cooperative through long-term loans. These long-term loans generally involve a repayment after a fixed period (e.g., 10 years) or after withdrawal. In case of insolvency or voluntary liquidation of the cooperative, members are not entitled to compensate their right to payment of the loan with their obligations to pay to the cooperative, therefore

generating an additional guarantee for non-member creditors that their obligations will be met in case of insolvency of voluntary liquidation (see Article 2:55, paragraph 5, NCC.

With regard to the distribution of profits/net proceeds, the regulation on cooperatives is rather flexible. According to the law, members are not entitled to an annual payment of their share in the net proceeds or profits, unless the articles of association provide otherwise. Article 2:27, paragraph 4, NCC merely stipulates that the articles of association have to contain a provision on the allocation of profits *in case of liquidation*. The incorporators are free to provide for any form of profit allocation in the articles of association, including no provision or a provision that adds the profits to the general reserves of the cooperative. The law does not prescribe a specific format how to deal with refunding members for their patronage.

Compulsory reserves of the cooperative are either statutory reserves mandated by law, like enunciated in detail in Article 2:373, paragraph 4, NCC or reserves provided for in the articles of association. In both cases, a cooperative is not allowed to distribute these reserves nor use them for the redemption of loses incurred by the cooperative (Article 2:58, paragraph 4 NCC).

Pursuant to Article 2:38, paragraph 3, NCC, a cooperative may adjudicate voting rights to non-member investors as indicated above which implies that a cooperative may issue financial instruments. Netherlands cooperative law does not provide for other financial arrangements such as members loans, but they are not forbidden. As mentioned above, to set-up financial arrangements between the cooperative and its members is left to the articles of association.

In case of dissolution of the cooperative, the remaining capital and assets – after fulfilling all obligations to existing creditors – are distributed to its members equally unless the articles of association provide otherwise. The law of the Netherlands does not provide for 'disinterested' distribution. In case of a conversion, the capital and assets as well as all liabilities are not affected since the legal personality after the conversion does not change due to the fact that, in case of conversion, there is no dissolution or winding-up (Article 2:18, paragraph 8, NCC).

Taxation

In principle, cooperatives are treated for the purpose of taxation on the same footing as private companies limited by shares and are subject to the Corporate Tax Act 1969 (Article 2). This implies that cooperatives have access to the same tax facilities as corporations, but cooperatives and their members also bear the same burden of taxation as corporations and their shareholders. However, in order to take into account the hybrid character of the cooperative as an incomplete vertical integration between the economic units of its members and the cooperative, the Netherlands legislator introduced a specific tax deduction regime for cooperatives in Article 9 of the Corporate Tax Act 1969. However, the national expert notes that facilities for corporate tax deduction for payments

to members are regarded as being too stringent by incorporators, hampering innovations in financing cooperatives with additional equity capital funded by members or external investors distinct from the economic interactions between members and the cooperative. The Netherlands legislator ruled that the profits of a cooperative are deemed to be split between an independent profit – connected with non-cooperative activities – and a partially deductible regime profit (PDR profit). However, cooperatives are only allowed to deduct the PDR profit, if four criteria simultaneously are met: 1) the PDR profit must have been distributed immediately within one year after the book year in which the profits were gained; 2) the PDR profit to be distributed is restricted to the amount of profits gained in one book year, meaning that prior reservations of profits are not considered to be tax deductible, if distributed in the following years; 3) the PDR profits must be distributed to the members in proportion of the value of their economic transactions with the cooperative; and 4) the PDR profits are only deductible if distributed to members that are natural persons; a number of five legal persons being members, however, will not be taken into account.

Another pivotal issue with regard to the tax burden of cooperatives is that of or fixing or estimating the profits of a cooperative if the cooperative does not pay for the economic transactions with its members on the basis of market prices. Profits for taxation purposes must be fixed on the basis of market prices which may render a problem if the cooperative is the only or one of the few entrepreneurs in the market.

Apart from the Corporate Tax Act, cooperatives are also regulated by the Dividend Withholding Tax Act. However, this act technically only applies to companies with a share capital. Cooperatives are not considered to be companies with share capital, meaning that cooperatives can distribute profits to investing members without paying any taxes on dividends, provided the cooperative is not an 'artificial' entity, meaning acting as a pseudo-cooperative.

iii.Other specific features

Cooperatives as such are not subject to external control by the State or any other authority. Furthermore, self-control by the members or a representative organisation is not promoted by the law. However, like any other legal person, cooperatives have to disclose their corporate data and their annual accounts. Under the rules for disclosure of corporate data, cooperatives are obliged to register the cooperative at the commercial register in conformity with the Act on Commercial Registers 2007 (*Handelsregisterwet 2007*). Specific requirements for disclosure as well as the company's items to be disclosed are laid down in the Royal Decree on Commercial Registers 2007 (*Handelsregisterbesluit 2007*). There is no specific register for cooperatives. Cooperatives – save for cooperatives involved in banking, financial and insurance activities under the Act on Financial Supervision – are not subject to public control or any form of external control.

A cooperative, like any other entreprise, has to compose an annual account and profit and loss account according to the standards set out in Title 9, Second Book, NCC (Article 2:360 and further) and is obliged to disclose these accounts to the commercial registrar (Article 2:394 NCC) within 2 months after approval of the accounts by the general meeting. Approval of the accounts by the general meeting is due within 6 months after closing of the financial book year, with a possibility of an extension with 4 months (Article 2:58 NCC). The maximum timeframe for disclosing the annual accounts is 12 months after closing of the financial book year (Article 2:394, paragraph 3 NCC). However, small and medium-sized companies are completely or partially exempted from these disclosure requirements (Articles 2:396 and 397 NCC). Since cooperatives in practice can function as a parent company or holding company, cooperatives may have to produce and disclose consolidated annual accounts on the basis of Articles 2:406 NCC. The annual accounts have to be presented at the mandatory yearly general meeting and finalised by a resolution of the general meeting.

The ICA Principle of cooperation among cooperatives is not implemented in Netherlands cooperative law. There are no special forms or rules on secondary cooperatives or on representative organisations of the cooperative movement. Secondary cooperatives are rare in the Netherlands. An example in the past is the Rabobank cooperative banking group that until 2016 was structured as a secondary cooperative, with local independent banking cooperatives as members of the secondary cooperative Rabobank Nederland. In 2016, the Rabobank was transformed into a single cooperative bank.

II. Degree of "cooperative friendliness" of the national legislation

Evaluating the current legislation for cooperatives, in general the law of the Netherlands on cooperatives and associations has been regarded by practitioners as very flexible regarding setting up a cooperative and tailoring the cooperative's articles of association to the needs of the incorporators. In this respect, it is essential to point out that according to the law of the Netherlands, cooperatives are under no obligation to adhere to additional social or civil society principles or recruit potential new members unless the articles of association stipulate otherwise. The legislator does not actively promote the ICA Principles. In this respect, Netherlands' cooperative law lacks a normative aspect educating potential users of the cooperative while setting-up a cooperative according to ICA Principles. Since October 2019, the voluntary *Coöperatie Code 2019* accommodates this type of cooperative.

Looking at the relative position of cooperatives vis-à-vis other business forms, cooperatives are treated for the purpose of taxation at the same footing as private companies limited by shares except for the Dividend Withholding Tax. The facilities for corporate tax reduction for payments to members are regarded as stringent. Also, in respect to the application of anti-trust law, cooperatives are not granted a specific treatment, except for the agricultural sector to some extent. Cooperatives generally are not granted a preferential treatment vis-à-vis investor-owned firms in this respect.

It is worth mentioning that the cooperative in the last decade has been used on a regular basis as a tool for tax planning by law firms and accounting firms as well as private equity firms, on account of the fact that a cooperative, until recently, was not subject to taxation on the distribution of profits. So, in some of these cases the cooperative is merely used as an 'artificial' special purpose vehicle within the formal legal boundaries of Netherlands law on cooperatives and associations. Since 1 January 2018, this 'abuse' of the cooperative law has been dealt with in a revision of the Dividend Withholding Tax Act.

Cooperative law of the Netherlands uses a 'one size fits all' approach for all types of cooperatives. As stated previously, there are (underdeveloped) tax incentives for small cooperatives that adhere to the ICA Principles and the principle of solidarity and mutuality. This also includes the absence of a facilitating regime for worker cooperatives. Furthermore, the legal statute on cooperatives gives little guidance on how to incorporate a financial legal structure in the articles of association, nor specific rules on financial accounting that consider the specificity of the cooperative business model. In general, the national expert believes that cooperative law may benefit from a separate legal act that pinpoints the specific nature of the cooperative as distinct from the association and the private company limited by shares. Additionally, the use of the term 'cooperative' should be better protected.

In the Netherlands, the national expert regards best practices of cooperative legislation to be the flexibility. Cooperative law in the Netherlands provides a set of default rules that can be adjusted in the articles of associations on many issues, like the differentiation of voting rights, the appointment of non-members on the management organ and the introduction of investor members. As a best practice, it is also worth highlighting the statutory rules on membership withdrawal which protect members against too restrictive rules in the articles of association.

In the Netherlands, the promotion of cooperatives is not a public function. However, since 2016, the rules for public procurement by community councils introduced a favourable regime for social enterprises, provided the objective of the enterprise is to include a minimum of 30% of disabled employees (see Article 15 of the Public Procurement Act of 17 June 2016). This provision also applies to cooperatives with a social objective, but the potential has not been used in practice so far.

In conclusion, the national expert considers the degree of "cooperative friendliness" of the Netherlands' legislation to be only limited so.

While comparing the Netherlands' legislation with foreign legislations, two jurisdictions could be a source of inspiration for the legislation of the Netherlands. The German *Genossenschaftsgezetz*, because while resembling the Netherlands' law, have made different choices on the objective of the cooperative, including non-economic objectives and interests, and because of their detailed legal framework in the law on how to finance a cooperative with member shares.[4] These two features also are present in the Portuguese Act as well as their strong constitutional support for the cooperative and the ICA Principles.[5]

[4] Prof. Hans-H. Münkner, Legal Framework Analysis, National Report: Germany, pp. 9-10, available at: https://coops4dev.coop/sites/default/files/2020-04/Germany%20Legal%20Framework%20Analysis%20Report_.pdf

[5] Deolinda Meira and Maria Elisabete Ramos, Legal Framework Analysis, National Report: Portugal, pp. 12-14 and 21-22, available at: https://coops4dev.coop/sites/default/files/2021-03/Portugal%20Legal%20Frameworks%20Analysis%20Report%20.pdf

III. Recommendations for the improvement of the national legal framework

The national expert notes that, according to practitioners, scholars and the legislator, the cooperative is considered a very flexible legal business form while using a 'one size, fits all' approach and referring to rules of the association frequently. The cooperative identity and its specific nature and the awareness thereof could benefit from one integrated Cooperative Act. Cooperative legislation should also consider introducing incentives for small cooperatives that adhere to the ICA Principles and allow the objective of the cooperative to be broadened to social and general interests of other stakeholders. Furthermore, specific rules for worker cooperatives may be introduced as well as, since the cooperative law in the Netherlands is underdeveloped in this respect due to weak incentives in labour and social securities law, as well as in tax law. Finally, an adequate legal framework for financing and raising equity in the law supplementing the existing regime of members liability in case of liquidation should be included in the cooperative law.

Apart from the general modifications and specific changes listed above, the protection of the cooperative identity vis-à-vis other business forms needs to be addressed too. Article 2:63 NCC stipulates that any person is prohibited to use the name 'cooperative', if it is not a cooperative. The problem, however, is that the legal definition of the cooperative is so broad that any activity can be moulded to be recognised as a cooperative, being formally established by a notarial deed. Hence, Article 2:63 NCC is in practice not enforced.

IV. Conclusions

The national expert notes that cooperative law in the Second Book of the NCC is very flexible. However, since the legal identity and objective of the cooperative is strictly defined in economic terms, cooperative law is missing a link to the principles and values of public international cooperative law, like the ICA Principles and the ILO Recommendation 193. The cooperative sector of the Netherlands has already attempted to overcome the lack of this normative dimension of the cooperate through a voluntary code. Cooperative law could also benefit from such a revision.

However, the national expert recognises that a recodification of law in general is a cumbersome process. Most likely, that would also be the case when changing national cooperative laws. Since, the cooperative law in the Netherlands is regarded as flexible and workable for most of the end-users, the urgency to change cooperative law in the Netherlands – in the opinion of the national expert – is not very high. Additionally, due to its interlinkage with other sections in the Second Book 2 of the NCC on legal persons, a recodification of cooperative law would imply a large revision of the law on legal persons.

A cooperative law is one source of guidance for establishing and maintaining a cooperative by end-users. However, cooperative law – at least in the Netherlands – is complex and end-users will need legal advice, e.g. from a notary and a tax advisor, that comes with a significant cost. Moreover, end-users should be informed on the potential of the cooperative in concise information, for example via a readable model act or cooperative code which, of course, must be in compliance with national statutory cooperative law. In October 2019, the voluntary *Coöperatie Code 2019* was introduced to fill this gap. It is worth monitoring the effectiveness of the code in this respect.

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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.

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