

LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: NORWAY

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 organizations, 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 Norway, 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.

The report is written by Julie Nåvik Hval, Head of Cooperative Affairs at Norwegian Agricultural Cooperatives (NAC). NAC is an apex organisation for 17 agricultural

cooperatives and organisations in agriculture. Almost all farmers in Norway are members of at least one of its member cooperatives.

Inputs have also been received by Tore Johannesen and Thor Eek at the Co-operative Housing Federation of Norway (NBBL) and other cooperatives outside the ICA's membership. NBBL is a national membership federation that represents 41 cooperative housing associations - known as building cooperatives. 14 000 housing cooperatives and condominiums, counting 554 000 housing units, are managed by the member associations. The 41 associations have a total of 1 085 000 members.

The national report has been oriented towards the general Cooperative Act, while using examples from some sectoral regulations to broaden the understanding of important regulations for different types of cooperatives.

II. National cooperative law: Norway

i. General Context

Cooperatives are not regulated in the Norwegian Constitution, but the Norwegian Parliament passed the Cooperative Act on the 29th of June 2007. This was the first time that cooperatives were regulated in a general and specific cooperative law. The Act includes a definition of what a cooperative is and all the necessary requirements and obligations that the cooperative needs to meet.

The ICA Principles of Cooperative Identity are not mentioned explicitly in the Cooperative Act. However, the ICA Principles formed the basis for drafting the Act. The Ministry of Justice and the Police stated the following in the preparatory works of the Cooperative Act:

“Cooperatives have a common grounding in the cooperative principles, which have been adopted by the International Cooperative Alliance. The ICA has also adopted a set of cooperative values which explain the ideology and values of cooperatives. Self-help, self-responsibility, democracy, equality, justice and solidarity are considered cooperative values. The Ministry believes that a general cooperative law will be an important tool to strengthen and protect the values that the cooperative model is built on.”¹

The ICA Principles were therefore used as an argument that there was a need for a separate legal framework for enterprises that are run on the basis of the cooperative principles, because such organisations deviate from other business models.

In addition to the general Cooperative Act, there are separate laws for housing cooperatives that are not regulated of the general Cooperative Act. Cooperatives are mentioned in other laws as well, but the focus in this report lies on the laws that are explicitly dedicated to cooperatives.

¹ Unofficial translation

Table: Overview of the most important laws that regulate Norwegian Cooperatives

Name of the Law (denomination)	Issuer	Date of approval	Date of last update
The Cooperative Act	Ministry of Trade, Industry and Fisheries	01.01.2008	01.01.2016
Co-operative Housing Association Act	Ministry of Local Governments and Modernisation	06.06.2003	04.12.2020
The Housing Co-operatives Act	Ministry of Local Governments and Modernisation	06.06.2003	04.12.2020

ii. Specific elements of the cooperative law

a) Definition and objectives of cooperatives

The Cooperative Act defines cooperatives in the following way (Chapter 1, Section 1 (2)):

“By a cooperative is meant a group whose main objective is to promote the economic interests of its members by the members taking part in the society as purchasers, suppliers or in some other similar way, when:

1. *the return, apart from a normal return on invested capital, is either left in the society or divided among the members on the basis of their share of the trade with the group, and;*
2. *none of the members is personally liable for the group’s debts, either in whole or for parts which together comprise the total debts.”*

The Cooperative Act also covers businesses where the interests of the members are promoted through:

1. the members’ trade with an enterprise which the cooperative owns alone or together with other cooperatives, including a secondary cooperative.
2. the members’ trade with an enterprise which the secondary cooperative owns alone.

The main difference between the cooperative and the shareholder corporation appears when it comes to the defining elements of the for-profit shareholder corporation. Some specificities of cooperatives are as follows:

1. Cooperatives must have at least two members.
2. All members have one vote each.
3. In a cooperative, there must be active involvement of the members. In practice this means that in a cooperative, members must contribute actively to the development of the company, for example through providing products or services. By contrast, in a shareholder corporation, ownership is based on capital inputs.
4. Annual profits are distributed on the basis of how much each member has contributed every year (e.g. how many litres of milk provided), not on the basis of capital shares.
5. Cooperatives cannot be sold. If someone buys the core operations of the cooperative, it will no longer be owned by the members, and will therefore no longer be a cooperative.

The Cooperative Act defines cooperatives as private companies, and their purpose is therefore decided by the cooperative itself. The requirements listed above and in the cooperative definition, must in any case be fulfilled (Cooperative Act, Chapter 1, Section 1 (2)).

The Cooperative Act (Chapter 1, Sections 1-4) states that the following are not covered in the Act:

1. private limited companies
2. public limited companies
3. cooperative housing associations
4. housing cooperatives
5. mutual insurance companies
6. subsidiary cooperatives

In addition, banking and insurance companies cannot be registered as a cooperative.

Some cooperatives engage in the production of products and services as strategic side businesses. Such side businesses are often organised outside the cooperative, where the cooperative is an owner. The side business is often registered as a shareholder company. The national expert identifies two examples of this:

1. TINE SA is the largest Norwegian dairy product cooperative. They own Diplom Is, which is registered as a shareholder company. Diplom Is produces ice-cream using milk from the cooperative farmers that own TINE SA.
2. Landkreditt SA is the only financial institution in Norway that is cooperative owned. Financial institutions are not accepted in the law to be defined as cooperative. However, as mentioned, an umbrella organisation can be a cooperative. This means that the cooperative Landkreditt SA and its 9000 owners, own a bank and an insurance company. The “sub companies” are registered as shareholder companies.

Chapter 1, Section 7- 1 in the Financial Institution Act does not allow for banks to register as cooperatives:

“Banks shall be founded and organised as public limited companies or as savings banks.”

SECTORAL SPECIFICITIES

There are some cooperatives that play a vital role in certain sectors, due to their size or their business objectives. Some of them have special legislation.

HOUSING COOPERATIVES

In general, the Cooperative Act regulates all cooperatives, but not the cooperative housing sector. The cooperative housing sector is regulated by a separate set of cooperative laws regarding housing.

The Norwegian housing cooperative model is based on two levels:

1. Cooperative associations (*boligbyggelag*); i.e. the house-building secondary cooperatives, that develop and sell the housing units to:
2. The housing cooperatives (*borettslag*); i.e. primary cooperatives that consist of a specific numbers of dwellings owned jointly by the residents (owner-occupied housing within a cooperative).

These two cooperative levels are regulated through two sets of laws, under the responsibility of the Ministry of Local Governments and Modernisation:

1. Cooperative Housing Association Act.
2. The Housing Cooperatives Act.

Housing cooperatives have had separate and quite detailed regulations since 1960. After World War 2, large investments were required in the housing sector to meet the need for housing. Housing cooperatives had already existed for almost three decades, but they

needed better regulation, as they were becoming important actors in rebuilding the country after the war.

When the general Cooperative Act came into force in 2008, the laws for the housing cooperatives were kept, partly because they were more detailed and customised to the housing sector than the new Cooperative Act.²

The two sets of laws go under the joint name of “Housing Cooperative Laws”. The laws were first established in 1960 and went through a major revision in 2003. The large majority of Norway’s nearly 9000 housing cooperatives are affiliated to a cooperative housing association. This requires double membership; both in the primary and secondary cooperative, which means that when you are a member of a housing cooperative, you will also be a member of the cooperative association. Together they constitute the organised housing cooperative system in Norway.

The two sets of laws define the purpose and tasks for the house-building cooperatives and the housing cooperatives. The two main tasks for the house-building secondary cooperatives are to deliver new dwellings for the members and to offer facility management to the primary housing cooperatives. When the members are buying new dwellings, they can choose a specific flat in a new house building project based on the number of years of membership. When the project is completed, they become co-owners in the new housing cooperative.

Regarding the housing cooperatives, the most important legal rules concern matters such as:

1. Limitation of liability.
2. Minimum requirements regarding the bylaws.
3. Ownership of shares (mainly natural persons and only one share/dwelling), but with legally defined exceptions to this main rule (public authorities have the right to own minimum 10% of the shares/dwellings and maximum 30%).
4. Change of ownership (dwellings are normally sold out in the free market).
5. The right of pre-emption (to market price for other members in the coop and members in the secondary cooperative association).
6. Procedures connected to enforced sale of the dwelling in the case of defaulted obligations.
7. Transfer of use (limited in time and requires consent of the board).
8. The cooperative’s maintenance obligation, etc.
9. Authority rules connected to the general meeting and the board.
10. Rules concerning facility-management and audit.

² Kommunal- og regionaldepartementet. Ot.prp. nr. 30 (2002–2003) Om bustadbyggjelag (bustadbyggjelags lova) og lov om burettslag (burettslagslova)

CONSUMER COOPERATIVES

Consumer cooperatives were already established in Norway during the second half of the 19th century. The consumer cooperative Coop is owned by more than 1.9 million members³ and is the second largest retail food chain in Norway.⁴

One of the special features of consumer cooperatives is the right to receive deposits from their members based on the basic principle that the main funding of cooperatives shall be provided by its members, and not from external sources. Pursuant to the Norwegian Financial Institutions Act Section 2(2)(1), the starting point is that deposits from the general public may only be received by banks. However, Section 2(2)(3) of the Act sets out an exemption for cooperatives, stating that cooperatives may receive deposits from their members in accordance with filing a notice with the Norwegian Financial Supervisory Authority (Norwegian FSA) about the arrangement. The Norwegian FSA may in turn require that the deposits are sufficiently secured and is authorised by law to determine the requirements of such arrangements.

Deposits are the main funding source for cooperatives connected to the Coop consumer cooperative. Members may transfer deposits electronically from bank accounts to their membership accounts, and some cooperatives also accept cash deposits from their members in physical stores. Coop has established its own guarantee scheme named "Samvirkelagenes Garantifond AL" which guarantees the deposits for an amount of up to NOK 2 million in favour of the members, equivalent to the guaranteed amount offered for bank deposits by the Norwegian Banks' Guarantee Fund.

While deposits have traditionally been considered as a vital funding source for consumer cooperatives, they also constitute a financial product offered to their members which falls within the scope of the 1999 Norwegian Financial Agreement Act.⁵ The Norwegian Financial Agreement Act sets out, among other things, requirements regarding the content of the underlying financial agreements, account requirements, withdrawal procedures, transfer of funds, information notices, and so on.

A new financial agreement was adopted by the Norwegian legislator in December 2019 and will replace the existing Financial Agreement Act, expected to be set in force by mid-2021 or in the beginning of 2022, with minor impacts anticipated for cooperatives.

In December 2019, the Norwegian FSA published a proposal for a law stating that the deposits arrangement of cooperatives would fall under the scope the Norwegian Anti-Money Laundering Act (No: *hvitvaskingsloven*).⁶ If adopted, cooperatives receiving deposits from their members will now be required to, among other things, conduct customer checks and risk assessments, monitor transactions and notify Økokrim (the

³ Coop homepage: <https://coop.no/medlem/medeierdemokrati#>

⁴ Coop Norge Annual Report 2019. <https://coop.no/globalassets/om-coop/arsmeldinger/2019/coop-arsrapport-2019.pdf>

⁵ Act on Financial Contracts and Financial Assignments (Financial Contracts Act) <https://app.uio.no/ub/ujur/oversatte-lover/data/lov-19990625-046-eng.pdf> Unofficial translation.

⁶ Act relating to Measures to Combat Money Laundering and Terrorist Financing (the Anti-Money Laundering Act) <https://www.finanstilsynet.no/globalassets/laws-and-regulations/laws/aml-act-of-1-june-2018-no.-23.pdf> Official translation

Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime) of suspicious transactions.

AGRICULTURAL COOPERATIVES

Norwegian farmers own approximately one third of the country's food industry through cooperatives.⁷ Because of the size of the three largest agricultural cooperatives, they have been assigned a particular responsibility by the Ministry of Food and Agriculture to achieve some of the objectives of the Norwegian Agricultural Policies.

The agricultural cooperatives TINE SA, Nortura SA and Felleskjøpet Agri have been given a special exception from the Competition Act so they can take on a market balancing role for a given set of products on behalf of the government. This exception is a legal permission that allows for deviation from two important principles in the Competition Act: the principle of free competition in the market by preventing cooperation between private businesses, as well as prohibition of dominant market shares. The exception from the Competition Act is regulated in the "*Regulation on the exception for cooperation etc. in agriculture and fisheries*". In Norway, agricultural cooperatives require this exemption because farmers are defined as private businesses. As a result, farmers can participate in agricultural cooperatives, and it is accepted that they have a dominant market share, as long as they have been assigned the role as a market regulator through the Agricultural Policy. Exceptions from the Norwegian Competition Act are provided for in Norwegian agricultural and fisheries policy.

The national expert has set out this legislation in greater detail in the table below:

Name of the law	Description	Issuer. Date/year	Last update
Regulation on the exception for cooperation etc. in agriculture and fisheries (Forskrift om unntak for samarbeid mv. innen landbruk og fiske.)	Regulates an exception from the Competition Act.	Ministry of Trade, Industry and Fisheries, 01.05.2004	N/A
Marketing Act (Omsetningsloven)	Regulates the role of cooperatives/other actors as well as regulatory instruments, in the promotion of agricultural goods in the market.	Ministry of Agriculture and Food, 10.07.1936	01.07.2019

⁷ Røtnes R. og E. Cappelen (2020) Betydningen til samvirker og stiftelser som eierformer i norsk næringsliv. Rapport 18-2020
<https://static1.squarespace.com/static/576280dd6b8f5b9b197512ef/t/5ec27fce43f4d46c90299f22/1589805014210/R18-2020+Betydningen+til+samvirker+og+stiftelser+som+eierformer+i+norsk+n%C3%A6ringsliv.pdf>

Regulation on market regulation of agricultural goods (Forskrift om markedsregulering til å fremme omsetningen av jordbruksvarer)	Regulates the market regulation system for selected agricultural goods, where cooperatives play a core role.	Ministry of Agriculture and Food, 22.10.2008	25.09.2020
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b) Establishment, cooperative membership and governance

Cooperatives must be registered in the State-owned National registry called “Brønnøysund Register Centre” in the same way as all other enterprises.

To set up a cooperative, the following is required:

1. A signed and dated **Founding document** that includes:
2. Names of the founders (must be at least two)/ company name, address and ID number/organisation number.
3. Name, address and ID number of Board Members.
4. Information on the company's auditor.
5. If start-up capital is required from the members of the cooperative, this will be stated in the Founding document.
6. If some members have special rights, this must be described.⁸

The cooperative must be registered in the National Registry no later than three months after the signing of the Founding document.

As a minimum, **the Statutes** must include the following:

1. Cooperative name.
2. The municipality where the cooperative shall have its business office
3. The purpose and role of the cooperative.
4. The size of entry capital for new members, and information about interest rates and possible repayments or not if leaving the cooperative.
5. Whether a membership fee is to be paid.
6. How the annual profit can be used.
7. The number of board members, or the lowest and highest possible number of board members. Section (6)(64)(1) of the Cooperative Act says that if the cooperative chooses to have less than three board members, this must be stated in the statutes.
8. Which matters are to be dealt with at the ordinary annual meeting.
9. How the net assets will be distributed upon dissolution.

⁸ The Cooperative Act (Section (9)(3) states that: If one or more of the founders are to settle a capital contribution in assets other than money, the memorandum of incorporation shall state the assets concerned, the name and address of the founder concerned and the terms that are to apply.

MEMBERSHIP REQUIREMENTS

Anyone can, in principle, become a member of a cooperative, according to the law. Section 14 of the Cooperative Act states that consumers, businesses and others that may have their economic interests safeguarded by a cooperative are entitled to become a member of the enterprise by enrolling in it. The enterprise may only refuse membership if there are reasonable grounds for doing so. The statutes may stipulate conditions governing becoming and remaining a member, provided there are reasonable grounds for these.

According to this, consumers, businesses and others have the right to become a member of the cooperative, as long as the membership will provide them with economic benefits. As it is stated in the law, there needs to be reasonable grounds if the cooperative refuses a new member. This means that as long as a potential member fulfils the requirements in the statutes, they cannot be rejected as a member. Therefore, it is important for the cooperative to state what the requirements for membership are in the statutes, to avoid any misunderstanding of the membership criteria.

The national expert provides some examples on what can be decided upon in the statutes:

Regarding active and inactive members, the cooperatives define what they consider to be the limit of an active and an inactive member in the statutes. For example, the statutes may stipulate that members can be excluded if they have not traded or actively engaged with the cooperative for a period of at least one or five years.

All members have the right to, but are not obliged to, participate in the decision-making process through their vote.

It is the cooperative itself that defines the limits of operations of the cooperative. The Norwegian Cooperative Act is quite conservative, or strict, in the sense that the core business of the cooperative must benefit the members, and non-members cannot participate in the core business.

The statutes must define who can buy products or services from the cooperative, what is required from the members and what the member benefits are compared to non-members.

In the Cooperative Act it is stated that there must be at least two members of a cooperative. If it falls below this, the enterprise will now longer fulfil the requirements of being a cooperative. It must then close down.

WITHDRAWAL

Withdrawal from a cooperative in Norway is regulated by Section 22 of the Cooperative Act.

A member has the right to withdraw from the cooperative on the basis of a written notice. If membership expires at a specific time, no written notice is required.

In the statutes the cooperative decides how long the resignation period is. It can be no longer than three months (from the date of the resignation notice). For secondary cooperatives, the resignation period can be up to 12 months.

If the cooperative finds that there is a need to define criteria for what is considered non-acceptable resignations, they can stipulate such criteria in the statutes.

When withdrawing from the cooperative, the members have the right to be repaid membership contributions. The statutes can however state otherwise. The statutes can also decide:

1. Whether repayment of membership contributions will be repaid with interest or not.
2. How payments, based on trade with the cooperative, will be paid.
3. Whether, in case of members being employees, they will be paid their share of the net assets of the cooperative, or not.

GOVERNANCE

An important principle in the Cooperative Act is the Principle of Equality (Section (3)(17), according to which a cooperative shall treat all its members in the same way. Any differential treatment requires reasonable grounds.

All members have one vote. However, in large cooperatives, it can be challenging to invite all members to general assemblies to vote. The Cooperative Act therefore says that in Cooperatives with more than 100 members, representative groups to the General Assembly can be set up. The participants in the representative group will be elected by the members, and each member has one vote each. He or she will be chosen as a representative from a geographic area, a type of production, or similar.

Cooperatives can employ and trade with non-members, depending on what is defined as the cooperative business. Worker-owned cooperatives are not common in Norway, as they are in many other countries. Usually, there is a distinction between the business organisation of the cooperative and the member organisation. They are often linked in the following way:

1. The business organisation, with the administrative directors at the top.
2. The membership organisation, with the Board at the top. The Board consists of members that make the strategic decisions for the business organisation to follow. The employees and the directors in the business

organisation can be, but are often not, members of the cooperative. The directors in the business organisation have the same responsibilities as in any other company type.

The main challenge with this type of organisation, and especially for large cooperatives with a high number of members, is that there can be significant distance between the members and everyday decisions in the organisation. Close dialogue and involvement of members in decision making processes is therefore important in such situations, as well as close dialogue between the Board and the commercial organisation.

Figure 1: Owners/Members and commercial organisations

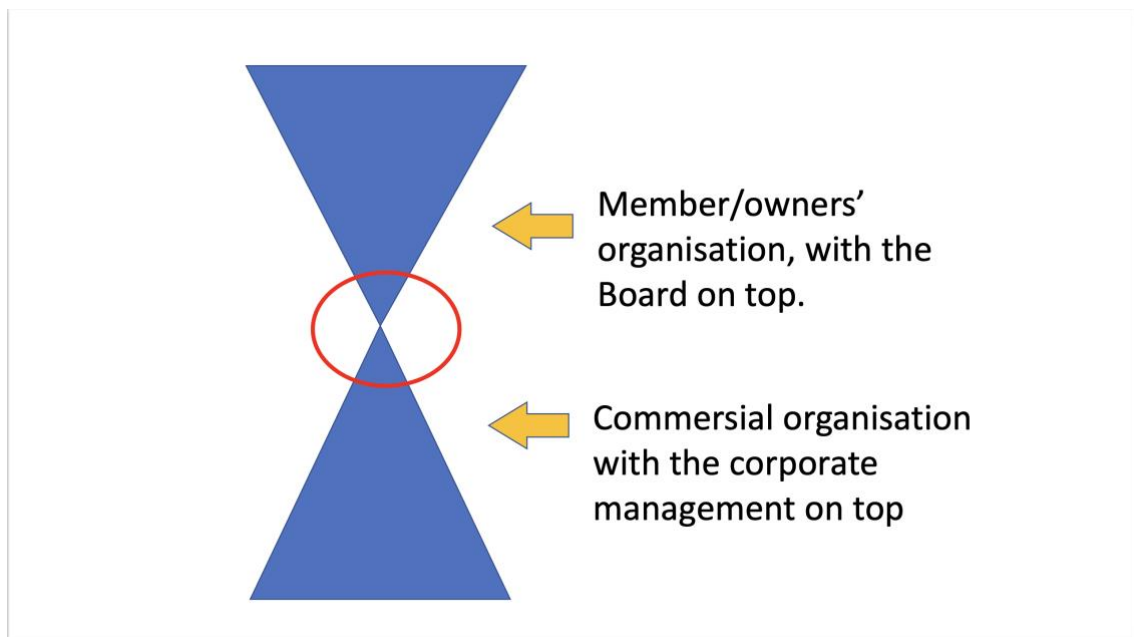


Figure 1 shows two 'separate' organisations: one for the owners/members, and one for the commercial organisation.

c) Cooperative financial structure and taxation

Cooperative financial structure - In Norway, capital contributions by the members are regulated in the Cooperative Act (Section (26-29)). Cooperatives have three main sources of capital:

1. Membership fee
2. Savings
3. Loans

Cooperatives cannot admit investor members that only participate through capital contribution. This means that the law does not facilitate external capital inputs from non-active members, for example when there is a need to cover large investment costs.

The Cooperative decides for itself whether there is a need for establishment capital. There is no minimum requirement in the law. The law does not say that the capital input must be equal for all the members. However, it states that the statutes must describe what is expected from new members.

Profits can either be used as savings or investments for the future development of the cooperative, or be paid to the members based on their level of transactions.

The statutes may stipulate that the annual profit will be used to:

1. Make **subsequent payments**, meaning that payments are based on their contribution and active use of the cooperative every year, e.g., the number of working hours, litres of milk delivered or how much electricity they have spent
2. Transfer to the **subsequent payments reserve**, meaning that a share of the profit from the cooperative will be transferred to a shared capital reserve.
3. Transfer to the **members' capital accounts**, meaning a personal capital reserve.
4. Add interest to the membership contributions and members' capital accounts.

SUBSEQUENT PAYMENTS

The statutes may stipulate that the members can be paid all, or parts of the annual profit based on their trade with the cooperative. Only members can be entitled to a subsequent payment. A subsequent payment can only be made from that part of the annual profit that remains after a deduction has been made for unsettled losses and, if relevant, a part of the annual profit that is to be transferred to reserves etc., in accordance with the statutes. No more than that which is in accordance with prudent, good business practices may be disbursed.

SUBSEQUENT PAYMENT RESERVE

When stipulated in the statutes, the Annual Meeting may decide that the annual profits can be transferred in whole or in part to a subsequent payment reserve. The Annual Meeting may decide that all or parts of the subsequent payment reserve shall be distributed to the members. The distribution must be based on the members' trade with the cooperative during a period stipulated in the statutes. This period cannot be less than one year. On the same terms, the Annual Meeting may decide that all or parts of the subsequent payment reserve shall be transferred to the members' capital accounts. Therefore, in theory, the disinterested dissolution of the cooperative may be permitted. The Annual Meeting may also reduce the subsequent payment reserve, and decide to have no payment to the members or any transfer to the members' capital accounts.

MEMBERS' CAPITAL ACCOUNTS

When stipulated in the statutes, the Annual Meeting may decide that the whole or parts of the annual profit can be distributed to accounts in the members' names (members' capital accounts) on the basis of the members' trade with the cooperative. The balance of the members' capital accounts must cover any otherwise unsettled losses.

The Annual Meeting may decide that all or parts of the balances of the members' capital accounts will be distributed to the members. Should a membership be ended, the member is entitled to be paid the balance of the member's capital account. This may however be waived in the statutes. When stipulated in the statutes, the Annual Meeting may decide that the annual profits will be used to pay interest on the membership contributions and members' capital accounts. The interest rate cannot be more than three percentage points above the interest payable on government bonds with a five-year term to maturity.

The membership contributions may only be increased by interest being paid on the contributions or by the members making further contributions.

MEMBER LOANS

Concerning member loans, Section 33 of the Cooperative Act states that a cooperative may only provide credit or security to a member within the framework of the assets that the enterprise may use to make subsequent payments, and only when adequate security is provided for the claim for repayment or for the recovery of property. The prohibition does not apply to credit on normal terms in connection with business agreements and trade with the members, credit or security granted by a secondary cooperative in favour of member enterprises, or credit or security granted to employees in a full-time job with the enterprise, provided the credit or security is in accordance with that which is normal when giving financial support to employees. The provisions apply to the opportunity to give credit or provide security to a director, a general manager, a member of another body of the enterprise or someone that is a related party of these, or to a member of the enterprise pursuant to the rules stipulated in section 1-5, first section, of the Norwegian Private Limited Companies Act.⁹ However, the prohibition does not prevent the enterprise from giving credit or providing security to an employee or his/her related parties provided:

1. the employee has been elected as an employee representative on the board of directors pursuant to the rules stipulated in this Act or in the statutes; and
2. the debtor is employed in a full-time job with the enterprise or another enterprise in the same group or in the same federation; and
3. the credit is provided in accordance with that which is normal in the case of financial support to employees.

⁹ Lov om aksjeselskaper (aksjeloven) <https://lovdata.no/dokument/NL/lov/1997-06-13-44>. Not translated.

It is a legal requirement that the cooperative has sufficient equity capital, based on the risk and the scope of the operations (Cooperative Act, Section 25). How much this is, can be stated in the statutes. The statutes also need to define what happens to the capital in case of member exit and dissolution of the cooperative.

As concerns payments in case of dissolution of the cooperative:

1. First, the creditors must be paid.
2. Members have the right to the following payments, unless the statutes states otherwise: membership contribution and the balance of the members capital accounts, including interest rates.
3. Assets on top of this, will be given to other cooperatives or a non-profit purpose.
4. Remaining assets will be property of the members on the dissolution date, unless the statutes state that former members are also eligible. Distribution will be based on trade with the cooperative for at least one year, but normally five.

TAXATION

Cooperatives are subject to taxes in the same way as all other business organisations. This is in coherence with their legal nature, as they are defined as private companies.

However, there is a difference in taxation when it comes to the subsequent payments.¹⁰ Subsequent payments can be compared to dividends in the shareholder company, but there are some criteria (see Section 27 of the Cooperative Act) that need to be met for them to be defined as such:

1. The statutes of the cooperative must allow for subsequent payments.
2. The recipients must be members of the cooperative.
3. There must be a surplus in the accounting year.
4. The payments must be based on the members' trade with the company.

If the payments are defined as subsequent payments in the cooperative, they can be eligible for tax deductions, according to the Tax Act Section (10) (50).¹¹

¹⁰ Norwegian Tax Authorities (2014). Statement on the relationship between the Tax Act and the Cooperative Act (text in Norwegian) <https://www.skatteetaten.no/rettskilder/type/uttalelser/prinsipputtalelser/etterbetaling-fra-samvirkeforetak--presisering-av-forholdet-mellom-skatteloven--10-50-og-samvirkeloven--27/>

¹¹ Lov om skatt av formue og inntekt (skatteloven) (Tax Act) https://lovdata.no/dokument/NL/lov/1999-03-26-14/KAPITTEL_11-6#%C2%A710-50

iii. Other specific features

d) Cooperative internal and external control and cooperation among cooperatives

EXTERNAL CONTROL

Cooperatives are subject to the same type of control as other companies. This includes:

1. An audit obligation.
2. Annual accounts, fully documented, audited and with a balance sheet as well as notes.
3. An annual report, including:
 - salaries and taxes
 - members of the Board
 - a short description of the economic situation
4. Continued reports on sick leave (due to support from the government in case of long sick leave).

COOPERATION AMONG COOPERATIVES

The ICA principle concerning cooperation among cooperatives is not regulated in Norway, but it is voluntary.

The national expert identifies a couple of examples of this principle in practice:

1. Firstly, Norwegian Agricultural Cooperatives is an apex organisation for cooperatives in the agricultural sector. The cooperation is voluntary, but the organisation brings forward topics that are of common interest for the members. Examples are business-related knowledge for farmers, including organisational development, policies, laws, market and competition matters. It is also an important organisation for building knowledge of the cooperative business model.
2. The Norwegian Co-operative Organisation (Samvirkene) is an interest organisation for cooperatives in Norway. They represent 2.8 million members, 94,000 employees and 250 billion NOK in revenue.¹²

¹² Samvirkene (2021) <https://www.samvirkene.no/>

III. Degree of “cooperative friendliness” of the national legislation

The Cooperative Act provides an important legal framework for cooperatives in Norway. It is cooperative friendly in the sense that it gives predictability and a clear framework for interpreting and understanding both the cooperative principles and how to practically run a cooperative. A part of the Act is currently under revision, which the national expert considers to be long overdue. It is important that cooperative legislation must be regularly revised, to make sure it does not lag behind other company legislation.

In the preparatory works of the Cooperative Act, the Ministry of Justice stated that there was a need for a separate law for cooperatives because of the following:¹³

1. The need for better facilitation for cooperative organisations.
2. To clarify the uniqueness of the cooperative business model.
3. To put the cooperative business model and the social economy on the agenda
4. To change attitudes towards cooperatives and improve the status of cooperatives in Norway.

There has not been any analysis that has looked at whether this has happened yet. However, the most important change is that cooperatives now have a clear legal framework that acknowledges the special characteristics of the cooperative business model, while at the same time formally placing cooperatives next to other businesses in importance.

The equality principle has been important for the cooperative movement in Norway. For example, this means that official registration is as easy for new cooperatives as any other type of new enterprise.

Even though, in the view of the national expert, there is a general satisfaction with the Cooperative Act, it is becoming evident that the laws for other business models, e.g., shareholder companies, have been more frequently updated than the Cooperative Act. In fact, the Cooperative Act has not been updated since it came into force in 2008. This has been highlighted by the cooperative sector to the Ministry of Trade, Industry and Fisheries since 2013.

The fact that, in Norway, there is now a separate jurisdiction for cooperatives is important. It gives cooperatives a defined place, and a defined responsible government entity, the Ministry of Trade, Industry and Fisheries concerning the general Cooperative

¹³ Ot.prp. nr. 21 315 Om lov om samvirkeforetak (samvirkelova)
<https://www.regjeringen.no/contentassets/71aa5451f41a47ecb89c89445036266f/nno/pdfs/otp200620070021000dddpdfs.pdf>

Act, and the Ministry of Local Governments and Modernisation when it comes to the acts relating to the cooperative housing sector.

FRIENDLINESS OF THE COOPERATIVE HOUSING LAWS

The laws on cooperative housing associations and housing cooperatives were completely revised in 2003. At the time of its revision, there had been more than 70 years of growth in the cooperative housing sector, and special laws for 40 years. By 2003, the market had changed completely, and the laws from 1960 had to be updated. The cooperative housing sector was generally very satisfied with the new laws which revitalised the sector.

Since the revisions in 2003, the legislation regarding the cooperative housing sector has been further amended several times, with small but important changes to ensure well-functioning laws for the sector. Most of the changes have been initiated by the cooperative housing sector itself.

Current laws for housing cooperatives and cooperative housing associations have been established after good cooperation between the Government and the Storting (the Norwegian legislature), and where the cooperative housing movement has been given the opportunity to make important contributions to ensure adequate regulations for the movement. Of course, it is not the cooperative housing movement that dictates the laws, but through active lobbying work with the Government and the Storting, Norway currently has good and well-functioning laws. When the need for change arises, the cooperative housing associations have good opportunities to record proposals for changes in the legislation. Recently, in Norway good examples exist of, among other things, the introduction of regulation of the right to electric car charging in the housing cooperatives, and not least during Covid-19, regulation of deadlines and alternatives for conducting board meetings and general meetings have been implemented quickly. All in all, the cooperative housing movement in Norway has had satisfactory opportunities for influence over legislation, ensuring updates are to the benefit of housing cooperatives and cooperative housing associations.

PRINCIPLE OF EQUALITY

Norwegian cooperatives want to have the same rights as other businesses and also treated on an equal footing. The law is built around this principle.

To understand why Norwegian cooperatives are fighting for equality instead of special treatment, (which is different from many other countries), one can learn from the country's history.

According to the national expert, there have traditionally been some basic misunderstandings around the cooperative model. One misunderstanding is that cooperatives must be non-profit, another that they are partly state owned. Some of these

misunderstandings can be historically explained, e.g., that the largest agricultural cooperatives have taken on a specific role for the government.¹⁴

Because of confusions surrounding the cooperative model, it was important to have cooperatives regulated in a separate company legislation. Even though this was an important starting point, it is still important for cooperatives to underline that they are private companies like any other company. This means, for example, that the Cooperative Act must be regularly updated, and that governmental support schemes must be suitable for cooperatives.

EQUALITY IN TAXATION

The principle of equality also includes the tax regime. Today, this is equal for cooperatives as for other enterprises.

An important example from the housing cooperative sector is the struggle to gain the same right to tax deduction for interest expenses. Owners of a cooperative dwelling did not achieve this right for interests paid on the common loan in housing cooperatives before 1975. A system of joint financing was the main economic funding when establishing a housing cooperative, so the lack of right to tax deduction represented a significant discrimination that the housing cooperative movement fought against for more than 20 years – before a unanimous Parliament supported equality towards other house owners.

EQUALITY IN DIGITALISATION

When the Covid-19 pandemic started spreading in Norway during March 2020, the country went into a state of lockdown, which also influenced the practical sides of running a cooperative.

For example, the Cooperative Act states that board meetings and General Assemblies must be physical meetings. The law for shareholder companies has been updated in recent years, so they had the possibility to arrange digital meetings.

In a pandemic situation with strict restrictions on physical gatherings, this posed a huge problem for the cooperatives that were about to enter the high season for General Assemblies. All businesses must have approved their annual accounts before the end of June.

After receiving inputs from Norwegian cooperatives on the impossible situation they were in, the government opened up for a temporary change in the Cooperative Act, so cooperatives could arrange Board meetings and General Assemblies digitally.

¹⁴ The first agricultural cooperative was established in 1856, which was a dairy. Today there are three large national cooperatives within milk, meat and grains, and a number of smaller ones. During the last 85 years, the largest ones have taken on a responsibility from the government on balancing the market for certain agricultural goods.

After a year with digital meetings, it has become evident that the laws need to be updated, to avoid unnecessary challenges in the future. In March 2021, the Government proposed permanent changes in the Cooperative Act. The changes will be processed and voted over by the Parliament, probably in May 2021. The Ministry of Trade Industry and Fisheries have received inputs from cooperatives, legal firms and interest organisations on the changes that are needed. The suggested changes are harmonised with other business types. The update and harmonisation of the Cooperative Act are important steps forward for Norwegian cooperatives.

LACK OF KNOWLEDGE OF THE CHARACTERISTICS OF THE COOPERATIVE MODEL

A challenge for the cooperative community in Norway is the lack of knowledge on the cooperative model among policy makers, public servants, the education system and even within cooperatives themselves.

One example of this is that there are no courses on the cooperative model in the education sector in Norway. Formerly such courses were included in Agricultural studies, but they have since been removed from the curriculum. Further, the cooperative model is not taught about in any of the economic/business related study programs at any Norwegian university. As a result, only a few law firms and a handful of experts in certain governmental offices hold most of the cooperative knowledge in the country. This poses problems, for example, because official support programs are not well suited for cooperatives. In terms of support, for example, there can be requirements to plan to reach a certain profit level and/or expansion in the size of the business to be considered eligible. Often such requirements do not comply with the nature of the cooperative business model.

ANTI-MONEY LAUNDERING REGULATIONS

Norwegian banks have been under the scope of the Anti-Money Laundering Act for several years and have experienced high costs of compliance with the legislation. In the hearing process on the updated version of the Anti-Money Laundering Act in 2020, they suggested to include cooperatives. The consumer cooperative Coop argued that implementing the act for cooperatives must be thoroughly assessed, as the proposal did not take into account the specific nature of cooperatives. Further, the risk of money laundering for the business of the cooperative is different than for banks, and cooperatives were not mentioned in the EU legislation which the Anti-Money Laundering Act was originally based on. If the proposal is adopted by the legislator as proposed by the Norwegian FSA, Coop fears that the cooperative as an organisational model could potentially be at a disadvantage compared to other corporations. The Ministry of Finance has not yet published its proposal on the matter.

IV. Recommendations for the improvement of the national legal framework

The national expert recommends three main changes to improve the national legal framework for cooperatives in Norway:

1. More frequent updates to the Cooperative Act to make sure it corresponds with changes in the legal framework for other types of businesses. This is important to ensure that the cooperative business model will be attractive and relevant for start-ups. It is also important to ensure predictability for current cooperatives.
2. More information about the cooperative model in the education system and among government officials. The cooperative knowledge is vulnerable and currently within very few hands. This makes it challenging to achieve momentum and interest among decision makers.
3. Government support programs that are better suited to the nature of the cooperative model. For example, this could mean more emphasis on improved quality of products or services, and economic predictability or stability.

V. Conclusions

To summarise, the Cooperative Act was warmly welcomed when it was adopted. It contributed to a “clean up” in the registry of firms. Although a large number of cooperatives had to go through and update their statutes, the whole process has contributed to a clearer understanding of the cooperative model and how it should be interpreted in a Norwegian context. However, it is evident that there is a constant need to look at the legislation, to make sure it is updated in a comparable way with other business models, but also to assess it in the context of general developments within society (such as digitalisation). The knowledge about the cooperative model is vulnerable, but the national expert believes that interest is increasing, and that it is important to ensure access to knowledge regarding the cooperative model.

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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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