

Netherlands Legal Framework Analysis: Key Highlights

The primary source of legislation for all cooperatives is the Second Book of the Netherlands Civil Code on Legal Persons (hereinafter: NCC). 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. Apart from mutual insurance companies and B2B credit cooperatives (*kredietunies*), there are no specific regimes for different types of cooperatives in the Netherlands.

The Constitution of the Netherlands does not mention cooperatives and the ICA Principles on Cooperative Identity are neither explicitly nor implicitly referred to in the law.

Cooperative Friendliness: The national expert considers the degree of “cooperative friendliness” of the Netherlands’ legislation to be only limited so. In the Netherlands, the national expert regards best practices of cooperative legislation to be its flexibility and the statutory rules on membership withdrawal which protect members against too restrictive rules in the articles of association. However, 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 also 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.

Key recommendations for improvement: 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. Among other recommendations, the national expert supports specific rules for worker cooperatives and an adequate legal framework for financing and raising equity in the law supplementing the existing regime of members liability in case of liquidation. Finally, the protection of the cooperative identity vis-à-vis other business forms needs to be addressed too, since Article 2:63 NCC is in practice not enforced.

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, though the national expert recognises that a recodification of law in general is a cumbersome process.