

Portugal Legal Framework Analysis: Key Highlights

This one-pager aims to provide a brief overview of the most notable features of Portugal's national cooperative legal framework, based on the work of the national legal experts.

Portuguese cooperative law is based on four fundamental pillars: a) the Constitution of the Portuguese Republic; b) the Social Economy Basic Law; c) the Cooperative Code (PCC); and d) legislation specifically regulating the 12 different types of Portuguese cooperatives. The Constitution and PCC apply to all forms of cooperative, whereas other pillars only apply when they concern the respective cooperative sector.

In 2015, the PCC was reformed to adapt Portuguese law to new demands regarding cooperative governance and their distinct economic regime, without abandoning the ICA principles on cooperative identity.

The ICA principles are recognised both in the Articles 61.2 and 82.4a of the Constitution, and Article 3 PCC. Respect for the cooperative principles is mandatory, hence, a disrespect for the cooperative principles in the operation of a cooperative can be a cause for dissolution, according to Article 112.1.h PCC.

Cooperative Friendliness: Overall, Portuguese cooperative legislation is regarded as significantly cooperative friendly. Cooperative law in Portugal provides legal-constitutional support to enshrine the cooperative principles. In particular, the experts note that Article 85.1 of the Constitution stipulates the state's commitment and support for the creation and activities of cooperatives.

Key recommendations for improvement: The experts' first main recommendation is a simplification of the tax system, to make it more beneficial for cooperatives. They further argue that EU Competition law should apply differently to cooperatives compared with for-profit enterprises and also for a re-adjustment of accounting tools for cooperatives. Finally, the experts recommend allowing large cooperatives to provide their management and representation bodies with technically qualified persons who are able to manage them effectively.

Conclusions: Whilst Portuguese cooperative law is cooperative friendly with legal-constitutional support for the cooperative principles, specific legislation on cooperative branches needs urgent and adequate reform. Cooperatives would benefit from changes to the tax regime and a stronger link between the cooperative movement and universities, to account for the needs of cooperatives in the 21st Century.