



# LEGAL FRAMEWORK ANALYSIS

## NATIONAL REPORT: GREECE

ICA-EU PARTNERSHIP



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**National Expert:** Adj. Lecturer Ifigeneia Douvitsa

## I. Introduction

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. This research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- provide general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organisations, notably the for-profit shareholder corporation.
- to evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore “cooperative friendly” or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).
- to provide recommendations for eventual renewal of the legal frameworks in place in order to understand what changes in the current legislation would be necessary to improve its degree of “cooperative friendliness”, which is to say, to make the legislation more favourable to cooperatives, also in consideration of their specific identity.

This report strives to maintain a balance between a broad and up-to-date picture of the legal landscape on cooperatives in Greece, whilst also analysing the main elements of specific cooperative laws. Apart from describing the Greek cooperative legislation in force, the report also introduces recommendations to improve the legislation and ends with a number of final conclusions.

This report was written by Adj. Lecturer Ifigeneia Douvitsa of the Hellenic Open University, member of the ICA Cooperative Law Committee and the regional representative for Europe. Further input was provided by staff from Cooperatives Europe and the International Cooperative Alliance, and the report incorporates additional input from the ICA member organisation in Greece, the KAPA Network, who support and promote cooperative enterprises in Greece, with a focus on cooperative education, promotion and international collaboration.

## II. National cooperative law: Greece

### i. General Context

In Greece, specific regulations on cooperatives may be found: A) in the national constitution of the country, B) in the ordinary laws.

**A.** Specifically, article 12.4 of the National Constitution (“NC” hereafter) stipulates that *“agricultural and urban cooperatives<sup>1</sup> of all types shall be self-governed according to the provisions of the law and of their statutes; they shall be under the protection and supervision of the State which is obliged to provide for their development<sup>2</sup>”*. Based on the above provision, the legislator is obliged to enact and apply laws that maintain a balance between the state protection and supervision of cooperatives on one hand - and the self-governance of cooperatives on the other hand<sup>3</sup>. However, preserving such a balance has proven to be a challenging task for the legislator, given the degree of state involvement in cooperatives’ internal governance mechanisms, demonstrated through the number<sup>4</sup> and content<sup>5</sup> of the enacted laws. Furthermore, dividing cooperatives into agricultural and urban cooperatives offered a base justification for the fragmentation of the cooperative legal framework. Specifically, the first special cooperative law on farmers’ cooperatives (L. 921/1979) justified its enactment in its preamble- among other reasons- on the abovementioned division offered by article 12.4 NC; hence creating a precedent of enacting special laws on agricultural cooperatives, ever since.

Furthermore, the article 12.5 NC prescribes for the establishment of mandatory cooperatives («αναγκαστικοί συνεταιρισμοί») for specific public interest purposes, the participation in which is imposed by law. A provision on mandatory cooperatives was first

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<sup>1</sup> Urban cooperatives may also be translated as civil cooperatives.

<sup>2</sup> K. Mavrias, E. Spiliotopoulos, X. Paparrigopoulos, S. Vassilouni, The Constitution of Greece, Hellenic Parliament (official translation), 2008, p. 27-28 (article 12).

<sup>3</sup> Γ. Παπαδημητρίου, Οι συνεταιρισμοί ως θεσμός του δημοκρατικού πολιτεύματος [Cooperatives as an institution of the democratic regime], Συνεταιριστική Πορεία, τ. 14, 1989, σ.80-84.

<sup>4</sup> For instance, between 1984- 1994, 230 laws were enacted for the regulation of agricultural cooperatives. Β. Λαμπροπούλου-Δημητριάδου, Κριτική θεώρηση της ελληνικής συνεταιριστικής νομοθεσίας, σε: Κ. Παπαγεωργίου (επ.), Σύγχρονη Θεώρηση του συνεταιριστικού θεσμού στην Ελλάδα, ΙΣΕΜ, 1995,[Assessment of the Greek cooperative legislation], p. 90-91.

<sup>5</sup> For example, based on the previous legal regime on agricultural cooperatives (article 19 of L. 4015/2011), the unions of agricultural cooperatives were obliged to be converted into either a first degree cooperative or a type of anonymous society.

introduced in the previous constitution (NC of 1952) to resolve any doubts upon their constitutionality<sup>6</sup>.

**B.** In the absence of a general cooperative law, there is a number of special laws that divide cooperatives into three main categories:

a) agricultural cooperatives, which are subject to Law 4384/2016, currently under discussion of being reformed, at the time of writing<sup>7</sup>.

b) forest-workers cooperatives which are subject to Law 4423/2016,

c) urban (or civil) cooperatives that undertake activities outside the agricultural sector and are subject to Law 1667/1986. In addition, special laws have been enacted to regulate particular types of urban cooperatives (e.g. *cooperative banks*, *social cooperatives of limited liability*, *social cooperative enterprises* (“SCEs<sup>8</sup>” hereafter), *worker cooperatives*, *energy communities* (“ECs” hereafter) and *recently social cooperatives of integration*), for which L. 1667/1986 is applied complementarily.

The special cooperative laws are usually drafted and submitted to the National Parliament by different ministries, serving a sector-specific purpose or addressing particular socio-economic issues. For instance, the introduction of the SCEs and the workers cooperatives by L. 4430/2016 (drafted by the Ministry of Labor) aimed - among others - to facilitate the formation of small-sized producer/worker initiatives under a cooperative structure. During the post-crisis years of high unemployment and small and medium size businesses shutting down; the introduction of ECs, (drafted by the Ministry of Energy) aimed - among others - to introduce more favorable provisions (than the existing ones) for the energy cooperatives, whilst enabling the local authorities’ participation<sup>9</sup>.

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<sup>6</sup> A. Κλήμης, *Οι συνεταιρισμοί (με την ειδική έννοια του Ν. 602) και τα ελληνικά Συντάγματα* [Cooperatives under the specific concept of L. 602 and the Greek constitutions], 1975.

<sup>7</sup> The draft law has been under public consultation and is soon to be submitted to the Hellenic Parliament to be voted by the deputies. What is noteworthy is the absence of any provisions for the cooperation among cooperatives. More specifically, the draft law does not prescribe for the formation of unions pursuing an economic purpose under a cooperative structure and federations pursuing a socio-political purpose under the legal form of an association, as well as the formation of a Panhellenic Confederation that would represent the agricultural cooperative movement.

<sup>8</sup> Not to be confused with the acronym of the European Cooperative Society (*Societas Cooperativa Europaea*), which is by established by the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.

<sup>9</sup> The participation of local authorities in energy cooperatives was either forbidden or contested prior to L. 4513/2018. The above issue has been solved by the explicit reference of L. 4513/2018 on the involvement of local authorities which is not only permitted but encouraged by the various clauses that the law introduces. See I. Douvitsa, **The new law on energy communities in Greece**. *Cooperativismo e Economica Social (CES)*, Vol. 40, University of Vigo, 2018, pp. 31-58.

**Table 1: List of the main cooperative laws in force**

The following table aims at providing a general overview of the main cooperative laws applicable to the various types of cooperatives. However, it is outside the aim's report to provide an exhaustive list of all applicable provisions on cooperatives.

Type of cooperative <sup>10</sup>	Cooperative Laws	Date of approval	Date of last update/legal act
<b>1. Agricultural Cooperatives</b> (i) Women's agricultural cooperatives (ii) Agricultural cooperatives (of organic produce) (iii) Fishermen's cooperatives	Law 4384/2016 "Agricultural cooperatives, forms of collective organisation of the agricultural sector and other provisions [Αγροτικοί Συνεταιρισμοί, μορφές συλλογικής οργάνωσης του αγροτικού χώρου και άλλες διατάξεις]	26/4/2016	28/7/2016 (L. 4409/2016)
<b>2. Forest-workers cooperatives</b>	Law 4423/2016 "Forest Cooperative Organizations and other provisions" [Δασικές Συνεταιριστικές Οργανώσεις και άλλες διατάξεις]	27/9/2016	23/5/2019 (L.4612/2019)
<b>3. Urban cooperatives</b>	Law 1667/1986 "Urban Cooperatives and other provisions" [Αστικοί συνεταιρισμοί και άλλες διατάξεις]	6/12/1986	1/4/2019 (L.4605/2019)
(i) Building cooperatives	Law 1667/1986 "Urban Cooperatives and other provisions" [Αστικοί συνεταιρισμοί και άλλες διατάξεις]  Special provisions from other laws: article 39 L. 4030/2011 as it has been reformed by article 31 L. 4067/2012  <i>Note:</i> - p.d. 17 of 16/16.1.84: it was abolished by article 26 of the p.d. 93 of 9/16.4.1987. - p.d. 93 of 9/16.4.1987: it was abolished by article 26 par. 11 L. 4280/2014. - According to article 12 particle 1 L. 4280/2014 the establishment, operation and supervision of building cooperatives is subject to L. 1667/1986, leading to the repeal of relevant provisions of p.d. 14 of 27-07-1999 (Government Gazette 580/Δ/1999)	6/12/1986	1/4/2019 (L.4605/2019)
(ii) Credit cooperatives/Cooperative banks <sup>11</sup>	Special provisions on credit cooperatives/cooperative banks are incorporated and codified in Law 1667/1986 "Urban Cooperatives and other provisions" [Αστικοί συνεταιρισμοί και άλλες διατάξεις]  Special provisions from other laws: L. 4261/2014	6/12/1986	1/4/2019 (L.4605/2019)
(iii) Maritime insurance cooperatives	Law 3569/2007 "Maritime insurance cooperatives and other provisions on the competence of the Ministry of commercial shipping" [Συνεταιρισμοί θαλάσσιας αλληλασφάλισης και άλλες διατάξεις αρμοδιότητας Υπουργείου Εμπορικής Ναυτιλίας] *	4/6/2007	The law's provision on the maritime

<sup>10</sup> The table includes the main types, in which cooperatives are divided from a legal standpoint, meaning that a cooperative constitutes a distinct type as long as it is acknowledged as such and it is subject to a special cooperative law or cooperative type-specific provisions regarding some basic aspects of its operation (such as its establishment, governance, dissolution etc.). Pharmacists' cooperatives are not mentioned in the above table, since their organisation is mainly subject to the provisions of L. 1667/1986 on urban cooperatives.

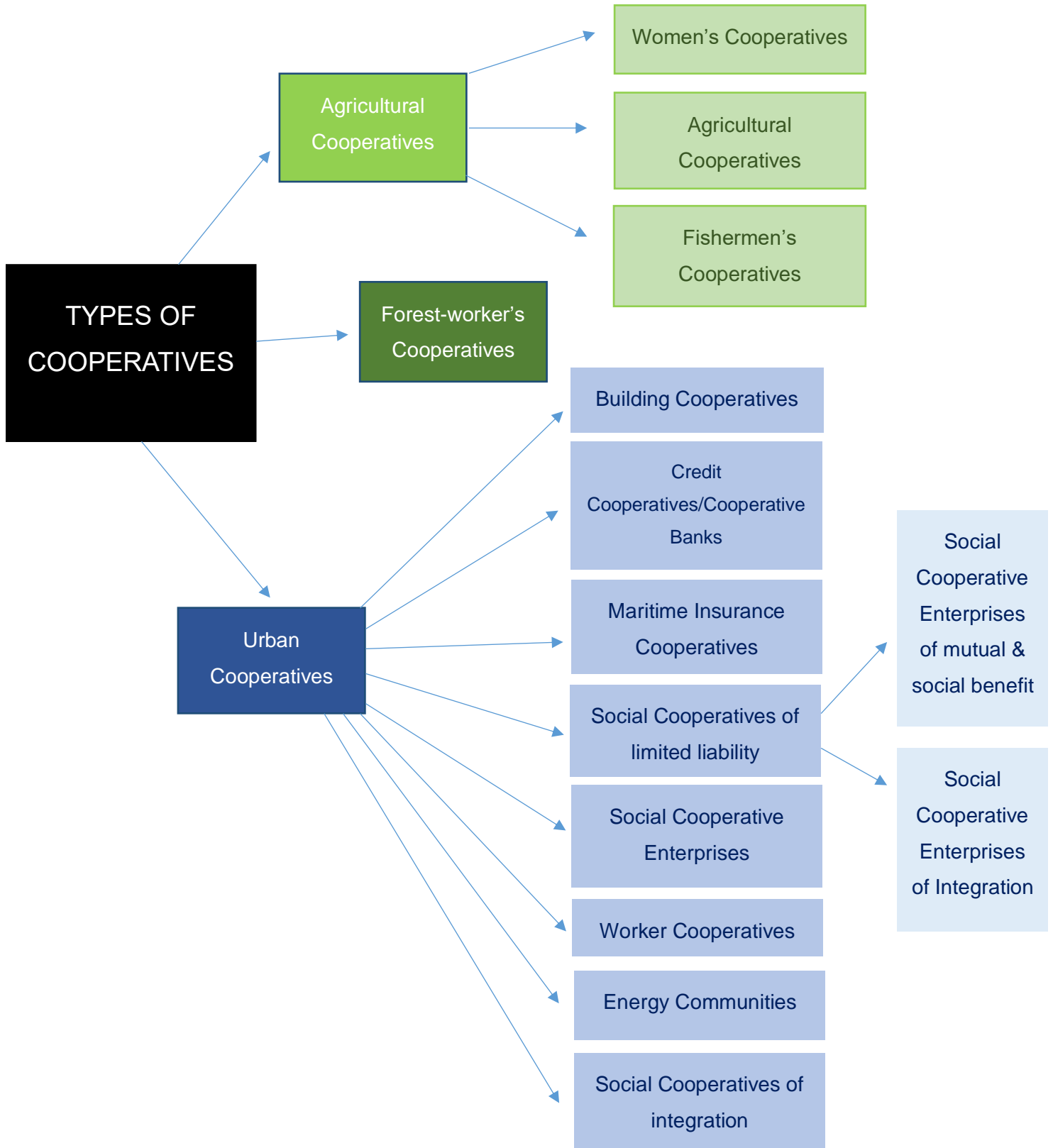
<sup>11</sup> Credit cooperatives are established as urban cooperatives and pursue a limited number of activities, such as facilitating access to loans for their members. In order to become cooperative banks and operate as credit institutions themselves, they have to receive authorisation by the Bank of Greece and fulfil particular criteria (article 8 L. 4261/2014).

	*(Law 1667/1986 is complementary applied)  <i>Note: The legislative decree 400/1970 which in article 35-37 prescribed for mutual insurance cooperatives was abolished by article 278 particle 1 L.4364/2016</i>		insurance cooperatives have not been reformed
(iv) Social cooperatives of limited liability	Article 12 Law 2716/1999 "Development and modernisation of mental health services and other provisions" [Ανάπτυξη και εκσυγχρονισμός των υπηρεσιών ψυχικής υγείας και άλλες διατάξεις] * *(Law 1667/1986 is complementary applied)	14/5/1999	1/6/2018 (L. 4542/2018)
(v) SCEs	Law 4430/2016 "Social and Solidarity economy and development of its actors and other provisions" [Κοινωνική και Αλληλέγγυα Οικονομία και ανάπτυξη των φορέων της και άλλες διατάξεις] * *(Law 1667/1986 is complementary applied)	31/10/2016	17/7/2019 (pr. decree 84/2019)
(vi) Worker cooperatives			
(vii) ECs	L. 4513/2018 "Energy communities and other provisions" [Ενεργειακές Κοινότητες και άλλες διατάξεις] * *(Law 1667/1986 is complementary applied)	22/1/2018	10/6/2019 (L.4618/2019)
(viii) Social cooperatives of integration	Article 143 of Law 4600/2019 "Modernisation and reform of the legal framework of private clinics, establishment of National Public Health Agency, establishment of the National Cancer Institute and other provisions" [Εκσυγχρονισμός και Αναμόρφωση Θεσμικού Πλαισίου Ιδιωτικών Κλινικών, Σύσταση Εθνικού Οργανισμού Δημόσιας Υγείας, Σύσταση Εθνικού Ινστιτούτου Νεοπλασιών και λοιπές διατάξεις.] * *(Law 1667/1986 is complementary applied)	8/3/2019	-
<b>4. European cooperative society<sup>12</sup></b>	Article 136-155 of Law 4099/2012 "Undertakings for collective investment in transferable securities and anonymous societies for mutual funds management, Directive 2009/65/EC. Adaptation of Greek legislation to the provisions of Directives 2010/78/EC, 2010/73/EC, 2011/96/EC, 2009/133/EC, 2004/113/EC. European Cooperative Society. Measures implementing Regulations (EC) No 1338/2001 and (EU) 1210/2010 on the protection of the euro and other provisions" [Οργανισμοί συλλογικών επενδύσεων σε κινητές αξίες και ανώνυμες εταιρείες διαχείρισης αμοιβαίων κεφαλαίων. Οδηγία 2009/65/ΕΚ. Προσαρμογή της ελληνικής νομοθεσίας στις διατάξεις των Οδηγιών 2010/78/ ΕΕ, 2010/73/ΕΕ, 2011/96/ΕΕ, 2009/133/ΕΚ, 2004/ 113/ΕΚ Ευρωπαϊκή Συνεταιριστική Εταιρεία. Μέτρα εφαρμογής των Κανονισμών (ΕΚ) 1338/2001 και (ΕΕ) 1210/2010 περί προστασίας του ευρώ και άλλες διατάξεις.]	20/12/2012	-
	p.d. 44/2008 "Supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, according to Directive 2003/72/EC/22.7.2003" [Συμπλήρωση του καταστατικού της ευρωπαϊκής συνεταιριστικής εταιρίας όσον αφορά το ρόλο των εργαζομένων, σύμφωνα με την Οδηγία 2003/72/ΕΚ/22.7.2003]	18.04.2008	-

<sup>12</sup> The Greek legislator enacted: a) the decree 44/2008 for the adaption of the Directive 2003/72/EC on the participation of employees at the European cooperative societies and the Law 4099/2012 (article 136-155) to enable the effective implementation in Greece of the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society.



Figure 1: The categorisation of cooperatives by the national legislator





A few special cooperative laws include one or more cooperative principles in their preamble<sup>13</sup>, without however any explicit reference to the ICA, the 1995 ICA Statement on the Cooperative Identity or the Recommendation 193/2002 of the International Labour Organization. Although the preamble is not considered to be part of the law, it nevertheless holds a legal value as a tool of legal interpretation that may be used by the courts, by lawyers or by academics<sup>14</sup>.

Specifically, the agricultural cooperatives' law preamble is the only one including all the seven cooperative principles, along with the text accompanying each and every one of them, as they have been distilled in the 1995 ICA Statement on the Cooperative Identity<sup>15</sup>. In the preamble of other special cooperative laws, some cooperative principles may be mentioned, as in the forest-workers cooperatives' law case. The latter referred to the principle of voluntary-open membership in order to justify article 46 of the draft law that forbids any new mandatory forest cooperatives from being established hereafter as they are not in line with the aforementioned principle<sup>16</sup>. Moreover, the values of the Social and Solidarity Economy ("SSE" hereafter) (e.g. democracy equality, solidarity) as they are embedded in the SSE definition of article 2 of L. 4430/2016 hold some similarities with relevant cooperative values. It should be also added that some provisions of the special cooperative laws may reflect the cooperatives principles, such as the cooperative principle of democratic control and in particular the "one member – one vote" rule, which is stipulated in all special cooperative laws (except for cooperative banks, in which cooperative shares with multiple voting rights may be issued (see II, ii (c)).

## ii. Specific elements of the cooperative law

### a) Definition and objectives of cooperatives

Each special cooperative law defines the type of cooperative that it regulates. As a result, there are as many cooperative-specific definitions as the number of special cooperative laws. For instance, the definition of an agricultural cooperative, which is closely related to the definition of the ICA Statement on the Cooperative Identity, is the following;

*«an agricultural cooperative is an autonomous association of persons united voluntarily and aiming at the common economic, social, and cultural development and promotion of its members, (based on) the self-help and the solidarity of its members, through a jointly-owned and democratically-controlled enterprise» (article 1.1 of L. 4384/2016).*

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<sup>13</sup> The draft laws that are submitted to the Hellenic Parliament are accompanied by a preamble, which states the rationale and purpose of the legal initiative.

<sup>14</sup> H.H Münkner, Co-operative principles and co-operative law, 2<sup>nd</sup> revised edition, Lit Verlag, 2015, p.14-16.

<sup>15</sup> Preamble of the draft law "Agricultural cooperatives, forms of collective organisation of the agricultural sector and other provisions [Αγροτικοί Συνεταιρισμοί, μορφές συλλογικής οργάνωσης του αγροτικού χώρου και άλλες διατάξεις], 6<sup>th</sup> of April 2016, p. 1.

<sup>16</sup> Preamble of the draft law "Forest Cooperative Organizations and other provisions" [Δασικές Συνεταιριστικές Οργανώσεις και άλλες διατάξεις] 6 September 2016 p. 8 (article 46).

Another example is that of an urban cooperative, which is defined as;

*«a voluntary association of persons that undertakes activities outside the agricultural sector, it pursues an economic purpose and especially with the cooperation of its members it aims at their economic, social, and cultural development and improvement of their living standards» (article 1.1 of L. 1667/1986).*

Despite the number of type-specific definitions, some prevalent traits that permeate the cooperative legislation are the voluntary nature of cooperatives<sup>17</sup>, pursuing a particular purpose (which may be a mutual or a mutual and social one) through a jointly owned and democratically controlled enterprise.

The purpose pursued by cooperatives is specifically defined in all special cooperative laws. A number of cooperatives aim at the economic, social and cultural needs of their members through a jointly owned and democratically controlled enterprise, with which the members have the right and the obligation to transact. For instance, the members of agricultural cooperatives are obligated to submit at least 80% of their total production to the cooperative and purchase supplies by it and if not, it constitutes grounds for member exclusion (article 8.3, 8.5 L. 4384/2016).

The Greek legislator introduces a number of cooperative types that, apart from a member promotion purpose, they also pursue the interest of non-members/ of the community's, overall. These cooperative types are:

- a) the SCEs of mutual and social benefit [*κοινωνικές συνεταιριστικές επιχειρήσεις (Κοιν.Σ.Επ.) συλλογικής και κοινωνικής ωφέλειας*] that may undertake sustainable development activities (e.g. in the green energy) and/or provide social services (article 14.2b L. 4430/2016),
- b) the SCEs of integration of vulnerable groups [*κοινωνικές συνεταιριστικές επιχειρήσεις (Κοιν.Σ.Επ.) ένταξης ευάλωτων ομάδων*] that aim at enabling the integration of persons coming from such groups, whose integration is hindered for physical and mental health reasons or due to delinquent behavior (e.g. disabled, mentally ill, addicts, prisoners, ex-prisoners) (article 2.8, 14.2(aa) L. 4430/2016),
- c) the SCEs of integration of special groups [*κοινωνικές συνεταιριστικές επιχειρήσεις (Κοιν.Σ.Επ.) ένταξης ειδικών ομάδων-*] that aim at enabling the integration of persons coming from such groups, whose integration is hindered due to economic, social or cultural causes (e.g. homeless, living under poverty conditions, long term unemployed under 25 years old or over 50 years old, refugees while waiting for their asylum application) (article 2.8, 14.2(ab) L. 4430/2016)
- d) the social cooperatives of limited liability [*κοινωνικοί συνεταιρισμοί περιορισμένης ευθύνης-ΚΟΙΣΠΕ*] which aim at the integration of people suffering from mental illnesses (article 12 L. 2716/1999),

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<sup>17</sup> Mandatory cooperatives are debated on whether they constitute an authentic form of cooperative, since they do not comply with the first cooperative principle of voluntary and open membership. For this reason, they shall not be further analysed in the present report.

- e) the social cooperatives of integration [κοινωνικοί συνεταιρισμοί ένταξης ΚΟΙΝΣΕΝ] which aim at the integration of addicts or ex- addicts (article 143 L. 4600/2019),
- f) the ECs which aim - among others - at promoting the SSE, addressing energy poverty, promoting energy sustainability, as well as producing, storing, self-consuming, distributing and supplying of energy (article 1 L. 4513/2018),
- g) the women (agricultural) cooperatives [«γυναικείοι (αγροτικοί) συνεταιρισμοί»], which aim at improving the conditions of women-farmers in rural areas through the cooperative model<sup>18</sup>,
- h) any other type of cooperative that fulfills the criteria that article 3.1 d of L. 4430/2016 sets out in order to be acknowledged as an SSE actor. One such criterion is the pursuit of a mutual benefit (: covering the member needs) and a social benefit (: covering non-member needs/ the needs of the community at large) (article 3.1 d (aa) L. 4430/2016).

Regarding the transactions between the cooperative and its members, there is an overall absence of a particular term identifying them, with the exception of the law on agricultural cooperatives, where there is a distinct definition and allocation of surplus (article 23.1 L. 4384/2016).

Regarding the transactions of the cooperative with non-members, the legislator remains silent, neither preventing them nor setting any limit or conditions, except for:

- a) the agricultural cooperatives, which transactions with non-member cannot be under more favorable terms than those applied to their members (article 23.2 L.4384/2016),
- b) the SCEs and worker cooperatives, whereby the law introduces a cap to the number of workers who are non-members (article 18 & article 28.2 L. 4430/2016),
- c) the cooperative banks may transact with non-members, but only with up to 50% of their loans and deposits (article 8 par.3 L. 4261/2014).

With relation to the sectors that cooperatives are active, as a general rule, cooperatives are able to operate in any possible sector of the economy such as banking, insurance, agriculture, retail, social care, housing, or energy. Nevertheless, the categorisation of cooperatives prevents them from expanding their activities to sectors outside the category, under which they have been set up, such as for instance the agricultural cooperatives, which cannot undertake activities outside the agricultural sector.

When comparing cooperatives' legal traits to those that are explicitly or implicitly acknowledged of anonymous societies ("S.A." hereafter) (based on Law 4548/2018 on S.A.) a number of differences are noted. In particular, the S.A.'s capital is invariable, whereas in the cooperatives' case it is variable<sup>19</sup>, depending on the number of current members. Moreover, the law on S.A. does not define their purpose, where this is not the

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<sup>18</sup> Preamble of the draft law "Agricultural cooperatives, forms of collective organisation of the agricultural sector and other provisions [Αγροτικοί Συνεταιρισμοί, μορφές συλλογικής οργάνωσης του αγροτικού χώρου και άλλες διατάξεις], 6<sup>th</sup> of April 2016, p. 4 (article 2)

<sup>19</sup> However, article 12 of L. 4261/2014 stipulates that credit cooperatives in order to become cooperative banks and thus operate as credit institutions need to have 6.000.000 euros as an initial capital.

case for cooperatives, the purpose of which is explicitly stipulated in the special cooperative laws.

Furthermore, in S.A. shares are freely transferable. On the contrary, in cooperatives, obtaining a cooperative share presupposes fulfilling the conditions of membership and a positive decision of adherence by the competent cooperative organ. It is also noted that the S.A. shareholders' right to profit distribution and the right to the distribution of the remainder after liquidation are considered as absolute rights due to the for-profit nature of S.A. The exercise of such distribution rights may also be permitted in some cooperative types (e.g. urban cooperatives, social cooperatives of limited liability, forest-workers' cooperatives) as long as relevant provisions are incorporated in their by-laws, but for other cooperative types (e.g. agricultural cooperatives, SCEs, worker cooperatives) such distribution rights are prohibited.

Moreover, the S.A. shareholders' voting rights are proportional to their capital contributions (rule of "one share- one vote") contrary to cooperatives in which each member has a single vote, irrespective of the capital contributed to the cooperative ("one member- one vote" rule) (except for cooperative banks)<sup>20</sup>.

## b) Establishment, cooperative membership and governance

Each cooperative type is registered in a different register, which is kept by either the courts or the administration offices. The registration of a cooperative, irrespective of its type, is indispensable to acquire a legal personality. The main legal requirement for its registration is having a by-law, signed by the founding members. The minimum number of members required by law depends on the type of cooperative, starting from two members (ECs) up to 100 members (consumer cooperatives). More specifically, cooperatives may be established:

- a) under a very small membership basis (e.g. 2 members required for ECs under particular conditions (article 2.2(c) L. 4513/2018), 3 members required for worker cooperatives (article 25.2 L.4430/2016), 5 members required for SCEs of mutual and social benefit (article 15.2 L.4430/2016) and for women agricultural cooperatives (article 2 particle 1 L. 4384/2016), 7 members required for SCEs of integration (article 15.2 L.4430/2016),
- b) under a medium membership basis (e.g. 15 members required for social cooperatives of limited liability (article 12.3 L.2716/1999) and urban cooperatives (article 1.3 L.1667/1986), 20 members required for agricultural cooperatives (article 4.1 L. 4384/2016), 21 members required for forest-workers' cooperatives (article 3.1 L. 4423/2016),

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<sup>20</sup> Σ. Ψυχομάνης, Δίκαιο εμπορικών εταιριών [Commercial companies law], γ' έκδοση, Εκδόσεις Σάκκουλα, 2018, σ. 201 επ.; Σ. Κιντής, Δίκαιο συνεταιρισμών [Cooperative law], τευχ. Α', 1997, Εκδόσεις Σάκκουλα, σ. 63.

- c) under a large membership basis (100 members required for consumer cooperatives (article 1.3 L.1667/1986).

A decrease of membership below the minimum required by law constitutes grounds for the cooperative's dissolution. In some cases, such as the forest-workers' cooperatives and the ECs, the legislator grants a deadline, during which the cooperative is expected to increase its membership base to prevent its dissolution (article 33.1(aa) L.4423/2016; article 9.1(a) L. 4513/2018).

New member admissions are decided by the Board of Directors (BoD) (or the GA in case the BoD rejects such admission). The special cooperative laws do not obligate the cooperative to accept a candidate member's application<sup>21</sup>. However, one previous case does exist concerning a pharmacist's application to become a member of a pharmacists' supply cooperative being rejected. The Supreme Court of Cassation ("Άρειος Πάγος") ruled that the decision of a cooperative, with a dominant market position and no valid reason to reject an adherence application by a candidate member who fulfils the required criteria by the laws and the by-laws, was unlawful and that the rejected candidate member may be compensated<sup>22</sup>.

The third parties that wish to join a cooperative are protected by the fact that the GA decides in a final degree on all the member applications that are rejected by the BoD. If the GA decision is also negative, then the candidate member may have recourse to the courts requesting the abolishment of the latter decision.

Moreover, the members may leave the cooperative after notifying the BoD in writing. However, the agricultural cooperatives may include in their by-laws a minimum timeframe of mandatory permanence at the cooperative (article 7.2 L. 4384/2016).

Regarding the "one member-one vote" rule, it applies to all cooperatives, except for:

- a) the investor members of the agricultural cooperatives, which have no voting rights (article 6.2 L. 4384/2016),
- b) the cooperative banks, the by-laws of which may permit issuing cooperative shares with multiple voting rights. The legislator lays down a number of limitations, to prevent a member or a minority within the cooperative bank from obtaining the majority of voting rights and therefore gain the absolute power in decisions-making processes (article 4.2 L. 1667/1986).

Furthermore, the models of cooperative governance laid down by the Greek special cooperative laws are the following:

1. Three-tier governance model: The main governance model of cooperatives in Greece consists of a GA, a BoD and a supervisory board ("SB" hereafter). The formation of a SB is non-mandatory for cooperatives with a low number of members (*e.g. agricultural cooperatives with less than 30 members- article 11*

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<sup>21</sup> Σ. Κιντής, Δίκαιο συνεταιρισμών: Αστικοί Συνεταιρισμοί [Cooperative law: Urban (civil) cooperatives], 2004, σ. 31-32.

<sup>22</sup> ΑΠ [Supreme Court of Cassation] 1969/1990 ΕΛΛΔ 1991-1449



L.4384/2016 or urban cooperatives with less than 25 members- article 8.1 L.1667/1986).

2.Two-tier governance model: The legislator introduces an exception to the aforementioned model for the SCEs and the worker cooperatives, which are established under a two-tier governance model (: a GA, a BoD or administrator<sup>23</sup> and no SB- article 19, 20, 29, 30 L. 4430/2016).

The internal bodies of administration under the Greek special cooperative laws are the following (Table 2):

1.The GA of members: As the highest body within the cooperative, it has the exclusive power to decide upon issues of crucial importance for the cooperative (e.g. *the by-law's reform, mergers, approving the balance sheet, dissolution of the cooperative*) and on anything else that is not assigned to any other body.

2.The BoD: It is the competent body for the representation and management of the cooperative. Its members are responsible for any damage they cause to the cooperative in the course of their duties and are accountable to the GA, which elects them and which can also dismiss them. In principle, only cooperators can be elected as members of the BoD.

Nevertheless, non-members may be appointed in the following occasions:

- a) in agricultural cooperatives and urban cooperatives, whereby the cooperatives' workers may appoint a representative as an additional member of BoD (article 16.2 L. 4384/2016; article 7.1 L. 1667/1986),
- b) in cooperative banks, whereby 2 out the 7 board members may be non-members (article 7.1 L. 1667/1986).

3.The Manager: In agricultural cooperatives and urban cooperatives a manager may be appointed by the BoD to exercise all or some of the BoD tasks (article 16.11L. 4384/2016; article 7.4 L. 1667/1986). Notably, for agricultural cooperatives with an annual turnover of 1 million euros or higher, a manager's appointment is mandatory (article 16.11L. 43842016).

4.The SB: It is the competent body for monitoring, controlling and supervising the BoD (e.g. examining if the BoD follows the law, the cooperative statute and the decisions made by the GA). Its members are responsible for any damage they cause to the cooperative in the course of their duties and are accountable to the GA, which elects its members and which can also dismiss them.

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<sup>23</sup> However, in case of 5 member SCEs of mutual and social benefit or 3-member worker cooperatives, the legislator permits, instead of a BoD, the appointment of an administrator in charge with all the BoD duties (article 20 par. 1& article 30 par. 1 L.4430/2016).

**Table 2: Basic aspects of the governance model of the Greek cooperatives**

Type of body/organ	Appointment	Mandatory	Composition	Duties
General Assembly (GA)	The GA is not appointed by another organ/body	Yes	Members	Highest decision-making body
Board of Directors (BoD)	by the GA	Yes* *(exceptions: -SCEs with 5 members -worker coops with 3 members)	Members* *(exceptions: Coop. banks, agricultural coops, urban coops)	Manage and represent the cooperative
Manager	By the BoD	Only in agricultural cooperatives with at least 1million euros annual turnover	The manager is not required by law to be a member	Undertake part or all of BoD duties
Supervisory Board (SB)	By the GA	Only in: <ul style="list-style-type: none"> <li>• Agricultural coops with more than 30 members</li> <li>• In forest-workers' coops</li> <li>• Civil coops with over 25 members</li> <li>• Social coops of limited liability with over 20 members</li> </ul>	Members	Monitor/control the BoD

One other aspect of the cooperative's governance is member control, which can be exercised for example by the voting rights, the right to elect and be elected at the cooperative's organs and the right of the minority to call for an extraordinary GA. Member control is also enabled by the members' right of information and education, however this is only explicitly mentioned in the special cooperative laws of agricultural and forest-workers cooperatives (article 8.1 L.4384/2016, article 8.2 L. 4423/2016).

### c) Cooperative financial structure and taxation

Each member contributes to the cooperative capital with **one mandatory share** (the minimum amount of which in some cooperatives is specified by law<sup>24</sup>) and participates at the GA with one vote, irrespective of its financial contributions to the cooperative. The exception is cooperative banks, which can issue additional shares with limited voting rights (article 4 particle 2 L.1667/1986).The cooperative may also issue **non-voting**

<sup>24</sup> The minimum amount of a mandatory share is 200 euros for the forest-workers cooperatives (article 11.2 L.4423/2016) and 100 euros for SCEs and worker cooperatives (article 16.2, 26.2 4430/2016)



**preferred shares**, the acquirement of which is often subject to a cap (e.g. in urban cooperatives a member can acquire up to 5 non-voting preferred shares- article 3.3 L. 1667/1986), but such a cap usually does not apply to legal persons of public law (e.g. municipalities), when acquiring such shares (e.g. article 3.3 L. 1667/1986)<sup>25</sup>. Whether the acquisition of such shares shall be linked to the cooperative transactions is to be decided in the by-laws.

In case of member withdrawal or dissolution of the cooperative, the shares shall be returned to the members. In fact, in the agricultural cooperatives the nominal value of the cooperative shares is returned (article 7.5 L.4384/2016), whereas in cooperative banks it is returned the value of the shares in proportion of the net equity of the cooperative bank (article 2.9 L. 1667/1986).

In addition, in the urban cooperatives, upon decision by the GA: a) newly adhered members may also be obligated to submit a contribution in proportion to the net equity of the cooperative, which shall be allocated to a special reserve, b) (newly adhered and existing) members may be obligated to submit an extraordinary contribution, in case the urban cooperative is unable to cover payments that are due or if, based on the balance sheet, the costs surpass the income (article 4.3, article 11 L.1667/1986).

Regarding the distribution of **surplus** and **profits**, it is noted that the only legal act that distinguishes the former from the latter and prescribes for a differentiated system of allocation is the special law on agricultural cooperatives (article 23 L. 4384/2016). In particular, the surplus is defined as the positive economic result generated from the transactions of the cooperative with its members. Following that, the surplus is allocated:

- a) to the cooperators with non-voting preferred shares, if the by-laws dictate,
- b) to a mandatory reserve (at least 10% of the surplus),
- c) to the members in proportion to their transactions with the cooperative,
- d) for the cooperative's development,
- e) for the education/training of its members (at least 2% of the surplus).

On the other hand, the profits are defined as the positive economic results generated by the transactions of the cooperative with non-members and they are distributed:

- a) to the mandatory reserve,
- b) for the development of the community upon decision of the GA.

In the urban cooperatives' case the legislator refers only to profits (including thus surplus) which are distributed (article 9.4 L.1667/1986):

- a) to the mandatory reserve (at least 10% of the profits), and for the formation of other reserves as well, upon a decision of the GA,

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<sup>25</sup> Municipalities and public psychiatric hospitals join a social cooperative of limited liability as its members. However, the provision of permitting an unlimited acquisition of non-voting preferred shares is doubtful if it has brought about an equivalent financial support by such members towards the cooperative. Instead, what is being noted in practice is the acquisition of a few shares by such legal persons of public law.

b) to the members. In case the by-laws do not contain any opposite provisions, then 50% of the profits shall be allocated to the members in proportion to their cooperatives shares and 50% of the profits shall be allocated to the members in proportion to their transactions with the cooperative,

c) the rest of the profits shall be distributed for the cooperatives' purposes upon decision of the GA.

A different system is prescribed for the SCEs and worker cooperatives. Their profits (in which surplus is also included) are allocated:

a) to the mandatory reserve (at least 5% of profits),

b) to workers (members or no members) as a worker bonus (up to 35% of profits)<sup>26</sup>,

c) for job creation and the development of the cooperative (article 21, 31 L. 4430/2016). Therefore, members that do not work for the above cooperatives are excluded from the profit distribution.

With regard to **investor-members**, they may join agricultural cooperatives with no voting rights or the right to elect or being elected (article 6.2 L. 4384/2016).

Another question relevant to the financial structure of cooperatives refers to their competence to issue **financial instruments**. Under the Greek legal regime, only cooperative banks may issue financial instruments such as bonds that, together with the non-voting preferred shares, may enter the stock exchange (article 3.7 L.1667/1986).

The abovementioned provisions refer to cooperatives that are operational. In case cooperatives dissolve, depending on the cooperative type, different provisions are stipulated on the **distribution of the remainder**. In particular, a disinterested distribution of the remainder after dissolution is prescribed for agricultural cooperatives (distribution to a fund held by a public entity- article 27.12 L. 4384/2016<sup>27</sup>), SCEs and worker cooperatives (distribution to a social economy fund- article 22.3, 32.3 L. 4430/2016<sup>28</sup>), non-profit ECs (distribution to other producer groups or other non-profit entities focused on the environmental protection and energy sector- 9.2 L. 4513/2018).

Conversely, the remainder may be distributed to the members in forest-workers' cooperatives, civil cooperatives, social cooperatives of limited liability and for-profit ECs (article 35.5 L. 4423/2016; article 10.2 L. 1667/1986; article 9.2 L. 4513/2018).

In relation to the cooperatives' **tax treatment**<sup>29</sup>, it is remarked that agricultural cooperatives enjoy a more appropriate tax treatment that takes into account the

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<sup>26</sup> Upon decision of the GA, the profits of SCEs and worker cooperatives may not be distributed to their workers, but allocated, instead, for the creation of vacancies and the development of the cooperative (article 21, 31 L. 4430/2016).

<sup>27</sup> It should be noted that article 27.12 L. 4384/2016 remains inactive.

<sup>28</sup> The ministerial decision that would specify the conditions under which such fund would be established has not been enacted and as a result the relevant articles remain a dead letter.

<sup>29</sup> The section on cooperative tax law focuses on the income taxation.

particular nature of cooperatives (article 29.1, 29.3 L. 4384/2016), compared to the provisions that are applied to other types of cooperatives. More specifically:

- a). the cooperative shares of the members of agricultural cooperatives are non-taxable, b. the surplus (generated from the transactions of the cooperative with its members), which is distributed to the members is subject to the members' income tax and not to the cooperative's income tax,
- b). the profits (generated from the transactions of the cooperative with non-members) are subject to the cooperative's income tax, subject to a rate of 10%<sup>30</sup> and after being taxed the remainder is allocated to the mandatory reserve,
- c). tax exemptions and any other favorable tax provisions on the merger of commercial companies are also applicable in case of mergers among agricultural cooperatives, in an attempt to facilitate the formation of larger cooperatives<sup>31</sup>.

Other types of cooperatives are mainly subject to the general tax provisions applicable to all legal persons with only a few exceptions. For instance, the SCEs and workers cooperatives are not taxed for the part of their profits, which is distributed as a bonus to their workers (: up to 35%), since it is not considered as an income generated from business activities, but instead it is a wage income<sup>32</sup>.

Further, the SCEs, the agricultural cooperatives and the worker cooperatives are exempted from an annual business tax, which is imposed to natural and legal persons with a commercial status and usually starts from 600 up to 1000 Euros per year (article 17 L. 4577/2018).

Based on the Greek case, the interrelation between cooperative (organisation) law and the tax law applicable to cooperatives is evident. The more the provisions on cooperatives depict a sharp and clear profile on cooperatives distinguishing them from other types of companies (especially the investor-owned firms), the more probable it would be for the legislator to foresee a differentiated tax treatment for cooperatives, as has been the case with the division between profits and surpluses.

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<sup>30</sup> Article 58.2 L. 4172/2013, as it has been recently amended by article 22.2 L. 4646/2019, is applicable to agricultural cooperatives and producer groups and organisations. Based on the latter, the profits earned by the entrepreneurial activity of agricultural cooperatives and producer groups and organisations from 1 January 2020 onwards are subject to a tax rate of 10%.

<sup>31</sup> Such provision has not brought about any significant results. In particular, since 2016 up until 2019, only two mergers occurred. Information provided by personal communication with the Department of Agricultural Cooperatives of the Hellenic Ministry of Agriculture.

<sup>32</sup> Ι. Σαρίδης, Όψεις της φορολογικής μεταχείρισης των επιχειρήσεων της Κοινωνικής Οικονομίας στο πλαίσιο του Κώδικα Φορολογίας Εισοδήματος [Aspects of the tax treatment of social and solidarity economy enterprises under the Income Tax Code], Διοικητική Δίκη 1/2019, p. 50.

## d) Cooperative external control and cooperation among cooperatives

### COOPERATIVE EXTERNAL AND INTERNAL CONTROL

Cooperatives are subject to a) state supervision (or control), b) self-control by the SB (when established) c) a financial audit by independent auditors<sup>33</sup>.

a) The **state supervision** of cooperatives is acknowledged in a constitutional level (article 12.4NC) and further specified in the special cooperative laws. As a result, the special cooperative laws prescribe for supervisory duties, which are more or less similar (e.g. guidance and monitoring the cooperatives' compliance with the laws and by-laws), but they are nevertheless acknowledged to the different ministries and public authorities, depending on the cooperative type. For example, the Ministry of Agriculture supervises the agricultural cooperatives (article 18 L. 4384/2016), the Ministry of National Economy supervises the urban cooperatives (article 13 L. 1667/1986), the Ministry of Health supervises the social cooperatives of limited liability (article 12.1 L. 2716/1999).

b) **Self- control** on the other hand is promoted by various provisions, such as those that foresee the establishment of a SB (see II, ii, b), which is not prescribed for all cooperative types. Interestingly, the first cooperative law of the country (L. 602/1915), which was a general one, applicable to all cooperatives, prescribed for a delegation of state control to the cooperative federations. However, this was never applied in practice and remained a dead letter<sup>34</sup>. One possible reason behind that may have been the fact that the national cooperative movement hit a critical mass under state supervision, promotion and support, which prevented the cooperatives ability to develop into an independent movement with its own self-control mechanisms in practice.

c) Regarding the exercise of **audit** by independent auditors, it is noteworthy that cooperatives are not subject to a cooperative-specific audit, but, instead, the general audit provisions of companies are applicable to them; hence, the audit is focused on their financial aspects, exerted by auditors with no particular expertise on cooperatives, while the purpose of member promotion is not examined.

### COOPERATION AMONG COOPERATIVES

The **cooperation among cooperatives** is implemented in the Greek legal framework both horizontally and vertically, as well as economically and socio-politically. Although the horizontal cooperation among cooperatives through contracts between the same or even different types is not hindered, in the case of vertical integration several limitations have been identified.

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<sup>33</sup> It should be added that cooperatives banks are subject to the supervision of the Central Bank of Greece ("Bank of Greece").

<sup>34</sup> Δ. Μαυρόγιαννης, Δ. Κασσαβέτης, Χ. Τσουραμάνης, Κείμενα ελληνικού, κοινοτικού και διεθνούς συνεταιριστικού δικαίου και πολιτικής: Νομοθετήματα ελληνικού συνεταιριστικού δικαίου [Texts of the Greek, European and international cooperative law and policy: Texts of Basic cooperative laws of Greece], (Explanatory report of the draft law. 602 "On cooperatives"), β' έκδοση, 1998, p. 455.

One general remark is that each special cooperative law enables the vertical integration among cooperatives of the same type for economic purposes and sociopolitical purposes. Specifically, the establishment of unions of cooperatives is permitted, but only among cooperatives of the same type. Such unions have the cooperative legal form and undertake economic activities for their cooperatives-members. However, in some cases, the latter is limited (: *the agricultural cooperatives' unions can undertake activities associated with only one or similar agricultural products- article 31.1 L.4384/2016*) or even prevented (: *SCEs and worker cooperatives cannot form such unions under a cooperative form*).

The same applies to the local and national federations of cooperatives, which are set up under the association form and serve a sociopolitical purpose. These federations, as with the unions, can only be established among the same type of cooperatives. However, article 9.1 of L. 4430/2016 enables the formation of unions of SSE actors (e.g. the Union of SSE actors in Athens "Co-ordination of SCEs" [Συντονισμός Κοινσεταιπ]) that serve sociopolitical goals, in which in principle cooperatives of any type may become members.

However, apart from the SCEs, the worker cooperatives and the social cooperatives of limited liability, which are the only cooperative types that are *ope legis* acknowledged as SSE actors, the remaining cooperatives - in contrast to the European and international practices- face difficulties to fulfill the criteria of article 3.1(d) L. 4430/2016 in order to be acknowledged as SSE actors (and therefore participate in the above unions), mainly due to their mutual purpose and their profit-surplus distribution. Even if all types of cooperatives could form and participate in such unions, they would be deprived of setting up third-tier organisations, since L. 4430/2016 prescribes only for a second tier. As a consequence, the vertical cooperation among cooperatives is rather fragmented and faces many obstacles imposed by law, despite sec.6 (d) ILO R. 193/2002.

### **III. Degree of ‘cooperative friendliness’ of the national legislation**

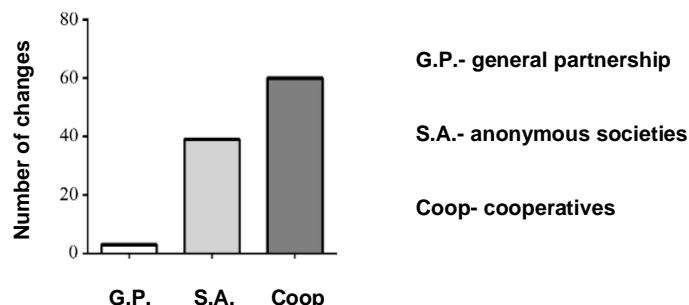
The legal obstacles that hinder cooperative development are not simply associated with particular provisions but are part of the overall problematic architecture of the cooperative legal landscape in Greece. In particular, the evolution of the Greek cooperative legal framework from an initial model of a general law (L. 602/1915) towards an ever-growing number of solely special cooperative laws, with provisions often overlapping or in conflict, has led to the legislation’s gradual fragmentation. In this context, the law-making process, implementation and the behavioral patterns of the everyday business life that follow, focus on the heterogeneity amongst different cooperative types, whilst disregarding their shared cooperative identity, under which all cooperatives are unified. Consequently, this is reflected in the absence of a comprehensive public policy plan for cooperative development and also in a lack of synergies among and between cooperatives.

The fragmentation of the Greek legal framework is reinforced by its instability, stemming from the constant amendment or abolishment of existing special cooperative laws and the introduction of new ones, which has also been emphasised by the contributing ICA member organisation. Both the national expert as well as the ICA member organisation highlight the constantly changing legal regime of cooperatives contrary to the stable legal framework on S.A. In particular, between 2000-2019, the number of cooperative reforms were found to be considerably higher compared to those which occurred for S.A. (Table 3). While the reforms in S.A. referred mainly to amendments on minor issues, or those imposed by European Union law, in the case of cooperatives, changes were in cases quite severe, for example in the case of agricultural cooperatives, since 2000 there have been 4 new consecutive laws governing and regulating them.

Thus, a legal uncertainty around the cooperative legal form is fostered, dissuading interesting parties from choosing it as their model of business.



Table 3. Changes in the legal framework of general partnerships, anonymous societies and cooperatives between 2000-2019.



Source: I. Δουβίτσα, *Η ελληνική συνεταιριστική νομοθεσία: Από τον κατακερματισμό στην ενοποίηση* [The Greek co-operative legal framework: From fragmentation to unification], Heinrich Boll Foundation (under publication in the beginning of 2020).

Under the abovementioned fragmented and constantly changing legal framework the cooperatives' development is impeded by a number of specific provisions (or the absence thereof). Namely, there is **no general definition** on cooperatives, but only a number of cooperative-specific definitions, which distorts the perception of cooperatives as a unified institution under a shared identity, with common cooperative values and principles. Moreover, a reference to the **shared identity** of cooperatives is missing from the preamble of most special cooperative laws, which would be useful for their interpretation. Furthermore, cooperatives are registered under **different registers and by different authorities**. Hence, the collection of statistical data for the whole cooperative movement, which are indispensable for drafting comprehensive public policies, is rendered impossible.

It was also noted above that setting- up a cooperative usually deprives it from **expanding its activities** to sectors outside the category that it belongs, such as for instance the case of the ECs, which cannot undertake activities outside the energy sector. In addition, prescribing for the "one member-one vote" as an absolute rule for all cooperatives may work in some cases in a detrimental way for the cooperative. In particular, not permitting the cooperative to issue **additional cooperative shares with a limited number of voting rights**, acquired in proportion to the members' transactions with the cooperative may impede the cooperative from attracting capital by its own members, which are considered to be the most fundamental and appropriate source of cooperative capital, as well as rewarding a cooperative's most active members.

Contrary to the cooperative principle of autonomy, several detailed provisions were responsible for interference and the hindering of cooperatives' internal functions and would therefore benefit from review and potential abolition (e.g. the obligation of members of agricultural cooperatives to submit at least 80% of their produce to the cooperative, the obligation of hiring a manager in all agricultural cooperatives with at least 1 million Euros as their annual turnover). One other issue of great importance for



both the national expert as well as the ICA member organisation is the absence in all but one special cooperative law (: article 23 L.4384/16 on agricultural cooperatives), of a **clear definition between profits and surpluses**, which would specify how they are generated and enable their different way of being allocated and taxed. In fact, in a number of cooperative types, the distribution of profits to the members is permitted, as well as the distribution of the remainder after liquidation, which are non-compliant with the not-for-profit cooperative way of cooperative enterprise.

With regard to the **vertical integration among cooperatives**, both the national expert as well as the ICA member organisation point out that in many instances the legislator introduces unnecessary limitations and conditions (e.g. *the agricultural cooperatives' unions can undertake activities associated with only one or similar agricultural products-article 31.1 L.4384/2016*; *the SCEs and worker cooperatives cannot form such unions under a cooperative form*), preventing different types of cooperatives from collaborating under unions with an economic purpose and federations with a socio-political purpose and most importantly preventing the set-up of a national confederation that would represent the whole cooperative movement.

One other issue to be raised from the perspective of the national expert and the ICA member organisation is the fact that for most types of cooperatives in the **absence of cooperative-specific tax and audit provisions**, the general provisions apply, resulting in taxing and auditing them as for-profit companies, hence disregarding their distinct identity that differentiates them from other companies.

Based on the above, a number of cooperatives do enjoy an enabling legal framework with cooperative-appropriate provisions (e.g. the agricultural cooperatives), supportive measures and incentives (e.g. in the form of an appropriate cooperative tax treatment) where this is not the case for others, resulting in an unequal treatment that is rarely justified by the type of cooperative or sector of activity.

There was a lack of consensus between contributing parties on the provision of best practices within the Greek cooperative legal framework, as members suggest there is little within the framework to provide for good practices. However, in the view of the legal expert, despite the aforementioned issues, some good practices are noted in the Greek cooperative legal framework. Starting with the national constitution, the content of article 12.4 NC strives for a balance between the cooperative's self-governance and their supervision and protection by the state. Nevertheless, the fact that cooperatives are explicitly referred to at a constitutional level not only highlights their significance, but it also offers a basis of justification for the enactment of supportive measures for their promotion and further development.

With regard to the particular provisions introduced in the various special cooperative laws, it was found that L. 4384/2016 on agricultural cooperatives prescribes for a number of cooperative-supportive provisions, such as distinguishing the profits (generated from transactions of the cooperative with non-members) from the surpluses (generated from the transactions of the cooperative with its members). Further, the way the surpluses and profits are allocated result in rewarding the members' transactions with the cooperative, preventing speculative practices and most importantly, they render a tool

for the implementation of the 5<sup>th</sup> cooperative principle (Education, Training and Information) and the 7<sup>th</sup> cooperative principle (Concern for the Community).

One other good practice that aims at preventing the dissolution of a cooperative for private gain is forbidding the remainder after liquidation to be distributed to its members, a provision that was found in several special cooperative laws.

Also, during the post-crisis years, the legislator has introduced new types of cooperatives to address the various issues that emerged. In particular the cooperative model was perceived as an adequate form for the social and economic integration of refugees while waiting for their asylum process, but also for other special groups of the population that face difficulties in being integrated, such as immigrants, victims of sex traffic, minority groups, long term unemployed, or single parents ( article 2.8, 14.2(a) L.4430/2016).

As Greece has been one of the European countries most affected by the issues related to energy poverty, the Greek legislator introduced a special cooperative law on energy communities, in order to enable the country's transition towards a model of energy democracy through the cooperative model and with the active participation of municipalities, local businesses and citizens<sup>35</sup>.

Although the Greek legal framework is embedded with a number of cooperative-supporting provisions, the emerging legal issues seem to surpass the good practices.

Therefore, in general, there is a considerable room for improvement for the current cooperative legislation in force. The ICA member organisation took into account the agricultural cooperative law, the urban cooperative law and the law on SCEs, when assessing the degree of "cooperative friendliness". To go further, according to the ICA member organisation, the Greek cooperative legislation is cooperative friendly for agricultural cooperatives, whereas law on urban cooperatives and on SCEs can be considered as more cooperative unfriendly than friendly; the former due to allowing the cooperatives' companionship with for-profit corporations and the latter due to establishing a type of cooperative with social enterprise features, which according to the contributing ICA member organisation "prevents it from achieving its goal".

The Greek legislator has been often inspired by the national cooperative laws of other countries. For instance, the L. 2716/1999 on social cooperatives of limited liability was influenced by the Italian law on social cooperatives and the new L. 4430/2016 on SSE by the Spanish and French SSE legal framework<sup>36</sup>. However, introducing a foreign legal act into a different socio-economic reality may not be deemed successful, if the particular conditions of the country, as well as the history and the level of development of the cooperative movement of that country, are not properly taken into account. Nevertheless, from the point of view of the national expert, there are several good practices stemming

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<sup>35</sup> See also footnote 8

<sup>36</sup>Σ. Αδάμ, Α. Κορνηλάκης, Κ. Καβουλάκος, Το θεσμικό πλαίσιο της κοινωνικής και αλληλέγγυας οικονομίας στην Ελλάδα. Η εμπειρία της δημόσιας διαβούλευσης και μια κριτική αποτίμηση του νόμου 4430/2016 [The legal framework of social and solidarity economy in Greece. The experience of public consultation and a critical approach of law 4430/2016], Ίδρυμα Χάινριχ Μπέλ Ελλάδας, 2018, p. 14 et seq.

from various legal jurisdictions that may be considered as a source of inspiration for the improvement of the Greek legal framework, these include:

-The mutual funds established by the national cooperative auditing associations under the Italian article 11 L.59/1992. Such funds are formed: a) by a mandatory contribution of the cooperatives/ members of the associations (3% of the annual profits) and b) by the remainder after liquidation of cooperatives that either dissolve or are transformed into another type of company (article 2514.1d CC). The above funds are used to support the creation of new cooperatives or to enable the further development of small ones. Regarding their tax treatment, it is worth highlighting that these funds are not taxed and the cooperatives that contribute to these funds by submitting their mandatory contributions to the national auditing association enjoy a tax-deduction (article 11.9 L.59/1992)<sup>37</sup>. Such provisions were also highlighted by the ICA member organisation as important.

- The implementation of the 6<sup>th</sup> cooperative principle of cooperation among cooperatives under the French and Portuguese cooperative legal framework, which allows the establishment of unions and federations among the same or even different categories of cooperatives, locally and nationally (article 5 L. 47-1775 of the 10<sup>th</sup> September 1947; article 101 et. seq. Portuguese Cooperative Code)<sup>38</sup>.

- The formation of multi-purpose cooperatives under the Portuguese Cooperative Code that enables a cooperative to undertake multi-sectorial activities (article 4.2 Portuguese Cooperative Code).

- The provisions on the exercise of a cooperative-specific audit that verifies not only the financial aspect but also the member promotion aspect of the cooperative by specially trained auditors, which is found in various countries, such as Italy, Spain, Portugal and Germany<sup>39</sup>.

From the perspective of the contributing ICA member organisation, the cooperative law of the Basque Spanish region is considered as a source of inspiration for the Greek legislation, due to the fact that it is a general and complete legal framework, which enhances the cooperative principles. Some of its provisions that were highlighted by the member organisation include; the low number of members required for the cooperatives' establishment, the internal governance provisions (e.g. part renewal of the BoD members), the proper distribution and taxation of surplus and profits, the introduction of a cap for the cooperatives' transactions with non-members and non-members employees, and the formation of a Cooperative Education and Promotion Fund.

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<sup>37</sup> A. Fici, Cooperation among cooperatives in Italian and comparative law, Journal of entrepreneurial and organisational diversity, issue 4(2), 2015, 64-97 (80 et seq.).

<sup>38</sup> D. Hiez, France, in Fajardo, G., Fici, A. Henry, H., Hiez, D., Meira, D., Münkner, H.H., Snaith, I., Principles of European Cooperative Law: Principles, commentaries and national reports, 2017, p. 239, 246. D. Meira, Portugal. In: Fajardo, G., Fici, A. Henry, H., Hiez, D., Meira, D., Münkner, H.H., Snaith, I., Principles of European Cooperative Law: Principles, commentaries and national reports, 2017, σ. 502 et seq.

<sup>39</sup> H.H Münkner, Co-operative audit. In: Fajardo, G., Fici, A. Henry, H., Hiez, D., Meira, D., Münkner, H.H., Snaith, I. Principles of European Cooperative Law: Principles, commentaries and national reports, 2017, p. 101 et. seq.

The detailed comparison between the Greek cooperative laws on the one hand and the cooperative law of the Basque region provided by the ICA member organisation could be of interest for the Greek cooperative legislation's improvement.

## **IV. Recommendations for the improvement of the national legal framework**

In order to address the ongoing fragmentation of the Greek cooperative legal framework, a two-step process is proposed: a) the harmonisation of the special cooperative laws, b) the enactment of a general cooperative law. Firstly, the special cooperative laws need to be harmonised on the basis of complying with the cooperative identity, enhancing an equal treatment for all cooperatives and preserving any preferential provisions for some cooperative types as long as they are justified by the particularities of that cooperative type (e.g. due to the nature of its activities or its pursued purpose or its member composition).

In addition, the enactment of a general cooperative law is suggested as a second step to further the improvement of the legal framework in Greece. The ICA member organisation is also in favor of a general cooperative law. From the perspective of the national expert, such a law would introduce a set of common provisions applicable (in principle) to all types of cooperatives. If enacted, it may affect any future law making on cooperatives, since the legislator would be obligated to take into account the general provisions of cooperatives and justify the need to introduce any specialised or divergent provisions in the preamble of the law. In any case, the cooperative law-making process would have as its starting point the general provisions and thus the legislation shall not expand unsystematically.

A key priority for the suggested law would be to enhance the constitutionally protected self-governance of cooperatives, by abstaining from prescribing intrusive and highly detailed rules and, introduce instead, general and flexible norms, leaving, thus, many aspects to be decided in the cooperative by-laws. Mandatory provisions shall be prescribed in the text only when deemed necessary in order to safeguard the cooperatives' distinctive identity. More specifically, some of the suggested provisions to be included in the general cooperative law refer to (indicatively):

- The inclusion of the ICA definition of a cooperative in the legal text and the ICA cooperative values and principles in its preamble,
- The formation of cooperatives under the same process, deadline and authority. The ICA member organisation with regard to that matter suggested a decrease of the number of founding members to 3.
- The state supervision undertaken by a supervisory authority, in which all cooperatives shall be subjected under a unified register as well as a cooperative-specific audit by specialised auditors. The enhancement of control mechanisms was also highlighted by the ICA member organisation, which was also of the opinion to introduce penalties when cooperative identity is infringed.

- The acknowledgement of a limited number of voting rights to the members that acquire additional shares, not based on their financial contributions, but in proportion to their transactions with the cooperative.
- The possibility for a cooperative of a particular type to expand its activities in other sectors upon decision of the GA and revision of its by-laws.
- A distinction between surplus and profits and an appropriate distribution of surplus (and for specific types of cooperatives such as social cooperatives, also of profits) as well as a disinterested distribution of remainder after liquidation, which is suggested by both the national expert as well as the ICA member organisation. However, the contributing ICA member organisation holds the opinion that the GA should be subject to more flexible provisions when deciding on the distribution of the cooperatives' surplus and profit.
- An appropriate taxation of the cooperative (especially concerning of its surplus and its indivisible reserves) in line with its particular nature. Such an issue was also raised by the contributing ICA member organisation.
- The formation of mutual funds based on the Italian experience (see III). A similar suggestion was also made by the ICA member organisation on the formation of Cooperative Education and Promotion funds, based on the Basque experience.
- The formation of unions of cooperatives with an economic purpose and federations with a socio-political purpose, with members from the same or different types of cooperatives, as well as the establishment of a PanHellenic confederation of cooperatives, representative of the cooperative movement as a whole. Enabling the cooperation among agricultural and urban cooperatives is also of concern for the ICA member organisation.
- The ICA member organisation also proposed a restriction on the volume of transactions of the cooperative with non-members, on the number of non-members employees, as well as on the adherence of non-cooperative enterprises as members.
- An interesting point raised by the ICA member organisation was the formation of a national council on cooperatives as a public authority in support of the cooperative model. The national expert holds the opinion that such a body or committee, established formally or informally, may consist of cooperators, academics and policy makers, which could monitor- among other things- the implementation and evolution of the cooperative legislation.



## V. Conclusions

To sum up, the current report incorporated the key issues raised by the ICA member organisation. The national expert's view worked in a complimentary way and coincided with the contributing member organisation in a number of issues that were discussed above, such as the distinction and proper distribution of surplus and profits for cooperatives, their appropriate tax treatment, as well as enabling the cooperation among different cooperative types. On the other hand, the member organisation is of the opinion that the SCEs legal framework is cooperative non friendly. It is true that, social cooperatives, in general as a broad phenomenon acknowledged by a number of national legislations usually deviate from the model of traditional cooperatives that serve explicitly a mutual purpose, but share nevertheless some of its basic traits. Therefore, from the national expert's point of view, they may be perceived as a particular type of cooperatives and not as a non-cooperative.

From the perspective of the ICA member organisation as well as of the national expert, in order for the cooperative legislation in Greece to be improved a general cooperative law is needed. Additionally, the national expert also expressed the opinion that such a step should be accompanied with the revision of the special cooperative laws. The final aim of such reform from the perspective of the national expert as well as the ICA member organisation would be to diminish the isomorphisation of cooperatives with investor-owned firms, by prescribing for a clear profile of all cooperatives and by sharpening their particular traits. In order for such legal reforms to obtain the desirable results, any changes in the cooperative legal framework should generate from a process of co-construction and democratic participation of the cooperatives and other stakeholders during law-making, in order to enact a law with the cooperatives and for the cooperatives. This may be facilitated by the formation of a national council of cooperatives, as suggested by the ICA member organisation, which should - among others- support the cooperative model and monitor the implementation of cooperative law.

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**Contact:** [legalresearch@ica.coop](mailto:legalresearch@ica.coop)

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