

Switzerland Legal Framework Analysis: Key Highlights

This one-pager aims to provide a brief overview of the most notable features of the national cooperative legal framework in Switzerland, based on the work of the national expert.

Cooperatives in Switzerland are exclusively regulated by the 29th title (Art. 828 - 926 CO) of the Swiss Code of Obligations. The Federal Constitution of the Swiss Confederation does not affect the cooperative law. The cooperative law is found at the end of the regulations concerning the forms of the numerus clausus of the Commercial Enterprises in Switzerland. It is not specifically regulated in a separate act, but approximately 90 articles of the CO relate exclusively to it. Although the most recent version of the CO is dated 1 January 2021, the title of the cooperative law has not been generally revised since 1937. In addition to the general provisions of the Code of Obligations, individual regulations from special laws also apply for different types of cooperative.

There is no explicit reference to the ICA Principles of cooperative identity in Swiss cooperative law. However, various ICA Principles are implemented in Swiss cooperative law, including Principles 1 to 4.

Cooperative Friendliness: Overall, the national expert considers that there are almost no real barriers in Swiss cooperative law. On the contrary, there are numerous advantages, especially due to the great flexibility and thus the possibility to adapt the cooperative form to individual requirements. However, the national expert emphasises that challenges remain, notably concerning the recognition of investor members and a potential reduction in the number of minimum members for a cooperative's establishment. The national expert notes that often there is not enough emphasis on the organization of financial aspects, to the extent that raising equity and debt capital can be challenging for cooperatives.

Key recommendations for improvement: In the view of the national expert, it is not that the legal framework needs to be redefined, but rather that more work needs to be done to clarify what a cooperative is and to raise awareness of the potential advantages of the enterprise form. Therefore, no fundamental changes are necessary for the cooperatives' development's sake. The existing legal regulations, most of which are simple and easy to understand, cover and regulate all essential points – the rest is left to private autonomy (and thus to private responsibility). The national expert notes that this elasticity and the related possibility to create tailor-made solutions for the enormous variety of Swiss cooperatives should not be given up lightly, by introducing new and detailed regulations.

Conclusions: In the national expert's view, the Swiss cooperative legal framework is beneficial because it can be so flexibly tailored to the most diverse needs. It allows a great deal of flexibility, but also requires independent action and continuous self-regulation. In the opinion of the national expert, the current main deficit of the legal form of the cooperative is its low level of awareness in the public consciousness.