



LEGAL FRAMEWORK ANALYSIS

NATIONAL REPORT: ITALY

ICA-EU PARTNERSHIP



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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 presents the main results of research to examine and analyse cooperative law in Italy its general context and main elements, including by highlighting innovative points and replicable best practices. Finally, conclusions and recommendations for the improvement of the legal framework are considered.

The Italian legal framework serves as a positive demonstration of the relationship between national legislation and the promotion of cooperatives. The Italian cooperative movement includes approximately 70,000 cooperatives and over 1.1 million workers. This represents approximately 7% of national GDP and over 11 million cooperative members, making cooperatives a significant force in Italian society.

This report has been written by Emilio Emmolo of Confcooperative, with the input and support of staff from Cooperatives Europe and the International Cooperative Alliance. Member organisations present in Italy were also contacted for contributions to the latter sections, and additional input provided by Associazione Generale delle Cooperative Italiane (AGCI), and Legacoop was incorporated in the present report. Due to the extensive nature of the legal framework, the report incorporates the most salient features in the following sections, including a general overview and a number of specific elements of Italian cooperative law.

II. National cooperative law: Italy

i. General Context

Cooperative societies in Italy are deeply and extensively regulated. First of all, Article 45 of the Italian Constitution states that;

“the Republic recognises the social function of cooperation with mutual character and without private speculation purposes. The law promotes and favours its growth with the most appropriate means, and ensures, with appropriate controls, its character and purposes”.

The main rules are contained in the Civil Code (articles 2511-2548) within the general framework on companies. Concurrently, there are separate acts specifically dedicated to cooperatives. There are special laws on particular types of cooperatives (worker cooperatives, social cooperatives and cooperative banks).

All the ICA Principles on cooperative identity are referenced within Italian law.

Table 1: Existing regulations and relevant laws on cooperatives in Italy

<i>Regulation</i>	<i>Description</i>
DECRETO LEGISLATIVO C.P.S. 14 dicembre 1947, n. 1577	Provvedimenti per la cooperazione (Measures for cooperation so called “Basevi Law”)
LEGGE 31 gennaio 1992, n. 59	Nuove norme in materia di società cooperative (New rules on cooperative societies)
DECRETO LEGISLATIVO 17 gennaio 2003, n. 6	Riforma organica della disciplina delle società di capitali e società cooperative, in attuazione della legge 3 ottobre 2001, n. 366 (Organic reform of the regulation of corporations and cooperative societies)
DECRETO LEGISLATIVO 2 agosto 2002, n. 220	Norme in materia di riordino della vigilanza sugli enti cooperativi (law on the re-organisation of the supervision of cooperatives), ai sensi dell'articolo 7, comma 1, della legge 3 aprile 2001, n. 142, recante: "Revisione della legislazione in materia cooperativistica, con particolare riferimento alla posizione del socio lavoratore"
LEGGE 3 aprile 2001, n. 142	Revisione della legislazione in materia cooperativistica, con particolare riferimento alla posizione del socio lavoratore (Reform of the legislation on cooperative matters, with particular reference to the position of the worker member)
LEGGE 27 febbraio 1985, n. 49	Misure per il credito e cooperazione – Misure urgenti per i livelli di occupazione (Measures for credit and cooperation - Urgent measures for employment levels so called “Marcora law”)

In addition, contributing member organisations pointed out a number of sectoral regulations, including but not limited to the following;

- *The Royal Decree No. 1165 of 1938*. This is a consolidated text of social and popular housing, in which housing cooperatives are regulated. The financing forms of these cooperatives are regulated in order to facilitate the assignment in ownership or rental of the home/house to the members. This is a provision that remains in force, but it has been mainly superseded by the legislation of the Regions.
- *The Legislative Decree No.385, 1 September 1993*, within which the Cooperative Credit Banks are regulated.
- *The Legislative Decree No. 112, 3 July 2017, (Reform of Social Enterprises)*. The purpose of this legislation is to regulate the wide-ranging sector of social economy by providing the minimum requirements (areas of activity, nonprofit, democratic governance), so that an entity can qualify as a 'social enterprise'. There are also cooperative societies among the various institutions involved.

ii. Specific elements of the co-operative law

a) Definition and objectives of cooperatives

Art. 2511 of the Civil Code defines the cooperative as a company “with variable capital and mutual purpose”. The cardinal principle, as well as the objective of the cooperatives, is that concerning the mutual exchange between members and cooperatives (the principle of mutuality). Mutuality is at the core of the cooperative model and it is expressed in the Italian legislation through various requirements which the cooperatives must respect, allowing them access to particular fiscal benefits. Art. 2512 of the Civil Code underlines different types of mutualistic exchange. In fact, they can:

- a) carry out their activity benefiting the members, consumers or users of products or services;
- b) use, in carrying out their activity, their worker members;
- c) use, in carrying out their activity, the products or services of their members.

Art. 2512 of the Civil Code establishes that cooperatives are mutually prevalent based on the type of mutualistic exchange, when they:

- 1) carry out their activity mainly benefiting the members, consumers or users of products or services;
- 2) mainly use, in carrying out their activity, their worker members;
- 3) mainly use, in carrying out their activity, the products or services of their members.

b) Establishment, cooperative membership and governance

The admission of new members is regulated by the civil code (articles 2527 and 2528) and the act of incorporation establishes the requirements for the admission of new members and the relevant procedure. The criteria cannot be discriminatory, but in line with the mutualistic aim and the economic activity. Admission is approved by the board and it must justify a refusal.

Under the Italian law, “each member has a vote” in the cooperative assembly, regardless of the amount of the subscribed capital. However, the Italian law provides a few exceptions to the rule. The cooperative’s statute may assign more votes to a member that is a legal entity (a cooperative or other legal forms of organisation), with a maximum of five, in relation to the capital held or the number of its members. It is also possible to give more than one vote to a legal entity member (not to a physical person member), because of the intensity of its mutualistic exchange (transactions realised with the cooperative, for instance in an agricultural cooperative, it may be the quantity of products sold to the cooperative).

Moreover, the civil code introduced a special member category, with its relevant rights and obligations which are different to those of ordinary members, in order to allow them the opportunity for training or for full future membership. These members cannot exceed one third of the number of the total cooperative members. At the end of a period, which cannot be longer than 5 years, the special member becomes an ordinary cooperative member, with the relevant rights and duties.

The Assembly is composed by all the Members of the cooperative. It is established for the following: to appoint and dismiss the Directors; to appoint the auditors and the person responsible for the audit; to approve the annual budget; to decide about the allocation of profits or the offsetting of losses incurred; to decide on changes on the statute; and to approve the regulations laying down the criteria and the rules relating to the conduct of mutual exchange between the cooperative and the members.

The most commonly used system of governance in the Italian cooperative world is the "ordinary" one, whose structure is represented by the assembly, the board of directors and the control or auditing body. The Italian legal system also provides for the possibility of using what is known as the dual model: “*The Articles of Association may provide for the administration and control to be exercised by a management board and a supervisory board in accordance with the following rules*” (Article 2409 - octies CC) or the so-called one-tier system: “*The articles of association may provide for the administration and control to be exercised by the board of directors and by a committee set up internally*” (Article 2409-sexiesdecies CC).

The statutes can forecast that also non-cooperative members would be able to be appointed as Board members. In any case, the cooperators-members have to make up the majority of the board.

The control/auditing board is mandatory for cooperatives, with the exception of small cooperatives, which are not obligated to appoint one. It supervises the performance of the cooperative and of the board (administrators' duties and responsibilities for non-performance or failure to abide by legal standards too) and the examination of the accounts.

c) Cooperative financial structure and taxation

Cooperatives are ruled by the capital variability. There is no minimum share capital and the admission of new members does not require amendments of the act of incorporation. Capital is composed by stocks or shares and they may not be transferred without the authorisation of the board of directors.

The Italian law obliges cooperatives to earmark 30% of total annual profits for the legal reserve, regardless of the amount of this legal reserve. Cooperatives are obliged to allocate 3% of total annual profits to the mutual funds for the promotion and development of cooperation, headed by the representative organisations of the cooperative movement with the aim of promoting and financing the development of new cooperatives.

As to the capital remuneration restraint, art. 2514, c.c., states that mainly mutual cooperatives cannot distribute dividends on the subscribed capital superior to the maximum interest of postal bonds increased by 2.5 points, and cannot remunerate the financial instruments subscribed to by user-members more than the maximum interest of postal bonds increased by 4.5 points.

The cooperative statutes must also acknowledge that it is forbidden to distribute the reserves among the cooperative members during the life of the cooperative, and in case of liquidation of the cooperative, it is compulsory to allocate the entire assets, deducting the share capital and any accrued dividends, to the mutualistic funds for the promotion and development of cooperation.

Cooperative will be able to make use of common financial tools to raise capital. Cooperatives can admit investor members (*soci sovventori* and *soci finanziatori*) who are only interested in the remuneration of the capital. They have a particular legal status (art. 4 law 59/92).

Investor members can never have more than 33% of votes in the assembly and they cannot have more than 33% of the members in the cooperative's directors board. The financial tools can be freely transferable, but the statutes can impose a number of conditions.

The cooperatives have the possibility to be funded by their members through the "member loans" (*prestiti sociali*). The sums paid by the members for social loans are repayable at any time, must be used exclusively for the achievement of the cooperative's corporate purpose, and their maximum remuneration is equal to the one of the dividends distributed by the cooperative.

Mutuality is expressed in the Italian legislation through various requirements which the cooperatives must respect allowing them access to particular fiscal benefits. The Italian fiscal regime recognises that the cooperatives are not taxed on 57% of their profits

allocated to indivisible reserves. In some particular sectors other percentage of tax exemption apply: 32% of exemption for the consumer cooperatives, 77% for the agricultural cooperatives and 97% for the social cooperatives. Those percentages of tax exemptions are applied only to the profits which are destined to indivisible reserves, while dividends (always within the limits of remuneration of the capital) are taxed normally.

Patronage refunds are exempt when they are assigned as shares of the capital in the form of increases of participation of every member in the company capital or in the form of issuing financial tools in order to capitalise the cooperative. In addition, the annual contribution to the mutual fund is not taxed.

Further, patronage refunds ("*ristorni*") are not taxed if they are assigned to members as share of the cooperative capital. Members are taxed when they receive the capital. If patronage refunds are assigned as additional remuneration, they are taxed.

d) Other specific features

SUPERVISORY ACTIVITY

With regard to the supervisory activity, the relevant provisions in the Italian Civil Code and in Decree No.220/2002 subject all cooperatives to an external supervisory system in order to ensure, pursuant to art. 45 of the Italian Constitution, the character and aims of the cooperatives themselves. Cooperatives are subject to public external control (*revisioni*) of the Ministry of Economic Development every two years (every year for social cooperatives). The State delegates the power of control to representative organisations of the cooperative movement. The representative Associations are charged with auditing their member cooperatives through appointed auditors. Control must satisfy two requirements: to assist the cooperatives and to check that their nature is that of a cooperative body.

The control is exercised by the State with regards to cooperatives not associated to representative associations.

1. Cooperation among cooperatives

The principle of cooperation among cooperatives is implemented in the Italian legislation and it is important for Italian cooperatives. Firstly, D.L.C.P.S. 1577/1947 (art. 27) provide for the “cooperative consortium” to facilitate their mutual aims, carry out together economic activities through a unitary organising structure, establishing a consortium as a cooperative company.

Consortia of cooperatives may be established with a minimum of three cooperatives and a minimum subscribed capital of € 516. A consortium’s by-laws may confer on its member cooperatives, in relation to the amount of the capital held or the number of their members, more than one vote (no more than five) in the members’ general meeting. In addition, a consortium’s by-laws may confer on its member cooperatives more votes in the members’ general meeting (or general assembly) in proportion to the mutual transactions that each cooperative carries out with the consortium. Special dispensations from the “one member, one vote” rule in secondary cooperatives are, therefore, possible and potentially useful in dealing with a heterogeneous membership.

The cooperatives consortiums have the same characteristics of the cooperative companies. This means that they have the same advantages and the same constraints as the cooperative companies.

The “joint cooperative group” (*gruppo cooperativo paritetico*) is a new figure introduced by the 2003 reform. The joint cooperative group is defined by law as the contract by which two or more cooperatives, which may also belong to different categories, regulate the direction and coordination of their respective enterprises. Public or private entities may be admitted.

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

In the view of the national expert, and when considering the perspectives of contributing member organisations, the Italian legislation has significantly high degree of “cooperative friendliness”. Taken as a whole, the legislation in Italy regarding cooperatives can be considered one of the most advanced and complete at European level, not only as it facilitates a growing and active cooperative movement and further integration among cooperatives, but because it is based on the specific constitutional recognition of the social function of the cooperation.

In the view of the contributing member organisations, there are no large legal obstacles or barriers to the development of cooperatives, and the existing cooperative legal framework can therefore be considered to be significantly friendly or adequate for cooperatives.

For example, good practices mentioned by member organisations include the Law on Social Cooperatives (381/1991), whereby an already existing phenomenon was regulated, taking into account the onset of new subjects who had started working in communities and territories to respond to emerging needs of assistance and job inclusion. In addition, contributing member organisations noted the fiscal regime and the Mutualistic Fund, foreseen by the law No. 59/1992.

In view of the contributing member organisations, and due to increasingly globalised financial markets, it might also be fruitful to resume the previous work on pan-European cooperative legislation, the European Cooperative Society (SCE), to harmonise the cooperative laws of the various Member States in order to favor cross-border activity and transnational cooperative enterprises, still hampered by legal and administrative difficulties that are a clear limitation in global transnational markets.

Despite good practices noted here, the legal framework can also be considered to suffer from a certain fragmentation due to the distribution of general regulations across different texts, to the coexistence of general and special disciplines with reference to particular types of cooperatives. This leads to potential recommendations for the improvement of the national legal framework, further developed below.

IV. Recommendations for the improvement of the national legal framework

Taking into account the points already discussed within this the report, contributing member organisations, in concurrence with the national expert, highlight the following points that might be considered for the improvement of the legal framework.

Of clear significance for stakeholders is to address false cooperatives. The false cooperatives are companies that escape controls and have a heavy impact, for example through market advantage, on the many cooperatives who operate within the law. They also represent an economic and reputational damage for genuine cooperatives. It is reported that false cooperatives may be set up for a short period of time for the sole purpose of circumventing tax and labour laws. It might therefore be necessary to improve and intensify external control over cooperatives, in order to reduce this phenomenon.

A clear example of existing action taken to address this issue was the efforts launched in 2016 by the Italian Cooperative Alliance (consisting of Confcooperative, Legacoop and AGCI), who submitted a law proposal to the Parliament which aimed at countering false cooperatives. The proposal was undersigned by more than 100,000 people. The central aim is to remove from the National Register of Cooperatives those entities that escape the controls or are unable to demonstrate that they have the necessary mutualistic requisites. The Italian Cooperative Alliance calls for the legislation to be implemented in a timely manner to tackle this issue.

A second priority would be to promote national legislation on 'community cooperatives. At present, the Italian legislator has not yet intervened to regulate at national level. The only legislative references are those that currently exist within regional laws, which are non-uniform, and may be an obstacle for the promotion of community cooperatives. Therefore, a Framework Law on Community Cooperatives might act as a single reference for the of this type of enterprise, preventing disorientation that could arise from the non-uniformity within the current regional legislative landscape.

Further, it would be necessary to improve the existing legislation on financial tools in order to address issues of under-capitalisation. In the view of contributing member organisations, specific attention could be given to the sub-capitalisation of cooperatives, which has always been considered to be a critical issue for cooperation.

A final consideration to be noted here is the introduction of measures for the simplification in different areas of the Italian legislation, for example, in the setting up of the cooperatives and their bureaucratic procedures. In the framework of an intervention in favour of regulatory and bureaucratic simplification, a re-edition of the instrument aimed at a work of coordination and codification of the norms belonging to a given subject appears to be needed. Further, the verification and prompt implementation of the legislative provisions that remain frequently unused, because they are not followed by the regulatory provisions of the second degree necessary for their implementation, may also be considered.

With further regard to simplification, this might also be considered in sectors of the legal system which, for different reasons, have remained excluded – in particular, the tax system and its incentives for cooperatives, and the administration of justice. In the view of contributing member organisations, another area where simplification may be necessary is within the Procurement Code, in order to provide clearer rules for organisations to follow, to further streamline the process and to improve efficiency.

Contributing member organisations also note the Reform of the Third Sector and of the Social Enterprise, which has changed the framework within which the non-profitable subjects of the country may move. Member organisations are in favour of the arrival of complete application and that this can contribute to enhancing the positive experiences already witnessed in the field of social cooperation.

These points taken together could be considered as potential improvements for the Italian legal framework for cooperatives.

V. Conclusions

In keeping with the points mentioned above, it is important to note that the answers of ICA members have been limited, but coinciding, in general, with the expert's opinion. With regard to additional comments to include, the national expert highlights the following points.

Two institutions, the civil service and the transition between school and work, which have become widespread phenomena also within the cooperative world, should be strengthened rather than weakened, as it appears for the general trend within the country to be moving toward the latter.

The civil service in social cooperatives has in fact allowed many young people to make profitable experiences of personal growth, as well as cultural and professional training, often useful for the purpose of their work placement. In light of the above it should be encouraged, in light of the cooperative principle of Education and Training. In addition, the same can be said for the school-work transitions that, notwithstanding the cases in which it was not appreciated by teachers and students, has proved to be an important instrument able to bring young people to the world of work, through graduating from school desks to practical activity within companies.

In conclusion, building further knowledge and evaluation of Italian cooperative legislation in future will be important as a resource for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge, member organisations 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.

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