



ØKONOMI- OG  
ERHVERVS MINISTEREN

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**Endelig besvarelse af spørgsmål 41 alm. del stillet af Erhvervsudvalget den 8. december 2008 efter ønske fra Line Barfod (EL).**

ØKONOMI- OG  
ERHVERVS MINISTERIET  
Slotsholmsgade 10-12  
1216 København K

Tlf. 33 92 33 50  
Fax 33 12 37 78  
CVR-nr 10 09 24 85  
oem@oem.dk  
www.oem.dk

**Spørgsmål 41:**

Ministeren bedes redegøre for eksempler på lande (f.eks. Frankrig og Italien), hvor der findes en statslig lovgivning for kooperativ drift og bedes herunder præcisere de kooperative selskabers ejendomsform, deres bestyrelses sammensætning, forrentning af kapitalindskud, overskuddets anvendelse og beskatningsforhold.

**Svar:**

Jeg har i et tidligere foreløbigt svar til Erhvervsudvalget anført, at den faste danske repræsentation i Bruxelles er anmodet om at indhente evt. udtalelse fra de enkelte EU-landes repræsentanter vedrørende spørgsmålet. Da udtalelserne nu foreligger, skal jeg hermed vende tilbage med en endelig besvarelse af det stillede spørgsmål.

Der er modtaget svar fra repræsentanter fra Belgien, Irland, Litauen, Slovakiet, Spanien, Sverige, Tjekkiet, Tyskland og Østrig. Alle disse landes repræsentanter har oplyst, at de enkelte lande har lovgivning om kooperative selskaber. Irland har dog ikke lovgivning, som direkte omfatter kooperative selskaber, men de omfattes derimod af anden lovgivning.

Erhvervs- og Selskabsstyrelsen, som har indhentet svarene fra den faste repræsentation i Bruxelles, har oplyst, at det ikke fra dansk side er muligt at sige noget mere konkret om indholdet og variationen i disse landes lovgivning, da der ikke findes en samlet opdateret oversigt over indholdet af lovgivningerne inden for dette område.

Desuden er det vurderet, at der af hensyn til informationsværdien ikke foretages en nærmere gennemgang af det modtagne materiale, da det er af meget konkret karakter samt af meget forskelligt indholdsmæssigt omfang. En sammenligning på tværs af landene er således problematisk, da den grundlæggende struktur i erhvervsreguleringen varierer betydeligt mellem landene.

Der er til denne besvarelse til Erhvervsudvalget vedlagt en række bilag,

som indeholder de nærmere oplysninger, der er indkommet fra de enkelte lande, som har besvaret de stillede spørgsmål.

Ud over de vedlagte bilag kan det oplyses, at Spanien, Sverige og Østrig har tilkendegivet, at de har lovgivning om kooperative selskaber. Da de ikke har medsendt yderligere oplysninger, men blot kopi af eller link til selve lovgivningen, er de indsendte svar ikke medtaget som bilag til denne besvarelse.

Det kan desuden oplyses, at EU-kommissionen i 2001 har fået udarbejdet en oversigt over de enkelte daværende EU-landes lovgivninger om kooperative selskaber. Dokumentet er af ældre dato, og det er oplyst, at oplysninger for flere landes vedkommende kan være forældede. Desuden er nye EU-lande ikke med på listen. På den baggrund vedlægges det pågældende dokument ikke, men det kan findes på EU-kommissionens hjemmeside på følgende adresse:

[ec.europa.eu/enterprise/entrepreneurship/coop/consultation/index.htm](http://ec.europa.eu/enterprise/entrepreneurship/coop/consultation/index.htm).

Med hensyn til den specifikke reference til Frankrig og Italien i spørgsmålet har Erhvervs- og Selskabsstyrelsen særskilt anmodet disse landes repræsentanter om oplysninger. Der er dog på trods af rykkerskrivelser ikke modtaget oplysninger fra disse lande, og der er derfor ikke medtaget oplysninger om disse lande i dette svar.

Såfremt der efterfølgende modtages oplysninger fra Frankrig eller Italien, vil disse blive eftersendt til Erhvervsudvalget så hurtigt som muligt.

#### Oversigt over de vedlagte bilag:

1. Spørgsmål stillet til de enkelte landes repræsentanter
2. Bidrag fra Belgien
3. Bidrag fra Irland
4. Bidrag fra Litauen
5. Bidrag fra Tjekkiet
6. Bidrag fra Tyskland
7. Bidrag fra Slovakiet

**Bilag 1: Spørgsmål stillet til de enkelte landes repræsentanter**

Question about legislation on co-operatives:

*1) Is there in your member state legislation concerning co-operatives?*

A co-operative is a form of business or organisation that is owned and democratically controlled by its shareholders/members. A co-operative is also known as a 'mutual organisation' or a 'co-op'. The organisation is run for the mutual benefit of its shareholders/members.

*2) If the answer to the first question is yes, we would like to know more about these co-operatives concerning ownership, the composition of the board of directors, return on capital contributions, use of profits and taxation.*

## **Bilag 2: Bidrag fra Belgien**

In Belgium, we know two different cooperative companies: the cooperative company with illimited responsibility, and the cooperative company with limited responsibility, whether the associates answer personally and jointly of the social debts or until the amount of their contribution (art. 350 to 436, of the companies Code).

### *The ownership:*

They must be at least 3 persons with a variable contribution in capital. The ‘parts’ are nominatives. The owners are registered in the company register hold at the seat of the company.

The parts are freely transferable to other owners or to third person if he complies the conditions established in the statutes. Every share gives a voting right.

The owners are able to resign or take back some of their parts despite other provisions in the statutes. This must take place only within the first six months of the social year.

An owner can be excluded by the general assembly.

The general assembly makes its decision following the public limited company rules.

### *Return on capital contributions:*

Every resigned owner, excluded owner, or an owner who took back some of his parts, has the right to receive the value of his parts which would have came out from the accounting balance sheet hold at the end of the year in which these facts took place (art. 374, CC).

### *Board of directors:*

The company is directed by an administrator, associated or not, named by the general assembly, unless other provision in the statutes (art. 378 CC).

### *Use of profits:*

The general assembly decides of the appropriation of the profits and the losses on the base of the provisions of the statutes (art. 355 and 384, CC).

### *Taxation:*

The cooperation company is ruled by the corporation tax.

Some cooperatives can ask for an “approval” which gives many financial advantages, as reduction on corporation tax, on withholding tax on income from movable assets (tax on capital incomes), on social security, ...

These cooperatives must comply different conditions, in particular:

- Joining the company must be free from any element of constraint,
- the aim of the company must get to associated economic or social advantage, in the satisfaction of their professional or private needs,

- the mandate of the administrators is free; however, they can be granted with attendance fees,
- the company must envisage a rebate to the owner.

### Bilag 3: Bidrag fra Irland

The table published by the Commission as Annex 1 of the 2001 consultation document "Co-operative in Enterprise Europe" needs some updating regarding Ireland. Therefore the information it contains regarding Ireland may not be fully accurate. As a result, I have provided some further information below which may assist you with your research.

It is important to first point out that under Irish legislation there is no legally recognised entity known as a "Co-operative". In practice most Irish co-operative organisations, especially in the Agriculture sector, register as Industrial and Provident Societies (IPS) under the Industrial and Provident Societies Acts (IPS Acts). A co-operative may also use the company legal form. Both legal forms confer the benefits and protections of limited liability and incorporated status.

The main legislation in Ireland regarding IPS is as follows:

<b>Primary Legislation applying to Industrial &amp; Provident Societies</b>
1. Industrial & Provident Societies Act – 56 & 57 Vict. Ch. 39 1893
2. Industrial & Provident Societies (Amendment) Act 1913
3. Agricultural Co-Operative Societies (Debentures) Act 1934
4. Industrial & Provident Societies (Amendment) Act 1978
5. Competition Act 2002
6. Investment Fund, Companies and Miscellaneous Provisions Act 2005

- Credit Unions are subject to specific legislation (not dealt with here)

The most significant legislation regarding IPS are the 1893 and the 1913 Acts. However, the legislation in this regard says very little in the areas you identified, such as ownership, board of directors, return on capital contributions, use of profits and taxation.

**Schedule II of the 1893 Act** provides that certain matters must be provided for by the rules of a society and it is left largely up to the individual society what these contain and how it operates. All the legislation requires is that rules must be put in place on the following matters:

1. Object, name, and registered office of the society.
2. Terms of admission of the members, including any society or company investing funds in the society under the provisions of this Act.

3. Mode of holding meetings, scale and right of voting, and of making, altering, or rescinding rules.
4. The appointment and removal of a committee of management, by whatever name, of managers or other officers, and their respective powers and remuneration.
5. Determination of the amount of interest, not exceeding two hundred pounds sterling, in the shares of the society which any member other than a registered society may hold.
6. Determination whether the society may contract loans or receive money on deposit subject to the provisions 'of this Act from members or others; and, if so, under what conditions, on what security, and to what limits of amount,
7. Determination whether the shares or any of them shall be transferable; and provision for the form of transfer and registration of the shares, and for the consent of the committee thereto; determination whether the shares or any of them shall be withdrawable, and provision for the mode of withdrawal and for payment of the balance due thereon on withdrawing from the society.
8. Provision for the audit of accounts and for the appointment of auditors or a public auditor.
9. Determination whether and how members may withdraw from the society, and provision for the claims of the representatives of deceased members, or the trustees of the property of bankrupt members, and for the payment of nominees.
10. Mode of application of profits.
11. Provisions for 'the custody and use of the seal of the society.
12. Determination whether, and by what authority, and in what manner, any part of the capital may be invested.

Therefore the rules a society adopt largely determine how it operates regarding the areas you identified. However, below are some points to note in this regard:

**Board of Directors:** Under schedule II:4 the legislation requires that a society has certain rules regarding a 'management committee'.

**Return on capital contributions:** Not specifically covered by the legislation (see schedule II:10 above)

**Use of profits:** Not specifically covered by the legislation (see schedule II:10 above)

**Taxation:** At the moment I am unsure of the difference between the tax law covering IPS and Companies.

**Bilag 4: Bidrag fra Litauen**

The answer to the first question is yes. Lithuania has special law on co-operatives – the Law on Co-operative Societies (Co-operatives), which was adopted on 1 January 2003.

Notably this law does not regulate the taxation questions, which are regulated by special tax laws (Law on Personal Income Tax, Law on Corporate Income Tax, Law on Value Added Tax, Law on Immovable Property Tax and others). It is necessary to note that according to the tax reform in Lithuania these laws will be amended starting 1 January 2009.



## **Bilag 5: Bidrag fra Tjekkiet**

Yes, the Czech Republic has legislation concerning co-operatives – this issue is regulated mainly by Act no. 513/1991 Coll., Commercial Code ("CC") in the part on commercial companies (however, the co-operative is not considered a commercial company in the Czech law).

### Main characteristics of co-operatives in the Czech law:

- it is an association of a variable number of persons (at least five or at least two legal entities)
- it has a variable capital created by members' contributions (subscribed capital has to be at least CZK 50.000 = approx. EUR 1900 and the amount of the real capital, i.e. the total of current contributions, cannot be reduced under this amount); the CC does not regulate "a share" or its size in relation to a co-operative, rather it usually uses the expression "members' rights and duties"
- contributions in cash, as well as in kind are both possible; the statutes may state that in case of termination of membership the member can request to be returned the provided consideration in kind
- every member has one vote (if not stated otherwise in the statutes)
- membership is conditioned by payment of a member's contribution or of its part determined by the statutes, it can be further conditioned by the fact that a member is an employee of the co-operative
- members of a co-operative are not liable for its obligations (however, the statutes may determine that all members or some of them have a compensation duty for economical losses of a co-operative upon the decision of the members' meeting)
- members' rights and duties (membership) can be transferred to another person if the statutes do not prohibit it
- object of activity of a co-operative may be a business activity or a non-commercial activity (i.e. to ensure economical, social and other needs of its members; e.g. housing co-operatives are often created)

### Foundation and creation of a co-operative

- a co-operative is founded upon decision of the foundation members' meeting which also adopts the statutes, determines the amount of subscribed capital and elects the first members of the board of directors and of the control commission
- a co-operative is created upon registration in commercial registry

### Bodies of a co-operative (structure)

- a) *members' meeting* (parallel to the general meeting in a commercial company)
  - all members have a right to participate, it shall take place at least once a year

b) *board of directors*

- is authorized to represent a co-operative and to decide on all affairs of a co-operative which are not assigned to other body by the legislation or by the statutes
- shall have at least 3 members
- members are elected by members' meeting for a period determined by the statutes which may not exceed 5 years from among the members of the co-operative fulfilling prescribed conditions (age at least 18 years, full legal capacity, without a criminal record, not subject to an insolvency procedure)

c) *control commission*

- is authorized to control the activity of a co-operative and to deal with the complaints of members
- shall have at least 3 members
- is responsible only before the members' meeting
- the function in the control commission is incompatible with the function in the board of directors

d) *director of a co-operative*

- the statutes may state that the ordinary management of a co-operative is executed by a director appointed by the board of directors; this function shall be executed by an employee of the co-operative

## e) "small co-operative"

- in case of a co-operative with less than 50 members the statutes may state that this co-operative does not create the board of directors and the control commission; it is then represented by a president or other member of the co-operative
- competition is forbidden for the members of the board of directors and of the control commission and for the director – they cannot pursue the business or be members of the management or supervisory body of other legal entities with the same or similar object of activity

Use of profit

- if a co-operative creates a profit (i.e. revenues are higher than costs), the members' meeting during the discussion on annual balance sheet report decides upon the proposal of the board of directors whether it shall be distributed or how it shall be used (as a co-operative may pursue a non-commercial activity and therefore the primary aim would not be a regular realization of the profit); provision on use of profit is an obligatory element which has to be regulated in the statutes

- the amount of the member's share in profit depends on the proportion of its paid contribution to the total amount of all paid contributions (if the statutes do not state otherwise)
- before distributing the profit a co-operative shall supplement the indivisible fund which has to be constituted during the creation of a co-operative in the amount of at least 10% of subscribed capital and shall be supplemented annually by at least 10% of the net profit (profit after tax deductions) up to the amount of the half of subscribed capital

#### Other members' rights

- a) right to distribution share
  - it arises upon termination of membership when a co-operative continues its existence
  - it depends on the amount of paid member's contribution, years of membership and the total amount of all paid contributions
- b) right to share in liquidation balance
  - in case of winding-up a co-operative

#### Taxation

- profit created by a co-operative is subject to the corporate income tax (in 2009 20%, in 2010 19%)
- share in profit paid to a member of a co-operative is further subject to a special tax rate of 15%

## **Bilag 6: Bidrag fra Tyskland**

The German Co-operatives Act (Genossenschaftsgesetz [GenG]) determines the cooperative's organizational rules including their business conduct. It was first adopted in 1889 and reformed inter alia in 1973 and 2006.

### Ownership:

Under German law a registered co-operative (*Genossenschaft*) is a member-oriented and a member-controlled organization, cp. para. 1 (1) GenG. The membership basically includes the share of the co-operative (*Geschäftsanteil*), the right in the pro rata deposit (*Geschäftsguthaben*, cp. para. 7 no. 1 [1] ) and in joint management (*Mitverwaltung*, cp. para. 43 ff. GenG) as well as the right to use facilities of the co-operative. Additional rights and regulations can be conceded by the articles of the co-operative.

### Composition of the Board of Directors:

Under German law a co-operative consists in addition to the general assembly of the members (*Generalversammlung*, cp. para. 43 ff. GenG) of an executive board (*Vorstand*, cp. para. 24 ff. GenG) and a supervisory board (*Aufsichtsrat*, cp. para. 36 ff. GenG). The executive board (*Vorstand*) manages the co-operative. Except extraordinary decisions the board is responsible for all day-to-day business activities. The executive board has at least two directors who have to be members of the co-operative (cp. para. 9 [2], 24 [2] GenG). The supervisory board (*Aufsichtsrat*) consists of at least three persons who also have to be members of the co-operative (cp. para. 9 [2], 36 [1] GenG). If the co-operative has not more than twenty members, only one director is required and a supervisory board is not necessary (cp. para. 9 [1], 24 [2] GenG). Additionally an audit by a co-operative auditing association is mandatory every year, for smaller co-operatives every two years (cp. para 53 ff. GenG).

### Return on Capital Contribution and Use of Profits:

Each member can basically claim for the pro rata profits of the co-operative corresponding to a decision of the general assembly of the members. Exceptions may apply due to the Cooperatives Act (e.g. non-payment of capital contributions) or due to the articles of the cooperative.

### Taxation

A co-operative is subject to corporate tax, trade tax and – depending on its types of activities – VAT.

**Bilag 7: Bidrag fra Slovakiet**

My answer to your first question is YES, there is such legislation. Most of it forms a part of our Commercial Code, although some parts can be found also in other Acts and regulations. Because of the EC Regulation on European Cooperative Society, SCE legal form (though considered also cooperative) has certain features distinctive from Slovak cooperatives. Nevertheless, most of these are well known from the Regulation itself, therefore my answers will focus on Slovak cooperatives pursuant to our Commercial Code.

1) Ownership: In general, a cooperative is owned by its members (not fewer than 5). Cooperative is a legal entity and its members shall not bear liability for the obligations of the cooperative. However, the articles of association may provide for certain exceptions. Both individuals and legal entities may become members. Articles may subject the membership to certain other conditions (e.g. employment relationship with the cooperative, etc.)

2) The composition of the board of directors: in Slovakia, we provide for a dual board structure– i.e. each cooperative shall have a management body and a supervisory body.

3) Profits (after taxation) to be distributed among members are determined by general (members) meeting. The creation of reserves is obligatory up to 10% of share capital. Unless the articles provide otherwise, a member's share in the profits to be distributed is the ratio between the amount of that member's paid-up contribution and all the members' paid-up parts of contributions. The share of members whose membership lasted less than one year shall be reduced pro rata. The articles or a resolution of the general (members') meeting may provide for other method of distributions.