



## Principle 1: Able to use the services?

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# Principle 1: Able to Use the Services?

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This article focuses on the importance of the guidance found in Principle 1 that those admitted as members of a co-operative should be able to use the services of the co-operative. The article explores some emerging legal trends and the extent to which they have followed this guidance and suggests that this topic merits consideration in any future review of the principles.

The first Co-operative principle, headed 'Voluntary and Open Membership' sets out that:

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination (ICA, 2018).

Understandably given its header and importance, discussion often focuses on the 'without discrimination' aspects of the Principle. This can risk overlooking that the expectation set out in this Principle is that membership is open to "persons able to use their services". The ICA's own guidance on the principles (ICA, 2015), while briefly covering this phrase when looking at interpretations, does not go on to give any form of guidance note. They explain:

... co-operatives are organised for specific purposes. In many instances, they can only effectively serve a certain kind of member or a limited number of members. For example, fishery co-operatives essentially serve those engaged in commercial fishing, usually in a single port or area; housing co-operatives can house only so many members; worker co-operatives can employ only a limited number of members. In other words, there may be understandable and acceptable reasons why a co-operative may impose a limit on membership (ICA, 2015, p. 6).

As with Principle 1 generally, the associative characteristics of the co-operative should be considered when interpreting 'services' (Henry, 2012, p. 56). As the above quote suggests, a member of a consumer co-operative uses the 'services' of the co-operative through purchasing its goods, a member of a worker co-operative through the provision of their labour, etc. That the ICA guidance does not go on to provide further guidance strikes as particularly odd given that of the two "Matters for future consideration" (ICA, 2015, p. 13), the first relates partly to this phrase:

... if members are not users of a co-operative's services, the reasons for them not being users should be analysed and their right to remain members should be considered (ICA, 2015, p. 13).

It is right that the principles cover that members should be users of the services of a co-operative, when noting firstly, that the definition requires co-operatives to be meeting the "common economic, social and cultural needs" of members; and secondly, the value of self-help (ICA, 2018).

The nature of the relationship between a member and the co-operative is one of the characteristics setting them apart from investor-owned companies:

Where an investor may also be the user of the services provided by a stock company or be the buyer/seller of its products, this position is rather accidental. In cooperatives this position is, in principle, a structural element. Members are the main users of the services of their cooperative or are the majority of the workforce in a workers' cooperative (Henry, 2012, pp. 37-38).

Despite this, there is a noted trend toward approximating co-operative law with company law (Henry, 2012, p. 6). And, we see co-operatives seeking to attract 'non-user' members. The ICA notes, for example, the difficulties co-operatives can face in attracting capital (ICA, 2013, p. 32) compared with investor-owned companies and the statutes for the European co-operative society (SCE) expressly permit the admission of 'non-user (investor) members' but go on to restrict their rights of representation and voting to 25% (Council Regulation (EC) No. 1435/2003, Article 59, 3). The registering authority for the co-operative society legal form in the UK, the Financial Conduct Authority (FCA), note:

Generally co-operative societies offer membership to people who can use their services (whether as workers, producers or consumers). However, a co-operative society may sometimes need to raise capital from people who cannot or do not use the society's services. We describe these members as 'non-user investor members' — people who have only an investment relationship with the society (FCA, 2015, p. 38).

They go on to provide principles-based guidance for restrictions on voting rights and other matters, so that "ultimate control of the society remains with members other than non-user investor members at all times" (FCA, 2015, p. 38).

Similarly, we have seen the creation of "general interest co-operatives", first in Italy in 1991, and later recognised by legal scholars in the draft Principles of European Co-operative Legislation (PECOL) (Study Group on European Cooperative Law, 2015, p. 26). The authors must have recognised the inherent tension between the concept of a general interest co-operative and the ICA Statement in their description that "general interest cooperatives are not obligated to conduct a co-operative enterprise with and in the interest of their members as consumers, providers or workers" (p. 28). Yet, later, in this focus on satisfying the general interest of the community rather than members was re-iterated in the final published version of the Principles (Fica, 2018, p. 27).

In a separate publication, one of the (dissenting) members of the PECOL study group went on to explain:

... such GICs [General Interest Co-operatives] are not based on self-help and self-responsibility but are created for helping others and therefore are not co-operatives but welfare associations or charities (Münkner, 2017, p16).

It appears from the pattern on legislative development that the centrality of members using the services of the co-operative is a significant consideration. Where, in the case of the SCE, non-users can be admitted, it is done with safeguards and restrictions. And, where in the case of the 'general interest co-operative', the concept is effectively abandoned, care has been taken in some (but not all) cases to effectively state that these entities are not in fact co-operatives in anything other than name.

As highlighted above, the ICA outlined the role of non-user members as a matter requiring future consideration (ICA, 2015, p. 13). Given the capital raising challenges highlighted by the ICA (ICA, 2013) remain unresolved, and non-user members remain present in different co-operative models globally, further consideration of this topic is merited in any future review of the principles.

## The Author

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