



**CONSULTATION OF THE EUROPEAN COMMISSION ON THE RESULT OF THE STUDY
ON THE IMPLEMENTATION OF THE STATUTE FOR A EUROPEAN CO-OPERATIVE
SOCIETY (SCE)
10 JUNE 2011**

Name of the Organization: Cooperatives Europe asbl

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QUESTIONNAIRE

- 1. Name of your legal entity, organisation, or service, its legal form, country of origin, size (if enterprise i.e. micro, small etc) and field of activity. Please indicate your function and why you are interested in the SCE.**

Cooperatives Europe asbl is a not for profit organization under Belgian Law. Cooperatives Europe represents 160.000 enterprises across Europe. The promotion of the co-operative business model is its main objective. Co-operative enterprises can achieve economic success while pursuing social objectives; this is the reason why Cooperatives Europe considers an SCE regulation of utmost importance: this tool may contribute to the development of co-operative enterprises.

- 2. Do you agree with the findings of the study on the negative and positive factors affecting the setting up an SCE (pages 143 and 146).**

Cooperatives Europe shares the study's point of view that the value of the European image is one of the most positive factors affecting the setting up of the SCE. The fact that the democratic principle of organization is the second persuasive effect demonstrates that

some entrepreneurs have a different vision of entrepreneurship than the one offered by the European Society regulation. Therefore, the SCE regulation is very useful, at least symbolically, to respond to the aspiration of these entrepreneurs and it respects the principle of plurality of business forms.

However, Cooperatives Europe highlights that a simple regulation is not enough for the promotion of the co-operative business model.

As for the dissuasive effects, Cooperatives Europe fully shares the opinion that the lack of knowledge of the SCE is to be tackled at first. Several sources of SCE laws (regulations, national laws, statutes) and the possibility of using “options” make the regulation complex and reduce its impact.

The lack of need for the SCE statute can be explained through two factors: first, the national co-operative laws enable to perform a cross border activity in all EU Member States; second, national co-operative laws are more flexible.

However, as for the few incorporated SCEs, Cooperatives Europe would like to remind that the ratio between SCEs and national co-operatives is more or less the same as the one between SE and national shareholders companies. Furthermore, the SCE regulation was implemented very late in some Members States, even in countries having a strong co-operative movement.

3. Do you agree with the study’s assessment that the initial minimum capital requirement is a considerable cost for the setting up of SCEs? (page 148)

Cooperatives Europe agrees with the study’s assessment that the minimum capital requirement is too high, in particular when the SCE is formed by natural persons. Furthermore, having in mind that the majority of incorporated SCE are SMEs, and that the minimum capital mentioned within the draft regulation on SPE is very low, it is also detrimental to the future use of the SCE statute.

Cooperatives Europe is also of the opinion that in order to ensure adequate creditor protection, greater attention ought to be paid to the issue of a comprehensive audit of the economic situation and compliance management.

4. Do you believe that the complexity of the Regulation, particularly due to hierarchy of various legal rules, is a negative factor for the start up phase of SCE? (page 160)

As said previously, Cooperatives Europe agrees with this assertion and would recommend to at least simplifying the interactions and relations between the different sources of Law of SCE. Simply rewording the regulations itself will probably not significantly increase the number of new establishments under the SCE.

- 5. Are you of the view that the cross-border requirement for the creation of an SCE (two founders from at least two Member States - MS) may be changed, in order to allow the creation of SCEs also by operators of a single MS and under which conditions?**

Not all Cooperatives Europe members share the study recommendation of rethinking its cross-border implications.

- 6. Do you agree with the statement of the study that the system of reference to national laws (with a distinction between cooperative legislation and national public limited-liability company law) should be simplified and even reduced? (page 160)**

Co-operatives Europe considers that the reference made to national Law on public limited companies, in the framework of the SCE regulation, is unnecessary and confusing. As the numerous references to national Law impede the incorporation of SCE, Cooperatives Europe agrees with the statement of the study. Legal forms and traditions of co-operatives in Member States vary a lot; consequently, the SCE cannot properly operate without the contribution of national law provisions, which is why the SCE varies according to the country where it is registered. This means that, as there are 30 different national laws, there will be 30 types of SCEs in Europe. If less reference to national Law were made, the SCE would have a stronger impact as a real European legal tool. Nonetheless, this position is not shared unanimously within Cooperatives Europe.

- 7. Do you think that SCEs should be given more autonomy from national laws, in the sense that SCEs should be allowed to include in their articles of association rules which may deviate from national legislation applied to national cooperatives? (page 160)**

This could be considered for certain operating procedures such as the rules concerning the General Assembly (art 57) for example.

In principle, the SCE should be given more autonomy from national co-operative legislation and be allowed to include rules that may deviate from national legislation applied to co-operatives in their articles of association.

Indeed, co-operatives must be enabled to compete effectively in their markets on a level playing field with the other forms of enterprise.

- 8. Do you believe that the number of options allowing the application of national laws should be limited to certain issues and what are these issues (e.g. areas where the matter at stake is crucial in the light of the cooperative identity like rules on voting rights, investor non user members, surpluses' distribution, etc)?**

The number of options allowing the application of national laws should be limited to certain issues: mainly voting rights and distribution of surpluses, especially for tax reasons and specific provisions for co-operatives in certain Member States. The SCE should provide a benchmark for optimal provisions for the establishment of new co-operatives in Europe.

This would enable the SCE to compete with national legislation and therefore to constitute a real incentive for Member States to improve their national co-operative laws. Nonetheless, this position is not shared unanimously within Cooperatives Europe: some consider that a close commitment to the respective national co-operative laws should be maintained as it respects the culture and national historical backgrounds.

9. Do you have any suggestions for amendments of the SCE Regulation that would increase its attractiveness for businesses and particularly for small enterprises?

The suggestions indicated in the report could contribute to improve the Regulation. Cooperatives Europe would suggest to simplify the interactions and hierarchical relations between the various legal rules and to refer less to national laws. Enterprise support services should also integrate the specificities of co-operative enterprises and the promotion of SCE. Existing support services, in particular the Enterprise Europe Network, do not consider this diversity. Among the various business support services needed, a key one is management consultancy and training.

Although these proposals are applicable to businesses of any size, they are particularly relevant for small and medium sized enterprises.

Another issue is financing, as co-operatives have less opportunities to build up equity and are more or less dependent on their members, who are the owners of the co-operatives.

10. What are in your view the most important legal issues to consider for entrepreneurs when deciding to create either a national cooperative or an SCE, or when assessing in which country to place or transfer the head office of an SCE? (e.g. are they of fiscal, company or labor law nature?)

The creation of an SCE is very much linked to the cross-border nature of the activity. There is no need to create an SCE when there is no cross-border activity. Considering the place of the head office, fiscal aspects as well as the company law are of a particular relevance.

11. Can you provide examples of practical problems you have encountered in the course of setting up or running of a national cooperative or an SCE? Or any difficulties you had with respect to the objectives or the sector activities that a cooperative is allowed to pursue, or if there are sectors where cooperatives cannot operate?

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12. Do you have any comments on the national report of your country? (Part II)

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