

**03 JULY 2012**

## **Contribution to the consultation on the review of the Regulation on the statute for a European Co-operative Society.**

### **Context**

In compliance with the article 79 of the European Co-operative Society Regulation (SCE), on 23<sup>rd</sup> February the Commission published the Report on the use and implementation of the text. On the basis of this Report, the Commission engaged a working programme whose objective is to evaluate if a revision of the SCE Regulation is needed and to establish some potential guidelines for the revision.

Three main actions have been undertaken:

- A specific workshop was dedicated to the SCE during the European conference organised by Cooperatives Europe with the support of the Commission on 23<sup>rd</sup> April.
- The Commission launched a consultation on a list of three main categories of provisions that may be amended.
- National governments will be invited to express their position during a European conference organised in Nicosia 28-29 September. by the Cyprus government during the Cyprus presidency of the EU .

Complementary to the consultation of the Commission, Cooperatives Europe organised a survey within its members on the Review of the SCE Regulation.

### **Preamble**

The SCE Regulation is the implementation of plurality of form of doing business as it is recognised within the article 54 of the TFEU, which explicitly mentions co-operative enterprises.

Up to now only few SCE have been created; this situation cannot be ascribed to a lack of interest in the co-operative business model. Instead, there are three main reasons why only few SCE have been created: first of all, the lack of awareness and knowledge about the SCE, even among support services developed to help entrepreneurs to set up their companies;

secondly, the SCE regulation was lately implemented in some countries<sup>1</sup>; last but not least, the complexity of the Regulation (the hierarchy of different legal sources for the statute of the SCE<sup>2</sup> plus a system of possible options) refrain people from choosing this legal form.

## **Specific comments**

### SCE added value

→ An overwhelming majority of our members considers that the SCE has a value added at European level as a first step to the recognition of the co-operative business model and an alternative to the traditional business forms. Even though the scope is more limited, the SCE is also believed to have an added value at national level, as it contributes to the development of co-operative legal frameworks nationally. In addition, it represents a legal framework that could be an example for those countries wishing to introduce or review a specific co-operative law.

### Simplification of SCE Regulation

→ Cooperatives Europe calls for a simplification of the current Regulation. Nonetheless, this position is not unanimously shared. One organization opposed some others consider that the key issue is to give more support on SCE knowledge through co-operative expertise and to engage a work on ‘easy to handle SCE in practice’.

### Reference to Plc’s

→ Several articles of the SCE Regulation refer to national public limited companies Laws (Plc’s). Cooperatives Europe considers that the reference made to national Law on public limited companies, in the framework of the SCE regulation, is confusing. Such reference would be useful only if there is no existing regulation in national co-operative Law.

→ Some articles from the SCE Regulation concern issues that are common to the SCE and SE Regulation. Cooperatives Europe supports the autonomy of the SCE Regulation vis à vis of the other European company statutes. In fact, the SCE and the SE differ in their values and objectives and therefore they cannot be regulated in parallel. Nonetheless, SCE amendments could be proposed in line with SE amendment if they concerned common administrative procedures. It should be maintained to the minimum necessary, and in any case not touch upon core interest of co-operatives such as voting rights, control transaction, and so on.

### Reference to national co-operative Law

→. References to national cooperative legislation enable Member States to shape the SCE in accordance with national cooperative identity/self-perception. Member States should continue to have this option. Nonetheless, numerous references to national Law impede the incorporation of SCE. Therefore, 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. This could be considered for certain operating

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<sup>1</sup> Co-operatives did not wait for the SCE regulation to develop a cross border activity

<sup>2</sup> There is indeed reference to the SCE Regulation, national plc’s laws and national cooperative Law.

procedures such as the rules concerning the General Assembly (art 57) for example. The question is very much discussed, in particular among national organizations.

### Cross border activity

→ A majority within Cooperatives Europe is of the opinion that the SCE should not be compulsory for co-operatives with a cross border activity. Although the SCE Regulation is a tool to ease cross-border cooperation between cooperatives, the creation of an SCE for co-operatives with cross-border activities should remain optional. Several co-operatives are already expanding their business areas internationally: the expansion strategies should not be limited by legal constraints.

### SCE Capital

→ Currently, the minimum subscribed capital is 30.000 €. Cooperatives Europe thinks that the minimum capital requirement is too high, in particular when natural persons set up the SCE. Cooperatives Europe would therefore recommend that in cases where only natural persons wish to establish an SCE the minimum capital requirement should be set to a significantly lower level.

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