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Co-operative Alliance

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## **Contribution to the consultation on the results of the study on the current situation and prospects of mutuals in Europe. June 2013**

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### **Preliminary remarks**

Cooperatives Europe is the European organisation representing cooperative enterprises in Europe. Cooperatives Europe defends the interests of its members and increases the knowledge about the cooperative enterprise model through advocacy, development and communication. More than 163 000 enterprises operating under the cooperative model across Europe are key players in a multiplicity of economic and social areas.

Cooperative enterprises, share with mutual societies some fundamental principles such as putting people at the core of business or working to satisfy members needs and therefore welcomes the consultation organised by the European Commission on the current situation and prospects of mutuals in Europe. It has to be reminded that the draft regulation on a European Mutual society was presented two decades ago with a draft regulation on European Association and a draft Regulation on European Cooperatives Statutes (SCE). Only the SCE was adopted in July 2003.

Cooperatives Europe contribution will be focused on the legal approach regarding the issue of a European statute for mutuals.

### **General principle**

The plurality of forms of doing business is recognised within the article 54 of the Treaty on the Functioning of the European Union. Contrarily to cooperatives, mutual are not explicitly mentioned in the Treaty; however, this is not a reason to exclude them from the implementation of this principle.

Therefore, it should be ensured that their specificities are taken into account in relevant EU regulations to create a level playing field with other types of organisation. In that respect, a

statute for a European mutual society would allow them to act in different EU countries while keeping their specific operating model or would serve as the regulation for mutual societies that do not have national regulations in their own countries. The statute for a European Mutual society would be a specific regulation for European mutual societies parallel to the existing Statute for a European Cooperative Society.

### Specific remarks

On barriers and difficulties (Question 2) cooperatives enterprises are facing common barriers and difficulties regarding their cross border activities and establishment, even if the SCE was adopted in 2003. Beyond the necessity to have an adequate legal tool respecting the cooperatives and mutuals principles, cooperatives and mutuals are facing a lack of knowledge. It is also important to highlight that some Member states exclude the use of the cooperative or of mutual operating model from some specific sectors.

It is up to the Mutual organisations to take position on the optional character of the European Mutual society and the reference to the national legislation (Question 3-1,3-2). We remind that in our contribution to the last consultation on the SCE Regulation, Cooperatives Europe stated that *'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 procedures such as the rules concerning the General Assembly (art 57) for example (...) A majority within Cooperatives Europe is of the opinion that the SCE should not be compulsory for co-operatives with a cross border activity'*<sup>1</sup>

Regarding the experience of the SCE regulation, several articles of the SCE Regulation refer to national public limited companies Laws (Plc's). It appeared to be very confusing and inappropriate. Such reference would be useful only if there is no existing regulation in national mutual societies Law provided that the stipulation respects the mutual principles.

Currently mutuals willing to develop their cross boarder activities can set up a European Cooperative Society; however, this means that they will have to change their operating model and this does not grant them a level playing field. Cooperatives Europe is not supporting the idea to adapt the European Cooperative Statutes to mutuals (question 3-5 on the adaptation of the European cooperative statutes to mutuals): in spite of the fact that they share some common principles, cooperatives and mutuals are different, and an hybrid common European tool will simply create confusion.

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<sup>1</sup> Consultation on the review of the SCE 10 07 2012. <http://www.coopseurope.coop/resources/position-papers/contribution-consultation-review-regulation-statute-european-cooperative>