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## Contribution to the consultation of the Commission on the notion of State Aid pursuant to Article 107 (1) TFEU

Cooperatives Europe welcomes the consultation on the Communication on the notion of State Aid. Even if we understand the reasons given, we regret that the consultation period is less than 12 weeks.

Our comments will be focused on the section regarding special fiscal aid issues and cooperatives societies.

"A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise".<sup>1</sup>

A cooperative is a member-based enterprise, whose the financial surplus serves to meet specific needs or to achieve specific objectives. Like any other enterprises, cooperatives must be economically successful; nevertheless their objective is to meet the economic and social needs of their members and/or of the general interest<sup>2</sup>.

With regard to this specific identity, Member States - in the cases recognized by the Treaties, can therefore enact particular clauses for cooperative societies and take into account any particular constraints that cooperatives may have.

This approach was recognised by the ECJ decision on 8<sup>th</sup> September 2011<sup>3</sup> where it is stated that a tax exemption may be qualified as state aid only if the condition required to benefit from specific

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<sup>1</sup> Statement on the Co-operative identity adopted in 1995 during the Congress of the International Co-operative Alliance in Manchester and included in ILO Recommendation 193 on the promotion of Cooperatives.

<sup>2</sup> Art 1 Rules of the European Co-operative Society

<sup>3</sup> Joint cases C-78/08 to C 80:08 point graphos and others 2011 ECR

national tax regime for cooperatives are not fulfilled. It means that a specific tax cooperative regime cannot be considered a priori as a state aid.

The draft notice is therefore following the ECJ decision where it stands that cooperative society is different from other economic operator when implementing specific operating principles. The business model of cooperative societies is recognized by Article 54 of the EC Treaty and regulated in the Regulation (EC) No. 1435/2003 on the Statute for a European Cooperative Society<sup>4</sup>. It is important to underline that those principles have been enshrined in the ILO Recommendation 193 on the Promotion of Cooperatives, adopted on 21 June 2002 by the 28 EU Member States.

Paragraph 158 of the draft notice highlights key criteria that distinguish cooperatives from other economic operators, mentioning membership requirement and non-distributable assets. Cooperatives Europe thinks that at this stage democratic governance should be mentioned, as it is a key element of cooperative enterprises.

Cooperatives Europe suggests adding in the first sentence of the paragraph 158 the words (user-owned, user-controlled, user-benefit). It would be then "*In principle, cooperative societies conform to operating principles, which distinguish them from other economic operators.*" This would strengthen the text and underline the specificity of the cooperative enterprise model.

In paragraph 158, Cooperatives Europe would suggest to eliminate the words "generate low profit margins", because the cooperatives must be competitive enterprises in the market, and they must generate reasonable profits to survive and be able to reinvest. Therefore it would be appropriate to substitute that phrase with "respect rules, which establish a dividend restriction".

Regarding paragraph 159, Cooperatives Europe thinks we should substitute the words "running of the business", with "governance and control of the cooperative", in order to stress the concept that the members have the right to elect the Board and to control its results.

The words "or sums paid to such parties by way of remuneration to be deducted" in paragraph 161 should be canceled. This concept is not correct, because also for conventional companies the remuneration of third parties (i.e. the workers, the suppliers) are fiscal deductible costs.

The draft notice also mentions the fact that cooperatives have 'generally limited access to equity markets and generate low profit margins'. This is indeed the reason why many Member States have provided tax arrangements for cooperatives that may vary according to the sectors and/or legal framework in each country. These specific rules have neither the objective nor the effect of establishing unfair competition; rather they are designed to take into account and to compensate in a proportionate way for the limitations that are inherent in the cooperative form.

Regarding the condition under which cooperatives may fall outside the scope of the State aid rules, it should be underlined that the implementation of the cooperative principle in each Member states is not uniform due to different culture, historical evolution and diverse normative framework at national, regional or sectoral level.

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<sup>4</sup> OJ L 201/7. 18 August 2003

Therefore cooperatives have diverse normative frameworks at national, European and international levels. They do not constitute an exception, but the application of specific operational principles.

Cooperatives Europe notes that the draft notice, following the ECJ decision, gives no validation in this section for a national measures that impact third parties (non members).

The draft notice also mentions that 'appropriate control and monitoring procedures must be applied by Members States concerned'. Cooperatives Europe believes that these controls should respect and be in line with the Cooperative principles adopted by the ICA in 1995 and associate to one point or another national experts from the cooperative movement. In some Member States there are already cooperative councils that could be part of this process.

*End*

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