Statute for a European cooperative society with regard to the involvement of employees

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PURPOSE: to present a report on the review of Council Directive 2003/72/EC supplementing the Statute for a European cooperative society with regard to the involvement of employees.

CONTENT: the Commission presents a report on the review of Council Directive 2003/72/EC supplementing the Statute for a European cooperative society with regard to the involvement of employees. Council Regulation (EC) No 1435/2003 establishes a Statute for a European Cooperative Society ("SCE") with a view to creating a uniform legal framework enabling cooperatives from different Member States to plan and carry out the reorganisation of their business on a Community scale. Council Directive 2003/72/EC ("the Directive") supplements the Regulation as far as the involvement of employees is concerned, with the aim of providing for arrangements for the involvement of employees in every SCE, thereby ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement that exist within the entities participating in its creation.

In preparation for this review, the Commission commissioned studies by independent experts and consulted with the Member States and the European Social Partners on these studies and the draft report.

Given the major similarities between the Directive and Council Directive 2001/86/EC on the involvement of employees in the European Company (the SE Directive) and the fact that certain Member States have transposed the Directive in the same instrument or by amendments to the legislation transposing Directive 2001/86/EC, the Commission refers to its review of the latter (see COM(2008)0591).

On horizontal issues relating to information and consultation rights, such as protection and guarantees to employee representatives or confidential information, the Commission also refers to its review of Directive 2002/14/EC establishing a general framework for informing and consulting employees (see COM(2008)0146).

Transposition: the report notes that the Directive has been transposed in all Member States only since March 2009. There is therefore a lack of experience in the practical application of the Directive. Furthermore, it is not a stand-alone piece of legislation. It complements the SCE Regulation and shows striking similarities with other directives governing the involvement of employees, such as the SE Directive. The Commission considers that the outcome of the evaluation of these directives and of the Regulation needs to be taken into account before launching any future revision process.

These conclusions are shared by all Member States and social partner who have expressed their views in the consultation process to draw up this report. It is necessary to inquire into the reasons for the very low take-up of the EU legal framework for cooperatives, before considering any moves towards a revision of the Directive.

The report has identified **some issues that merit further consideration**. These are as follows:

Absence of experience: as far as the Commission is aware, only seventeen SCEs had been established by 8 May 2010, none of which had a significant number of employees. Even if, according to organisations representing cooperatives, other SCEs were to be established, experience of both the implementation and the application of the Directive is lacking.

Complexity of the provisions: understanding the national implementing provisions of both the Regulation and the Directive may present a challenge to smaller organisations. As for the Directive, the existence of two different routes governing the involvement of employees in the SCE – negotiation or national rules - as well as the specific provisions on the participation in general assemblies needs to be properly understood. However, as Member States have quite literally transposed the Directive in specific laws, the implementation does not add to complexity. Moreover, social actors involved in the cooperative movement and in the trade union movement stress that the complexity lies instead in the statute, and they have taken actions since 2006, often with the financial support of the Union, designed to prepare the setting up of mechanisms for information, consultation and participation in SCEs.

Specificities of cooperatives: cooperatives differ from limited companies in several respects. They have their own legislation, which is different from company law in some Member States, and they may even be qualified as civil associations rather than companies under national law, with some specific laws applying to certain types of cooperatives (agricultural, housing, credit or health). As regards individual employment relationships, there are no apparent differences for the most relevant aspects. However, there are some specific features as regards collective relations, to account for the difference between workers who are members of the cooperative and those who are not. While these specificities raise no particular problems as regards information and consultation, they do present a more complex picture with regard to collective agreements or board-level participation. Some concerns have been raised by national cooperative movements that SCE may undermine the cooperative principles, but these concerns focus on the statute itself, not on employee involvement. Independent experts have identified a positive impact of the transposition of the Directive on labour law and on cooperative law.

Common issues on transnational involvement of employees: some issues are common to the various directives dealing with transnational involvement of employees and in particular to the Directive 2001/86 /EC (the SE Directive). As to the **misuse of procedures**, the independent experts point out that several Member States have not transposed Article 13 of the Directive which requires Member States to take appropriate measures with a view to preventing the misuse of an SCE for the purpose of depriving employees of rights to employee involvement or of withholding such rights. As it had been the case for the SE Directive, the Commission deems this to be a potential cause of concern. The **protection of participation rights** where a European company or cooperative society converts into a company or cooperative of national statute has been raised in the context of the review of the SE Directive. To address this issue, Directive 2005/56/EC on cross-border mergers obliges the company to adopt a legal form that allows for the exercise of participation rights. Independent experts point to the absence of provisions in the Directive as regards the enforceability of the agreement on employee involvement. The recast of the Directive on European Works Councils led to fresh approaches in this area, as employee representatives will have the means required to apply the rights arising from the Directive to collectively represent the employees' interests. Issues relating to the key definitions of the Directive, such as "employees' representatives", "involvement of employees", "information", "consultation", "participation", and “participating legal entities" are raised in the same way as for other directives, particularly the SE Directive 2001/86/EC. There is a case for a more coherent approach to these definitions across the directives.

The Commission will continue monitoring the correct implementation of the Directive, and promoting capacity-building of stakeholders.