

Statute for a European cooperative society

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The Commission presents a report on the application of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE Regulation). The SCE Regulation is complemented by Council Directive 2003/72/EC on the involvement of employees in the SCE ('SCE Directive'). The deadline for adapting national legislation to the Regulation and Directive on the SCE was set for 18 August 2006.

Application: in November 2011, 24 SCEs were registered in the 30 EU/EEA Member States, as follows: five in Italy; seven in Slovakia; one each in France, Liechtenstein, the Netherlands, Spain and Sweden; three in Hungary, two in Germany and two in Belgium. The SCE Regulation was due to enter into force in 2006. However, a large majority of Member States failed to meet this deadline. As of December 2011, three Member States had not yet taken the necessary steps to ensure the effective application of the Regulation.

General trend: according to the professional organisations, there is no general trend applying to all cooperatives. When deciding whether to create a national cooperative or an SCE, or when assessing the best country in which to register an SCE, one of the most important issues to consider is **taxation**. The SCE Statute however, does not regulate taxation, since this is governed by the laws of the country where the SCE is based. Thus, the taxation of cooperatives' revenues and corporate tax, taxation of profits or surpluses within the hands of the co-operators and taxation of indivisible reserves still differs from one country to another.

After taxation, the other issues to consider - in descending order of importance - are **national labour law requirements, and the complexity and relative strictness of the national legislation on cooperatives**. When deciding where to register a cooperative, business people will also prefer a country with good communication networks and a business-friendly administrative environment.

A consultation with stakeholders has revealed several problems in applying the SCE Regulation. These apply to both setting up and running an SCE.

The most significant problem for setting up SCEs is **lack of awareness about the SCE among the business community**. The most important **negative drivers are set-up costs, the complex procedures to be followed (because of the numerous references to national law) and legal uncertainty as to which law applies in each case**.

A number of stakeholders also see the **minimum capital requirement of EUR 30000** as an obstacle, at least for natural persons wishing to set up small SCEs in order to cooperate across borders. However, the alternative view is that having sufficient capital shows that a business is serious.

Some respondents consider the rules on **employee involvement** as a negative driver as, in their view, they are cumbersome and complex. These rules are also considered disproportionate where only few employees are concerned. However, workers' organisations and other respondents do not point to problems in this area.

Reasons for the relative lack of success of the SCE Statute: it is argued that the SCE statute has been relatively unsuccessful not only because it is complex but also mainly because firms that choose to operate as a cooperative tend to be well anchored in their local territory. After all, the purpose of a cooperative is to serve the members who participate directly in the democratic management of the firm.

The overwhelming majority of cooperatives are small businesses operating within national borders. **A number of stakeholders' organisations therefore doubt whether the SCE statute offers any advantage.** In addition, people setting up cooperatives tend to rely on their own national laws, which they know better.

Simplification: all stakeholders tend to believe that the **complexity of the instrument is a major obstacle to the success of the SCE.** The European organisation representing all national and sectoral federations of cooperatives in the EU says that national cooperative laws seem simpler and more flexible. According to several stakeholders, the complexity of the Regulation (with its multiple references to national legislation) deters not only cooperatives but also other types of firm that might otherwise be interested in organising their activities through an SCE.

Specific issues and possible amendments: the following points stand out:

- the **question of whether to allow the head office or main administration of an SCE to be located in a country other than that of its registered office** does not seem to be of concern to the cooperative movement. There were no comments on this point from stakeholders. Cooperatives are enterprises with strong links to local communities and need to maintain a strong relationship with the territories in which they operate, just as traditional capital companies do;
- the **question of whether to allow the articles of association of an SCE to deviate from local laws on cooperatives is an issue that preoccupies all stakeholders.** Opinion is divided on whether SCEs should be given more autonomy from national laws. The majority of respondents believe that the SCE Regulation should give cooperative members the flexibility to choose the governance model and structure that will best serve their objectives and needs. However, a number expressed serious reservations, saying that this autonomy may allow an SCE to deviate from the principles and values of the cooperative business model. Respondents also said that SCEs should not be exempt from mandatory rules on the protection of minority members' or employees' rights;
- the questions on the division of an SCE into two or more national cooperatives and on remedies if a merger is cancelled do not seem to concern cooperatives, at least until now. As of December 2011, no SCE appears to have been created by merger.

The Commission intends to consult stakeholders in 2012 on whether and how to simplify the SCE Regulation and will ask:

- whether individual articles should be simplified by deleting and replacing the references to public company law;
- whether the SCE Regulation can be made more independent of national laws.

In a broader context, the question of the European legal forms, such as the SE or the SCE, and the need for their review also forms part of the ongoing reflection on the future of EU Company Law. The results of this reflection will help the Commission's assessment on the necessity and, if appropriate, on the instruments to be used in order to meet the demand of business in Europe for a more level playing field, better regulation and simplification.