Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the European Economic and Social Committee[(3)],

Whereas:

(1) The European Parliament adopted resolutions on 13 April 1983 on cooperatives in the European Community[(4)], on 9 July 1987 on the contribution of cooperatives to regional development[(5)], on 26 May 1989 on the role of women in cooperatives and local employment initiatives[(6)], on 11 February 1994 on the contribution of cooperatives to regional development[(7)] and on 18 September 1998 on the role of cooperatives in the growth of women's employment[(8)].

(2) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade should be removed, but also that the structures of production should be adapted to the Community dimension. For that purpose it is essential that companies of all types the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(3) The legal framework within which business should be carried on in the Community is still based largely on national laws and therefore does not correspond to the economic framework within which it should develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(4) The Council has adopted Regulation (EC) No 2157/2001[(9)] establishing the legal form of the European Company (SE) according to the general principles of the public limited-liability company. This is not an instrument which is suited to the specific features of cooperatives.

(5) The European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85[(10)], allows undertakings to promote certain of their activities in

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common, while nevertheless preserving their independence, but does not meet the specific requirements of cooperative enterprise.

(6) The Community, anxious to ensure equal terms of competition and to contribute to its economic development, should provide cooperatives, which are a form of organisation generally recognised in all Member States, with adequate legal instruments capable of facilitating the development of their cross-border activities. The United Nations has encouraged all governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise[11].

(7) Cooperatives are primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis.

(8) These particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the ‘one man, one vote’ rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative.

(9) Cooperatives have a share capital and their members may be either individuals or enterprises. These members may consist wholly or partly of customers, employees or suppliers. Where a cooperative is constituted of members who are themselves cooperative enterprises, it is known as a ‘secondary’ or ‘second-degree’ cooperative. In some circumstances cooperatives may also have among their members a specified proportion of investor members who do not use their services, or of third parties who benefit by their activities or carry out work on their behalf.

(10) A European cooperative society (hereinafter referred to as ‘SCE’) should have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles:

— its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,

— members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE,

— control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE,

— there should be limited interest on loan and share capital,

— profits should be distributed according to business done with the SCE or retained to meet the needs of members,

— there should be no artificial restrictions on membership,

— net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes.

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(11) Cross-border cooperation between cooperatives in the Community is currently hampered by legal and administrative difficulties which should be eliminated in a market without frontiers.

(12) The introduction of a European legal form for cooperatives, based on common principles but taking account of their specific features, should enable them to operate outside their own national borders in all or part of the territory of the Community.

(13) The essential aim of this Regulation is to enable the establishment of an SCE by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State.

(14) In view of the specific Community character of an SCE, the ‘real seat’ arrangement adopted by this Regulation in respect of SCEs is without prejudice to Member States' laws and does not pre-empt the choices to be made for other Community texts on company law.

(15) References to capital in this Regulation should comprise solely the subscribed capital. This should not affect any undistributed joint assets/equity capital in the SCE.

(16) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

(17) The rules on the involvement of employees in the European cooperative society are laid down in Directive 2003/72/EC[(12)], and those provisions thus form an indissociable complement to this Regulation and are to be applied concomitantly.

(18) Work on the approximation of national company law has made substantial progress so that certain provisions adopted by the Member State where the SCE has its registered office for the purpose of implementing directives on companies may be referred to by analogy for the SCE in areas where the functioning of the cooperative does not require uniform Community rules, such provisions being appropriate to the arrangements governing the SCE, especially:

— first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the Community[(13)],

— fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies[(14)],

— seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[(15)],

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— eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents[16],

— 11th Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State[17].

(19) Activities in the field of financial services in particular in so far as they concern credit establishments and insurance undertakings have been the subject of legislative measures pursuant to the following Directives:

— Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[18],

— Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)[19].

(20) This form of organisation should be optional,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Form of the SCE

1 A cooperative society may be set up within the territory of the Community in the form of a European Cooperative Society (SCE) on the conditions and in the manner laid down in this Regulation.

2 The subscribed capital of an SCE shall be divided into shares.

The number of members and the capital of an SCE shall be variable.

Unless otherwise provided by the statutes of the SCE when that SCE is formed, no member shall be liable for more than the amount he/she has subscribed. Where the members of the SCE have limited liability, the name of the SCE shall end in ‘limited’.

3 An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives. An SCE may conduct its activities through a subsidiary.

4 An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.

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5 An SCE shall have legal personality.

6 Employee involvement in an SCE shall be governed by the provisions of Directive 2003/72/EC.

Article 2

Formation

1 An SCE may be formed as follows:

— by five or more natural persons resident in at least two Member States,

— by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States,

— by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States,

— by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States,

— by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.

2 A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 3

Minimum capital

1 The capital of an SCE shall be expressed in the national currency. An SCE whose registered office is outside the Euro-area may also express its capital in euro.

2 The subscribed capital shall not be less than EUR 30 000.

3 The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State.

4 The statutes shall lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE. This sum may not be less than the amount laid down in paragraph 2. The date laid down in Article 16 by which members who cease to belong to the SCE are entitled to repayment shall be suspended as long as repayment would result in subscribed capital falling below the set limit.

5 The capital may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions, subject to paragraph 4.