

The European Cooperative Society – an update

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The European Cooperative Society

Introduction

Regulation 1435/2003 on the Statute for a European Cooperative Society (Societas Cooperativa Europaea – SCE) provides rules on the formation, structure and functioning of SCEs. It was adopted on 22 July 2003 and introduced jointly with Council Directive No. 2003/72/EC supplementing the Regulation and introducing the SCE rules on employee involvement. The rules came into force on 18 August 2006. The SCE complements the legislation on European Companies (SE) which has enabled companies to set up as a European public limited company. The SCE fills the gap regarding the transnational activities of cooperatives. The use of the SCE form is very limited. In the ECDB database provided by the ETUI, 27 created SCEs and 6 planned SCE establishments were listed by November 2011.

In the Single Market Act, the Commission announced its intention to examine whether the SCE Regulation needed revision or simplification in order to better serve the interests of cooperatives.¹ The Commission stated that the slow take-up of the Statute for a European Cooperative Society must be looked into. Before taking its final decision the Commission would have to consult stakeholders. Directorate General Enterprise (the SME section) of the European Commission launched a web-based consultation in mid-April 2011 on the functioning of the European Cooperative Society. The purpose of the consultation was to allow stakeholders to give their views on the findings and recommendations of a commissioned external study drafted by the consortium of EURICSE from Italy. According to the Commission, the external study provided a comprehensive picture of the rules applied to the SCE in EU Member States and EEA countries, the Regulation's impact on national legislation on cooperatives and its influence on the promotion of the cooperative movement. It identified only 17 existing SCEs. The authors concluded that the main reason for the limited success was the lack of awareness of the existence of the SCE, as well as the complexity of the text of the Regulation. They call the European image the most positive factor affecting the setting up of an SCE.

The ETUC contribution to the consultation

The ETUC stated very clearly in its contribution to the consultation that the SCE should not be seen as an end in itself but rather as a means to achieve broader interests in the context of Social Europe. The fact that only 17 SCEs had been established by the time of the external study should therefore not be seen as a simple failure of the SCE legislation, but also possibly as clear evidence of the limited need for a European company form on the part of cooperatives. According to the ETUC, a thorough needs assessment with regard to the SCE is still lacking and the Commission has not touched upon the basic question of whether there is a real need to develop this kind of EU legislation. Given the small number of SCEs and the fact that the phenomenon is unknown to a broader audience this is a legitimate question.

The ETUC takes note of the fact that the related Directive has not been assessed. Although the exact aim of the call for tenders was to award a contract for a study on the implementation of Regulation 1435/2003 on the Statute for European Cooperative Society in the EU Member States and EEA countries (Norway, Iceland and Liechtenstein), the study contains some fairly

¹ European Commission, COM (2011) 206 final, Single Market Act – Twelve levers to boost growth and strengthen confidence 'Working together to create new growth'. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0206:EN:NOT>

strong statements about the negative effect of worker participation provisions on the use of the SCE in different countries without serious examination of the Directive. According to the ETUC, simplification in the interests of increasing the number of SCEs should not be seen as an end in itself. Rather, simplification should always be seen in the context of its impact on the goal of protecting stakeholders, including workers' rights, and on national culture and traditions. Areas for possible reform and simplification have to be tackled without jeopardising essential guarantees of transparency.

Results of the consultation

The European Commission summarised the contributions received in a synthesis document.² The synthesis attempts to give an account of the responses as they were presented. The consultation document contained twelve questions related to the most positive and most negative factors affecting the setting up of an SCE, the amount of its capital, the requirement of having founders from at least two Member States, the system of reference to national legislation, the number of options offered to Member States and the autonomy of the Regulation with regard to national rules and asked for suggestions for ways forward for the SCE. The European Commission received 32 responses; only three contributions criticised employee involvement.

The consultation outcome can be sketched out in a few lines:

- The most important point is that there is a serious lack of awareness, combined with inadequate promotion by Member States;
- respondents declare that the SCE has only a symbolic character;
- implementation has been late in several countries and with a strong reference to national legislation; as a consequence, the SCE is or can become the 'prisoner' of national law;
- the existing national cooperative form is mainly used by national entities that are well anchored in their local territory, largely with activities that have a domestic dimension;
- most respondents question the added value; there are neither real legal nor fiscal advantages and national laws are seen as more flexible and simple.

The reference to national laws and the number of options based on a broad range of national legal forms and traditions can be seen as real obstacles to SCE creation. However, one must realise that the SCE cannot operate properly without the contribution of national law provisions. Taking into account other items that are popular in European debates on modernised company law it is remarkable to read that neither the possibility to proceed to a legal merger of national cooperatives in order to create an SCE nor the possibility to transfer the registered office to another Member State were mentioned as advantages offered by the Regulation by any of the contributing associations representing cooperatives at EU or national level. The conclusion is formulated that all cross-border activities may be performed nowadays by means of national cooperative forms.

As already mentioned, the workers' participation element was not a big issue: 3 respondents declared that employee participation 'may be an obstacle' to SCE creation. One respondent

² For the synthesis document, see: http://ec.europa.eu/enterprise/policies/sme/public-consultation/index_en.htm

considered negotiations as cumbersome and board-level representation as ‘an impediment’ to the smooth management of the company.

Follow-up

The text of the consultation synthesis was published by the European Commission on the EC website in November 2011. It is a summary of the contributions received and attempts to give an account of the responses. So far, Commission Services has not taken a position on the comments expressed and summarised in the synthesis. The results serve, together with the findings of the study, ‘as a basis for a Commission report to the European Parliament and Council’ on SCE application. In the near future the European Commission plans to organise activities that might help to further clarify whether the regulation needs a certain revision or simplification in order to better serve the interests of cooperatives.

Two conferences will be held on cooperatives in 2012: in April 2012 in Brussels and in September 2012 in Cyprus during the latter’s EU Presidency.

Jan Cremers, AIAS, 2012-01-12.