

CECOP POSITION ON EUROPEAN COMMISSION COMMUNICATION « TOWARDS A SINGLE
MARKET ACT: FOR A HIGHLY COMPETITIVE SOCIAL MARKET ECONOMY »

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CECOP – CICOPA Europe (European Confederation of Worker Cooperatives, Social Cooperatives and Social and Participative Enterprises) is a European confederation grouping national organisations in 16 countries which in turn affiliate over 50.000 cooperative and participative enterprises in industry and services. The vast majority are SMEs, while some of them are second-degree enterprises of SMEs. They employ 1.4 million workers across Europe. Among the main sectors of activity, we find metal industries, mechanical industries, construction and public work, wood industry and furniture, white goods, textiles and garments, transport, media-related activities, social services, education and culture, environmental activities, etc. Finally, more than a thousand worker cooperatives in the CECOP network were born as business transfers to employees of conventional enterprises in crisis or without heirs.

CECOP welcomes the European Commission initiative “Towards a Single Market Act: For a highly competitive social market economy” and support the view that Europe needs to boost growth, competitiveness and reinforce the social progress. As a stakeholder representing over 50.000 cooperative and participative enterprises in industry and services, CECOP is determined to contribute to the achievement of the Single Market Act’s targets.

The recent economical and financial crisis has had – and it is still having – a deep impact on the destruction of jobs, wealth, and enterprises and mostly the SME. The consequences of this destruction will probably have an impact on a long term period, thus measures adopted by the European Commission to face them shouldn’t be limited only to the time of crisis.

Different proposals in the text certainly need specific consultation processes and implementation measures but, at the same time, they should be clearly interdependent in order to be more effective. In fact, the links between central EU policies such as internal market, industry, enterprise, employment and social policies should be reinforced.

In this respect, it is, in our opinion, key to underline that concrete measures aiming at creating, developing and maintaining employment are absent in the list of proposals. Employment policies should be one of the major pillars when it comes to boost the internal market, growth, competitiveness and social progress in the EU. Only a few proposals are linked to employment in the Single Market Act, but only linked to the qualification aspects of it. Measures in favour of economically sustainable employment should be put on the European agenda for a sustainable and competitive economy. The issue of job durability should not be seen only from the point of view of employment and social policies, but also from the point of view of the enterprise’s long-term economic development: indeed, enterprise development without any continuity in jobs is difficult to achieve.

A global dimension is also missing in the text. In fact, it is non-realistic to envisage boosting the European single market without considering the EU in the world-wide context nor the effects of globalisation, of which the recent financial and economic crisis has been a powerful reminder.

However, CECOP regrets that the plurality of forms of doing business in general, and cooperatives in particular, are not mentioned in the Single Market Act. Since the beginning of the economical and financial crisis, cooperatives have shown their stability and sustainability, representing a model of enterprise resilience to the crisis. In the industrial and service sectors, most cooperatives in the EU have remained alive and their employment levels have remained basically untouched, as is reflected in a CECOP – CICOPA Europe survey¹. Recognising and promoting this enterprise model is necessary for

¹ <http://www.cecop.coop/Cooperative-enterprises-in>

the achievement of the Single Market and the maintenance of the European Social Model, stated in Article 54 of the Treaty on the functioning of the European Union.

► 10 out of 50 proposals from the Communication “Single Market Act” are a priority for CECOP and its members:

- *Proposal n°12: The Commission will adopt an action plan for improving SME access to capital markets in 2011. This will include measures to make investors more aware of SMEs, to develop an efficient stock exchanges network or specific regulated markets focussing on SMEs and to make listing and disclosure requirements more adapted to SMEs.*

A major part of the around 50.000 enterprises belonging to the CECOP European enterprise network are SME. Thus we consider this proposal essential in order to guarantee a better legal environment, favourable to the creation and development of SMEs, including measures facilitating access to financing. It is also essential for the viability of the EU SMEs to ensure a rapid implementation of the new Directive on combating late payment in commercial transactions.

Small and medium cooperatives have proven to be more able to resist to the economical and financial crisis², than other SME from the same sectors and regions: we thus deem essential, for the sake of European SME, to learn from the positive experiences generated by our business model and to integrate them in this new action plan for SMEs, such as: democratic governance and control of the enterprise, long-term business strategies thanks to a strong emphasis on capital accumulation and financial non-banking instruments created by cooperative federations, etc.

- *Proposal n°13: The Commission will assess the Small Business Act by the end of 2010 with the aims of ensuring that the ‘Think Small First’ principle is implemented in both policy and the legislative procedure in order to closely link the Small Business Act with the Europe 2020 Strategy.*

Since the publication of the SBA, (June 2008), the global economical and financial situation has drastically changed. In fact, the economic crisis has entailed – and is still entailing – serious challenges for enterprise sustainability, particularly in the case of SMEs, as well as employment and social cohesion. The review of the SBA should be replaced in this particular context.

- *Proposal n°14: The Commission will propose a review of the accounting Directives in 2011 to simplify financial reporting obligations and to reduce the administrative burden, especially for SMEs.*

These two directives, dating back from the 1980s, are certainly outdated and should be reformed. But we are strongly opposed to link the IFRS for SME project (which we consider harmful for SMEs) with the review of the accounting Directives. In fact, the Fourth and Seventh Council Directives should be amended first and independently from IFRS for SMEs, and without having an impact on member state national GAAP (namely the national accounting regulations).

- *Proposal n°16: The Commission will explore measures with the potential to encourage private investment – particularly in the long term – to make a more active contribution towards achieving the objectives of the Europe 2020 strategy. These measures might concern the reform of corporate governance and create incentives for the long-term, sustainable and responsible investment required by smart, green and inclusive growth. Moreover, by 2012 the Commission will ensure that venture capital funds set up in any Member State can operate and invest freely in the European Union (if necessary by adopting a new legislative framework). It will endeavour to eliminate any tax treatment that disadvantages cross-border activities.*

The reform of corporate governance should in no way lead to requesting a change in the specific type of corporate governance which characterizes cooperatives. The contribution of cooperatives to society could not be ensured without the continued implementation of such specific governance, enshrined in the national legislation of almost all EU member states.

We strongly support measures leading to smart, green and inclusive growth, provided such growth be clearly accompanied by long-term wealth creation, long term enterprise strategies and long-term jobs. As far as the possibility of venture capital funds to invest freely in the European Union is concerned, we

² idem

consider fundamental the adoption of a new legislative framework as suggested, in view of the risks involved, especially in terms of volatility and instability. The recent financial and economic crisis provides strong warnings in this regard.

- *Proposal n°17: After the currently ongoing assessment of European public procurement legislation, and based on wide-ranging consultation, the Commission will make legislative proposals in 2012 at the latest with a view to simplifying and updating the European rules to make the award of contracts more flexible and to enable public contracts to be put to better use in support of other policies.*

The conditions for the involvement of cooperatives in public contracts or through service concessions and public-private partnerships (PPP) should take into account their long-term and structural general interest mission and outcomes, impacting on the quality of the services, their affordability, geographical accessibility and long term duration. Those characteristics are guaranteed by cooperatives' specific mode of operation and governance (democracy and participation) and the costs that this entails which, in fact, given the above-mentioned positive characteristics of the services that such modes of operation help generate, are an investment over the long term, even if they appear as a cost in the short term.

It is also essential to clarify the Art.19.of Directive 2004/18/EC on Public Procurements. In fact the Art.19 states that “*the Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons.*” Although Art.19 has to do with public tenders at European-level, the first concrete cases of application of this article brought to CECOP's knowledge tend to demonstrate that its implementation is extremely difficult, if not impossible, to be done at European level, and that, in practice, the tenderers are national. Indeed, the notion of “sheltered workshops” has disappeared from virtually all national legislations and has not been defined at the EU level: thus, without any further definition of the term “sheltered workshops”, there is the risk that such reserved public contracts will, de facto, remain national, as national legislation needs to be used to fill in the legal void. Therefore, this provision which was established to further the internal market seems to act against its own purpose. Another risk is that such lack of a clear definition can favour “opportunistic tenderers” which, in order to win the tender, hire disabled and disadvantaged persons without ensuring them long-term employment prospects, and do not necessarily have such goals in their core mission. In order to limit such risks, and to stick to the spirit of Art.19, CECOP recommends that the EC encourage public authorities to see to it that the tenderers are enterprises in which the disabled are workers with long-term contracts and in compliance with the national labour law, and which can show that the long-term integration through work of disabled and disadvantaged persons is part of their core mission.

- *Proposal n°18: In 2011 the Commission will adopt a legislative initiative on services concessions. Clear and proportionate rules will improve market access for EU undertakings by ensuring transparency, equal treatment and level playing field for economic operators. They will also promote public/private partnerships and boost the potential for delivery of better value for money for users of services and for contracting authorities.*

CECOP supports an EU regulation for service concessions in particular concerning the obligation of publicity and the obligation to sub-contract part of the concession to third parties that are not companies controlled by the contracting party. Such minimum EU regulation would provide the enterprises that are in a position to compete for public concession contracts, including cooperatives, with the necessary legal certainty to bring into full play their economic contribution to the EU's development.

In this way, the European Commission should:

- ❖ adopt a new definition for concessions, with particular clarification of elements such as the notion of risk, the duration of the concessions, the “modifiability” in time of the clauses of concession and extension/modification of the contents of the concessions
 - ❖ adopt a definition for contractual PPP, with a clear distinction between concessions and public procurements
 - ❖ transform existing case law and Commission interpretative communications in regulations
- *Proposal n°25: The Commission undertakes to adopt, by 2011, a Communication and a series of measures on services of general interest.*

An important number of the cooperatives affiliated to CECOP national members provide services of general economic interest (transport, waste management, generation of electricity, environment, communication, etc) as well as social services of general economic interest (social-health services, long

term care, employment services, social housing services, etc) in various countries in the EU. CECOP is of the opinion that it is necessary to develop a regulatory framework that would clarify the definitions of SGI and SSGI and the rules that should be applied to them, as proposed in Protocol 9 of the Lisbon Treaty. The current situation is particularly unfavourable for entities involved in the offer of social services of general interest, (including cooperatives). Clarification must be pursued and is particularly necessary in terms of the rules regarding accessibility, quality, sustainability, financing and implementation of the rules regulating public procurement and state aid. Without it, the general interest missions cannot be effectively achieved.

- *Proposal n°32: The Commission will launch a consultation with the social partners in order to create a European framework for the advance planning of industrial restructuring.*

We support this measure only if the consultation allows stakeholders such as cooperative organisations, like CECOP, who are not formally counted among the European-level social partners, to take part in it. In fact, successful experiences have been developed among the CECOP network in term of business restructuring, such as economically sustainable business transfers to employees. In the CECOP European network, a considerable amount of enterprises in various industrial and service sectors which were condemned to disappear have been saved and have then developed (with higher turnover and higher employment rates) through employment buy-outs. This type of business restructuring should have an important place in this European framework for the advance planning of industrial restructuring. Cooperatives from the CECOP network have also developed experiences in other forms of business organisation that favour the anticipation and the management of change (such as horizontal groups and consortia among cooperatives, etc.)

- *Proposal n°36: In 2011 the Commission will propose a Social Business Initiative in order to support and accompany the development of socially innovative corporate projects within the single market by means of in particular social ratings, ethical and environmental labelling, revised rules on public procurement, and by introducing a new investment fund regime and tapping into dormant savings.*

While we support initiatives that would promote our enterprise model at the national level, the EC should be aware of the fact that an additional European enterprise legal form would not be an adequate answer to it, as it would apply only to enterprises with transnational activities. The ESC (European Cooperative Society) already exists for this purpose. Instead, the EC should encourage Member States to adopt legal forms for enterprises producing services and goods of general interest, for those who have not done it yet. The EC could, in association with the concerned stakeholders, draft a number of characteristics and values for this type of enterprises and spread it among member states thanks to the open method of coordination.

- *Proposal n°37: For several reasons relating mainly to the nature of its financing and the preference of shareholders or stakeholders who support projects with a strong element of social, economic and sometimes technological innovation, the market economy is structured around a variety of different types of legal status (foundations, cooperatives, mutual associations, etc.). The Commission will propose measures enabling the quality of the legal structures concerned to be improved in order to optimise their functioning and facilitate their development within the single market.*

The ESC already exists as a European-level instrument, dedicated to cooperatives that operate at a European level. As a recent study conducted by Cooperatives Europe has shown, the ESC has provided positive but modest results, and a reform of the ESC Regulation appears necessary. At the same time, CECOP supports the establishment of European statuses for mutuals, associations and foundations.

However, beyond the reform or the creation of European-level instruments, the EC should also encourage the development of appropriate policies and regulation for the promotion of social economy enterprises (cooperatives, mutuals, associations, foundations) at the national level as well, through the various non-regulatory instruments existing for this purpose (such as the Open Method of Coordination). Indeed, cooperatives need better European recognition and improved promotion policies in most EU member states, in order to better implement their mission.