

CECOP answer to the European Commission consultation on the results of the study on the implementation of the regulation 1435/2003 on the statute for a European Cooperative Society (SCE)

Brussels, 14 June 2011

1. Name of your legal entity, organisation, or service, its legal form, country of origin, size (if enterprise i.e. micro, small etc) and field of activity. Please indicate your function and why you are interested in the SCE.

CECOP – CICOPA Europe (European Confederation of Worker Cooperatives, Social Cooperatives and Social and Participative Enterprises) is an *aisbl*, namely a not for profit international organisation under Belgian Law. CECOP – CICOPA Europe represents national cooperative organisations in 16 EU countries which in turn affiliate over 50,000 cooperative and participative enterprises in industry and services. They employ 1.4 million workers across Europe. CECOP considers the SCE as an important tool for the development of cooperatives in its own cooperative sector (industry and services).

2. Do you agree with the findings of the study on the negative and positive factors affecting the setting up an SCE (pages 143 and 146)?

CECOP shares the study's point of view that the value of the European image is one of the most positive factors affecting the setting up of the SCE. The fact that the democratic principle of organisation is the second persuasive effect demonstrates that some entrepreneurs have a different vision of entrepreneurship than the one offered by the European Society regulation. Therefore, the SCE regulation is very useful, at least symbolically, to respond to the aspiration of these entrepreneurs and it respects the principle of plurality of business forms.

However, CECOP highlights that a simple regulation is not sufficient for the promotion of the cooperative business model at a European trans-national level.

As for the dissuasive effects, CECOP fully shares the opinion that the lack of knowledge of the SCE is to be tackled first. Several sources of SCE laws (regulations, national laws, statutes) and the possibility of using "options" make the regulation complex and reduce its impact. The perceived lack of need for the SCE statute can be explained through two factors: first, the national cooperative laws enable to perform a European activity in all EU Member States; second, national cooperative laws are more flexible.

However, as for the few incorporated SCEs, CECOP would like to remind that the ratio between the number of SCEs and of national cooperatives is more or less the same as the one between SE and national shareholding companies. Furthermore, the SCE regulation was implemented very late in some Members States, even in countries having a strong cooperative movement.

3. Do you agree with the study's assessment that the initial minimum capital requirement is a considerable cost for the setting up of SCEs? (page 148)

CECOP agrees with the study's assessment that the minimum capital requirement is too high, in particular when the SCE is formed by natural persons. Furthermore, having in mind that the majority of incorporated SCE are SMEs, and that the minimum capital mentioned within the draft regulation on SPE is very low, it is also detrimental to the future use of the SCE statute.

Nevertheless, it is equally important to address the needs of the biggest cooperative actors, who are most likely to use this instrument given the European character of their operations. On the other hand, at least in our sector, no SCE seems to have been established by "start up" nor by "merger" (with a subsidiary), but rather by grouping together already existing cooperatives and/or other entities: thence, it appears that the SCE could be relevant in terms of creating European cooperative (horizontal) groups. Nevertheless, none of the large cooperative groups in our sector (eg Mondragon, CCC, CCPL, CGM, CNS, ASCES, etc), which have or plan to have industrial or service operations at the European level, have used the SCE instrument so far. We thus conclude that the instrument is not adapted to the specific requirements of cooperative (horizontal) groups, and that national legislations on cooperative groups or consortia, where it exists (eg Italy and Spain) should be properly studied before any change to the SCE Regulation is approved. Our book "*Beyond the Crisis – Cooperatives, Work, Finance*" (to be presented at the EESC on 7 September) discusses cooperative groups and consortia in some depth. The book ends with a series of policy recommendations that have already been conveyed to the European Commission, including one specifying that the "The European cooperative Society (SCE) regulation should be revised in order to take into account the needs of already established cooperative groups."

CECOP is also of the opinion that in order to ensure adequate creditor protection, greater attention ought to be paid to the issue of a comprehensive audit of the economic situation and compliance management.

4. Do you believe that the complexity of the Regulation, particularly due to hierarchy of various legal rules, is a negative factor for the start up phase of SCE? (page 160)

As said previously, CECOP agrees with this assertion and would recommend to at least simplifying the interactions and relations between the different sources of Law of SCE. Merely rewording the regulation itself will probably not significantly increase the number of new establishments under the SCE.

5. Are you of the view that the cross-border requirement for the creation of an SCE (two founders from at least two Member States - MS) may be changed, in order to allow the creation of SCEs also by operators of a single MS and under which conditions?

The term « cross border » activity used in the text is not appropriate as it seems to imply an activity across a border (like *transfrontalier* in French). We have found no example of this kind of SCE, even in terms of projects. In turn, the "European" character of the enterprise's operations is fundamental.

6. Do you agree with the statement of the study that the system of reference to national laws (with a distinction between cooperative legislation and national public limited-liability company law) should be simplified and even reduced? (page 160)

CECOP considers that the reference made to national Law on public limited companies, in the framework of the SCE regulation, is unnecessary and confusing. As the numerous references to national Law impede the incorporation of SCE, CECOP agrees with the statement of the study. Legal forms and traditions of cooperatives in Member States vary a lot; consequently, the SCE cannot properly operate without the contribution of national law provisions, which is why the SCE varies according to the country where it is registered. This means that, as there are 30 different national laws, there will be 30 types of SCEs in Europe. If less reference to national Law were made, the SCE would have a stronger impact as a real European legal tool. However, any creation of positive law at European level, to replace the numerous references to national law in the regulation, should be based on the highest existing national standards in the various legal domains (company law, labour law etc), so as to avoid the risk of social dumping.

7. Do you think that SCEs should be given more autonomy from national laws, in the sense that SCEs should be allowed to include in their articles of association rules which may deviate from national legislation applied to national cooperatives? (page 160)

This could be considered for certain operating procedures such as the rules concerning the General Assembly (art 57) for example. In principle, the SCE should be given more autonomy from national cooperative legislation and be allowed to include rules that may deviate from national legislation applied to cooperatives in their articles of association. Indeed, cooperatives must be enabled to compete effectively in their markets on a level playing field with the other forms of enterprise. In addition, as mentioned in section 6 above, the risk of social dumping should be averted by creating high quality positive law.

8. Do you believe that the number of options allowing the application of national laws should be limited to certain issues and what are these issues (e.g. areas where the matter at stake is crucial in the light of the cooperative identity like rules on voting rights, investor non user members, surpluses' distribution, etc)?

The number of options allowing the application of national laws should be limited to certain issues: mainly voting rights and distribution of surpluses, especially for tax reasons and specific provisions for cooperatives in certain Member States. The SCE should provide a benchmark for optimal provisions for the establishment of new cooperatives in Europe. This would enable the SCE to compete with national legislation and therefore to constitute a real incentive for Member States to improve their national cooperative laws. Provisions making it possible and legally safe to create highly integrated cooperative (horizontal) groups through the SCE should be added, based on the legislation existing in this domain in Italy and Spain.

9. Do you have any suggestions for amendments of the SCE Regulation that would increase its attractiveness for businesses and particularly for small enterprises?

The suggestions indicated in the report could contribute to improve the Regulation.

CECOP would suggest to simplify the interactions and hierarchical relations between the various legal rules and to refer less to national laws. Enterprise support services should also integrate the specificities of cooperative enterprises and the promotion of SCE. Existing support services, in particular the Enterprise Europe Network, do not consider this diversity. Among the various business support services needed, a

key one is management consultancy and training. Although these proposals are applicable to businesses of any size, they are particularly relevant for small and medium sized enterprises. Another issue is financing, as cooperatives have less opportunities to build up equity and are more or less dependent on their members, who are the owners of the cooperatives.

10. What are in your view the most important legal issues to consider for entrepreneurs when deciding to create either a national cooperative or an SCE, or when assessing in which country to place or transfer the head office of an SCE? (e.g. are they of fiscal, company or labor law nature?)

The creation of an SCE is very much linked to the European nature of the activity. There is no need to create an SCE when there is no European activity. Considering the place of the head office, fiscal aspects as well as the company law are of a particular relevance.