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This list states the country names (official short names in English) in alphabetical order as given in ISO 3166-1 and the corresponding ISO 3166-1-alpha-2 code elements.[1]

COUNTRY	ISO 3166-1-alpha-2 code
Austria	AT
Belgium	BE
Bulgaria	BG
Cyprus	CY
Czech Republic	CZ
Denmark	DK
Estonia	EE
Finland	FI
France	FR
Germany	DE
Greece	EL
Hungary	HU
Iceland	IS
Ireland	IE
Italy	IT
Latvia	LV
Liechtenstein	LI
Lithuania	LT
Luxembourg	LU
Malta	MT
Netherlands	NL
Norway	NO
Poland	PL
Portugal	PT
Romania	RO
Slovakia	SK
Slovenia	SI
Spain	ES
Sweden	SE
United Kingdom	UK

[1]Source: ISO, www.iso.org/iso/english_country_names_and_code_elements#i

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EXECUTIVE SUMMARY

SUMMARY: 1. *Introduction. The SCE project: scope, aims and methodology*. – **2.** *Main findings and conclusions*.

1. Introduction. The SCE project: scope, aims and methodology

The "SCE project" has been carried out thanks to, and in execution of a service contract between the European Commission - DG Enterprise and Industry and a Consortium formed by Cooperatives Europe, EKAI Center, and EURICSE, which represented and led the Consortium[1].

This contract was entitled "Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE)" but, notwithstanding its title, it had a wider scope and further objectives. In fact, the exact aim of the call for tenders was "to award a contract for a study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (Societas Cooperativa Europaea - SCE) in the EU Member States and EEA countries (Norway, Iceland and Liechtenstein), rules applied to the SCE, national legislation on cooperatives, and the impact of the Statute on the national legislation and the promotion of cooperatives in EU countries. The study will also include recommendations for future legislation"[2].

Consequently, this project deals with two major themes, prevalently from a legal point of view: the Regulation 1435/2003 on the Statute for European Cooperative Society (hereinafter "SCE Regulation" or "SCE R")[3] and European national cooperative law in all 30 countries involved in this research[4]. These subjects are obviously connected to each other (as this study will clearly show, this connection is more relevant than one might

[1] Contract no SI2.ACPROCE029211200 of 8 October 2009.
[2] Call for tenders no ENTR/2009/021 of 23 April 2009.
[3] Council Regulation (EC) No 1435/2003 of 22 July 2003. Its historical background is finely sketched in Chantal Chômel, *The long march of the European cooperative society*, in Revue International de l'économie sociale, 2004, 1 ff.
[4] The contract did not require the study to include and consider Council Directive 2003/72/CE of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. Nonetheless, certain aspects of this Directive have been taken into account inasmuch as they have been considered relevant for the examination of the SCE Regulation, particularly in relation to the degree of its success and individuation of potential dissuasive factors in using this legal structure.

imagine, due to the particular structure of the SCE Regulation). They enjoy, however, a certain degree of autonomy within this research, which intends to offer a complete outline of cooperative law in Europe, which may be used in pursuing the objectives envisaged by the European Commission in its 2004 communication on the promotion of cooperative societies in Europe[5]. In that communication, the European Commission underlined the importance of improving cooperative legislation in Europe by several means, including the cooperation between national authorities and Commission services and drafting model laws[6]. More generally, our wish is that this project might give a strong impulse to research, study and teaching on cooperatives by generating new interest in a fascinating and still somewhat unexplored (particularly in some European countries) subject matter.

With specific regard to the SCE Regulation, the principal objectives of the project were the following:

- to learn whether and to what extent the SCE Regulation has been implemented by the states to which it applies - that is, all 27 European Union Member States (hereinafter “MSs”) and the European Economic Area countries (hereinafter “EEA countries”);

- to collect all existing laws and measures implementing the SCE Regulation;

- to evaluate the degree of success or failure of the SCE Regulation, by ascertaining the number of existing SCEs, as well as the impact, if any, of the SCE Regulation on national cooperative law;

- to identify the main persuasive and dissuasive factors for setting up an SCE, paying particular attention to those factors that depend on the SCE Regulation itself;

- to formulate recommendations for amendments of the SCE Regulation, also taking into account that, according to art. 79, par. 1, SCE R, “five years [namely, 17 August 2011] at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and to the Council a report on the application of the Regulation and proposals for amendments, where appropriate”.

With specific regard to national cooperative law, the main purposes of the project were the following:

[5] COM(2004) 18 of 23.2.2004 on the promotion of cooperative societies in Europe.
[6] See COM(2004) 18, par. 3.2.

- to collect the general cooperative laws of all countries involved in the research;
- to learn more about European national cooperative laws and their main features;
- to explore the relevant European national cooperative legislation in order to find out whether and what common rules and principles exist;
- to compare national cooperative laws and the SCE Regulation from the perspective of the cooperative identity;
- to ascertain whether and what legal obstacles to the development of cooperatives, if any, exist in the countries covered by this research.

In addition, the research was directed toward providing information on certain issues related to the visibility of cooperatives.

In general more than 220 people have contributed to this research in various ways and to diverse extents, making it possible to write this final study. All their names appear in the list of contributors. Each contribution was essential for this research. Several contributors generously did more than they were expected or required to do.

In seeking to pursue these ambitious goals and manage the relevant tasks and large amount of data to be collected, the Consortium established a research team including at least one national expert for each country involved, directed by a scientific and a steering committee.

Furthermore, given the participative nature the Consortium wanted this research to assume, more than 170 stakeholders were consulted[7]. A special thanks to these generous individuals and the time they dedicated to this research.

Finally, the administrative support of 12 project managers from the Consortium's partners was essential for bringing to light the scientific outcomes of this project.

[7] 151 of these stakeholders answered the questionnaire provided by national experts (see part I, chapter 3 of this final study).

Although this study is the result of scientific collaboration among all the researchers involved, also in order to guide readers through this final study and the considerable number of pages it consists of, it must be pointed out that:

- part I of this overall final study contains a synthesis and comparative report, drafted by Antonio Fici and approved by the scientific committee, on the diverse subjects of the research. This section puts forward the theoretical framework and ascertains the empirical application, and in particular:
    - chapter 1 discusses the SCE Regulation and examines the main interpretative doubts it raises, as well as the forms and modalities of its implementation by the countries concerned;
    - chapter 2 deals with European national cooperative legislation with the main purpose of outlining its principal features, and presents a comparative analysis of said legislation by commenting on a legislative table of cooperative rules contained in appendix 3 to part I of this final study;
    - chapter 3 analyses the degree of success of the SCE Regulation by presenting and discussing the outcomes of the research on the existing SCEs and stakeholder consultation; it also indicates the extent to which the SCE Regulation has had an impact on national cooperative legislation;
    - chapter 4 contains brief notes on cooperative visibility and related issues, referring to questionnaires in annex I to this final study for the detailed indication of trends in the use of the cooperative form, adopted national measures in promotion of cooperatives, existent curricula of studies, etc.;
    - chapter 5 proposes recommendations for both amendments to the SCE Regulation and policies in favour of cooperatives in Europe;
        - in appendix 1 detailed comparative tables on option implementation by MSs and EEA countries may be found (moreover, in appendix 1a there is a table on the comparison between SCE Regulation and SE Regulation option implementation);
        - appendix 2 contains tables which indicate the competent authorities designated by MSs and EEA countries in accordance with art. 78, par. 2, SCE R;
        - appendix 3 includes detailed comparative tables of national cooperative legislation examined according to 20 indicators of cooperative identity;
        - appendix 4 contains a table with detailed information on the existing SCEs;

- appendix 5 contains tables summarising by country the results of the stakeholder consultation on the degree of success of the SCE Regulation.

- part II of this final study contains, ordered by country, national reports by the national experts involved in this research; each national report is written in accordance with guidelines provided by the scientific committee to guarantee uniformity of contributions and the presence therein of relevant information on both SCE regulation implementation and national cooperative legislation. Those more interested in the situation of a specific country than on the overall and comparative picture (as well as the theoretical framework of this research) may bypass part I and find in part II the country report they are interested in.

- Annex 1 (in CD/Rom) to this final study includes, ordered by country, 136 returned questionnaires from the consultation procedure conducted by national experts; the methodology applied for this consultation is described in part I, chapter 3 of this final study;

- Annex 2 (in CD/Rom) to this final study contains a database with all national laws collected for this research. The database is organised in two sections: section 1) includes the laws implementing, or related to the SCE Regulation; section 2) includes national cooperative laws; when SCE Regulation implementation rules, as it may happen, are embodied in the national legislation on cooperatives, relevant laws may be found both in section 1) and in section 2).

Other aspects of the methodology followed in pursuing the tasks of this research will be described later in part I, when the relevant task is presented or the relevant profile is discussed.

A last note must regard legal terminology. When researchers from 30 countries are involved, it is inevitable that different terms are used with regard to the same legal concept, institution, act or procedure. This may be found in national reports contained in part II of this final study. In contrast, to aid reader understanding regardless of nationality, the synthesis and comparative study in part I, as well as all tables in the appendices to part I, use the legal terminology found in the SCE Regulation. Therefore, although some scholars would not agree with this, in part I of this final study and related appendices, "organ/s" is used instead of "body/ies"; "statutes" instead of "by-laws"; "winding-up" instead of "dissolution", etc. The possibility remains, however, that minor differences may still be found therein. The author of this study is responsible for any errors.

2. Main findings and conclusions

This research has found 17 existing SCEs (as of 8 May 2010), showing that the SCE Regulation has had only limited success. This is also demonstrated by the fact that the harmonization (or rather, indirect approximation) effect on the national cooperative legislation has been rather limited (see table 14 in the text).
The limited success of the SCE Regulation can be attributed not only to legal causes, but also to other factors. In fact, one could say that the latter are just as important as the former. The following observations all lead to this conclusion:

- The stakeholders interviewed by the project indicated “lack of cognitive awareness” as the main potential dissuasive factor for the establishment of an SCE; moreover, “lack of need” and “small scale of cooperative operations” were also frequently mentioned by the respondents as dissuasive factors;

- Among the factors with a potential persuasive effect, the cross-border nature of the entrepreneurial project or of the membership played a role, while the SCE Regulation is considered more important for the European image that it gives to the cooperative than for its particular rules as compared to those which apply to national cooperatives;

- Although Italy did not implement the SCE regulation, it has the highest number of SCEs.

Despite this outcome, it is important to examine the legal elements that led to the limited success of the SCE Regulation. The research presented here has done this both from a theoretical and from an empirical point of view, with the goal of devising recommendations for possible modification of the SCE Regulation.
Both the theoretical and the empirical research demonstrate that the SCE Regulation is complex, and, more specifically, that the system of legal sources requires some changes in several respects:

- The numerous references to national law produce negative effects of various kinds and in any event prevent the SCE Regulation from reaching the goals it set out;

- The reference system is complex, both with respect to the way references to national law are made (particularly for the “options” category, which generates several interpretative problems), and with respect to the national source inasmuch as the SCE statute makes an inopportune distinction between references either to

national cooperative law or to national public limited-liability company law, as well as to national law in general.

Beyond these issues, it appears that there are several unresolved problems that lead to the contradictions and complexities within the SCE Regulation. In particular:

- The problem of the relationship between European law and national law concerning cooperatives;

- The related problem of the specific objectives of the SCE Regulation and whether it should: a) create a European legal form of cooperative that can compete with national cooperatives, and thus achieve (if the SCE Regulation is indeed competitive relative to the national cooperative laws) a sort of indirect approximation of national cooperative laws, possibly with the aim of improving upon them; or, b) simply signal that, in addition to capitalistic and investor-driven companies, there are cooperatives, which are companies with different goals and structure, thus having a purely symbolic effect.

While it is impossible to summarise their complex content here, the recommendations set forth in Chapter 5 of this final study tend to suggest the need for strengthening the SCE Regulation relative to national laws, and at the same time strengthening the freedom of self-regulation by statutes, proposing that the SCE Regulation should no longer perform a merely symbolic function. In addition to these general recommendations, this study contains specific proposals for amendments of the SCE Regulation in light of the general criteria for strengthening it mentioned above.

If I am not mistaken, this study for the first time provides the basic information needed to know and compare 30 national cooperative laws, which, in the context of a future organic reform of European cooperative law, must be compared on the one hand with ICA's cooperative principles (and other documents such as 193/2002 ILO Recommendation), and on the other hand with the SCE Regulation. Of course, this is just a first and necessarily incomplete analysis, which can (and should) be strengthened and improved upon in the future.

The comparison between national cooperative laws reveals significant differences both with respect to legislative models concerning cooperatives and to specific rules adopted by each national cooperative law (see part I, chapter 2, par. 4).

It is often maintained that the diversity of cooperative laws across the different countries is a value that should be preserved and that effort should be made toward this end, including by preventing (as it has been) the SCE Regulation from interfering with national issues and from reducing national specificities. Personally, I find this opinion, which has certainly been (and still seems to be) shared by a relevant number of people, perplexing. In fact, if we

compare the situation of cooperatives with the one of capitalistic enterprises, we must ask whether national differences could become an obstacle to the development of cooperatives at the international level. The harmonization of national laws concerning cooperatives would undoubtedly be a long and complex process, as it should start with terminology and concepts before venturing into the research and proposal of shared rules. Above all, it would be necessary to identify the objectives of this legislation and the values to which it should conform, which is difficult when capital and personal profit are not part of the equation, as in the case of cooperatives. Nevertheless, I think that the international cooperative movement is capable of rising to this challenge. The comparison of national laws shows that, despite the differences, there are shared elements at the terminological and conceptual level, as well as in terms of concrete solutions to various regulatory issues (many solutions differ among countries only for minor and purely quantitative aspects).

From my personal standpoint, I hope that the study presented below, although perfectible, will serve a purpose that goes beyond the evaluation of the successes and failures of the SCE Regulation thus becoming the basis for its future modifications: I hope that this study will focus the attention of researchers on cooperative law and give rise to a field of comparative studies on this subject. The lack of a sufficient comparative legal analysis is at the root of many doubts, perplexities, misunderstandings, and might also be one of the causes of the heterogeneity of national cooperative legislation. If the cooperative movement derives its strength from cooperation among cooperatives (as this research also attests, the development of cooperation and the adequacy of national legislations indicate the existence of a cohesive and well organized cooperative movement), the movement can and should also find support in the international cooperation among cooperative law scholars.

The understanding of the cooperative phenomenon, its specificities relative to other enterprise forms, and, more in general, the pluralistic market model, all require more and more rigorous and in-depth legal analysis, attentive to the comparative dimension and to the concrete needs of the cooperative movement.

Antonio Fici

PART I

SYNTHESIS AND COMPARATIVE REPORT

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CHAPTER 1

MAPPING OF THE RELEVANT LEGISLATION IMPLEMENTING THE SCE REGULATION IN THE EU MEMBER STATES AND EEA COUNTRIES

SUMMARY: 1. *Introduction*. – **2.** *A legal analysis of the SCE Regulation*. – **2.1.** *The law applicable to SCEs: the system and hierarchy of sources of regulation. An interpretation of art. 8 of the SCE Regulation*. – **2.1.1.** *SCE statutes and national law: May the provisions of SCE statutes prevail over a mandatory rule of national law?* – **2.1.2.** *What does "expressly authorised by this Regulation" in art. 8, par. 1, b), mean? The role of statutes in the regulation of SCE*. – **2.1.3.** *SCE regulation and national law: What do "not regulated" and "partly regulated" mean?* – **2.1.4.** *Which national law?* [Table 1. National laws implementing the SCE Regulation (SCE laws) - Table 2. Specific references to national law in the SCE Regulation]. – **2.1.4.1.** *Options and national implementation rules.* **– 2.1.4.1.1.** *The implementation of options in MSs and EEA countries* [Table 3. Options in the SCE Regulation - Table 3a. Are the options implemented? (AT-IS) - Table 3b. Are the options implemented? (IT-UK) - Table 4a. Option implementation: total by country - Table 4b. Option implementation: total by option]. – **2.1.4.1.2.** *SCE Regulation option implementation and SE Regulation option implementation: a comparison by country*. – **2.1.4.1.3.** *Options in the perspective of SCE Regulation reform*. – **2.1.4.2.** *National rules which apply in virtue of specific references* [Fig. 1. SCE law: hierarchy of sources of SCE law and their scope]. – **2.1.4.3.** *National rules and measures adopted in execution of obligations* [Table 5. National registers of art. 11, SCE R]. – **3.** *Conclusions. An unreasonably complex system of regulation which should be simplified in order to improve its effectiveness*.

1. Introduction

According to recital 2 of the SCE Regulation, "the completion of the internal market … mean[s] not only that barriers to trade should be removed, but also that the structures of production should be adapted to the Community dimension". Moreover, recital 3 states that "the legal framework within which business should be carried on in the Community is still based largely on national laws… That situation forms a considerable obstacle to the creation of groups of companies from different Member States"; and recital 11, that "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".

Therefore, according to these statements, one of the main objectives of the SCE Regulation should be to improve the legal environment for the development of cooperatives, by establishing a new legal form which, going beyond national laws and their

specificities, might be suitable for cross-border cooperative operations, while respecting the particular operating principles of cooperatives, which are different from those of other economic organisations[1].

It must be verified whether the SCE Regulation is designed in accordance with the aforementioned aim. If it is not, the main discrepancies must be underlined and suggestions offered for alternative solutions to overcome them, thus putting the SCE Regulation in line with its proposed objective of providing a (legal) supportive environment for cooperatives[2].

The SCE project aims to verify if, how and to what extent the SCE Regulation has been implemented by all 30 countries to which it applies. In order to understand the meaning of "implementation" and consequently the relevant measures the countries concerned were expected to adopt, it is first necessary to analyse the SCE Regulation from a strictly legal perspective so as to ascertain more precisely the features of the interaction between the European and the national level of legislation.

As will be shown, the intrinsic complexity of the SCE Regulation, together with the lack of deep legal investigation conducted on this subject thus far (and the use, at times, of simplifying and misleading categories of classification), makes the analysis difficult and conclusions uncertain, which thus raises the need to further the legal debate on this issue (as happened to a greater extent with regard to the parallel European Company – SE Regulation)[3].

[1] As recognised in recitals 7 and 8. Namely, recital 7 refers to the principles of democratic structure and control and the distribution of the net profit on an equitable basis; recital 8 to the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the "one member, 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.

[2] In this regard recital 6 of the SCE Regulation makes an explicit reference to the United Nations resolution of 19.12.2001, which encourages all governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise.

[3] The subject of SCE has been mostly disregarded by European legal scholars thus far. Research conducted on 15 reviews dealing with European company, cooperative, commercial, non-profit, or private law, published in English from 2003 until now, found only three articles specifically dedicated to the SCE. Namely, these reviews are: *Business Law Review*, *Common Market Law Review*, *European Business Law Review*, *European Company Law*, *European Review of Private Law*, *International Journal of Comparative Labour Law and Industrial Relations*, *Legal Issues of Economic Integration*, *European business organisation law review*, *European company and financial law review*, *Annals of Public and Cooperative Economics*, *Journal of cooperative Studies*, *Non-profit Management & Leaderships*, *Nonprofit and Voluntary Sector Quarterly*, *Review of social economy*, *Voluntas*. And the articles found are: Ruud Galle, *The Societas Cooperativa Europea (SCE) and National Cooperatives in Comparative Perspective*, in 3 European Company Law, 255-260 (2006); J. Fernández Guadaño, *Structural changes in the development of European Cooperative Society*, in 77 Annals of Public and Cooperative Economics, 107 ff. (2006); Ian Snaith, *Employee Involvement in the European Cooperative Society: A Range of Stakeholders?*, in 22 International Journal of Comparative Labour Law and Industrial Relations, 213-230 (2006). The situation is different in relation to the SE Regulation: during the same period and in the same reviews, around 30 articles appeared having "European company" or an equivalent

2. A legal analysis of the SCE Regulation

This section has two main objectives: to lay the foundations for a proper examination of all the different aspects related to the SCE Regulation implementation by Member States (and EEA countries) and to highlight the main critical aspects of the SCE Regulation. Both examinations will help form the basis for the final proposal for recommendations.

The SCE regulation is very important inasmuch as it introduces this new (and European) legal form of enterprise, which parallels the cooperative legal form of enterprise recognised (albeit in various ways and to different extents, as will be pointed out later[4]) by all of the countries involved in this research. As also recognised by the European Union, this was a necessary step after the adoption of the SE Regulation in 2001, in order to ensure equal treatment of cooperatives as compared to public limited-liability companies, and to contribute to their economic development[5].

In this sense, the SCE Regulation has certainly had, and continues to have, an important and irreplaceable "symbolic" and political value. It clearly shows also at the European level that the capitalistic legal form of organisation (the investor-driven company, controlled by shareholders in proportion to the amount of capital held) is not the only one available and that other legal forms may be chosen by economic agents.
In an accepted context of plurality of legal forms[6], the cooperative has a precise identity clearly distinguishing it from investor-driven (capitalistic) companies: it is made up of people (and not "Euros"), it is democratically controlled via non-capitalistic criteria (i.e., "one member, one vote" *vs.* "one share, one vote"), and it is not devoted to the enrichment of its founders and participants, but to the satisfaction of needs other than the pure return on capital (needs which, moreover, may also pertain, to a certain extent, to non-members or the community).

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referment in their title. Moreover, 7 articles on SPE (European Private Company) were found, even though that on SPE is only a proposal at the moment. For national bibliographies on SCE, see the relevant sections in the country reports collected for this project (in part II of this final study).

[4] See chapter 2 in part I of this final study.

[5] See recital 6 of the SCE Regulation.

[6] See in this respect International Labour Organisation's 193/2002 Recommendation on the promotion of cooperatives, where it is stated: "a balanced society necessitates the existence of strong public and private sectors, as well as a strong cooperative, mutual and the other social and non-governmental sector". Along these lines, 2001 Nobel Prize winner Joseph Stiglitz has recently pointed out: "my research showed that one needed to find a balance between markets, government, and other institutions, including not-for-profits and cooperatives, and that the successful countries were those that had found that balance" (Joseph Stiglitz, *Moving beyond market fundamentalism to a more balanced economy*, in 80 Annals of Public and Cooperative Economics 348 (2009)); and moreover: "success, broadly defined, requires a more balanced economy, a plural economic system with several pillars to it. There must be a traditional private sector of the economy, but the two other pillars have not received the attention which they deserve: the public sector, and the social cooperative economy, including mutual societies and not-for-profits" (*ibidem*, 356).

However, one should inquire whether the SCE Regulation may be considered (or become) more than a "symbolic" tool - in other words, whether it is (or still has to become) an effective measure to promote the cooperative legal form of business in Europe (and elsewhere), both in terms of reorganisation of existing cooperatives on a Community scale, and an increase in the number of cooperatives. The point needs to be explored, starting with the analysis of the SCE system of regulation sources.

The SCE Regulation (like, albeit to a lesser extent, the SE Regulation) is not a complete and self-sufficient regulation which provides an autonomous legal framework for the subject matter it regulates. In fact, an SCE is subject not only to the provisions of the SCE Regulation, but also to those of the national law in which the SCE is registered, to the point that: *a*) an SCE cannot properly operate without the contribution of national law provisions[7]; *b*) given that national law is in charge of filling the gaps of the SCE Regulation, the regulation of an SCE varies according to the country where it is registered, where variation is emphasised by the fact that, when cooperative law is at stake, national differences are more significant[8].

The subsequent paragraphs will present this situation in greater detail and focus on the questions that it raises, seeking systematisation while avoiding an excessive (and therefore sterile) simplification of the several problematic points involved in the analysis, which, as we will see, have a strong impact on the manners in which national countries shall and may deal with this Regulation (and eventually on an SCE freedom of self-regulation via statutes).

2.1. The law applicable to SCEs: the system and hierarchy of sources of regulation. An interpretation of art. 8 of the SCE Regulation

To individuate the overall regulation of an SCE one must begin with art. 8, SCE R, although, as we will point out later, this is not the only relevant rule in this respect.

According to art. 8, SCE R[9]:

"An SCE shall be governed:
(a) by this Regulation;
(b) where expressly authorised by this Regulation, by the provisions of its statutes;

[7] This sentence needs to be clarified by taking into account the different roles played by national law in the context of the regulation of the SCE: see *infra* par. 2.1.4., including subparagraphs.
[8] For a comparative analysis of national cooperative laws, see *infra* chap. 2 in part I of this final study.
[9] Whose content is substantially the same as that of art. 9, SE R. A completely different approach can be found in art. 4, of the proposal for an SPE (European private company) regulation: see *infra* in the text.

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:
(i) the laws adopted by Member States in the implementation of Community measures relating specifically to SCEs;
(ii) the laws of Member States which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office;
(iii) the provisions of its statutes, in the same way as for a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office".

Hence, the SCE Regulation holds the first rank in the hierarchy of the sources (art. 8, par. 1, *a*), while national law (of the registered SCE) the second, as national law may only apply in the case of matters "not regulated" or "partly regulated" by the SCE Regulation (art. 8, par. 1, *c*)[10].

On the other hand, the regulatory role of SCE statutes is limited to the situation where either the SCE Regulation "expressly authorises" their provisions (art. 8, par. 1, lit. *b*) or the law of the Member State in which the SCE has its registered office would authorise a national law cooperative to regulate a certain aspect (art. 8, par. 1, *c*, *iii*).

All this raises a number of questions, which will be discussed below.

2.1.1. SCE statutes and national law: May the provisions of SCE statutes prevail over a mandatory rule of national law?

Given that national law is subordinate to the SCE Regulation, one should conclude that, where the SCE Regulation "expressly authorises" SCE statutes, then these can take precedence even when they conflict with mandatory national rules which would apply to a national law cooperative in the country of the registered SCE.

Art. 9 on the principle of non-discrimination ought to be taken into account when assessing this interpretation. According to art. 9, SCE R, "subject to this Regulation, an SCE shall be treated in every Member State as if it were a cooperative, formed in accordance with the law of the Member State in which it has its registered office".

This provision raises the following considerations:

[10] See art. 11, SCE R: "Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies".

- non-discrimination in art. 9 SCE R is a guiding principle for national legislators when regulating SCEs, in the sense that an SCE must not be discriminated against a national law cooperative, which implies that, in adopting the implementation rules within the meaning of art. 8, par. 1, *c*), *i*), Member States (and EEA countries) should select such rules as to put SCEs on an equal footing with national law cooperatives;

- on the other hand, it is not clear whether the principle of non-discrimination also operates reversely, in the sense that national legislators must not award an SCE better treatment than that awarded to a national law cooperative, and are, moreover, obliged, inasmuch as it is possible (e.g., by implementing an option granted by the SCE R), to adopt the same rules for the SCE as apply to a national law cooperative[11];

- the above must, however, be construed in light of the hierarchy of sources of SCE regulation and of the express reservation contained in art. 9, which specifies that the requirement of equal treatment is "subject to this Regulation";

- therefore, the principle of non-discrimination, if considered in accordance with art. 8 and the wording of art. 9, should permit a diverse treatment of SCEs and national law cooperatives, either more permissive or more restrictive, provided, however, that this unequal treatment be determined by the SCE Regulation itself (and not by national law, whatever its particular grounds for intervention, whether said law fulfils an obligation or exercises an option: see *infra*).

[11] Sometimes it is the SCE Regulation itself that expressly requires the above: see for example art. 37, par. 1, SCE R, and the formula "under the same conditions as for cooperatives" therein.
In this regard, it is worth mentioning that in certain cases the national law implementing the SCE Regulation, by exercising some options granted by the latter, provides for a special treatment of an SCE as compared to national law cooperatives. For example, the Dutch SCE law states that an SCE may admit investor (non-user) members according to art. 14, par. 1 (2) SCE R, while Dutch national cooperative law does not expressly provide for this possibility (although legal scholars argue for the admissibility of investor-members also in national law cooperative, subject to art. 38, par. 2, NCC, as regards limitation on voting power: no more than ½ of total votes).
Another point must be underlined: art. 9, SCE R, implicitly binds MSs to apply in general to an SCE national rules governing cooperatives ("an SCE shall be treated … as if it were a cooperative"); which is consistent with the provision in art. 8, par. 1, *c*), ii, which declares applicable to an SCE "the law which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office". Therefore, a MS could not declare applicable in general to SCEs the national law on public limited-liability companies if the MS legislation embodies a particular law on cooperatives. On the other hand, when the SCE Regulation, as happens at times, specifically refers to national law on public limited-liability companies, this law should apply to SCEs in preference to that regarding cooperatives. Having pointed this out, one must note that the operation of the SCE Regulation has led sometimes to a different concrete result: for example, art. 11, par. 1, SCE R, makes reference to a register designated by the law of the MS in accordance with the law applicable to public limited-liability companies; notwithstanding the above, MSs, whose legislation embodies a specific register of cooperatives (different from that of public limited-liability companies), have designated the latter within the meaning of art. 11, par. 1, SCE R (see *infra* in the text).

Returning to the previous question, one should conclude that, when the SCE R refers to the SCE statutes, expressly authorising them to regulate a particular matter, then statutes may prevail even over mandatory national law provisions.

An example of this is offered by art. 1, par. 2 (3), SCE R, which states that "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". This provision allows an SCE to be set up in the form of an organisation with the unlimited liability of members, even though under the national law of the SCE country of registration cooperatives may only be "limited liability" organisations[12].

Another important example is provided by art. 1, par. 4, SCE R, which states that "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". This means that, following an authorisation embodied in its statutes, an SCE may operate with non-members, even though the national law of the SCE country of registration does not (explicitly or implicitly) permit a cooperative to act with non-members[13]. The state of national cooperative laws with regard to this issue is presented in point 3 of the comparative table of national legislation in Appendix 3.

An additional example can be found in art. 45, par. 1, SCE R, which states that "members of SCE organs shall be appointed for a period laid down in the statutes not exceeding six years". Given this, a mandatory rule of national law which imposes a shorter time limit (for example, three years) on national cooperative statutes would not limit the autonomy of SCE statutes in this regard[14].

The above applies in both the case of national cooperative law and in that of national law implementing the SCE Regulation. The specific purpose of national law, indeed, does not change the outcomes of the aforementioned interpretation.

It is worth noting that the discussion conducted thus far not only has theoretical and practical significance, but is also meaningful for the future, as it is strongly linked to a point

[12] As, for example, in Italy after the reform of company law of 2003/2004. In contrast, many other state national laws provide for both the cases, limited and unlimited liability cooperatives (see, for example, the Belgian legislation).

[13] Regarding this latter provision, more complex is the case in which (as usually happens) national cooperative law sets precise limits to the operation of the national cooperative with non-members. In such cases, it has to be inquired whether these limits also apply to an SCE. It depends, as we shall see, on the interpretation of art. 8, par. 1, *c*, and the concept of partial regulation and aspects not covered therein.

[14] For other significant examples, see articles: 14, par. 1 (4); 16, par. 3; 38, par. 1; 58, par. 3 (2); 58, par. 4; 61, par. 3; 64, par. 1.

of possible revision of the SCE R envisaged in art. 79 (b). Art. 79 (b), SCE R, refers to the appropriateness of “allowing provisions in the statutes of an SCE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation with regard to the SCE which deviate from, or are complementary to, these laws, even when such provisions would not be authorised in the statutes of a cooperative having its registered office in the Member State”.

Nonetheless, the scope of this argument is limited by the fact that in most cases the SCE Regulation expressly provides that SCE statutes shall respect mandatory provisions of national law or that SCE statutes be empowered to regulate a matter only on condition that national law so permits. This means that the statutory autonomy of the SCE is highly circumscribed by the numerous references to national laws and the possibility of a conflict with mandatory national rules is strongly limited[15].

The above may be found, as previously stated, in several provisions of the SCE Regulation, particularly when the matter at stake is crucial in light of the cooperative identity. For example, art. 14, par. 1 (2), may be considered, which states: “where the laws of the Member State of the SCE’s registered office so permit, the statutes may provide that persons who do not expect to use or produce the SCE’s goods and services may be admitted as investor (non-user) members”. This provision of the SCE Regulation clearly subordinates SCE statutes to national law, so that the admissibility of investor members in an SCE depends on the existence of a national rule permitting investor members in a (national law) cooperative. This point is synoptically described in point 6 of the comparative table of national legislation in appendix 3.

Other relevant examples are provided by art. 65, par. 1, and art. 75. The former makes the statutes’ provisions on the allocation of the annual surplus subject to mandatory provisions of national law. The latter allows a non-disinterested distribution of net assets in case of winding-up (SCE dissolution) only where permitted by national law.

It is evident that this manner of treating the relationship between SCE statutes and national law serves the purpose of reducing the autonomy of the SCE Regulation from national laws and, therefore, the difference in each country between an SCE and national cooperatives, to the detriment of uniformity (given that 30 types of SCEs will co-exist and be potentially available, as there are 30, more or less, different national laws) and possible

[15] This should constitute a point of discussion in the context of general recommendations to be provided to the European Commission as regards possible amendments to the SCE Regulation: see *infra* chap. 5 in part I of this final study.

competition between the SCE Regulation and national cooperative law. On the other hand, this strategy favours and promotes competition among national legal systems.

2.1.2. What does "expressly authorised by this Regulation" in art. 8, par. 1, b), mean? The role of statutes in the regulation of SCE

It seems that art. 8, par. 1, *b*), by mentioning an "express" authorisation, excludes a potential residual gap-filling role of SCE statutes. This means that SCE statutes may only regulate a matter if the SCE R makes express reference to them. This results in a further limitation of the freedom of self-regulation and in a high degree of rigidity of the SCE Regulation (which, furthermore, must be taken into account in the comparison of the SCE Regulation with national cooperative laws, which may be more generous as regards the freedom of self-regulation awarded to a national cooperative).

Nevertheless, this argument must be slightly relaxed considering that:

- in the SCE Regulation explicit and specific references to SCE statutes are numerous (although, as already pointed out, in most cases the SCE Regulation empowers statutes to regulate a matter only on condition that national mandatory rules be absent or national law provisions so permit)[16];

- more generally, art. 5, par. 4, SCE R, embodies a wide range of matters to be regulated by the SCE statutes;

- finally, according to art. 8, par. 1, *c*) (iii), SCE R, self-regulation also operates where the applicable national cooperative law so permits.

One must underline, however, the different approach shown in this regard by the proposal on the statute for a European private company (SPE). The degree of flexibility of a regulation is certainly higher when the regulation itself provides that "an SPE shall be governed by this Regulation and also, as regards the matters listed in Annex I, by its articles of association" (art. 4, par. 1 (1), proposal for SPE R – COM (2008) 396/3), whereas national law applies only to matters not covered by the articles of the SPE Regulation or by Annex I, especially taking into account that this Annex includes a long list of matters (this list is divided in 5 Chapters and 44 indents).

When discussing possible recommendations for amendments to the SCE Regulation, it must be considered what role and contribution each regulative source (SCE Regulation, national cooperative and company law, SCE statutes) should have in general, and in

[16] See *infra* table 2 where all references to national law are presented.

particular whether it is opportune to grant SCE more freedom of self-regulation and enhance its function, thereby making SCE law not only more flexible but also, perhaps, more uniform than at present by the numerous references to national law[17].

2.1.3. SCE regulation and national law: What do "not regulated" and "partly regulated" mean?

Art. 8, par. 1, *c*), makes a general reference to national law for the regulation of SCEs. Hence, differently than for SCE statutes, national law generally applies to SCE regardless of a specific reference by an SCE Regulation provision, although (as will be pointed out later) many specific references to national law do exist in the SCE Regulation. Nevertheless, the general reference in art. 8, par. 1, *c*), is limited to matters not regulated and aspects not covered by matters partly regulated.

Therefore, another major doubt arises from the wording of art. 8, SCE R. This regards the interpretation of the formula "not regulated" or "partially regulated" matters whose aspects not covered may consequently be regulated by national law. Namely: When can a matter be considered not regulated or only partially regulated by the SCE Regulation? When must a silence in the SCE Regulation be considered a "true" and substantial gap (which may be filled by national laws according to art. 8, par. 1, *c*) or only an apparent one (in this case, the "not said" being equivalent to "not provided")?

To answer the above question is quite impossible, as it would require elaborating a clear notion of a "fully regulated matter", which cannot be easily reduced in prescriptive terms. It is only practicable to present relevant cases where this issue might be at stake in the SCE Regulation.

For example, the provision in art. 1, par. 4, SCE R, may be taken into account, according to which "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". In this case, as already seen, there is no reference to national law, which means that the application of the SCE Regulation is not conditioned either on the absence of a mandatory national rule, or the presence of a permissive national rule. However a pertinent question is: How should a case be handled where national law (as frequently happens when this issue is contemplated by national cooperative laws: see point 3 of the comparative table of national legislation in Appendix 3) limits the possibility of acting with third parties (i.e., non-

[17] In this regard, recital 6 of the proposal for SPE Regulation points out that "to ensure high degree of uniformity of the SPE, as many matters pertaining to the company form as possible should be governed by this Regulation, either through substantive rules or by reserving matters to the article of association of the SPE".

members)? E.g., by providing that transactions with members be predominant or those with non-members spefically authorised? The question becomes more important if one considers that certain national laws do not prevent cooperatives from acting with non-members, but award them a specific tax treatment only if they respect a precise limit in the activity with non-members[18].

It is evident that, if one views the matter as being regulated by the SCE Regulation, there would be no room for national rules' application, and in the aforementioned example, an SCE could act with non-members in accordance with the conditions laid down by the SCE Regulation (which in fact does not set a precise limit on the activity with non-members). In contrast, if one views the matter as being only partially regulated by the SCE Regulation, national rules which restrict or place conditions on the activity with non-members would (also) apply to an SCE.

The situation becomes more complicated if we introduce the possibility of a gap in the statutes invoked by the SCE Regulation to regulate a matter. For example, the matter of the composition of the management organ may be considered in relation to the possible requirement that all or most members of said organ also be members of the cooperatives (a requirement present in many national cooperative laws: see point 17 of the comparative table of national legislation in Appendix 3). This matter is regulated by the SCE Regulation by referring to the SCE statutes and leaving national laws only the power to fix the minimum and/or the maximum number of members (art. 37, par. 4, SCE R). How should a case be handled where an SCE statute does not expressly provide that the members of the management organ may also be non-members of the SCE? May the mandatory rules of national laws fill this gap? Is it a "true" gap?

A proper solution of such doubts would require that at least the following arguments be taken into account:

- when the SCE Regulation wants national laws to co-regulate a matter, it makes an explicit reference to them; this may be interpreted *a contrario* so that, where no explicit reference exists, a silence in the SCE Regulation (or in SCE statutes to which the SCE Regulation refers) could not be construed as a "true" gap, which would legitimate its completion by national law;

- more particularly, when the SCE Regulation wants national laws to co-regulate a matter, it expressly awards them an option; this may be interpreted *a contrario* so

[18] The most important example can be found in Italy, whose national cooperative law awards cooperatives a specific tax treatment only if they act predominantly (more than 50%) with their members: see the Italian report in part II of this final study.

that, when an option is not awarded, a silence in the SCE Regulation (or in SCE statutes to which the SCE Regulation refers) could not be construed as a "true" gap, which would legitimate its completion by national law.

To reiterate, in the complex system of SCE law and its sources, this issue must not be excessively over-emphasised. In fact, as previously underlined, apart from the general reference to national laws in art. 8, many specific references to national law do exist in the SCE Regulation. This clearly reveals the "respect" the SCE Regulation awarded national legislators on this subject. This point will be explored in the next paragraph, which will further highlight the costs of this strategy in terms of rationality and effectiveness of the system of SCE law.

2.1.4. Which national law?

As observed above, the SCE Regulation makes a general reference to national law as a general source of SCE law in art. 8, par. 1, *c*), as well as several specific references thereto throughout the text.

As regards the general reference in art. 8, par. 1, *c*, the SCE Regulation envisages the adoption by MSs of a specific law dealing with its implementation. These specific laws constitute, therefore, the main source of production and knowledge of the national rules applicable to an SCE. In fact, however, such national rules may also be found in laws other than those strictly considered as "SCE implementation laws" (for example, in national laws on trade/commercial/companies registers, as amended to take into account SCEs). In many cases the implementation of the SCE Regulation has been realised by amendment to the national cooperative law (or the code which contains the regulation of cooperatives), in whose very body the new rules on SCE have been placed (see Belgium, Bulgaria, France, among others).

Within the SCE project, all national measures directly and specifically connected with the implementation of the SCE Regulation in accordance with art. 8, par. 1, *c*), were collected. A CD/Rom containing this legislation was delivered to the European Commission (annex II to this final study).

Table 1 below indicates all these measures, showing when an English version is available (which is the case for 13 out of 24 implementation laws)[19]. "NI" indicates "not implemented".

[19] Moreover, most national reports contain the translation of the most relevant national SCE law provisions.

The table reveals that six countries have not adopted any implementation law. In three of these countries (Greece, Luxembourg and Spain) the approval of said law is in process, sometimes in an advanced stage (in Greece and Spain)[20]. In contrast, two (Italy and Malta) have officially declared that an implementation law is not necessary, due to the asserted capacity of their national cooperative legislation to deal with the SCE and offer it an adequate legislative framework[21]. The Portuguese Government seems to hold the same view[22].

In 17 cases the implementation law came into force in 2006 (in 12 cases on 18 August 2006, to be precise, the same date as the SCE Regulation); in two cases it came into force in 2007; in three cases in 2008; finally, in two cases in 2009. It is worth noting that non-implementation has not impeded the creation of SCEs: six out of 17 registered SCEs have been set up in countries without an SCE national law being in force[23].

The content of SCE implementation laws varies in each country. Normally, these laws deal with the implementation of options and indicate the measures adopted in execution of the obligations the SCE Regulation imposes on MSs. More information about SCE Regulation implementation may be found in the national reports in part II of this final study.

The following tables 3a, 3b, 4a and 4b summarise the state of option implementation (tables in appendix 1 offer a more detailed and comparative view in this regard).

[20] See the relevant national reports in part II of this final study.
[21] See the relevant national reports in part II of this final study. In this respect, see par. 2.1.4.1. with particular regard to option implementation and the impossibility of considering an option implemented only by way of reference to national cooperative law.
[22] See the relevant national report in part II of this final study.
[23] See chapter 3 of this final study.

Table 1. *National laws implementing the SCE Regulation (SCE laws)*

COUNTRY	Type	Title/number/date	Notes	EN
AUSTRIA	Law	Act modifying cooperative law 2006	in force since 18.8.2006	NO
BELGIUM	Law	Company Code, Book XVI, art. 949 ff.	book XVI was introduced into the Company Code by Royal Decree 28.11.2006 in force since 30.11.2006	NO
BULGARIA	Law	- Cooperative Law 28.12.1999 No 113, chapter two "A" art. 51a ff. - Law of the commercial register 25.4.2006, No 34, chapter two "A", art. 31a ff. (as amended in 2007)	introduced by Law on Amendment and Supplementation of the Commercial Act (LASCA), 11.12.2007, No 104 in force since 1.1.2008	YES YES
CYPRUS	Law	Law 159(I) of 2006, providing for the implementation of Council Regulation (EC) No 1435/2003 on the statute for a European Cooperative Society	in force since 15.12.2006	YES
CZECH REP.	Law	Law No 307/2006 Coll. of 23.5.2006	in force since 18.8.2006	NO
DENMARK	Law	Act No 454 of 22.5.2006, The Danish SCE act	in force since 18.8.2006	YES
ESTONIA	Law	SCE implementation act of 14.12.2005	in force since 18.8.2006	YES
FINLAND	Law	Law No 906/2006 of 29.10.2006	in force since 1.11.2006	NO
FRANCE	Law	Sec. III *bis*, art. 26-1 ff., of the law on cooperative societies No 47-1775 of 10.9.1947, introduced by Law No 2008-649 of 3.7.2008 (see also Decree No 2009-767 of 22.6.2009)	in force since 4.7.2008	YES
GERMANY	Law	Law on the implementation of SCE and amendment to cooperative law of 14.8.2006	in force since 18.8.2006	YES
GREECE	NI			
HUNGARY	Law	Law on European cooperative societies LXIX/2006	in force since 18.8.2006	YES
ICELAND	Law	Act No 92/2006 of 14.6.2006, respecting European Cooperative Societies	in force since 18.8.2006	YES
IRELAND	Reg. authorised by law	Statutory Instruments No 433 of 2009, European Communities (European Cooperative Society) Regulations 2009	in force since 29.10.2009	YES
ITALY	NI but see:	- Ministry of the economic development, Communication No 2903, 30.6.2006, on SCE Reg. - Ministry of the economic development, Communication No 57, 26 March 2007, designating the competent authority		NO
LATVIA	Law	Law on European cooperative society of 9 November 2006	in force since 23.11.2006	YES

LIECHT.	Law	Law on the Statute of European cooperative society (SCEG) of 22.6.2007, No 229	in force since 1.9.2007	NO
LITHUANIA	Law	Law X-696 on European cooperative societies of 15.6.2006	in force since 18.8.2006	YES
LUXEMB.	NI			
MALTA	NI			
NETHERL.	Law	Act of 14.9.2006 implementing the Council regulation on the statute for a European Cooperative Society (SCE implementation act)	in force since 13.10.2006	YES
NORWAY	Law	Law on European cooperative society of 30.6.2006, No 50	in force since 18.8.2006	NO
POLAND	Law	Law on European cooperative society of 22.7.2006	in force since 18.8.2006	NO
PORTUGAL	NI			
ROMANIA	Emerg. ord. approved by law	Government emergency ordinance No 52 of 21.4.2008, amending and supplementing the Law No 31/1990 on trading companies and supplementing the Law No 26/1990 on the trade register (approved by Law 14.11.2008, No 284)	in force since 30.4.2008	NO
SLOVAKIA	Law	Law on SCE 91/2007 of 7.2.2007	in force since 1.4.2007	NO
SLOVENIA	Law	Cooperatives act, chapter IX.A SCE, article 56a ff., as introduced by the Act amending the Cooperatives act of 22.10.2009	in force since 17.11.2009	NO
SPAIN	NI			
SWEDEN	Law	Law 2006:595 of 1.6.2006	in force since 18.8.2006	NO
UNITED KINGDOM	Reg. authorised by law	Statutory Instruments 2006 No 2078, The European Cooperative Society Regulations 2006	in force since 18.8.2006	YES

Table 2 below presents all cases in which the SCE Regulation makes a specific and explicit reference to the law of Member States as a source of regulation of the SCE[24].
The second column ("Art.") indicates the relevant SCE R provision.
The third column ("Content") reproduces the relevant provision.
The fourth column ("Q") refers to the qualification of the provision as an:

- OP1: option whose implementation enlarges the capacity of an SCE
- OP2: option whose implementation restricts an SCE freedom of self-regulation
- OP3: option whose implementation protects third parties and the public interest
- OP4: other options
- R1: simple reference to national cooperative law
- R2: simple reference to national public limited-liability law

[24] It must also be noted that the SCE Regulation does not cover areas of law such as taxation, competition, intellectual property or insolvency. Therefore, the provisions of the Member States' law and of Community law are applicable in the above areas and in other areas not covered by the Regulation (see recital 16 of the SCE R).

- R3: simple reference to national (principally company) law
- R3 but R1: simple reference to national law but implicitly to cooperative law
- OB: obligation to adopt a measure

In certain cases, multiple qualifications are possible.

Table 2. *Specific references to national law in the SCE Regulation*

No	Art.	Content	Q
1	2 (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	OP1
2	3 (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	R3
3	4 (6)	The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE	R2
4	5 (2)	The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the Member State in which the SCE has its registered office	R1
5	5 (3)	The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE	R2
6	6	The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place	OP2
7	7 (2)	The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office	OP3
8	7 (4)	An SCE's members, creditors and the holders of other rights, and any other body which according to national law can exercise this right, shall be entitled …	R3
9	7 (7) (1)	Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer	OP3
10	7 (7) (2)	A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer	OP3
11	7 (7) (3)	The first and second subparagraphs shall apply without prejudice to the application to SCEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies	R3
12	7 (14) (1)	The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest	OP3
13	8 (2)	If national law provides for specific rules and/or restrictions related to the nature of	R3

		business carried out by an SCE, or for forms of control by a supervisory authority, that law shall apply in full to the SCE	
14	10 (1)	The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE	R2
15	11 (1)	Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies	OB R2
16	11 (4) (2)	In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting	OP1
17	11 (5)	The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that SCE	R2
18	12 (1)	Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office	R2
19	12 (2)	The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of an SCE opened in a Member State other than that in which it has its registered office.	R3
20	12 (2)	However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives	OP4
21	14 (1) (2)	Where the laws of the Member State of the SCE's registered office so permit, the statutes may provide that persons who do not expect to use or produce the SCE's goods and services may be admitted as investor (non-user) members	R3 but R1
22	15 (1) 7th	Membership shall be lost: - in any other situation provided for in the statutes or in the legislation on cooperatives of the Member State in which the SCE has its registered office	R3 but R1
23	17 (1) 30 (4)	Subject to this Regulation, the formation of an SCE shall be governed by the law applicable to cooperatives in the Member State in which the SCE establishes its registered office	R1
24	20	For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State	R1 R2
25	21	The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2)	OP3
26	22 (3)	The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an SCE	R2
27	24 (1)	The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging cooperatives, subject to the additional requirements imposed by the Member State to which the cooperative concerned is subject	R2 R3
28	26 (2)	A single report for all merging cooperatives may be drawn up where this is permitted by the laws of the Member States to which the cooperatives are subject	R3
29	26 (3)	The law applicable to the mergers of public limited liability companies concerning the rights and obligations of experts shall apply by analogy to the merger of cooperatives	R2
30	28 (1)	The law of the Member State governing each merging cooperative shall apply as in the case of a merger of public limited-liability companies …	R2

31	28 (2)	A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger	OP3
32	29 (1)	The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging cooperative, in accordance with the law of the Member State to which the merging cooperative is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited companies under the law of that State	R1 R2
33	29 (2)	In each Member State concerned the court, notary or other competent authority shall issue a certificate attesting to the completion of the pre-merger acts and formalities	OB
34	29 (3)	If the law of a Member State to which a merging cooperative is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority members …	R3
35	30 (1)	The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SCE, by the court, notary or other competent authority in the Member State of the proposed registered office of the SCE able to scrutinise that aspect of the legality of mergers of cooperatives and, failing that, mergers of public limited-liability companies	OB R1 R2
36	32	For each of the merging cooperatives the completion of the merger shall be made public as laid down by the law of the Member State concerned in accordance with the laws governing mergers of public companies limited by shares	R2
37	33 (3)	Where, in the case of a merger of cooperatives, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging cooperatives becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging cooperatives or by the SCE following its registration	R3
38	33 (4)	The rights and obligations of the participating cooperatives in relation to both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SCE	R3
39	35 (4)	The draft terms of conversion shall be made public in the manner laid down in each Member State’s law at least one month before the general meeting called upon to decide thereon	R3
40	35 (5)	Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the cooperative being converted into an SCE is subject shall certify *mutatis mutandis* that the rules of Article 22(1)(b) are respected	R3
41	35 (7)	Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised	OP2
42	35 (8)	The rights and obligations of the cooperative to be converted on both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the SCE	R3
43	37 (1)	A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State’s territory	OP4 R1
44	37 (2) (2)	A Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory	OP 1/2
45	37 (3)	No person may at the same time be a member of the management organ and of the	OP2

		supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period	
46	37 (4)	The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number	OP2
47	37 (5)	Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs	OP4
48	39 (4)	The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number	OP2
49	40 (3)	The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility	OP4
50	42 (1)	A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory	OP4
51	42 (2) (1)	The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members	OP2
52	42 (4)	Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs	OP4
53	46 (1) (1)	An SCE's statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE's registered office is situated does not provide otherwise	R3 but R1
54	46 (2)	No person may be a member of any SCE organ or a representative of a member within the meaning of paragraph 1 who: - is disqualified, under the law of the Member State in which the SCE's registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or - is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State	R3 but R1
55	46 (3)	An SCE's statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ	R1
56	47 (1)	Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 37(1) and 42(1), is conferred on two or more members, those members shall exercise that authority collectively, unless the law of the Member State in which the SCE's registered office is situated allows the statutes to provide otherwise, in which case such a clause may be relied upon against third parties where it has been disclosed in accordance with Articles 11(5) and 12	R3 but R1
57	47 (2) (1)	Acts performed by an SCE's organs shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, providing they do not exceed the powers conferred on them by the law of the Member State in which the SCE has its registered office or which that law allows to be conferred on them	R3 R1
58	47 (2) (2)	Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the	OP4

		act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof	
59	47 (4)	A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation	OP1
60	48 (3)	a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation	OP2
61	49	The members of an SCE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SCE the disclosure of which might be prejudicial to the cooperative's interests or those of its members, except where such disclosure is required or permitted under national law provisions applicable to cooperatives or companies or is in the public interest	R1 R2
62	50 (3)	Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned	OP4 R1
63	51	Members of management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to cooperatives in the Member State in which the SCE's registered office is situated, for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties	R1
64	52 (1) (b)	The general meeting shall decide on matters for which it is given sole responsibility by: (a) …; (b) the legislation of the Member State in which the SCE's registered office is situated, adopted under Directive 2003/72/EC	R3 but R1
65	52 (2)	the general meeting shall decide on matters for which responsibility is given to the general meeting of a cooperative governed by the law of the Member State in which the SCE's registered office is situated, either by the law of that Member State or by the SCE's statutes in accordance with that law	R3 but R1
66	53	Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to cooperatives in the Member State in which the SCE's registered office is situated	R1
67	54 (1)	An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SCE's registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings	R1
68	54 (1)	A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation	OP1
69	54 (2)	General meetings may be convened at any time by the management organ or the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the Member State in which the SCE's registered office is situated	R1
70	56 (3)	Where Article 61(4) is applied, relating to quorum requirements, the time between a first and second meeting convened to consider the same agenda may be reduced according to the law of the Member State in which the SCE has its registered office	R3 but R1
71	58 (2)	Members of the SCE's organs and holders of securities other than shares and debentures within the meaning of Article 64 and, if the statutes allow, any other person entitled to do so under the law of the State in which the SCE's registered office is situated may attend a general meeting without voting rights	R3 but R1
72	59 (2) (1)	If the law of the Member State in which the SCE has its registered office so permits,	R3

		the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30 % of total voting rights, whichever is the lower	but R1
73	59 (2) (2)	If the law of the Member State in which the SCE has its registered office so permits, SCEs involved in financial or insurance activities may provide in their statutes for the number of votes to be determined by the members' participation in the cooperative activity including participation in the capital of the SCE. This attribution shall not exceed five votes per member or 20 % of total voting rights, whichever is the lower	R3 but R1
74	59 (2) (3)	In SCEs the majority of members of which are cooperatives, if the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity including participation in the capital of the SCE and/or by the number of members of each comprising entity	R3 but R1
75	59 (3)	As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office	R3 but R1
76	59 (4)	If, on the entry into force of this Regulation, the law of the Member State where an SCE has its registered office so permits, the statutes of that SCE may provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings, provided that the employees' representatives do not together control more than 15 % of total voting rights	R3 but R1
77	61 (3) (2)	Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory	OP2
78	61 (4) (2)	In the cases referred to in the first subparagraph, at least two thirds of the votes cast validly must be cast in favour, unless the law applicable to cooperatives in the Member State in which the SCE's registered office is situated requires a greater majority	R1
79	63 (1)	Where the SCE undertakes different activities or activities in more than one territorial unit, or has several establishments or more than 500 members, its statutes may provide for sectorial or section meetings, if permitted by the relevant Member State legislation	R3 but R1
80	65 (1)	Without prejudice to mandatory provisions of national laws, the statutes shall lay down rules for the allocation of the surplus for each financial year	R3 but R1
81	68 (1)	For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, an SCE shall be subject to the legal provisions adopted in the Member State in which it has its registered office in implementation of Directives 78/660/EEC and 83/349/EEC.	R3
82	68 (1)	However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives	OP4
83	68 (2)	Where an SCE is not subject, under the law of the Member State in which the SCE has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the documents relating to annual accounts available to the public at its registered office	R3
84	69 (1)	An SCE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives relating to the taking up and pursuit of the business of credit institutions as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts	R3
85	69 (2)	An SCE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated	R3

		under directives as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts	
86	70	The statutory audit of an SCE's annual accounts and its consolidated accounts if any shall be carried out by one or more persons authorised to do so in the Member State in which the SCE has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC	R3
87	71	Where the law of a Member State requires all cooperatives, or a certain type of them, covered by the law of that State to join a legally authorised external body and to submit to a specific system of auditing carried out by that body, the arrangements shall automatically apply to an SCE with its registered office in that Member State provided that this body meets the requirements of Directive 84/253/EEC	R1
88	72	As regards winding-up, liquidation, insolvency, cessation of payments and similar procedures, an SCE shall be governed by the legal provisions which would apply to a cooperative formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting	R1
89	73 (1) (1)	On an application by any person with a legitimate interest or any competent authority, the court or any competent administrative authority of the Member State where the SCE has its registered office shall order the SCE to be wound up where it finds that there has been a breach of Article 2(1) and/or Article 3(2) and in the cases covered by Article 34	OB
90	73 (1) (2)	The court or the competent administrative authority may allow the SCE time to rectify the situation. If it fails to do so within the time allowed, the court or the competent administrative authority shall order it to be wound up	OB
91	73 (2) 73 (3) 73 (4)	When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures … The Member State in which the SCE's registered office is situated shall put in place the measures necessary to ensure that an SCE which fails to regularise its position in accordance with paragraph 2 is liquidated. The Member State in which the SCE's registered office is situated shall seek judicial or other appropriate remedy with regard to any established infringement of Article 6	OB
92	73 (5)	Where it is established on the initiative of either the authorities or any interested party that an SCE has its head office within the territory of a Member State in breach of Article 6, the authorities of that Member State shall immediately inform the Member State in which the SCE's registered office is situated	OB
93	74	Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating shall be publicised in accordance with Article 12	R3
94	75	Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE	R3 but R1
95	76 (4)	The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion	R3
96	76 (5)	Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the SCE being converted into a cooperative is subject, shall certify that the latter has assets at least equivalent to its capital	R3
97	76 (6)	The general meeting of the SCE shall approve the draft terms of conversion together with the statutes of the cooperative. The decision of the general meeting shall be passed as laid down in the provisions of national law	R3 but R1
98	77 (1)	If and so long as the third phase of EMU does not apply to it, each Member State	OP2

		may make SCEs with registered offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital	R2
99	77 (2)	If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State	OP2 R2
100	78 (1)	Member States shall make such provision as is appropriate to ensure the effective application of this Regulation	OB
101	78 (2)	Each Member State shall designate the competent authorities within the meaning of Articles 7, 21, 29, 30, 54 and 73. It shall inform the Commission and the other Member States accordingly	OB

Apart from the general one in art. 8, par. 1, *c*), there are 101 specific references in a Regulation made up of 80 articles, which means more than one reference (1.25 references, to be precise) for each article on average. It goes without saying that this mechanism risks seriously hampering the effectiveness of the SCE Regulation and reducing the probability of its success. As will be pointed out later, references to national law are seen as a major problem by the stakeholders consulted for this research, which represents a cause of complexity of the SCE Regulation, which is considered, in turn, a major dissuasive factor for setting up an SCE.

In fact, in light of the above finding, one must question whether the provisions of the SCE Regulation, despite the wording of art. 8, play a primary role in the regulation of the SCE, considering the scope of the regulation. From this point of view, it seems that in reality both European and national law have an equal role in regulating the SCE, while self-regulation via statutes occupies a residual role.

The situation is even worse if one considers that these 101 references are not all of the same nature but variable; furthermore, that these 101 references do not all refer to the same branch of national law; finally that, when reference is made to cooperative law, the complexity and variability of cooperative law in Europe contribute to making SCE law a system which even the most expert specialist would find it difficult to govern.

The analysis will now be directed to classifying these references in useful categories. To do this, one must take into account the nature of the reference, and its object.

2.1.4.1. Options and national implementation rules

According to their nature, a relevant number of references in the SCE Regulation can be grouped in the category of "options"[25]. Within this category, options can then be divided into subcategories according to their function.

In this text and related tables, options in the strict sense are only considered those provisions of the SCE Regulation which give Member States the power to dictate a particular rule on SCE, either different from, or additional to that provided by the SCE Regulation, so that rules governing SCEs remain those provided for by the SCE Regulation where the option is not implemented by the MS. Furthermore, an option is in nearly all cases introduced by the formula "a Member State may provide" or an equivalent one. This is the typical case of art. 6, according to which the Member State may oblige SCEs registered in its territory to locate the head office and the registered office in the same place, while the SCE Regulation only requires the registered office to be located in the same Member State in which the head office is situated. Another clear example can be found in the provisions allowing MSs (and EEA countries) to determine the minimum and/or the maximum number of members of SCE organs (art. 37, par. 4; 39, par. 4; 42, par. 2, subpar. 1). On the other hand, as pointed out below, there are many situations in which it is not evident whether the SCE Regulation awards MSs a real option or only refers to Member States' national law as a condition for the legitimacy of the rule of the SCE R itself or of SCE statutes.

In fact, options in the SCE Regulation raise a number of problematic issues.

Firstly, returning to the issue of identification of options and their distinctions from simple references, this division is not straightforward. For example, one may consider art. 14, par. 1, subpar. 2, which allows SCE statutes to provide for the admission of investor (non-user) members only if national law so permits. Strictly speaking, this does not appear to be a real option, but only a reference to the applicable national legislation. Nevertheless, a Member State (whose legal system lacks such a provision) might well adopt a specific rule stating that SCEs are allowed to admit investor-members (regardless of whether the same possibility is given to national law cooperatives, if art. 9 of the SCE R is meant to operate only in favour of SCEs), thus "transforming" a "simple" reference into an "option". The same conclusion holds true with regard to other provisions, such as art. 59, par. 2, among others. The most significant example of this is provided by the Dutch SCE implementation law, whose art. 8 states: "the statutes of a European Cooperative Society with registered

[25] Particular attention to options and their implementation is given by the EC in the contract relating to this study. Also in the report by Ernst & Young, *Study on the operation and the impacts of the Statute for a European Company (SE). Final report 9 December 2009*, the analysis of option implementation assumes a key role.

office in the Netherlands may provide that the membership is available for non-using members, as referred to in article 14, paragraph 1, of the Regulation", while its art. 15 states that "in the cases referred to in article 63, paragraph 1, of the Regulation, the statutes of a European Cooperative Society may provide for sectorial meetings or section meetings".

The above clearly reveals that, however interesting an analysis of option implementation might be, this could never be complete, for only the analysis of all implementation rules can give the overall picture of SCE Regulation implementation by MSs (and EEA countries).

The category of "options", therefore, might be a "false" and misleading analytical instrument.

Secondly, it is not evident whether the option must be expressly exercised by the Member State or, when not, corresponding national rules apply equally and automatically, although not specifically dictated for the SCE. For example, should art. 2, par. 2, be intended in the sense that it requires a specific national provision on SCE, or in the sense that, where the existing national law generally permits that an organisation whose head office is not within the European Union may take part in the foundation of a national law company, such permission also regards the foundation of an SCE? (The same question may regard art. 39, par. 4, among others). To answer in the affirmative would imply that corresponding national rules apply to SCEs even though, strictly speaking, the matter is covered by an option: in such a case the difference between an "option" and a "simple" reference would almost dissolve.

In this regard one must also consider that SCE implementation laws frequently make an explicit general reference to the national legal system, by declaring the national law on cooperatives and/or companies applicable to an SCE. In Lithuanian SCE law X-696, for example, there is a provision according to which "the European cooperative societies which have their registered office in the Republic of Lithuania shall be governed *mutatis mutandis* by the legal norms of the Republic of Lithuania regulating cooperative societies (cooperatives) and public limited liability companies to the extent that the Regulation permits and the Regulation, this Law and other legal acts regulating European cooperative societies do not establish otherwise" (art. 1, par. 3, Law X-696). In this and equivalent cases, the issue is whether such general reference can be considered an exercise of options with regard to matters which find regulation in the national cooperative and/or company law referred to.

Even more relevant is the case of MSs that have not implemented the SCE Regulation, assuming that their national cooperative law was already adequate to deal with SCEs without the need to create a special implementation law. This is particularly the case of

Italy and Malta, as the other countries which have not yet implemented the SCE Regulation have shown their intention to implement the SCE Regulation with a specific law in the near future (for example, in Spain where the legislative process is in an advanced stage). If it is correct that options must be specifically implemented by MSs, then the strategy of not implementing the SCE Regulation, and relying on the current national law, would fail to give a national identity to the SCE. This would regard not only the internal organisation of the SCE (for example the functioning of its organs), but also other aspects, such as the transfer of the registered office.

The best example is offered by the Italian case. In the ministerial communication related to the SCE Regulation (the same communication which maintains that no SCE implementation law is necessary in Italy), it is affirmed that the certificate of art. 7, par. 8, SCE R, may not be issued by the competent authority before SCE indivisible assets have been devolved to "mutual funds", according to the principle of disinterested distribution of remaining assets applicable to Italian cooperatives[26]. However, it must be recalled that Italy has not issued any SCE implementation law and therefore it is doubtful that the option laid down in art. 7, par. 14, subpar. 1, could be considered as having been exercised by this country[27]. A counterargument could be, however, that when MSs have designated the competent authority within the meaning of art. 7, par. 14, subpar. 1, this designation is functionally equivalent to the exercise of the pertinent option.

Thirdly, one must inquire how options must be implemented by MSs, whether MSs are free in this regard or must follow specific criteria[28]. There are two possible answers. The first is that, if the SCE Regulation awards an option, the MS is free to determine the content of the national rule of implementation. The second is that, in this case, the principle of non discrimination of art. 9, SCE R, must guide national legislators, so that options must be implemented in view either of promoting an SCE or of rendering its legal treatment equal to the treatment accorded to national cooperatives, but never with the end of thwarting an SCE in comparison to a national cooperative.

With regard to their object, options in the SCE Regulation may be grouped as follows:

- a first group (OP1 in table 3 below), consisting of four options, serves the purpose of enlarging the capacity of an SCE: therefore, if the option is implemented by MSs, the SCE could benefit; one of these options (that of art. 2, par. 2: no 1 of table 3 below) has a public interest rationale, while the other three relate mainly to the governance of the SCE;

[26] At least those which are mainly mutual cooperatives: see the Italian report in part II of this final study.
[27] For further comments on this issue, see the Italian report in part II of this final study.
[28] The SCE Regulation itself identifies such criteria at times: see, for example, art. 50, par. 3, which mentions the same conditions applicable to cooperatives governed by the law of the Member State concerned.

- a second group (OP2 in table 3 below), consisting of ten options, restricts the SCE freedom of self-regulation: therefore, the implementation of such options is detrimental for the SCE; only three of these options (those in art. 6, 77, par. 1 and 2: respectively no 2, 29 and 30 of table 3 below) concern the public interest of the MS; one (that in art. 37, par. 7: no 11 of table 3 below) may be justified by the protection it offers employees participating in an SCE; while the remaining six pertain to the governance of the SCE;

- a third group (OP3 in table 3 below), consisting of six options, may be distinguished from the second group only by the fact that the implementation of these options serves the purpose of protecting third parties, such as SCE members or creditors (those in articles 7, par. 2; 7, par. 7, subpar. 1; 7, par. 7, subpar. 2; 28, par. 2: respectively no 3, 4, 5 and 10 of table 3 below), or the public interest (those in art. 7, par. 14, subpar. 1, and art. 21: respectively no 6 and 9 of table 3 below);

- a fourth group (OP4 in table 3 below) includes nine options which cannot be included in the former three groups; most of these options (with the sole exception of those in no 8 and 28) relate to the SCE governance;

- one option, that of art. 37, par. 2, subpar. 2 (OP1/2, no 13 in table 3 below), can be included in both the first and second group; this, too, concerns SCE governance.

2.1.4.1.1. The implementation of options in MSs and EEA countries

Table 3 below presents all 30 options (at least, those which, according to our interpretation, should be considered as such). The subsequent tables 3a and 3b synthetically show whether these options were implemented or not by the 30 countries involved in this research (Y = Yes; N = No; NA = Not applicable), while tables 4a and 4b provide figures on option implementation.

In considering tables 3a and 3b, and the corresponding figures in tables 4a and 4b, one must take into account several factors which suggest that they be evaluated *cum grano salis*, and particularly that:

- six countries have not adopted any implementation law at all; nonetheless, they are included in the tables as they had not implemented options (this choice is correct in light of the aforementioned argument that, for an option to be considered

implemented, a state must expressly opt for it in the SCE implementation law or elsewhere);

- moreover, in Romania and Bulgaria (and particularly in the former country) the national SCE implementation measure confined itself to dictating only the most essential provisions for allowing the establishment of SCEs in the country (and, therefore, option implementation is null in Romania and almost null in Bulgaria);

- options 16 and 21 are very general, so that answering YES or NO partly depends on the discretion of interpreters: How should a case be considered in which MSs only provided for the minimum or maximum number of organs? Is it an example of implementation of options 16 and 21? Moreover, how should a case be considered in which MSs simply declared applicable their national rules on cooperatives to the SCE one-tier or two-tier system of administration and control? Is it an example of implementation of options 16 and 21?

- the considerable number of legal provisions to be dealt with in this regard and the language barrier could lead to minor mistakes.

More detailed and comparative tables of option implementation, including the content of the implementation rule (where appropriate), are provided in appendix 1 to part I of this final study.

Table 3. *Options in the SCE Regulation*

No	Art.	Content	Q
1	2 (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	OP1
2	6	The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place	OP2
3	7 (2)	The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office	OP3
4	7 (7) (1)	Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer	OP3
5	7 (7) (2)	A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer	OP3
6	7 (14) (1)	The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest	OP3
7	11 (4) (2)	In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting	OP1
8	12 (2)	However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives	OP4
9	21	The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2)	OP3
10	28 (2)	A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger	OP3
11	35 (7)	Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised	OP2
12	37 (1)	A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory	OP4 R1
13	37 (2) (2)	A Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general	OP 1/2

		meeting under the same conditions as for cooperatives that have registered offices within its territory	
14	37 (3)	No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period	OP2
15	37 (4)	The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number	OP2
16	37 (5)	Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs	OP4
17	39 (4)	The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number	OP2
18	40 (3)	The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility	OP4
19	42 (1)	A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory	OP4
20	42 (2) (1)	The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members	OP2
21	42 (4)	Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs	OP4
22	47 (2) (2)	Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof	OP4
23	47 (4)	A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation	OP1
24	48 (3)	a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation	OP2
25	50 (3)	Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned	OP4 R1

26	54 (1)	A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation	OP1
27	61 (3) (2)	Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory	OP2
28	68 (1)	However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives	OP4
29	77 (1)	If and so long as the third phase of EMU does not apply to it, each Member State may make SCEs with registered offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital	OP2 R2
30	77 (2)	If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State	OP2 R2

Table 3a. *Are the options implemented? (AT-IS)*

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IS
1	N	Y	N	Y	Y	N	Y	N	N	N	Y	N	N	Y	Y
2	Y	Y	Y	Y	N	N	Y	N	N	N	N	Y	Y	N	N
3	Y	N	N	N	Y	N	N	Y	N	N	Y	Y	Y	Y	Y
4	Y	Y	N	N	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y
5	Y	Y	N	Y	N	Y	Y	Y	N	N	Y	N	N	Y	N
6	N	Y	N	Y	N	Y	Y	Y	N	N	N	Y	N	Y	Y
7	N	Y	N	N	Y	N	Y	N	N	N	N	N	N	Y	N
8	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N
9	N	Y	N	Y	N	Y	Y	Y	N	N	N	Y	N	Y	Y
10	Y	N	N	Y	Y	Y	Y	N	N	N	Y	N	Y	N	Y
11	N	N	N	N	N	N	N	N	N	N	N	Y	N	Y	N
12	N	N	N	Y	N	Y	Y	N	N	N	Y	Y	N	N	Y
13	Y	Y	N	Y	Y	Y	N	N	N	N	Y	Y	Y	Y	N
14	N	Y	N	Y	Y	Y	N	Y	N	N	N	Y	Y	N	Y
15	N	N	N	Y	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y
16	Y	Y	N	N	N	Y	Y	Y	N	N	N	Y	N	N	Y
17	N	Y	N	Y	Y	Y	Y	N	N	N	N	Y	Y	N	Y
18	Y	N	N	N	N	Y	N	N	N	N	N	Y	N	Y	N
19	Y	N	N	Y	Y	Y	Y	N	N	N	Y	Y	Y	N	Y
20	N	Y	N	Y	Y	Y	Y	N	N	N	N	Y	Y	Y	Y
21	Y	N	N	N	Y	Y	Y	N	N	N	N	Y	Y	N	Y
22	N	N	N	Y	N	N	Y	N	N	N	N	Y	N	N	N
23	Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y	N	N	N
24	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N
25	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
26	N	Y	N	N	N	N	Y	N	N	N	N	N	N	Y	N
27	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N
28	Y	N	Y	Y	N	N	N	N	N	N	N	Y	N	N	N
29	NA	NA	N	NA	N	NA	N	N	NA	NA	NA	NA	N	NA	Y
30	NA	NA	N	NA	N	NA	N	N	NA	NA	NA	NA	N	NA	Y

Table 3b. *Are the options implemented? (IT-UK)*

	IT	LI	LT	LU	LV	MT	NL	NO	PL	PT	RO	SE	SI	SK	UK
1	N	Y	N	N	N	N	Y	Y	Y	N	N	Y	N	Y	Y
2	N	N	Y	N	Y	N	N	N	N	N	N	N	N	N	N
3	N	N	Y	N	Y	N	Y	N	Y	N	N	N	N	Y	Y
4	N	Y	Y	N	Y	N	Y	N	Y	N	N	Y	Y	Y	Y
5	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	Y
6	N	N	Y	N	Y	N	Y	Y	Y	N	N	Y	Y	N	Y
7	N	N	N	N	N	N	N	N	N	N	N	Y	N	Y	Y
8	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y
9	N	N	Y	N	Y	N	Y	N	Y	N	N	Y	Y	N	Y
10	N	N	N	N	Y	N	N	N	N	N	N	Y	Y	Y	N
11	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
12	N	Y	Y	N	N	N	N	Y	Y	N	N	Y	Y	N	N
13	N	Y	N	N	Y	N	Y	Y	Y	N	N	N	Y	Y	Y
14	N	Y	N	N	N	N	N	Y	Y	N	N	Y	N	Y	N
15	N	Y	Y	N	N	N	N	Y	Y	N	N	Y	Y	Y	Y
16	N	Y	N	N	Y	N	N	Y	N	N	N	Y	N	N	Y
17	N	Y	Y	N	Y	N	N	Y	Y	N	N	Y	Y	Y	Y
18	N	Y	N	N	N	N	N	N	Y	N	N	Y	Y	Y	Y
19	N	Y	Y	N	N	N	N	Y	Y	N	N	Y	Y	Y	N
20	N	Y	Y	N	Y	N	Y	Y	Y	N	N	Y	Y	Y	Y
21	N	Y	N	N	Y	N	N	Y	Y	N	N	Y	Y	Y	Y
22	N	N	N	N	N	N	N	Y	N	N	N	N	Y	N	N
23	N	Y	N	N	N	N	Y	Y	N	N	N	N	Y	Y	Y
24	N	N	Y	N	N	N	N	N	N	N	N	Y	N	Y	N
25	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
26	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y
27	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
28	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
29	NA	Y	N	NA	Y	NA	NA	N	N	NA	N	Y	NA	NA	Y
30	NA	N	N	NA	Y	NA	NA	N	N	NA	N	Y	NA	NA	Y

Table 4a. *Option implementation: total by country*

COUNTRY	IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
AUSTRIA	12	16	2
BELGIUM	14	14	2
BULGARIA	3	27	0
CYPRUS	17	11	2
CZECH REPUBLIC	13	17	0
DENMARK	17	13	0
ESTONIA	9	21	0
FINLAND	9	19	2
FRANCE	19	9	2
GERMANY	17	11	2
GREECE	0	28	2
HUNGARY	11	19	0
ICELAND	16	14	0
IRELAND	13	15	2
ITALY	0	28	2
LATVIA	13	17	0
LIECHTENSTEIN	14	16	0
LITHUANIA	11	19	0
LUXEMBOURG	0	28	2
MALTA	0	28	2
NETHERLANDS	9	19	2
NORWAY	13	17	0
POLAND	15	15	0
PORTUGAL	0	28	2
ROMANIA	0	30	0
SLOVAKIA	15	13	2
SLOVENIA	14	14	2
SPAIN	0	28	2
SWEDEN	18	12	0
UNITED KINGDOM	19	11	0
TOTAL	**311**	**557**	**32**

Table 4b. *Option implementation: total by option*

No	IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
1	14	16	0
2	9	21	0
3	14	16	0
4	20	10	0
5	10	20	0
6	16	14	0
7	7	23	0
8	2	28	0
9	15	15	0
10	12	18	0
11	2	28	0
12	12	18	0
13	17	13	0
14	13	17	0
15	17	13	0
16	12	18	0
17	17	13	0
18	10	20	0
19	16	14	0
20	19	11	0
21	15	15	0
22	5	25	0
23	13	17	0
24	4	26	0
25	1	29	0
26	5	25	0
27	1	29	0
28	4	26	0
29	5	9	16
30	4	10	16

2.1.4.1.2. SCE Regulation option implementation and SE Regulation option implementation: a comparison by country

Table 1 in appendix 1a to part I of this final study shows options in the SCE Regulation and the exact corresponding options in the SE Regulation, while subsequent table 2 in the same appendix compares SCE and SE option implementation, highlighting differences in this implementation by the concerned countries. Data on SE option implementation are taken from Ernst & Young's 2009 *Study on the operation and the impacts of the Statute for a European Company (SE)* – a report drawn up following a call for tender from the European Commission. The comparison is limited to 24 options (those which have exactly the same content in both European regulations) and 25 countries (as information on option implementation is provided for only 25 countries in the Ernst & Young report, with the exclusion of Ireland, Iceland, Liechtenstein, Lithuania and Malta).

2.1.4.1.3. Options in the perspective of SCE Regulation reform

In general, the technique of options should serve the purpose of allowing MSs (and EEA countries) to adapt the regulation of SCEs to their *desiderata*. Consequently, from a trans-national perspective, the implementation of options may enlarge the diversity of treatment among SCEs registered in diverse countries.

In addition, the technique of options raises, among others, those main interpretative questions which have been pointed out in paragraph 2.1.4.1. of this chapter.

This approach should be re-considered by European legislators, who, moreover, recently manifested their willingness to go beyond it in the 2008 proposal for a Council regulation on the statute for an SPE, which at present contains only two options (those in points 29 and 30 of Tables 3, 3a, 3b and 4b above).

If there is political consensus on the opportunity to revise the SCE Regulation, these arguments should at least be considered:

- in general, the total number of options should be reduced, by eliminating those which principally regard SCE internal organisation (its governance), namely, 17 options indicated in points 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 of Tables 3, 3a, 3b and 4b above; moreover, these options do not appear to be of crucial importance, not even from the point of view of the identity of a cooperative; there is no apparent reason why (and homogeneity of SCEs and national cooperatives may not certainly be one, as the SCE is an autonomous

parallel European legal form) these matters should be left to the judgement of MSs and not directly regulated by the SCE Regulation itself[29], nor left to the discretionary power of SCE statutes[30];

- more particularly, options 16 and 21 make no sense as such, given that, if one argues that a measure is necessary, then this measure should not be entrusted to an optional implementation; rather, there are three possible alternatives in this regard:
    - either an MS (or EEA country) is obliged to adopt appropriate measures for the one-tier or the two-tier SCE system of administration and control (where the national legal system lacks these measures), or
    - a more complete SCE Regulation provides these rules itself, or
    - the SCE Regulation leaves the regulation of these matters to SCE statutes, thus increasing the power of SCE self-regulation;

- as to options 8 and 28, considering that MSs (and EEA countries) have not taken advantage of them (as Tables 4a and 4b above clearly show), these could be eliminated as well;

- as to the remaining 11 options (1, 2, 3, 4, 5, 6, 9, 10, 11, 29, 30):
    - option 1 is related to the omnipresent issue of the coincidence of the registered office and the head office of companies, which is one of the pillars of the SCE Regulation (see art. 6); the SCE Regulation could not contradict itself, and this is probably why art. 2, par. 2, was conceived as an option for MSs and not directly as a permissive rule for SCEs; as long as art. 6 remains untouched[31], given that the implementation of this option potentially enlarges the capacity of an SCE, option 1 must be maintained;
    - option 2, on imposing on SCEs the obligation of locating the head office and the registered office in the same place within the territory of the MS of registration, must be pondered in light of art. 2, par. 2, as well: modification of art. 2, par. 2, according to the recent trend favouring the incorporation theory (against the real seat theory), would, of course, make option 2 meaningless;
    - options 3-6 should be maintained as they try to deal with a matter which is relatively new and contrasted in the European legal framework (the transfer

[29] E.g., the SCE Regulation itself could determine the time limit in art. 37, par. 3; or award each member of the supervisory organ the facility provided for in art. 40, par. 3.
[30] E.g., with regard to the number of members of the organs.
[31] The point will be addressed later, but it is immediately worth noting that the proposal for SPE Regulation, in accordance with the Centro judgement of the ECJ of 9.3.2009 (C-212/97), does not require the SPE to have its central administration or principal place of business, that is to say, its head office, in the MS in which it has its registered office (art. 7, par. 2).

of the registered office) and definitely involves national sensitivity, all of which needs to be taken adequately into account; nonetheless, in option 6 the notion of "public interest", which may justify state opposition to the transfer of SCE registered office, would need to be better defined by providing a few examples of its possible application;

- options 9 and 10 should be maintained;
- option 11 has only been implemented twice by MSs (and EEA countries) and therefore could be substituted by a direct provision of the SCE Regulation which provides for the favourable vote of a qualified majority or leaves the matter (whether to provide for such favourable vote or not) to SCE statutes;
- options 29 and 30 relate to a transitory and economic public order issue, and therefore should be maintained.

In sum, the general criterion suggested here to reduce the number of options is to maintain only those options justifiable in terms of the cross-border nature of the SCE and the protection of the public interest or the interest of third parties. In contrast, options related to pure organisational matters should be replaced either by a (mandatory or default) rule of the SCE Regulation, or by self-regulation.

2.1.4.2. National rules which apply in virtue of specific references

In addition to the general reference in art. 8, par. 1, *c*), and those references which may be qualified as "options" or "obligations", there are several other "simple" explicit references to national law in the SCE Regulation.

These references may be classified according to both the branch of national law to which they refer and to their object (as in the analysis of options described above).

References indicated by "R1" in table 2 above refer directly to national cooperative law: there are 14, and their object is mainly connected to the formation (4, 23, 24, 29 of table 2 above) and governance of the SCE (55, 57, 66, 67, 69, 78 of table 2 above); two relate to duties of conduct and liability (61 and 63 of table 2 above); another regards regulation of extraordinary events (88 of table 2 above); yet another external control (87 of table 2 above).

References indicated by "R2" in table 2 above refer directly to national public limited-liability company law: there are 13, and their object is mainly connected to SCE formation (3, 5, 26, 27, 29, 30, 32, 35, 36 of table 2 above); three regard the matter of disclosure (14,

17, 18 of table 2 above); and another regards duties of conduct (6 of table 2 above). In certain cases, national public limited-liability company law only applies when the reference to national cooperative law fails (see 24, 32 and 61 of table 2 above).

References indicated by “R3” in table 2 above do not expressly refer to a particular branch of national law, although the majority of them can be considered as implicit references to cooperative law, in which case they are indicated by “R3 but R1” in table 2 above.

There are 21 R3-type references, which deal with many aspects, mainly SCE formation and disclosure requirements (see 2, 8, 11, 13, 19, 28, 34, 37-40, 42, 57, 81, 83-86, 93, 95, 96 of table 2 above).

There are 17 R3 but R1-type references, which deal almost exclusively with matters related to SCE internal governance (see 21, 22, 53, 54, 56, 64, 65, 70, 72-76, 79, 80, 94, 97 of table 2 below).

As observed above, the role these references assign to national law is not mainly to provide additional rules and fill potential gaps in the SCE Regulation and in SCE statutes, as envisaged by the general provision in art. 8, SCE R, when it deals with the law applicable to SCEs. Consequently, as represented by figure 1 below, thanks to these references, national law ends up assuming a role substantially equal (or even superior) to that of the SCE Regulation if one considers the quantity and importance of matters regulated.

Indeed, almost all of these specific references to national law - regardless of the matter concerned (formation, governance, publicity, protection of creditors, etc.) and the branch of the law they refer to (cooperative or public limited-liability company law) - either give precedence to the national law provision over the SCE Regulation provision, or qualify a certain national law provision as mandatory for SCEs or necessary for SCE statutes to adopt particular organisational solutions. The cases where national law, which applies in virtue of reference, plays only the role of providing supplementary or default rules are very limited (see references 22, 23, 24, 64, 65, 66, in table 2 below).

Therefore, providing only a few examples:

- in a first group of cases, the SCE Regulation dictates a rule, but at the same time states that if there is a contrary provision of national law, this contrary provision prevails (e.g., art. 54, par. 1, SCE R, according to which: “an SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SCE’s registered

office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings");

- in another group of cases, the SCE Regulation empowers SCE statutes to regulate a matter, while providing, however, that self-regulation is subject to mandatory provisions of national law (e.g., art. 65, par. 1, SCE R: "without prejudice to mandatory provisions of national laws, the statutes shall lay down rules for the allocation of the surplus for each financial year");

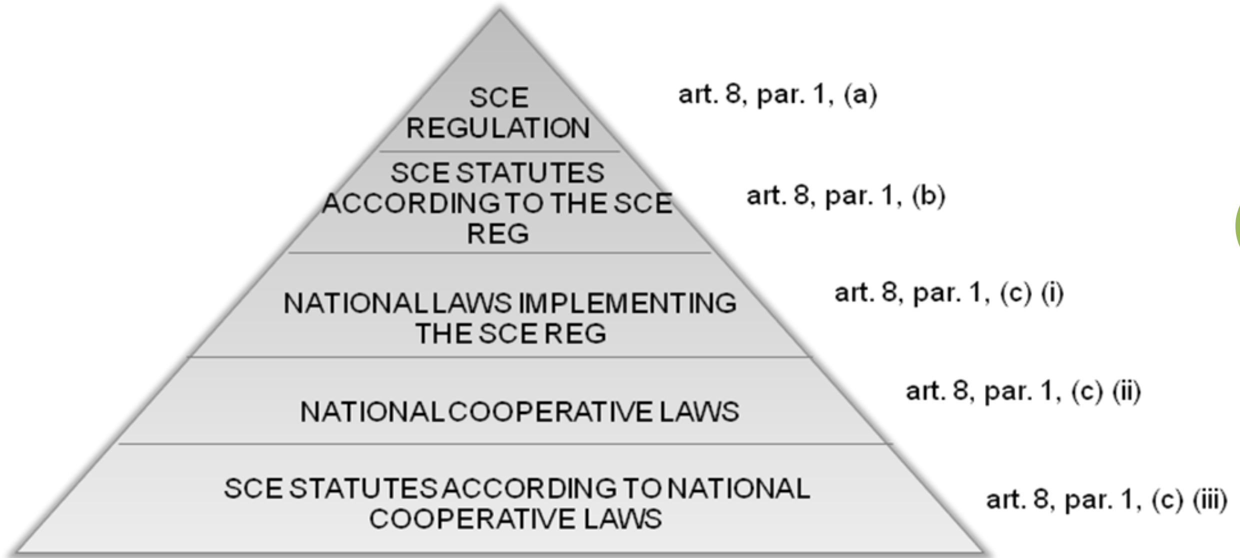
- in similar cases, the SCE Regulation awards SCE statutes an option which the SCE is allowed to exercise only if national law does not provide otherwise (e.g., art. 46, par. 1, subpar. 1, SCE R: "an SCE's statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE's registered office is situated does not provide otherwise"), or if national law legitimates SCE statutes to do so (e.g., art. 46, par. 3, SCE R: "an SCE's statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ");

- even more complex is the situation where SCE Regulation lays down a rule, while permitting SCE statutes to derogate from it, but only provided that the content of the derogating provision would be permitted by national law (e.g., art. 75, SCE R, which states that: "net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE").

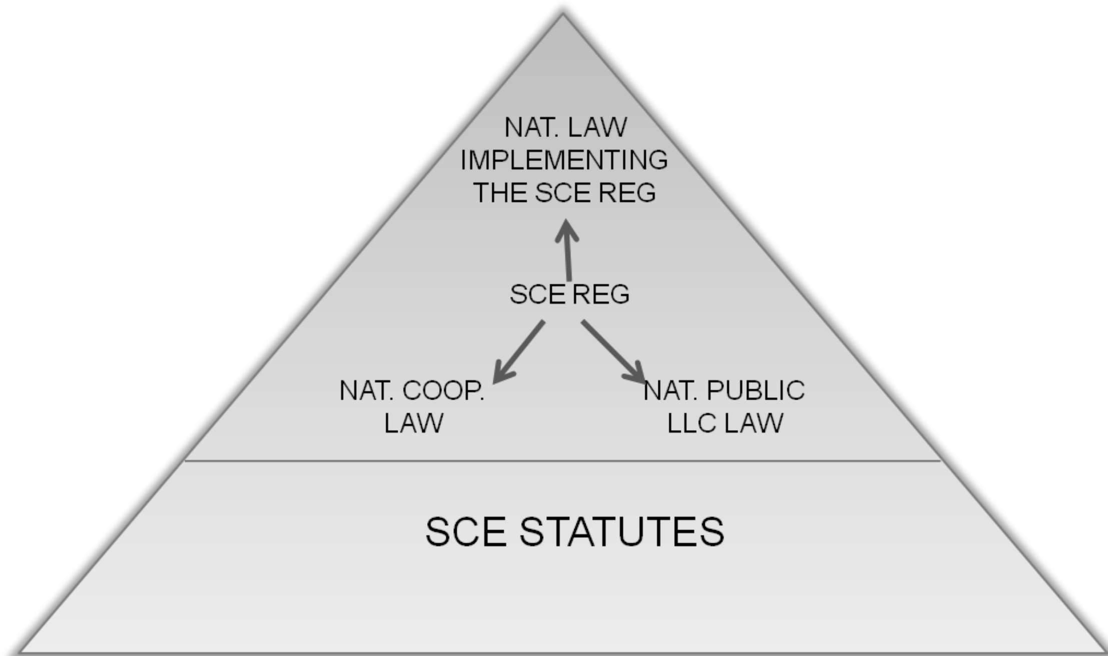
Given this, comparing the formal hierarchy of sources of SCE law with the substantial scope of each legal source, the result is that both the SCE Regulation and national law are at the top of the pyramid, while SCE statutes only play a secondary role, as Figure 1 below seeks to represent.

Fig. 1. *SCE law: hierarchy of sources of SCE law and their scope*

a) HIERARCHY OF SOURCES OF SCE LAW



b) SCOPE OF THE SOURCES



In the contract regarding this study, the European Commission asks “whether the SCE Regulation in the future should provide simpler and stronger rules, and whether references back to national laws should be minimised”.

After the critical examination of the complex system arising from the SCE Regulation, the answer cannot be but affirmative. References cannot be, however, completely eliminated. Rather, our recommendation is to:

- make SCE law more rational;
- better organise the hierarchy of sources;
- ensure that the SCE Regulation directly regulates matters which do not appear to be so fundamental from the MS perspective, and identify, on the contrary, the specific cases in which the intervention of national laws appears to be necessary.

Criteria to re-arrange the entire Regulation and make it more attractive for potential stakeholders should be identified, and in doing so one should reflect on:

- how to simplify the relationship between the various sources of SCE law: the SCE Regulation, SCE statutes, national law;
- the opportunity to increase self-regulation (particularly with regard to governance issues);
- consequently, when SCE Regulation should dictate mandatory rules (e.g., maximum number of votes an SCE statute may award investor-members) and when it should only dictate default rules;
- finally, when national law should take precedence over SCE Regulation and SCE statutes provisions (e.g., cross-border matters involving the economic public order of the country, such as the transfer of the registered office, the formation by merger, etc.).

One fundamental point is SCE cooperative identity and its definition; in particular, whether only the SCE Regulation or, as at present, both the SCE Regulation and national laws (legitimated by explicit references in the SCE Regulation) should identify and protect it through mandatory rules.

Given, as stakeholder consultation conducted for this research has shown, that it is not the degree of flexibility which makes the SCE Regulation more attractive than national cooperative law or *vice versa* (as may perhaps be the case with regard to the SE[32]), competition between the SCE Regulation and national law (if one wants such a competition to take place) is mainly realised on the basis of the identity of the structure which the two regulations give rise to.

On this issue, one of the main goals of the project was to compare the SCE Regulation and national cooperative laws with regard to those rules which principally contribute to define cooperative identity. The results of this comparison are presented and discussed in the next chapter, as well as summarised in appendix 3 to part I of this final study by pertinent tables.

2.1.4.3. National rules and measures adopted in execution of obligations

Communitarian regulations are European normative acts which in principle, unlike directives, do not need to be implemented by Member States. In fact, the European regulation "shall be binding in its entirety and directly applicable in all Member States" (art. 288, par. 2, Treaty on the functioning of the European Union - "TFEU"). Yet, also with regard to regulations, Member States are obliged to adopt "all measures of national law necessary to implement legally binding Union acts" (art. 291, par. 1, TFEU). This obligation exists both in the case in which EC regulations do not require a national implementing law, but this law turns out to be necessary in fact, and moreover in the case in which they expressly require such a law.

This is exactly the case of the SCE Regulation, which explicitly requires Member States to take measures necessary for its implementation, namely:
- "to make such provision as is appropriate to ensure the effective application of this Regulation" (art. 78, par. 1);
- "to designate the competent authorities within the meaning of articles 7, 21, 29, 30, 54 and 73", as well as "to inform the Commission and the other Member States accordingly" (art. 78, par. 2);
- "to take appropriate measures" in the case of violation by an SCE of art. 6, SCE Reg. (art. 73, par. 2-5).

[32] This may justify the choice to analyse the relationship between SE provisions and national public limited-liability company law in terms of greater or less flexibility (and consequent attractiveness) from the point of view of the majority shareholder: see Ernst & Young, *Study on the operation and the impacts of the Statute for a European Company (SE). Final report 9 December 2009*, report drawn up following call for tender from the European Commission.

Furthermore, according to art. 11, par. 1, SCE R, MSs were required to designate a register in accordance with the law applicable to public limited-liability companies.

As to the general provision of art. 78, par. 1, one can only refer to the implementation laws (see table 1 above). No other specific measures in favour of the SCE are known thus far.

As to the register for the registration of SCEs according to art. 11 SCE R, some MSs and EEA countries have expressly individuated said register in their SCE implementation law (or other consequential measure)[33], while others have neither mentioned the register in the SCE implementation law nor designated it elsewhere. In this case, however, the register has been *de facto* determined by reference to the national register of cooperatives where existent (in this case, as pointed out below, disregarding the - apparently compulsory - indication in art. 11, par. 1, SCE R), or to the general national register of companies. The absence of explicit designation has not impeded the creation of SCEs: as said, six out of 17 existing SCEs have been set up in countries where no SCE implementation law exists and the register has not been expressly individuated.

Furthermore, one must point out the inappropriateness of the reference made in art. 11, par. 1, SCE R, to the law applicable to public limited-liability companies. In fact, according to national cooperative laws, a specific register of cooperatives is established in some countries (see point 4 of the comparative table of national legislation in appendix 3). Consequently, the compulsory indication to MSs contained in art. 11, par. 1, SCE R, has not been followed by those MSs where a specific register for cooperatives operates. Such a decision appears to be logical, as there is no reason – particularly in light of the principle of non discrimination laid down in art. 9, SCE R – to treat SCEs differently than national cooperatives in this regard. In the perspective of SCE Regulation amendment, art. 11, par. 1, should certainly be one of those provisions subject to revision. Accordingly, some MSs have established a specific register for SCEs with the same authority that holds the register of cooperative societies[34].

The same considerations apply to the related provision in art. 12, par. 1, SCE R. Here, too, a national implementing measure should be adopted by MSs following the indication to select that manner of publication which applies to public limited-liability companies. Nonetheless, considering that the Authority holding the register of art. 11, par. 1, is normally the same Authority responsible for the publication of documents and particulars,

[33] See, for example, art. 31a of the Bulgarian law on the commercial register of 2006 as amended in 2007 (but the amendment entered into force in 2008) in order to include SCE registration.
[34] This is, for example, the case of UK (see art. 8 of the UK SCE law).

MSs have not followed this indication and, moreover, in certain cases, have expressly pointed out their own diverse view[35].

The table below presents national registers according to art. 11, SCE R. These are the registers from which national experts obtained information on the existing SCEs.

Table 5. *National registers of art. 11, SCE R*

COUNTRY	NATIONAL REGISTER
AUSTRIA	Commercial register
BELGIUM	Register of legal entities - *Moniteur belge*
BULGARIA	Commercial register
CYPRUS	Register for cooperative societies
CZECH REPUBLIC	Commercial register
DENMARK	Register held by Danish Commerce and Companies Agency
ESTONIA	Commercial register
FINLAND	Trade register held by the National Board of Patents and Registration
FRANCE	Trade and companies registry
GERMANY	Register of cooperative societies
GREECE	Registry of *societes anonyme* and limited liability companies
HUNGARY	Register of enterprises
ICELAND	Register of cooperative societies
IRELAND	Registrar of friendly societies
ITALY	Register of enterprises held by the Chambers of commerce
LATVIA	Register of enterprises
LIECHTENSTEIN	Register of companies held by the Office of land and public registration
LITHUANIA	Register of legal entities
LUXEMBOURG	Commerce and companies register
MALTA	Register of cooperative societies held by the Cooperative board
NETHERLANDS	Commercial register
NORWAY	Register of business enterprises
POLAND	Register of enterprises within the National Court Register
PORTUGAL	Commercial register
ROMANIA	Trade register
SLOVAKIA	Business register
SLOVENIA	Business register
SPAIN	Commercial registrar
SWEDEN	Register of SCEs held by the Swedish companies registration office (*Bolagsverket*)
UNITED KINGDOM	Register of SCEs held by the Financial Service Authority (Great Britain); Register of SCEs held by the Registrar of Credit Unions (Northern Ireland)

The tables in part I, appendix 2, shows the competent authorities designated by MSs (and EEA countries) in accordance with art. 78, par. 2, SCE R

[35] See, for example, art. 10 of Cyprus SCE law, which states: "Notwithstanding the provisions of the Companies Law, the Commissioner keeps a registry in relation to publication of documents as provided by article 12 of the Regulation (EC) No 1435/2003".

3. Conclusions. An unreasonably complex system of regulation which should be simplified in order to improve its effectiveness

The discussion conducted in the preceding paragraphs of this chapter must not be seen as a mere academic exercise (which however, even as such, it would be ungenerous to define trivial, given the exiguous number of legal studies regarding the SCE), for it deliberately pursues the objective of revealing and remarking on the considerable number of questions and doubts to which the current feature of the SCE Regulation gives rise (in particular due to the intricate system of legal sources of regulation). The resulting complexity certainly does not promote the spreading of the SCE Regulation as it raises set up and operation costs of an SCE. The limited number of existing SCEs and the opinion of the consulted stakeholders (although important exceptions exist in some countries[36]) do seem to confirm this judgement.

The negative judgement covers in particular the ambiguous technique of options, and the provision of numberless specific references to national law, especially when claiming to individuate the particular branch of this law (instead of declaring the law which applies to national cooperatives generally applicable to SCEs).

In this regard, it is worth mentioning that piece of the European Commission communication COM(2004) 18, on the promotion of cooperative societies in Europe, where it is stated: "differences in national laws can create problems to the effective application of the ECS Statute … This heterogeneity may result in obstacles to efficient operation of co-operatives on a cross-border or European level as the rights and obligations of members, directors and third parties become unclear. This problem will become more apparent when certain provisions of national laws are applied to European Co-operative Societies according to their Member State of registration".

And moreover: "the most important element to be evaluated is the freedom given to Member States' to regulate a series of questions according to the national traditions. Because it is expected that the Regulation has an indirect and gradual harmonising effect, as it becomes a reference for future legislation, particularly in the new and candidate countries, … the Commission believes that it is even more important that the regulation in the future provides simpler and stronger rules, and that references back to national laws are minimized".

[36] See, above all, the German report in part II of this final study as well as stakeholder consultation in Germany in annex I to this final study.

Likewise, the High Level Group of European Company Law Experts has observed: "There are important questions deserving analysis in the future application of the SCE Regulation … It will be interesting to see how the SCE relates to the national forms of cooperatives"[37].

A straightforward regulation, undoubtedly, is not the only (nor, perhaps, the main) driving force behind the choice to apply for a certain legal structure. Nevertheless, the potential dissuasive effect of a complex regulation must not be disregarded. This considering, moreover, that other regulations which may provide an alternative (and not cooperative) way of aggregation are simpler. This contention holds true both for the SE Regulation (in fact, this regulation also presents the same general feature as the SCE Regulation, but the references to national public-limited liability company law appear more governable than those to national cooperative law, due to the intrinsic complexity of national cooperative law[38]), and particularly for the proposal of SPE Regulation.

The SPE Regulation, in its current version[39], has a simple structure. It consists of only 48 articles. It has a clear system of sources of regulation, putting the Regulation itself on the first level of the hierarchy, the articles of association (i.e., SPE statutes) on the second, and the applicable national law on the third (see art. 4). Specific references to national law are limited (around 20 as opposed to 101 as in the SCE Regulation; only 2 options compared to 30 in the SCE Regulation) and moreover in some of these specific references national law maintains a subordinate and residual gap-filling role. If one considers, in addition, the advantage of not being subject to a minimum capital requirement (which is symbolically determined as 1 €: see art. 19, par. 4), to the obligation to have the central administration in the same MS of the registered office (art. 7, par. 2), or to any cross-border requirement[40], then the SPE Regulation, if and when it will be passed (without

[37] See *Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe*, 4 November 2002, where it is also underlined that "the impact of the [at that time] forthcoming SCE Regulation on the cooperative enterprise should be studied closely before putting further efforts into creating these other European forms [with reference to European association and European mutual societies]".

[38] Without considering that, as pointed out above in the text, in the SCE Regulation there are references both to national cooperative law and national public limited-liability company law.

[39] It is known, in fact, that the European Parliament passed a Resolution on 10 March 2009 on the SPE Regulation proposal: this resolution (taking into account German objections to this proposal: see the next note) clearly has the intention to lead this proposal back to "normality" under many aspects, as regards for example the cross-border requirement, the minimum capital requirement (proposed 8,000 €), and the worker participation regime.

[40] The explanatory memorandum (point 4) explains that the proposal does not make the creation of an SPE subject to a cross-border requirement since such an initial requirement would significantly reduce the potential of the instrument and in addition it could easily be circumvented. Further, monitoring and enforcing it would put an unreasonable burden on Member States. This is a very controversial point, as the German *Bundesrat Beschluss* no 479/08 shows, which questions the competence of the European Commission to rule on a subject which is considered outside the provision of art. 308 TEU, as it regards MS internal matters ("*reine Inlandssachverhalte*"), subject, as such, to the principle of subsidiarity.

relevant changes)[41], could constitute an attractive alternative for cooperatives and people potentially interested in cooperatives. They may find in the SPE structure (which, as for the SCE, will also be available for individuals, even only one)[42] a more simple path to pursue their objectives under a European label. All this will happen to the detriment of the cooperative legal form of business. In other words, the simplification of the SCE Regulation must be considered necessary not only to add an empirical effect to the symbolic effect it already has, but also to preserve the symbolic effect itself.

If one agrees with this, the issue is no longer whether to simplify the SCE Regulation or not, but what general and specific changes should be made in the SCE Regulation. In other words, how it should be amended. Chapter 5, part I, of this final study, contains recommendations thereupon.

[41] For example, as regards the minimum capital, the European Parliament has proposed raising it to the amount of 8,000 €, which would still be consistently below that required for the SCE (30,000 €).
[42] See art. 3, par. 1, *e*).

CHAPTER 2

MAPPING OF THE NATIONAL LEGISLATION ON COOPERATIVES

SUMMARY: 1. *Introduction* [Table 6. Collected national cooperative laws and rules]. – **2.** *Cooperatives in European constitutions* [Table 7. References to cooperatives in national constitutions]. – **3.** *Cooperative law in Europe: An overview by country*. – **4.** *Cooperative law in Europe: Main features and general comparative considerations.* **4.1.** *A comparative legislative table of relevant cooperative rules (and the corresponding SCE Regulation provisions) in light of ICA principles and 193/2002 ILO Recommendation: in search of the common core of European cooperative law* [Table 8. Comparative table of national cooperative legislation]. – **5.** *Legal obstacles* [Table 9. Legal obstacles to the development of cooperatives].

1. Introduction

This chapter deals with the national cooperative law of 30 countries involved in the SCE project. Its main purposes are:

- to indicate the general law on cooperatives, as well as special laws on particular types of cooperatives, in force in the countries concerned;
- to describe the principal characteristics of each national cooperative legislation;
- to compare national cooperative legislations both from a general and systematic perspective and according to a more specific rule-based analysis (particularly directed toward the definition of the "cooperative identity"), also in light of International Cooperative Alliance (ICA) principles[43], 193/2002 ILO Recommendation on the promotion of cooperatives, and the SCE Regulation;

[43] These are the principles embodied in the "Statement on the Cooperative Identity" adopted by the International Cooperative Alliance (ICA) in 1995. They have been included in United Nation resolution 56/114 adopted at the 88th Plenary meeting of the U.N. General Assembly on 19th December 2001, and subsequently incorporated into the International Labour Organisation's recommendation 193 on the promotion of cooperatives adopted at the 90th Session of the ILO on 20 June 2002.

- to indicate and describe, if any, national legal obstacles to the development of cooperatives.

Research on these points is of a fundamental importance, given that:

- the legal framework which emerges from the SCE Regulation is not straightforward and it must in any case be considered in light of national cooperative legislation, to which the SCE Regulation specifically refers 101 times[44];

- according to the mainstream contention, also shared by the European Commission in its 2004 communication on the promotion of cooperative societies, there is neither a unique model of legislation in Europe nor shared rules, although all legislations are based on ICA principles[45];

- there are few comparative studies on cooperatives (as well as on SCE) and, more generally, legal scholars' attention on this subject seems to be decreasing in recent years, as the review of the most recent literature on European company, commercial, business and private law has shown[46];

- the national cooperative law scenario is in movement; on the one hand, there seems to be a new trend toward a complete and autonomous cooperative legislation, as the example of Norway particularly demonstrates; on the other hand, re-organisation of internal cooperative law is a discussed issue in many MSs, particularly where, as in France, cooperative law presents a complex structure due to the multitude of laws governing this subject[47];

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[44] See the pertinent table in chapter 1, par. 2.1.4., in Part I of this final study.

[45] According to the EC 2004 communication on the promotion of cooperative societies in Europe, "all Member States permit the creation and operation of cooperatives … the legal forms and traditions of cooperatives in Member States are highly varied. The different approaches to legislation governing cooperatives can be categorised into three types: (1) countries where there is one general cooperative law, (2) countries where cooperative legislation is divided according to the sector and social purpose of the cooperative, and (3) countries where there is no cooperative law and where the cooperative nature of a company is solely derived from its internal statutes or rules".

[46] See footnote 3 in chapter 1. Exceptions in English include: H.H. Münkner, *Cooperative principles and cooperative law*, Marburg am Lahn (1974); Id., *Ten lectures on cooperative law*, Bonn (1982). See also H. Henry, *Guidelines for cooperative legislation* (2nd edition), Geneva, 2005; comparative considerations from the Italian law perspective in A. Fici, *Italian cooperative law and cooperative principles*, Euricse Working Papers no 2/2010, in www.euricse.eu and in www.ssrn.com. A general overview on SCE may be found, in German language, in F. Avsec, *Die Europäische Genossenschaft innerhalb des Europäischen Wirtschaftsraumes*, Marburg (2009).

[47] Discussion in France is vivid at the moment: a seminar on the topic was held in December last year at the University of Lille (see *Le lettre du GNC*, Mars, 2010, No 361 *bis* and the various articles in 317 *Revue Internationale de l'Économie Sociale* 17 ff. (2010)).

- there seems to be a political need (particularly for competition law reasons) to reinforce and promote cooperative identity as a distinguished legal form of business based on values and principles which are different from those which drive other company and capital-based legal forms of enterprise: these values and principles substantially coincide with those affirmed and sustained by ICA (and 193/2002 ILO Recommendation), and which some European national laws have literally transposed in their national legislation as a means of interpretation of the legislation or of guidance for its application;

- a discussion on the possible future of cooperative law in Europe is needed; the SCE Regulation has stimulated such discussion, but more should be done to strengthen cooperative identity and diversity; to illustrate why and how cooperatives may better face an economic crisis; in other words, to explain their "social function", which art. 45 of the Italian constitution meaningfully attributes to cooperatives (and with sole regard to them)[48]; and consequently why they need a specific legal treatment under many aspects (from labour to tax and competition law);

- the same discussion should also be considered important in light of other sorts of possible effects, namely, the approximation of European national cooperative legislations; in this regard, it must be noted that, as this research will show, also in consideration of the structure of the SCE Regulation with its 101 references to national law (besides the general one in art. 8), the SCE Regulation has not produced (and it is difficult to suppose it might do so in the future, given the said structure) a real approximation effect on national cooperative legislations, as expected in fact by the European Commission[49].

To the end of pursuing the objectives related to this section of this research, national legislation on cooperatives was collected from all 30 countries concerned. Precedence was given to the national "general" law on cooperatives, although many other "special" laws on particular types of cooperatives were collected where relevant. Legislation was gathered both in the original language and in English, where an English official or unofficial version was available. Nevertheless, in national reports in part II of this final study the English translation of the most relevant provisions of national law may be found.

[48] See, in this regard, A. Fici, *Cooperatives and social enterprises: comparative and legal profile*, in B. Roelants (ed.), *Cooperatives and social enterprises. Governance and normative frameworks*, CECOP, Brussels, 2009, 77 ff.

[49] See the 2004 communication on the promotion of cooperative societies in Europe, after having noted that "heterogeneity may result in obstacles to efficient operation of cooperatives on a cross-border or European level as the rights and obligations of members, directors and third parties become unclear", and "this problem will become more apparent when certain provisions of national laws are applied to European Cooperative Societies according to their Member State of registration".

Comparative legislative tables of national legislation (in appendix 3 to part I of this final study) are provided in English as well. A CD/Rom containing this legislation was delivered to the European Commission. The hope of the research group is that this collection and the efforts made to realise it might constitute the basis for future comparative research and the development of cooperative studies in Europe.

Table 6 below indicates the national legislation collected within the SCE project and gathered in a database delivered to the European Commission. The table indicates where an English version of such legislation is existent. The collection includes all general cooperative laws and rules and many special laws.

Table 6. *Collected national cooperative laws and rules*

Country	Title/number/date	Notes	EN
AUSTRIA	- Cooperative Law of 9.4.1873 - Law on cooperative auditing of 1997 - Law on the merger of cooperatives of 7.5.1980	- last amended in 2008 - last amended in 2009 - last amended in 1996	NO
BELGIUM	- Company Code, Book VII, art. 350 ff. - Law 20.7.1955 on the institution of the National Cooperative Council (NCC) - Royal decree 8.1.1962 on the admission of cooperatives to the NCC	general cooperative regulation inside the company code	NO
BULGARIA	Cooperative Law 28.12.1999 No 113	last amended in 2008	YES
CYPRUS	- Cooperative law 22/1985 - Cooperative societies regulation (1987)	- last amended in 2009 - last amended in 2007	YES extr acts NO
CZECH REP.	- Commercial code (Act No 513/99), sec. 221 ff. - Act No 87/95 on Savings and credit cooperatives		NO
DENMARK	- Consolidate Act on Certain Commercial Undertakings, No 651 of 15.6.2006 - Company tax law No 1001 of 26.10.2009 - Housing coop law No 960 of 19.10.2006		YES NO NO
ESTONIA	- Commercial associations act of 19.12.2001 - Savings and Loan associations act of 9.2.1999 - Building association act of 9.6.2004 - Apartment associations act of 27.6.1995	- last amended in 2004 - last amended in 2002 - last amended in 2006	YES
FINLAND	Cooperatives Act No 1488/2001		YES
FRANCE	- Law on cooperative societies No 47-1775 of 10.9.1947 - Law on cooperatives of retailers (art. L124-1 ff. of the Commercial code) - Law on cooperative or mutual banks (art. L512-1 ff. of the Monetary and financial code) - Law on variable capital (art. L231-1 ff. of the Commercial code) - Law of 7.5.1917 on consumer cooperatives - Law 78-763 of 19.7.1978 on worker cooperatives (SCOP) - Law on certain types of cooperatives 83-657 of 20.7.1983 - Law on agricultural cooperatives (book 5 of the Rural and maritime fishing code) - Law on maritime cooperatives (book 9, title III, subsec. 2, of the Rural and maritime fishing code: introduced by the Ord. 2010-462 of 6.5.2010)		YES YES YES YES NO NO NO NO NO
GERMANY	Cooperative Societies Act (GenG) of 1889	- last amended in 2006	YES
GREECE	- Law 2810/2000 on rural cooperatives - Law 1667/1986 on civil cooperatives - Law 3601/2007 on cooperative banks - Presidential decree 93/1987 on housing cooperatives		NO
HUNGARY	Law on cooperatives X/2006		YES
ICELAND	- Law on cooperative societies No 22 of 27 March 1991		NO

	- Law on housing cooperatives No 66 of 27 March 2003 - Law on building cooperatives No 153 of 28 December 1998		
IRELAND	- Industrial and provident societies act 1893 - Credit union act 1997 - S.I. 223/2004 on credit union act - S.I. 838/2007 on credit union act (amendment)		YES
ITALY	- Civil code, art. 2511 ff. - Legislative decree 220/2002 on cooperative supervision - Legislative decree 1577/1947 on various general aspects - Law 59/1992 on various general aspects - Law 142/2001 on worker cooperatives - Law 381/1991 on social cooperatives	cooperative regulation inside the Civil code, but other general rules can be found in other laws (220/2002; 59/1992; 1577/1947)	NO
LATVIA	Cooperative societies law	last amended in 2009	YES
LIECHTENSTEIN	Law on natural persons and companies, 20.1.1926, No 4, art. 428 ff.	last amended in 2006 cooperative regulation inside the law on natural persons and companies	NO
LITHUANIA	Law on cooperative societies No IX-903 of 28.5.2002	last amended in 2008	YES
LUXEMBOURG	- Law 10.8.1915 on commercial companies, as modified by law 10.6.1999, section VI, art. 113 ff. - Grand-ducal Decree 17.9.1945 modifying Law 27.3.1900 on the organisation of agricultural associations	cooperative regulation inside the law on commercial companies	NO
MALTA	Cooperative Societies Act (2001), Chapter 442 of Malta Laws		YES
NETHERLANDS	Civil code, book II	cooperative regulation inside the Civil code	YES
NORWAY	Cooperative societies act of 29.6.2007		YES
POLAND	- Cooperative law of 16.9.1982 - Law on cooperative credit and saving unions of 14.12.1995 - Law on agricultural producer groups of 15.9.2000 - Law on cooperative banks of 7.12.2000 - Law on housing cooperative of 15.12.2000 - Law on social cooperatives of 27.4.2006		NO
PORTUGAL	- Cooperative code, law No 51/96 of 7.9.1996 - other 18 laws (tax law and special laws)		NO
ROMANIA	Law 21.2.2005, No 1, regarding the organisation and operation of cooperatives		YES
SLOVAKIA	Commercial code, chap. 2, § 221 ff.	cooperative regulation inside the Commercial code	YES
SLOVENIA	Cooperatives act of 1992	last amended in 2009	NO
SPAIN	- State cooperative law 27/1999 of 16.7.1999 - Many other State and Autonomous cooperative or cooperative-relevant laws and measures		NO
SWEDEN	Cooperative societies act SFS 1987:667 of 11 June 1987	last amended in 2009	YES
UNITED KINGDOM	- Industrial and Provident Societies Act 1965 - Industrial and Provident Societies Act 1967 - Friendly and Industrial and Provident Societies Act 1968		YES

	- Industrial and Provident Societies Act 1975 - Industrial Common Ownership Act 1976 - Industrial and Provident Societies Act 1978 - Credit Unions Act 1979 - Industrial and Provident Societies Act 2002 - Co-operatives and Community Benefit Societies Act 2003 - The Co-operative and Community Benefit Societies and Credit Unions Act 2010 - Mutual Societies Application Form by the Financial Services Authority		

Paragraph 2 contains a table of European country constitutional norms which refer to cooperatives, according to a recent study conducted by the ICA legislative group. Paragraph 3 presents an overview of national cooperative law by country, seeking to underline the main characteristics of each national legislation. Subsequent paragraph 4 deals with European national cooperative legislation from a comparative and systematic perspective. In the same paragraph, the contents and results of a comparative table of national cooperative laws prepared for this research (see appendix 3 to part I of this final study) are commented. Paragraph 5 presents reported legal obstacles to the development of cooperatives at the national level. Conclusions follow in paragraph 6.

2. Cooperatives in European constitutions

The ICA Legislation Working Group[50] has recently finalised an interesting study including references to cooperatives in national constitutions. The results concerning the countries covered in this research are presented in table 7 below (some provisions in the national language were translated into English)[51]. This table only indicates those constitutional provisions which award cooperatives special consideration, particularly in light of their social function or relation to the common benefit. Some national reports in part II of this final study discuss constitutional provisions on cooperatives and their effects.

[50] Coordinated by Hagen Henry.
[51] In fact, in the ICA Legislation Working Group's study, in the section dedicated to Europe, references other than those included in table 8 are presented as "unclear whether indirect reference". They regard the constitutions of Poland, Slovakia, and Sweden, but in reality seem to be too general to be properly considered references to cooperatives.

Table 7. *References to cooperatives in national constitutions*

Country	Provision	Reference
BULGARIA	The law shall establish conditions conducive to the setting up of cooperatives and other forms of association of citizens and legal entities in the pursuit of economic and social prosperity	Art. 19, par. 4, Constitution of 1991
GREECE	Agricultural and urban cooperatives of all types shall be self-governed according to the provisions of the law and of their statutes; they shall be under the protection and supervision of the State which is obliged to provide for their development. Establishment by law of compulsory cooperatives serving purposes of common benefit or public interest or common exploitation of farming areas or other wealth producing sources shall be permitted, on condition however that the equal treatment of all participants shall be assured	Art. 12, par. 4, Constitution Art. 12, par. 5, *ibidem*
HUNGARY	The State shall support cooperatives based on voluntary association and shall recognize the autonomy of such cooperatives	Art. 12, par. 1, Constitution of 1949
ITALY	The Republic recognises the social function of cooperation with mutual character and no private speculation purposes. The law promotes and favours its growth with the most appropriate means and guarantees its character and purposes with appropriate controls.	Art. 45, par. 1, Constitution of 1947
MALTA	The State recognises the social function of cooperatives and shall encourage their development	Art. 20, Constitution
PORTUGAL	The right to establish ... cooperatives is guaranteed. Associations of consumers and consumer cooperatives have the right, in accordance with the law, to state aid and to be consulted on matters related to the defence of consumers … Everyone has the right to freely establish a cooperative, provided they respect cooperative principles. Cooperatives freely operate in accordance with the law and may group into unions, federations and confederations, as well as other organisational forms provided by law. The law regulates the specific organisational features of cooperatives with the participation of public bodies. The right to self-management is recognised in accordance with the law. In order to guarantee the right to housing, the State shall … d) promote and favour initiatives from local communities and citizens which aim to solve their housing problems, and stimulate the establishment of housing and self-building cooperatives. The State, in accordance with the law, recognises and supervises private and cooperative education. The economic-social organisation follows these principles: … b) co-existence of public, private, cooperative and social sectors of production factor property; … f) protection of the cooperative and social sector of production factor property (see also art. 82 for the definition of cooperative and social sector of production factor	Art. 43, par. 4, Constitution of 1976 60, par. 3, *ibidem*; 61, par. 2-5, *ibidem* 65, par. 2, *ibidem* 75, par. 2, *ibidem* 80, *ibidem*

	property; 136, par. 3, *b*; 165, par. 1, *x*; 288, *f*). The State stimulates and favours the establishment and operation of cooperatives. The law shall define tax and financial benefits of cooperatives, as well as more favourable conditions for the access to credit and technical support. The State supports feasible practices of self-management. In accordance with the law, expropriated lands shall be devolved to … rural worker cooperatives or small farmers … (see also art. 95) In pursuit of agricultural policies, the State shall prevalently support small and medium farmers, in particular when … they are associated in cooperatives, as well as agricultural worker cooperatives … The support of the State includes … d) incentives to rural workers and farmers for creating associations, in particular establishing production, purchase, sale, transformation and services cooperatives …	 85, par. 1-3, *ibidem* 94, par. 2, *ibidem* 97, par. 1, 2, *ibidem*
SPAIN	Public bodies shall promote with adequate means the diverse forms of participation in the enterprise and stimulate, through an adequate legislation, cooperative societies …	Art. 129, par. 2, Constitution of 1978

3. Cooperative law in Europe: An overview by country

This paragraph aims to brief show the principal characteristics and peculiarities of the cooperative legislation applicable in the countries involved in this research, from the standpoint of an external observer whose main interest is to compare different phenomena at a general level, and whose attention is, therefore, principally or exclusively oriented toward those specific aspects which allow for this type of analysis. Hence, this analysis does not substitute the deeper presentation of national cooperative law contained in the national reports in part II of this final study (where, moreover, information about drafts concerning new legislation and reforms are provided): readers interested in a specific national legal system can refer to the relevant national report in part II.

The analysis conducted in this paragraph is based on both the information provided in the national reports by the national experts and the legislative tables of comparative legislation contained in appendix 3 to part I of this final study. It also embraces the issue of legal obstacles to the development of cooperatives, which will be summarised by a synoptic table later in par. 5.

It must be noted that the analysis conducted herein is strictly legal, which means and implies that cooperatives are presented and studied as they are shaped by the applicable law, with particular regard to its mandatory rules. The fact that cooperatives, on a voluntary basis, assume in certain countries a different form (e.g., they voluntarily incorporate a

cooperative identity even though the law does not require them to do so) cannot be considered here and goes beyond the scope and purposes of this research.

Austria

Austria has an autonomous general cooperative law - which therefore applies to all types of cooperatives - enacted in 1873 and amended several times, most recently in 2008. There are other collateral general laws (therefore, applicable to all cooperatives) which regulate particular aspects (cooperative auditing and the merger of cooperatives). Special laws on particular types of cooperatives do not exist.

The Austrian cooperative law of 1873 may be considered a “liberal” law, which provides few mandatory rules and leaves many profiles to self-regulation. This holds true particularly with regard to the activity with non-members, the admissibility of investor-members and the distribution of profits.

Cooperative identity is founded on aspects other than financial. An Austrian cooperative is permitted to distribute profits and assets to members, and is not obliged to establish reserves. Accordingly, it is subject to the same tax treatment as other companies.

In contrast, an Austrian cooperative is subject to the “one member, one vote” rule (although exceptions are possible but subject to restrictions), may not have administrators other than members, and is subject to cooperative revision by auditing cooperative associations, of which it must be a member (compulsory membership).

In general, according to the national expert, there are no legal obstacles to the development of cooperatives in Austria. Minor problems are represented by fees for the compulsory membership in auditing cooperative associations, and the impossibility for cooperatives, whose aim is social, to assume the “charitable” legal status, which would allow them to benefit from a specific tax treatment[52]. As regards this last point, it is worth noting the opinion of the Federal Ministry of Finance, who argues that cooperatives may not be charitable as their principal object is to provide services for their members, which is incompatible with the provision to the community as required by art. 35 BAO – Austrian Federal Tax Law. This objection was also raised by Italian courts before the law on social cooperatives passed in 1991.

[52] Particularly if one considers that registered associations (*Verein*) and limited-liability companies may assume this legal status.

Belgium

In Belgium, general rules on cooperatives may be found inside the Company Code of 1999 (in force since 2001), precisely in book VII of said Code, at art. 350 ff. No special laws on particular types of cooperatives exist. However, an important measure, as pointed out below, is Law 20.7.1955 on the institution of the National Cooperative Council (NCC).

Strictly speaking, Belgian regulation of cooperatives does not define a cooperative in line with the traditional ICA cooperative principles or those principles of legislation stemming from the analysis of European national cooperative legislation. In fact, as emerges from the definition in art. 350, Company Code, the Belgian cooperative is substantially a company with variable capital and number of members. The rules governing cooperatives do not attribute them a "cooperative identity". Profits and assets distribution to members is allowed without restrictions; the rule "one member, one vote" may be derogated without limits; etc. Accordingly, there is no specific tax treatment for such cooperatives, nor particular supervision applied to them.

Where the cooperative identity appears is in the specific regulation of cooperatives "which conclude an agreement with the NCC" under Law 20.7.1955. These cooperatives are awarded a specific tax treatment, provided they assume a cooperative identity with regard to limited additional votes for each member (maximum 1/10 of total votes), limited interest on the paid-up capital (maximum 6%), and distribution of profits according to the member operations with the cooperative. Moreover, cooperatives acting under Law 20.7.1995 and the agreement with the NCC are supervised by the Ministry of Economy.

Therefore, Belgian cooperatives in general are just companies with a variable capital and a variable number of members, without a specific cooperative identity. In contrast, the "real" cooperative form emerges from tax law. The number of this latter category of cooperatives is small (around 400 cooperatives out of 25,000 cooperatives).

In general, according to the national expert, there are no relevant legal obstacles to the development of Belgian cooperatives. Obstacles may be of diverse nature (bad communication and publicity). An impediment is probably that SCEs are not allowed to assume the SFS (*société à finalité sociale*: company with social purpose) legal status (see art. 661, par. 1, Company Code). The assumed (and questionable) reason for this is that the EU regulation does not provide that an SCE may pursue a "social purpose". Curiously, two SCEs have been set up in Belgium and both pursue aims related to the "social economy" sector.

Bulgaria

Bulgaria has an autonomous general cooperative law of 1999, last amended in 2008. It also has special laws on particular types of cooperatives (housing cooperatives of 1978; cooperatives of disabled people of 2004). Particular rules on mutual insurance cooperatives are laid down in the Insurance Code of 2005.

The general law may be defined as a "traditional" cooperative law strictly abiding by cooperative principles of legislation as established by ICA, which results in a clear distinction between cooperatives and other company forms.

Bulgarian general cooperative law explicitly recognises the "provider-user" relationship between the cooperative and the member as an essential feature of cooperatives. Therefore, the dual role (or quality) of cooperative members, also referred to by some scholars as "principle of identity" (owners=users)[53] or by other legislation as "mutual purpose"[54], is envisaged by Bulgarian legislation. This clearly stems from the definition of cooperative (art. 1), rights and obligations of members (see articles 9 and 10).

The minimum number of members is seven, and all members must be individuals (apart from cooperative unions which are formed by cooperatives). There is no provision regarding either the activity with non-members or the admissibility of investor-members. Admission is regulated so that refused candidates may appeal to the general meeting (along the lines of art. 14, par. 1, SCE R). There are rules prescribing the formation of reserve funds, which may not be distributed to members (except in case of cooperative dissolution). No exceptions to the rule "one member, one vote" are admitted. Moreover, the members of the management board shall be elected amongst the members of the cooperative. The only cooperative feature lacking, perhaps, regards the absence of a cap in the distribution of profits. Cooperatives enjoy a specific tax treatment (after 31 December 2010 this treatment will only apply to cooperatives of agricultural producers and cooperatives which employ disabled persons). They are not subject to a specific form of supervision.

According to the national experts, legal obstacles exist in Bulgaria and relate to a restriction in the economic activity which may be performed by a cooperative. Cooperatives may not perform banking, financial and reinsurance activities. Another obstacle regards SCEs, as a particular regime of land ownership applies to, and limits the formation of an SCE by merger and the transfer of SCE registered office (see the comparative table of option implementation (I) in appendix 2 to part I of this final study).

[53] See H.H. Münkner, *Ten lectures on cooperative law*, Bonn (1982), p. 52.
[54] See art. 2511 of the Italian civil code.

Cyprus

Cyprus has an autonomous general cooperative law of 1985, last amended in 2009. There are no special laws on particular types of cooperatives.

This general law is “traditional”, solidly based on cooperatives principles of legislation (which said law formally incorporates), and clearly oriented toward the common good and solidarity among cooperatives (see, above all, the compulsory rule on the destination of residual assets in case of cooperative dissolution, and the solidarity fund in support of credit cooperative institutions).

The minimum number of members in a primary cooperative is 12 (five in secondary cooperatives). Admission of new members is regulated so that candidates refused membership may appeal to the Commissioner of the Authority for Supervision and Development of Cooperative Societies (ASDCS) and further to the Minister of Commerce. There are compulsory legal reserves which may not be distributed to members. Profits may be distributed up to a maximum amount determined in the cooperative statutes. The rule “one member, one vote” applies and there are no exceptions provided thereto. Cooperative conversion is not permitted. Only members are eligible to serve on the management board. Cooperatives are awarded a specific tax treatment (profits of a cooperative arising from transactions with its members are exempted from tax) and are subject to a specific form of public supervision.

According to the national expert, there are no legal obstacles to the development of cooperatives in Cyprus. The number of credit cooperative institutions decreased due to mergers. No new cooperatives have been established since 2006 as the cooperative movement is already well established.

Czech Republic

In the Czech Republic, the general regulation of cooperatives may be found inside the Commercial Code of 1999, precisely in sec. 221 ff. A few special laws and rules on particular types of cooperatives do exist: the law 87/95 on savings and credit cooperatives and a particular regulation of housing cooperatives.

This general regulation deals with cooperative principles in a “liberal” way, as it awards cooperatives a high degree of freedom of self-regulation. The maximum amount of distributable profits must be determined by statutes; statutes may derogate from the “one member, one vote” rule (except for certain major decisions). On the other hand, a

compulsory and non-distributable reserve fund is provided for (although it must be augmented yearly only up to a half of registered (basic) capital of the cooperative, which is around 1,935 €). Only members or representatives of legal entities which are members may be elected as administrators. Under tax law, cooperatives are not treated differently than other companies, nor are they subject to a specific form of supervision.

According to the national expert, there is no legal obstacle to the development of cooperatives in the Czech Republic. Cooperatives may not run re-insurance and banking activities, but credit unions (which are cooperative banks) are permitted and specifically regulated.

Denmark

Consolidate Act on Certain Commercial Undertakings, No 651 of 15.6.2006 may be considered the general law on cooperatives in Denmark. However, this law only provides the definition of a cooperative, leaving all other relevant matters (including those specifically related to the cooperative identity) to cooperative statutes, which is the reason why the common perception is that there is no specific legislation on cooperatives in Denmark (this also seems to be the contention of the national expert: see the Danish report in part II of this final study). The definition is based on the aim of promoting the common interests of the members, on the “identity principle”, that is, the fact that cooperative members are both members and users, and on patronage refund as the way of distributing the surplus among members.

Under tax law, a more stringent definition of cooperative exists. A specific tax treatment is reserved to “taxable cooperatives”, which are cooperatives whose statutes provide for a minimum number of at least 10 members, limited operations with non-members (the turnover with non-members may not exceed 25% of the total turnover), the distribution of the surplus to members according to their operations with the cooperative, and a limitation on the remuneration of the paid-up capital (normally equal to the discount rate of Danish National Bank).

According to the national expert, there are no legal obstacles to the development of cooperatives in Denmark, although the absence of a specific legislation does not promote this legal structure, particularly within specific sectors, such as social inclusion and labour integration.

Estonia

The understanding of the Estonian legislation concerning cooperatives may be complicated by the fact that official English versions of existing cooperative laws curiously translate the word “ühistu” into “association”, while in fact it means cooperative.

In effect, apart from the translation issue, if ones reads the contents of the general law on “commercial associations” of 2001, it is clear that it refers to cooperatives and moreover that it strictly abides by cooperative principles. According to its art. 1, par. 1, “a commercial association is a company the purpose of which is to support and promote the economic interests of its members through joint economic activity in which the members participate: 1) as consumers or users of other benefits; 2) as suppliers; 3) through work contribution; 4) through the use of services; 5) in any other similar manner”. This definition not only describes the “commercial association” as a “company” and assigns an economic activity to it, but it also embodies the principle of identity (or dual nature of members), moreover distinguishing several manners of member contribution in correspondence with the possible forms of cooperative functioning.

Estonia also has special laws on particular type of cooperatives (savings and loan, building and apartments cooperatives).

The general law on cooperatives is a complete and “traditional” law, which follows cooperative principles. A compulsory reserve is provided for and this, as well as all other reserves, is not distributable to members during the existence of the cooperative. Surplus is divided according to the member participation in the cooperative activity, although remuneration of the paid capital is possible to a certain extent. The “one member, one vote” rule applies without exceptions. Cooperatives are not subject to a specific tax treatment nor to a specific form of supervision.

According to the national expert, in Estonia there is no legal obstacle to the development of cooperatives other than the minimum capital requirement, which is high (around 2,560 €) and not significantly different from that applicable to other companies.

Finland

Finland has a complete, very detailed and modern general law on cooperatives of 2001. It also has a special law on cooperative banks.

The definition of cooperative immediately refers to the dual quality of members (users and owners), although it is also significantly specified that cooperative statutes may stipulate

“that its main purpose is the common achievement of an ideological goal”, which might allow cooperatives with external activity and social functions (see above the doubt arisen in Austria as to this issue).

The general law allows cooperatives to admit investor-members, as well as to issue financial instruments. The regulation of new member admission favours the openness of the cooperative in accordance with the 1st ICA principle. A compulsory legal reserve fund is provided for, and may not be distributed among members. Dividends may be distributed in proportion to the paid-up capital, but the default rule is that surplus is distributed in proportion to the use of the cooperative services made by the member (which would consent the cooperative to take advantage of a specific tax treatment). The “one member, one vote” rule may be derogated only to a certain extent (one member may not have more than ten times the number of votes that other members have, although this rule does not apply to cooperatives whose majority of members are cooperatives or other legal entities).

There are no restrictions with regard to the election of administrators, the possibility of conversion, the distribution of residual assets in case of dissolution (it follows statutes indications).

Cooperatives are subject to a specific form of supervision.

As to legal obstacles to the development of cooperatives, according to the national expert, a legal obstacle is the taxation of capital income paid to owners which is less favourable for cooperatives than for limited liability companies. This is quite surprising, given that in Finland there is a long tradition of neutral treatment of different business forms. This is an obstacle particularly for the members of dairy and meat cooperatives which have to make big investments on cooperative shares, so that the less favourable taxation puts them in an unequal situation compared to limited liability companies' owners.

France

Formally, France has a general law on cooperatives: law no 47-1775 of 1947, where moreover SCE Regulation implementation rules have been placed, by adding a section (sec. III *bis*, art. 26-1 ff.). In substance, however, the situation is different due on the one hand to the provision in art. 2 thereof (which states that “cooperatives are governed by the present law subject to laws that are specific to each category of them”), and on the other hand to the existence of many specific and detailed laws on particular types of cooperatives. The trend of creating sector-specific detailed cooperative laws or rules is not only long-term but also actual (the most recent example is provided by the regulation of maritime cooperatives introduced into the Rural and maritime fishing code by an ordinance

of 6.5.2010 (book 9, title III, subsect. 2). Therefore, besides the general law, there are many special cooperative laws and rules, whose role in regulating the cooperative phenomenon is wide (see table 7 above).

Furthermore, the general law of 1947 is not sufficient as a legal framework to establish and organize the cooperative. Cooperatives are also subject to either the rules on the limited liability company or those on the joint stock company.

The general law is a “traditional” cooperative law under many aspects, although it embraces innovative solutions (for example with regard to the admissibility and regulation of investor-members).
First, it clearly refers to cooperatives the “mutual” aim or identity principle (dual quality of members), moreover making it clear that the cooperative not only acts with its members but also in their interest, by trying to create for them the best possible conditions. This is confirmed by the prohibition to act with non-members (although special laws provide exceptions to this general rule).
Second, it provides for the compulsory constitution and annual augmentation of reserves (although up to a certain amount), as well as for the non distribution of legal reserves.
Third, it sets limits to the remuneration of the capital held by members and envisages the distinction between remuneration of the paid-up capital (through dividends) and remuneration of the member-cooperative operations (through cooperative refunds).
Fourth, it dictates the “one member, one vote” rule, subject to exceptions in a limited number of cases (e.g., in favour of investor-members but with a cap to these additional votes). Fifth, it does not consent cooperative conversion, unless there is a specific authorisation given by the Ministry where cooperative survival or expansion are at stake. Sixth, it provides for the disinterest distribution of residual assets.

Some cooperatives are subject to a specific form of supervision by federations. Some cooperatives are subject to a specific tax treatment.

According to the national expert, the complexity of French cooperative legislation and the central role played by special laws may be considered legal obstacles to the further development of French cooperatives, and may also have negative effects on the use of the SCE form.

Germany

Germany is a country where cooperative legislation has a long tradition. The Cooperative Societies Act of 1889 - which is the general law on cooperatives in Germany - is still in

force, although it has been amended several times, most recently in 2006. No special laws on particular types of cooperatives exist.
This law is detailed and complicated, with a one-sided focus on the needs of large cooperatives and on approximating cooperative law to company law. However, the last reform of 2006 adjusted the law to the needs of new and small cooperatives (e.g., by reducing the minimum number of members) and adapted it in order to make it as attractive as the SCE Regulation under certain aspects (e.g., by providing for the admissibility of investor-members).

German cooperative law may be seen as a "liberal" regulation, given that many key issues for cooperative identity - such as activity with non-members, constitution of non-distributable reserves, distribution of dividends on the paid-up capital, allocation of assets in case of dissolution - are left to cooperative self-regulation. Where cooperative identity is solid is in the "one member, one vote" rule, which suffers only few and limited exceptions, and in the cooperative system of supervision (compulsory membership in a cooperative auditing federation). Moreover, tax law awards a specific treatment of cooperative refunds, on the condition that the income (distributed by way of cooperative refund) is earned in transactions with members, members are treated equally, and amounts are paid out to members.

According to the national expert, there are no legal obstacles to the development of German cooperatives.

Greece

Greek cooperative legislation is significantly fragmented. The two main relevant laws are Law 1667/1986 on civil cooperatives and Law 2810/2000 on rural cooperatives. Also special laws on particular types of cooperatives (banking, housing and social) exist. The law on civil cooperatives is the law which applies to all cooperatives other than rurals (including banking, housing and social cooperatives, for what is not provided for in their particular regulations). In this sense, it may be seen as the general law on cooperatives in Greece, although the national expert's contention is that there is no general cooperative law in Greece. Moreover, while the law on rural cooperatives may be considered a modern and adequate law on cooperatives, the opposite holds true for the law on civil cooperatives.

According to the national expert, there are several legal obstacles to the development of Greek cooperatives, including: legal limit to capitalisation of civil cooperatives and cooperative banks due to the restriction on investor-members and optional shares; legal status of employees in rural cooperatives; tax law on civil cooperatives which results in a

double taxation; the law on social cooperatives is rather narrow; the law on housing cooperatives is rather strict and deviates from cooperative principles; cooperative banks are not allowed to act with non-members.

Hungary

Hungary has a general law on cooperatives (law X/2006) and other special laws on particular types of cooperatives (banking, housing). The general law is a modern and detailed law on cooperatives. It also contains particular rules on social cooperatives.

According to the general law, a cooperative may be created with the objective of assisting members with their financial as well as non-financial (cultural, educational, social, etc.) needs. The minimum number of members of a cooperative is seven. The “one member, one vote” rule is mandatory and no exceptions are provided for. Cooperatives are allowed to admit investor-members to a limited extent. The law recognises the distinction between the distribution of the surplus to members in proportion to their activity with the cooperative and to the capital held, but does not put an obligation on cooperatives to give precedence to the former. A compulsory indistributable reserve fund is provided for by law (the fellowship fund). Specific tax treatment only applies to surplus allocated to the reserve fund.

According to the national expert, there are no legal obstacles to the development of cooperatives in Hungary. The obscurity of EU legislation on worker participation is seen, at times, as a stumbling block.

Iceland

Iceland has a general law on cooperatives and other special laws on particular types of cooperatives (housing and building). The general law is a “traditional” cooperative law in many aspects, although it embraces innovative solutions (for example, with regard to the admissibility of investor-members).

In the general law, the definition of cooperative reflects the identity principle (members=users). The minimum number of members is high (15), even though derogations may be permitted. A reserve fund must be set up and is not distributable among members during the existence of the cooperative. The distribution of the annual surplus in proportion to member’s operations with the cooperative may be provided for by the cooperative’s statute. The democratic principle “one member, one vote” applies, although cooperative statutes may derogate from it in a particular case. Cooperatives are neither subject to a specific tax treatment nor to a specific form of supervision.

According to the national expert, a legal obstacle to the development of cooperatives in Iceland is represented by the impossibility of running financial lending activities.

Ireland

Strictly speaking, Ireland has no general law on cooperatives. In the SCE implementation act reference is made to the Industrial and provident societies act of 1893, which however neither define a cooperative, nor regulates it according to ICA principles or commonly recognised rules on cooperatives in Europe. In contrast, Ireland has a specific law on credit unions, the Credit Union act 1997, which provides a more stringent regulation, some points of which comply with traditional cooperative principles of regulation.

While, strictly speaking, there are no legal obstacles to the development of cooperatives in Ireland and key witnesses have reported that the existing legislation has broadly facilitated cooperatives in fulfilling their objectives, there are a considerable number of administrative obstacles within the legislation (as highlighted in the national report) and some witnesses express the desirability of legislation that acknowledges the distinct characteristics of cooperatives and which uses the term “cooperative”.

Italy

Italian general regulation of cooperatives is embodied in book 5 of the Civil code, in art. 2511 ff., as reformed in 2003 (but the reform came into force in 2004). Cooperatives are considered a particular type of company, thus regulated by the civil code in the section where it deals with all general types of companies. Furthermore, general rules on cooperatives may be found in other laws outside the Civil code: these laws deal with particular aspects, such as public supervision of cooperatives, particular types of investor-members and financial instruments, cooperation among cooperatives, etc. Italy also has some special laws (or rules) on cooperatives. These special laws (or rules) may be justified in terms either of the particular good or service provided by the cooperative (cooperative banks are subject to specific rules included in the banking law of 1993), or of the special purpose pursued by the cooperative (social cooperatives are regulated by law 381/91), or of the particular nature of the exchange relationship between the cooperative and its members (worker cooperatives are regulated by law 142/2001). Given this, as well as the provision in art. 2520, par. 1, Civil code, Italian cooperative legislation (though complex and scattered) has an intrinsic order which makes it valuable under many aspects.

Italian cooperative law is traditional and innovative at the same time. Its most evident peculiarity (introduced in 2003) is represented by the division of cooperatives in two

categories: mainly mutual cooperatives and not mainly mutual cooperatives. The regulation of the first category of cooperatives is a significant example of a cooperative regulation which applies cooperative principles (limited activity with non-members; limited distribution of dividends; allocation of surplus according to the quantity or quality of operation with the cooperative; compulsory reserve funds, which are non-distributable, not even in case of dissolution; disinterest distribution of assets in case of dissolution), while providing for innovative solutions to promote cooperatives (e.g., with regard to investor-members or the distribution of voting rights). The regulation of the second category, in contrast, does not completely follow cooperative principles. This is the reason why only mainly mutual cooperatives are awarded a specific tax treatment. All cooperatives are subject to public supervision, which in fact is principally operated by cooperative federations.

According to the national experts, there are no legal obstacles to the development of Italian cooperatives.

Latvia

Latvia has a modern and detailed general law on cooperatives, which also embodies particular rules on specific types of cooperatives (agricultural, apartment owners). Another act regulates credit unions. The general law complies with cooperative principles, even though some relevant matters (such as the distribution of profits) are not regulated by mandatory rules, but rather are left to cooperative statutes.

The national expert did not indicate any legal obstacles to the development of Latvian cooperatives.

Liechtenstein

The regulation of cooperatives in Liechtenstein may be found in the Law on natural persons and companies of 20.1.1926, No 4, art. 428 ff., although general rules on companies in art. 106 ff. therein also apply to cooperatives. There are no special laws on particular types of cooperatives.

The definition of a cooperative focuses on the open number of members and the aim of pursuing the economic interest of the members by means of common self-help. A high degree of freedom is given to cooperative statutes, even with regard to matters directly related to the cooperative identity (for example, the “one member, one vote” rule may be derogated by statutes).

Some cooperatives, depending on the activity performed, are subject to a specific tax treatment. Non-profit cooperatives of public utility are subject to a particular tax treatment, but this treatment is not specific to cooperatives, as it applies to all legal forms acting for non-profit purposes.

The national expert did not indicate any legal obstacles to the development of cooperatives in Liechtenstein.

Lithuania

Lithuania has a detailed general law on cooperatives (Law No IX-903 of 28.5.2002) and a law on credit unions.

The definition of a cooperative focuses on the aim of satisfying financial, social or cultural needs of members, and on the participation of members in the governance of the cooperative, as well as on the distribution of surplus according to member operations with the cooperative. Five is the minimum number of members. The law recognizes the distinction between dividends (i.e., amounts paid to members in proportion to the capital held) and cooperative (patronage) refunds (i.e. amounts paid to members in proportion to their activity with the cooperative). A compulsory reserve fund is provided for by law. The "one member, one vote" rule may be partly derogated only in the case of a cooperative whose members are prevalently cooperatives.

Cooperatives are subject to a specific tax treatment, but not to a specific form of supervision.

The Lithuanian national experts did not indicate any legal obstacles to the development of cooperatives in Lithuania.

Luxembourg

In Luxembourg, general cooperative rules are within the law on commercial companies of 1915; these rules lay down a model of cooperative which, in many aspects, is not correspondent to that emerging from ICA principles or agreed upon rules in European national legislation or the SCE regulation itself; in contrast, the law on agricultural associations, in many respects, is closer to ICA principles than the general regulation in the law of 1915 (as regards activity with members and non-members; new member admission; the purpose of providing goods and services to members; etc.).

In substance, general cooperative rules define a cooperative as a company with variable capital and number of members. All other aspects, including democracy, are not provided for by mandatory rules, but entrusted to default rules or cooperative statutes.

According to the national expert, there are no legal obstacles to the development of cooperatives in Luxembourg, although the absence of provisions regulating cooperatives in compliance with cooperative principles of legislation may be seen as a legal obstacle.

Malta

The principal legislation governing cooperatives in Malta is the Cooperative Societies Act, which was passed in 2001. This Act provides a comprehensive specific legislation on the constitution, registration and control of all types of cooperatives. In other words, it applies to all cooperatives seeking to establish themselves in Malta. It governs the establishment, legal status, management and dissolution of cooperative societies in Malta, whatever their activity or membership. Although not as detailed and voluminous as the Companies Act (Chapter 386 of the Malta Law), it is still quite a comprehensive law which manages to deal with the most important issues. Laws on particular types of cooperatives do not exist in Malta.

The General law on cooperatives strictly complies with ICA cooperative principles, which are mentioned in the definition of the cooperative and incorporated into the law (art. 21, par. 2), which states that these principles shall not be directly enforceable in any court or tribunal, but shall be adhered to in the interpretation and implementation of this Act and of any regulations made thereunder (art. 21, par. 3).

The law provides for the constitution of a compulsory legal reserve fund, which is non-divisible among members, and the destination of a part of the annual surplus to the Central Cooperative Fund. Dividends on the paid-up capital are distributable to a limited extent. Patronage refunds (i.e., the distribution of all or any part of the net surplus of a cooperative, paid among its members in proportion to the volume of business or other transactions done by them with the society) are treated in the ordinary manner of surplus distribution to members. The "one member, one vote" rule may be derogated by statutes. Only members may be elected managers. Devolution of residual assets in the event of dissolution follows the disinterested principle of distribution.

Maltese cooperatives are awarded a specific tax treatment and are subject to a specific form of supervision.

According to the national expert, there are no legal obstacles to the development of cooperatives. Minor obstacles do exist, but have a diverse nature.

Netherlands

In the Netherlands, the specific regulation of cooperatives may be found in the second book of the civil code. For what is not provided for therein, cooperatives are subject to the general rules governing legal persons, associations, and (for certain aspects, also) private companies limited by shares. The regulation of cooperatives may be considered "liberal", as it prevalently consists of default rules and awards cooperative statutes wide autonomy. Given this, Dutch cooperative law seems far from respecting traditional ICA cooperative principles, even though tax law provisions partly add some specificities when requiring additional conditions for a specific taxation of cooperatives. A particular regulation applies to cooperative insurance companies (mutuals). No other special laws or rules on cooperatives exist.

The identity principle emerging from the definition of a cooperative is protected by the provision allowing activity with non-members, but only on the condition that the activity with members is not of subordinate importance. Two members are sufficient to set up a cooperative (moreover, one member remaining does not lead to dissolution). "One member, one vote" is provided by a default rule, which, therefore, may be derogated by cooperative statutes. Financial profiles are not regulated, but left to cooperative statutes' provisions.

There is a specific tax treatment for cooperatives, but not a specific form of supervision.

According to the national expert, the inadequacy of the current specific tax treatment for cooperatives and the lack of specific consideration of cooperatives under antitrust law may be considered as legal obstacles to their development.

Norway

Norway has a brand-new general law on cooperatives and a few special laws on particular types of cooperatives (building and housing, mutual insurance companies). The general law is well-designed, detailed and complies strongly with the traditional cooperative principles, although it also presents some innovative solutions.

The definition of a cooperative highlights the identity principle and the distribution of surplus according to member activity with the cooperative, which in fact are two related aspects. This principle is strengthened by the possibility for cooperative statutes to award

more votes to members in proportion to their activity with the cooperative, provided that one member may not have the majority of votes. Admission of new members may only be refused on the basis of reasonable grounds. Dividends on paid-up capital are admitted only to a limited extent. The law does not require the constitution of a reserve fund, but once reserve funds are established, they may not be distributed to members (unless the reserve fund is expressly set up for distribution purposes).

Norwegian cooperatives are subject to a specific tax treatment and a specific form of supervision.

According to the national expert, the repeal by the government of the 15% deduction for non-distributable reserves, after the EFTA surveillance authority communicated that this measure was an illegal state aid, is seen as a legal obstacle in the country.

Poland

Poland has a general law on cooperatives and several special laws on specific types of cooperatives (credit cooperatives and savings unions, cooperative banks, agriculture producer groups, housing, social cooperatives). The general law is a traditional cooperative law, strongly following the cooperative principles of regulation.

The law requires the constitution of a legal reserve fund, which is indivisible among members during the existence of the cooperative. The “one member, one vote” rule may be derogated only by cooperatives formed of legal persons.

There is no specific tax treatment for cooperatives. Cooperatives are subject to a specific form of revision.

According to the national expert, there are no major legal obstacles to the development of cooperatives in the country. However, minor legal obstacles may include: the high minimum number of founders (10); the absence of a specific regulation on accountancy, as the currently applicable one is onerous, particularly for small cooperatives; the “one member one vote” rule, which may reduce capital investment in a cooperative.

Portugal

Portugal has a complete legal structure for the cooperative sector: the general regulation on cooperatives may be found in the Cooperative Code; 12 special laws regulate the 12 different types of cooperatives defined in the Code. In addition, Portugal has one special law for cooperative “régies”, one special tax law for cooperatives, integrated by a special

law on the collection of VAT applicable to agricultural cooperatives, and one regulation for financial assistance to cooperatives (investment and creation of jobs). The cooperative code is a clear and well-designed cooperative law, which strongly follows and applies the consolidated cooperative principles, which moreover are mentioned in the definition of the cooperative, together with the non-profit way of conduct, as compulsory for cooperatives.

There are compulsory reserve funds, which may not be distributed to members, not even in the event of dissolution. As to the distribution of surplus, the law recognises the distinction between dividends on paid-capital and patronage refunds. The "one member, one vote" rule may not be derogated (this is possible only in secondary cooperatives). Conversion is not permitted. The principle of disinterested distribution of residual assets in the event of dissolution applies.

In accordance with the pertinent constitutional provision, cooperatives are awarded a specific tax treatment. Only agricultural credit cooperatives are subject to a specific form of cooperative revision.

The national expert indicates as legal obstacles to the development of cooperatives the non-admissibility of non-user (investor) members and the impossibility to derogate from the "one member, one vote" rule in first degree cooperatives.

Romania

Romania has a well-designed and detailed general law on cooperatives and a special law on agricultural cooperatives. Cooperative banks are regulated in banking law. ICA principles are mentioned in the definition of the cooperative and incorporated into the general law, which specifies that these principles are to be used for the interpretation and application of said law.

The minimum number of members is five. A compulsory legal reserve is provided for by the law. The distribution of dividends on paid-up capital is permitted. The democratic rule "one member, one vote" is mandatory in primary cooperatives. Only members may be managers and the cooperative may not be converted into other legal forms of business. The principle of disinterested distribution of residual assets in the event of dissolution applies.

Cooperatives are not awarded a specific tax treatment and are subject to a specific form of control not conducted by representative organizations, but by a public body controlled by the Ministry of Economy.

According to the national expert, legal obstacles to the development of cooperatives relate to the tax and ownership regimes. The imposition of a minimum income tax since 2009 has affected the activity of many small cooperatives, as the payments can amount to, approximately, 500 Euros (for incomes between 0 and 12.000 Euros) to 10.000 Euros per year. Due to the remainders left by the specific regulation of cooperatives during the communist regime, currently, in many cases, cooperatives possess only the right to use the land on which they carry out their activities or on which they have constructions, but not the full property, which raises a number of problems for cooperatives.

Slovakia

In Slovakia, general rules on cooperatives may be found in the commercial code (§ 221 ff.). There are no special laws on particular types of cooperatives.

The minimum number of members is five. The law provides for the establishment of a legal reserve fund, which may not be distributed to members during the existence of the cooperative. The "one member, one vote" rule may be derogated by cooperative statutes. Only members of the cooperative may be appointed managers. There is no specific tax treatment for cooperatives, nor a specific form of cooperative revision.

According to the national expert, there are no legal obstacles to the development of Slovakian cooperatives.

Slovenia

Slovenia has a general law on cooperatives and no special laws on particular types of cooperatives. The general law contains several innovative solutions, while still preserving the specific identity of cooperatives.

Activity with non-members is allowed, but only to the extent to which it does not render secondary the activity with members. The minimum number of members is three. Cooperatives may admit investor-members and issue financial instruments. The law requires the establishment of a reserve fund, which may not be distributed during the existence of the cooperative. The distribution of the surplus to members according to their activity with the cooperative is provided for by a default rule. The "one member, one vote" rule may be derogated, awarding more votes to members up to a certain extent.

According to the national expert, the main legal obstacle to the development of cooperatives in Slovenia is represented by the fact that banking and insurance activities are not permitted to cooperatives. Moreover, in general, cooperatives are perceived as a

type of organisation only relevant in the sector of agriculture and forestry (the main example for this is the Ministry of Agriculture's authority over cooperative legislation)

Spain

As regards cooperative law, Spain represents a unique case in Europe, as the Autonomous Regions have exclusive competences in the area of cooperatives, which leads to 14 autonomous laws on cooperatives thus far; autonomous laws only apply to cooperatives which run their activity principally in their own territory. The general state cooperative law 27/1999 only applies to cooperatives which run their activity in more than one Autonomous Region, but in no one prevalently (and perhaps to the cooperatives of Ceuta and Melilla). The state general cooperative law of 1999 contains specific rules on particular types of cooperatives. Special laws on particular types of cooperatives do not exist. The only exception is the Credit Cooperative Law, and certain rules about insurance and haulier cooperatives that have been laid down in some general, but sectorial Spanish laws. The state general cooperative law of 1999 is a complete, detailed and well-designed cooperative law, strongly complying with ICA principles, which are mentioned in the definition of the cooperative.

The law states that any legal economic activity can be organized and developed by a cooperative. Restrictions exist with regard to the activity with non-members. Reserve funds must be established and are not distributable, not even in the event of dissolution. The "one member, one vote" rule may be derogated in certain cases, but in general, multiple votes may be awarded to a member in proportion to her/his activity with the cooperative. The law recognises the distinction between patronage refunds (named "cooperative returns") and dividends on paid-up capital, which are admitted only up to a certain extent.

Cooperatives are subject to a specific tax treatment and a specific form of supervision.

The national expert did not indicate any legal obstacles to the development of Spanish cooperatives.

Sweden

According to the Swedish national expert, strictly speaking, Sweden has no specific "cooperative law", i.e. a law that applies only to cooperatives (however defined), and the term "cooperative" (though well established in the language) does not denote a particular incorporation form/legal subject regulated by legislation. Nonetheless, it is possible to say that virtually all cooperatives are regulated by one law, the law on economic associations

(Ekonomiska föreningslagen, EFL SFS 1987:667, last amended 1 July 2009). Housing and financial cooperatives are subject to special laws.

In effect, if one maintains that a law which only defines a cooperative according to the identity principle, but fails to define its identity through mandatory rules, cannot be considered a specific “cooperative law”, then Swedish law 1987:667 (as well as other general law considered in this research: see Denmark, Luxembourg, Netherlands) is not a “cooperative law”. Indeed, almost all relevant matters are either regulated by default rules or left to cooperative statutes, including the democratic manner of organisation.

Swedish cooperatives do not enjoy any specific tax treatment or form of supervision.

The national expert did not indicate any legal obstacles to the development of Swedish cooperatives.

United Kingdom

In the UK, a body wishing to function as a cooperative is free to use any legal form it chooses. That includes registering under the Companies Act 2006 or the Limited Liability Partnerships Act 2000 or operating as a partnership under the Partnership Act 1890, subject to restrictions on the use of the word “co-operative” in the name of a registered company. However, the Industrial and Provident Societies Acts 1965 to 2003 (to be renamed the Co-operative and Community Benefit Societies and Credit Unions Acts 1965 to 2010 when s 2 of the Co-operative and Community Benefit Societies Act 2010 is brought into force) provide a legal structure specifically designed for cooperatives.

The Financial Services Authority (FSA) is responsible for industrial and provident society registration – a function similar to that performed by the Registrar of Companies for companies registered under the Companies Act 2006. Further information about the FSA and its role as the registry for mutual societies can be found on its website at http://www.fsa.gov.uk/ and in the information notes that it publishes on that site and in print.

Section 1 of the IPSA 1965 lays down the conditions to be satisfied for a society to be registered as an industrial and provident society. It must be a society for carrying on any industry business or trade (including dealings of any description with land) whether wholesale or retail. It must also show ‘to the satisfaction of the [Financial Services] Authority’ that either (i) it is a bona fide co-operative society or (ii) its business is being or is intended to be conducted for the benefit of the community. When section 1 of the Co-

operative and Community Benefit Societies Act 2010 is brought into force it will be clear that the registration is as one or other of those categories of society.

The FSA Information Notes set out how the FSA's statutory discretion under the IPSA 1965 will be exercised. "Registration of Co-operatives" requires a society wishing to register as a co-operative to meet the following conditions:
Community of Interest –"there should be a common economic, social or cultural need and/or interest amongst all members of the co-operative"
Conduct of Business – "The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business. Participation may vary according to the nature of the business and may consist of: buying from or selling to the society; using the services or amenities provided by it; or supplying services to carry out its business."
Control – "Control of a society lies with all members. It is exercised by them equally and should not be based, for example, on the amount of money each member has put into the society. In general, the principle of "one member, one vote" should apply. Officers of the society should generally be elected by the members who may also vote to remove them from office."

Interest on Share and Loan Capital – "Where part of the business capital is the common property of the co-operative, members should receive only limited compensation (if any) on any share or loan capital which they subscribe. Interest on share and loan capital must not be more than a rate necessary to obtain and retain enough capital to run the business..………..."

Profits – "If the rules of the society allow profits to be distributed, they must be distributed amongst the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business……….."

Restriction on Membership – "There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members, but there may be grounds for restricting membership in certain circumstances which do not offend co-operative principles. For example, the membership of a club might be limited by the size of its premises or the membership of a self-build housing society by the number of houses that could be built on a particular site."

Apart from the need to establish that a society meets the "bona fide co-operative" requirement on first registration, it is necessary that it continues to do so. The FSA has power to cancel the registration of a society for failure to adhere to Section 1.

When an application is made to register a co-operative, a copy of its rules is submitted to the FSA. That copy is checked to ensure that the rules do not violate co-operative principles so as to cast doubt on whether the society is a “bona fide co-operative”. That process is repeated whenever any application is made to register an amendment to the society’s rules and until the amendment is registered it has no legal effect. This system ensures that very considerable freedom is permitted to co-operatives to organise themselves as they choose, so long as the society’s rules contain the provisions required by Schedule 1 to the 1965 Act as amended and are consistent with the society’s status as a bona fide co-operative. The legislation does not prescribe the content of the society’s constitution even in respect of matters such as governance, share capital, distribution of surplus, or members’ voting rights. The question of whether particular provisions of the society’s rules are to be permitted is always decided on the basis of whether or not those provisions are consistent with co-operative principles as applied by the FSA. However, the use of model rules provided in advance by sponsoring organisations is encouraged by the availability of a very substantially reduced registration fee if such rules are used.

As a result UK law is very liberal and, within the broad limit of what the regulator regards as appropriate for a "bona fide co-operative", the rules (in civil law systems the "statutes") of each co-operative are free to make whatever provision they choose. Hence, for example, there is no legal requirement for any minimum level of share capital, or to build reserves, no specific legal rule permitting only a one tier or a two tier system of governance, and no generally applicable legal rule about trading with non-members or whether board members need to be members. All of these matters are left to the founders and members to decide providing the co-operative remains a bona fide co-operative in the opinion of the FSA.

According to the national expert, strictly speaking, there are no legal obstacles to the development of cooperatives in the UK. Yet, there are some administrative obstacles as follows:

- the absence of a public body for the promotion of cooperatives: neither the registering body for cooperatives (the FSA) nor the government department responsible for their legal framework (HM Treasury) have any obligation or role in relation to the promotion of cooperatives. This tends to leave the sector without promotion in comparison with companies whose business structure is promoted and facilitated by the Department of Business, Innovation and Skills;
- the registration system for cooperatives does not operate electronically. Searches have to be carried out manually. This causes problems with credit rating and checks by those with whom they do business. Companies are registered at the Companies Registry, which operates electronically);

- the registration fees to establish cooperatives are substantially higher than those applicable to companies registered at Companies House: this is because of the cost of the role of the FSA in checking the constitution to ensure that a cooperative meets the requirements of the legislation as compared to the straightforward procedure involved in ensuring that a company has complied with necessary formalities.

4. Cooperative law in Europe: Main features and general comparative considerations

As regards the possible forms and models of a cooperative legislation from a comparative perspective, the examination of the legislation in force in the countries involved in this research has shown that:

- European countries do have a specific legislation on cooperatives; the only exception is perhaps represented by Ireland, as the Industrial and Provident Societies Act (the national law that, according to the Irish SCE law, should apply to SCEs registered in Ireland) cannot be exactly considered a cooperative law;

- to be more precise, there are countries which are characterised by a sort of "double track" system, as substantial cooperative law is almost inexistent or, however, fails to provide a precise cooperative identity to the subject matter it regulates, while the presence of particular cooperative features is necessary to award cooperatives a specific tax treatment (Belgium, Denmark; Netherlands, Sweden) or is required by a public authority regulation for the registration of cooperatives (UK);

- as the comparative analysis shows (see paragraph 4.1. below and appendix 3 to part I of this final study), in some countries (particularly in Belgium; Denmark; Luxembourg; Netherlands; Sweden), matters surrounding the cooperative identity are not regulated by mandatory rules (not even, in some cases, with regard to the democratic principle "one member, one vote"), but by default rules or they are directly left to cooperative statutes;

- the majority of European countries have a general law on cooperatives, although in some countries the general regulation of cooperatives is included in a more general code, either the civil code (Italy; Netherlands) or the commercial code (Czech Republic; Slovakia), or the company code (Belgium); Portugal provides the only example of a cooperative legislation based on a cooperative code;

- there are countries where the general law is the only existent cooperative law (Germany; Slovakia; Slovenia); others where, in addition to the general law, there are other general laws on certain particular aspects, such as cooperative revision or merger (Austria, Italy); yet others where besides the general law there are special laws (or special rules) on particular types of cooperatives[55];

- special laws (or rules) can be sector-based (depending on the nature of the good or service provided by the cooperative: e.g., cooperative banks), purpose-based (depending on the particular nature of the cooperative aim: e.g., social cooperatives) or based on the particular nature of the relationship between the cooperative and its members (e.g., worker cooperatives);

- while the existence of special laws is an ordinary phenomenon, there are countries (France and, although to a minor extent, Portugal) where special laws occupy a central position, for they are numerous and their content detailed, thus ending up even prevailing over the general law in the regulation of the cooperative phenomenon;

- cooperative legislation consisting of a national and many autonomous laws is unique to Spain;

- European cooperative legislation does not embody a form of legislation such as that recently adopted in the Canadian province of Quebec, where general cooperative rules and particular cooperative rules on specific types of cooperatives co-exist in the same cooperative law text, which is a very interesting solution for those countries which could be interested in adopting a new cooperative law or reforming their current cooperative legislation, making it more complete or practicable. Partial exceptions are represented by those general laws which include specific rules on a specific type of cooperative (e.g., social cooperatives as in France and Hungary; or agricultural and apartment cooperatives as in Latvia; see also the Spanish general law in this regard).

With regard to the possible contents of a cooperative regulation from a comparative perspective, the examination of the legislation in force in the countries involved in this research has shown that:

[55] It is important to underline that in almost all cases a relationship between the general law on cooperatives and special laws on particular types of cooperatives is expressly established (by the general law or by the special law) so that the general law also applies to particular types of cooperatives for what is not provided for by the special law governing them.

- there are both "liberal" and "strict" laws in relation to the degree they align with cooperative principles and consequently the freedom they award cooperative statutes;

- there are partially different views of the cooperative phenomenon, according to the different manners in which the financial aspect and the social aspect are combined in a cooperative law:
  - in some cases, the financial aspect is predominant; therefore, the cooperative may freely distribute profits in proportion to the paid-up capital; devolve assets to members in case of dissolution; etc.; normally, in this case, cooperatives are not subject to a specific tax treatment;
  - in other cases, the social aspect plays a more significant role and the cooperative is obliged to take into account either interests other than those of its actual members (the interests of its subsequent members, other cooperatives, the overall cooperative movement, the community) or non-financial interests of its members (e.g., their education); normally, in this case, cooperatives are awarded a specific tax treatment and are subject to a specific form of control (however, this is also provided for in legislation following the first, above mentioned, view);

- there are traditional (e.g. Polish) and innovative laws (e.g. Italian, Norwegian) to the extent to which they try to adapt traditional cooperative principles to specific (mainly financial) needs of the cooperatives.

4.1. A comparative legislative table of relevant cooperative rules (and the corresponding SCE Regulation provisions) in light of ICA principles and 193/2002 ILO Recommendation: in search of the common core of European cooperative law

In order to allow the comparison of national rules applying to cooperatives, also in light of the possible choice of the country where setting up an SCE, as well as to find out whether a common core is traceable and what it consists of, a comparative table of European national legislation has been drafted and may be found in appendix 3 to part I of this final study. The table compares cooperative rules of each country with corresponding rules of the SCE R, in light of the ICA cooperative principles of legislation and 193/2002 ILO Recommendation provisions[56], according to the framework shown in table 8 below.

[56] As already explained above, 193/2002 ILO Recommendation embodies ICA cooperative principles and takes the 1995 ICA Statement on the cooperative identity a step further, especially as it is an international governmental instrument. The ILO Recommendation on the other hand draws much of its legitimacy, and hence legal value, from the fact that it integrated the ICA Statement almost *in toto* into its text, subscribing thus to a text which represents the opinion of some 800 million people. In addition, the ILO Recommendation 193

The analysis only covers the general cooperative laws (or equivalent) of each country. Therefore, it is worth noting that different or additional rules to those indicated in the table might be found in special laws on particular types of cooperatives.

Table 8. *Comparative table of national cooperative legislation*

	ICA PRINCIPLES - 193/2002 ILO RECOMMENDATION	**SCE REGULATION**	**NATIONAL LAW**
1) Definition and aim	Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination (1st ICA Principle: Voluntary and Open Membership) "Cooperative" means an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (193/2002 ILO Rec., I.2)	The satisfaction of members' needs and/or the development of their economic and social activities, in particular through agreements to supply goods or services or to execute work; or by promoting, in the manner above mentioned, their participation in economic activities, in one or more SCEs and/or national cooperatives (art. 1, par. 3)	
2) Economic activity (restrictions)	It is recognised that cooperatives operate in all sectors of the economy (193/2002 ILO Rec., I.1)	No direct restrictions, but national law provisions apply (art. 8, par. 2)	
3) Activity with non-members (admissibility and restrictions)	No provisions	Permitted only if allowed by the statutes (art. 1, par. 4) No restrictions	
4) Registration	Governments should provide a supportive policy and legal framework … which would: (a) establish an	Yes, in a register designated by the national law in accordance with the law applicable to public-	

has a wider scope than the ICA Statement, giving guidance, if not more, in matters such as equal treatment, taxation etc.

	institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible (193/2002 ILO Rec., II.6)	limited liability companies (art. 11, par. 1).	
5) Minimum number of members	No provisions, but see "Cooperative" means an autonomous association of persons (193/2002 ILO Rec., I.2)	2 companies or 5 natural persons (art. 2)	
6) Investor-members (admissibility)	Cooperatives are autonomous, self-help organisations controlled by their members. If they enter to agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy (4th ICA Principle: Autonomy and Independence) Governments should, where appropriate, adopt measures to facilitate the access of cooperatives to investment finance and credit (193/2002 ILO Rec., III.12)	Yes, on condition of statutes provision and if national law so permits (art. 14, par. 1, subpar. 2)	
7) Admission of new members (rules on)	Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination (1st ICA Principle: Voluntary and Open Membership)	Subject to approval by administrators. Candidates refused membership may appeal to the general meeting (art. 14, par. 1)	
8) Capital variability	Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the	Yes (art. 1, par. 2)	

	responsibilities of membership (1st ICA Principle: Voluntary and Open Membership)		
9) Minimum capital requirement	No provisions	30,000 €	
10) Allocation of the surplus and in particular allocation of the surplus to compulsory legal reserve funds	At least part of that capital is usually the common property of the cooperative ... Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible (3rd ICA Principle: Member Economic Participation). Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives (5th Principle: Education, Training and Information). Cooperatives work for the sustainable development of their communities through policies approved by their members (7th ICA Principle: Concern for Community) Governments should provide a supportive policy and legal framework … which would: (b) promote policies aimed at allowing the creation of appropriate reserves, part of which at least could be indivisible, and solidarity funds within cooperatives (193/2002 ILO Rec., II.6)	The statutes shall lay down rules for the allocation of the surplus without prejudice to mandatory provisions of national laws (art. 65, par. 1). Before any other allocation, 15% of the surplus shall be allocated to a legal reserve fund, as long as the legal reserve is equal to 30,000 € (art. 65, par. 2)	
11) Distribution of reserves (admissibility	At least part of that capital is usually the	Not permitted to the withdrawing member (art.	

and restrictions)	common property of the cooperative ... Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible (3rd ICA Principle: Member Economic Participation)	65, par. 3)	
12) Distribution of dividends on paid-up capital (admissibility and restrictions)	Members usually receive limited compensation, if any, on capital subscribed as a condition of membership (3rd ICA Principle: Member Economic Participation)	Yes, without limitations (art. 67), if statutes do not provide for the payment of “dividends” under art. 66	
13) Distinction dividends/refunds and distribution of refunds on the basis, and in the proportion to the activity	Members allocate surpluses for any or all of the following purposes: ... benefiting members in proportion to their transactions with the cooperative (3rd ICA Principle: Member Economic Participation)	Dividends are not clearly distinguished from refunds. Art. 66 names “dividends” those that are “refunds” in fact. While art. 67, par. 2, 3rd indent, uses the term “return” with regard to “dividends”. “Dividends” of art. 66 prevail over “returns” of art. 67 if statutes provide for the payment of the former.	
14) Voting rights	Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organised in a democratic manner (2nd ICA Principle: Democratic Member Control)	One member, one vote (art. 59, par. 1), but statutes may provide for some exceptions if national law so permits (art. 59, par. 2-4)	
15) Sectorial or section meetings (admissibility)	No provisions	Yes, where the SCE undertakes different activities or activities in more than one territorial unit, or has several	

		establishments or more than 500 members, if permitted by the relevant national legislation and provided for by the statutes (art. 63, par. 1)	
16) Conversion into another legal form of company or entity (admissibility)	No provisions	Only the hypothesis of the conversion into a national law cooperative is envisaged (art. 76)	
17) Management and administrative boards/organs: only members eligible?	Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership (2nd ICA Principle: Democratic Member Control). Cooperatives are autonomous, self-help organisations controlled by their members (4th ICA Principle: Autonomy and Independence) Governments should provide a supportive policy and legal framework … which would: (e) encourage the development of cooperatives as autonomous and self-managed enterprises (193/2002 ILO Rec., II.6)	Management organ: NO, it depends on statutes provision (art. 37, par. 4), but as regards the supervisory organ not more than ¼ of the posts available may be filled by non-user members (art. 39, par. 3) Administrative organ: not more than ¼ of the posts available may be filled by non-user members (art. 42, par. 2)	
18) Assets devolution in case of dissolution	Members usually receive limited compensation, if any, on capital subscribed as a condition of membership (3rd ICA Principle: Member Economic Participation)	Disinterested distribution of net assets or, where permitted by national law, in accordance with an alternative arrangement set out in the statutes (art. 75)	
19) Specific tax treatment (main measures)	Cooperatives should be treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organization. Governments should introduce support	No (see recital No 16)	

	measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions (193/2002 ILO Rec., II.7.2)		
20) Public and/or other forms of supervision (auditing), including precautionary supervision, specific for cooperatives and not merely financial (main objects)	Governments should provide a supportive policy and legal framework … which would: (c) provide for the adoption of measures for the oversight of cooperatives, on terms appropriate to their nature and functions, which respect their autonomy, and are in accordance with national law and practice, and which are no less favourable than those applicable to other forms of enterprise and social organization (193/2002 ILO Rec., II.6)	National law provisions apply (articles 5, par. 3; 8, par. 2; 71)	

Explanation of the table

The table above takes into account the definition of a cooperative and 19 other elements of possible cooperative regulation, which directly or indirectly, also in light of the ICA principles and 193/2002 ILO Recommendation, refer to the cooperative identity or contribute to its definition, as explained below.

Some lines are marked as they relate to points in which the SCE Regulation refers to national law by declaring it applicable to SCEs. Therefore the table (which may be found completed with references to the 30 countries involved in this research in appendix 3, part

I of this final study) permits not only a comparison of national cooperative laws from the perspective of the most relevant points of cooperative regulation (those which contribute to define cooperative identity), but also the verification of the incidence of SCE Regulation references to national law on the cooperative identity of the SCE, taking into account that 30 national laws apply to it.

The importance of this analysis (and particularly the reference to ICA principles of legislation and 193/2002 ILO Recommendation including them) clearly stems from the words of the 2004 EC communication on the promotion of cooperative societies in Europe: “legislators should be based on the cooperative definition, values and principles when drafting new laws governing cooperatives. In this context however Member States are required also to be sufficiently flexible in order to enable cooperatives to compete effectively in their markets and on equal terms with other forms of enterprise. Cooperatives do not need preferential treatment, but a legislation creating a more level playing field, in the sense that they are allowed to act free from restrictions and obligations, which are based on various national policy objectives, and to which are not however subject the other forms of companies with which they compete in a modern market economy. Well-drafted legislation can also help to overcome some of the restrictions inherent in the cooperative form, such as lack of access to investment capital. For example, cooperatives might be permitted to issue non-user investor shares which are tradable and interest bearing, on the condition that the participation of such non-user shareholders be limited to ensure that the cooperative nature of the companies is not jeopardised. The Commission invites Member States to be guided, when drafting national regulations governing cooperatives, by the ‘definition, values and cooperative principles’ of the above mentioned Recommendation but also to be sufficiently flexible in order to meet the modern needs of cooperatives”.

Item description and main comments on the results of the comparison

1) Definition and aim

The definition of a cooperative is expected to be that part of the cooperative regulation which contains the key elements of a cooperative, including its aim, which is necessary in order to distinguish it from other types of companies or legal forms. Although cooperative specificities may also emerge from other elements of the regulation, the definition assumes, therefore, a central role in the regulation of cooperatives.
The definition in the ICA principles does not directly focus on a cooperative’s specific purpose, but on some elements of its structure and activity, namely, its open character and the relationship between a cooperative and its members, which stems from the reference to the “use of services” and the “acceptance of responsibility” by members. By way of

contrast, the definition in the ILO Recommendation indicates a specific purpose and an organisational element (the "jointly owned and democratically controlled enterprise").
The comparative analysis reveals that there is no common definition of a cooperative, but definitions in the relevant European laws focus on several different aspects related to the purpose, the structure, and the activity (and sometimes to more than one of all these aspects together). Principally, these aspects (which, as said, may co-exist in a definition) are:

- the aim of pursuing economic, social, cultural or other needs of members through an economic activity;
- the fact that members participate in the economic activity of the cooperative as buyers, suppliers, workers, etc., thus assuming the "double quality" of members and users ("identity principle");
- the variability of the share capital and/or members;
- open membership and the principle of non-discrimination in the admittance of new members.

It is important to underline that, in many cases, European national cooperative laws explicitly or implicitly refer to (ICA) "cooperative principles" (the example of Malta is evident in this respect). In some cases, however, they point out other relevant profiles of cooperative identity, such as its democratic structure (e.g., Spain) or the not-for-profit aim (e.g., Denmark and UK), that is, the fact that cooperatives do not distribute their surplus to members according to the paid-up capital, but rather according to the contribution given by members to the cooperative activity by transacting or working with the cooperative. This reflects and brings into effect the identity principle (or double quality of cooperative members).

2) Economic activity (restrictions)

The second item of the table regards an aspect which is not linked to the cooperative identity. The objective is to verify whether European countries allow a cooperative to undertake any economic activity or whether there are barriers in comparison to other types of companies. Therefore, this item aims to show cooperative-specific restrictions to economic activity, in other words, restrictions that only apply to cooperatives due to the very fact of being cooperatives.
The comparative analysis reveals that in most countries there are no such barriers, and therefore cooperatives operate on an equal footing with other companies. In addition, in some laws, it is opportunely stated that cooperatives may freely engage in any economic activity (see France, Portugal, Spain). The Portuguese cooperative code is emblematic in this respect, when it states that "Cooperatives may freely exercise any economic activity …it cannot be prohibited, restricted or conditioned to cooperatives the access and the

exercise of activities that can be developed by private companies or other entities of the same nature, as well as by any other legal persons governed by private law with non-profit aim (art. 7, CC)". This perfectly responds to the preoccupation which emerges from an ILO Recommendation stating, "It is recognised that cooperatives operate in all sectors of the economy" (193/2002 ILO Rec., I.1).
However, in some countries, barriers do exist, in particular relating to banking, finance and insurance activities[57].

3) Activity with non-members (admissibility and restrictions)

This item relates indirectly to the idea that a cooperative is an organisation aiming to act with its members as purchasers (of the services and goods provided by the cooperative: consumer cooperatives, cooperative banks, etc.), sellers (of services and goods used by the cooperative for its economic activity: professional cooperatives, agricultural cooperatives, etc.) or workers (worker cooperatives). Thus, one must ask whether the law addresses and protects this cooperative profile by excluding or (more probably) restricting the activity of the cooperative with non-members (which means: selling to, purchasing from, and employing non-members).
This element (which is clearly an aspect of the "identity principle" or "double quality" of members, as referred to above) is envisaged by the SCE Regulation, which declares that activity with non-members is permitted only if allowed by SCE statutes, without establishing, however, a limit for this.
The comparative analysis shows that this aspect is not often considered by legislators, probably because, if on the one hand limiting the activity with non-members would reinforce cooperative identity, on the other hand the activity with non-members is necessary for cooperatives and is difficult to determine *ex ante* the extent to which it may be allowed to cooperatives. When the aspect is considered, its treatment is similar to that provided for by the SCE Regulation, i.e., activity with non-members is permitted only if allowed by statutes. Moreover, some laws restrict this possibility with general formulas, e.g., providing that activity with non-members may not be nor become predominant over activity with members.
Sometimes this profile assumes a central role in cooperative regulation, as in Italy, where it is required in order to define a cooperative as "mainly mutual", which is a condition for its eligibility for a specific tax treatment (not awarded to cooperatives which are not "mainly mutual"). Also in other countries, this is an essential element under tax law (see, for example, Denmark).

[57] However, it must be pointed out that in certain cases, although banking and insurance are prohibited to cooperatives, "credit unions" and "mutuals", which substantially are cooperative forms of conducting (respectively) banking and insurance activities, are permitted.

4) Registration

This item aims to verify whether there is a specific register for cooperatives in European countries or whether cooperatives are registered in the same register as other companies. This is a profile which affects cooperative visibility even though, in this respect, a specific code or section for cooperatives within the general register of companies or enterprises could in theory serve the same purpose.
In around 2/3 of countries there is no specific register for cooperatives and cooperatives are registered in a general register (legal entities/companies/commercial/trade/business register).

5) Minimum number of members

While other companies may be set up by, and operate with, two people (or even only one), cooperatives, being "associations of persons" (see the definition in the ILO Recommendation), are supposed to consist of an appropriate minimum number of members. In the SCE Regulation this appropriate minimum number is 5 natural persons or legal entities, while 2 legal entities are sufficient to establish a secondary cooperative in the form of an SCE.
The comparative analysis shows that the ordinary minimum number of members in European national laws ranges from two to seven. Sometimes this is consistently higher (ten in Poland, 12 in Cyprus, 15 in Iceland and Greek civil cooperatives), whereas sometimes it is not even indicated by the law (which means that, implicitly, two people are sufficient; see, for example, Austria).
It is worth noting that there is a legislative trend toward the reduction of this minimum number (see, for example, Germany and Italy).

6) Investor-members (admissibility)

Due to the specific purpose of cooperatives to engage in transactions with members, so that members are "user-members" in the aforementioned sense, and not to remunerate the capital provided by members except to a limited extent, the question arises whether a cooperative may admit members interested only in the remuneration of the capital conferred and not in exchanging with the cooperatives or working with it.
This point is relevant for cooperative identity (in a similar way as the preceding point on the activity with non-members), for the remuneration of capital is the purpose of (capitalistic) investor-owned companies. However, if on the one hand the exclusion of investor-members in cooperatives could in theory be essential for cooperative identity or contribute to reinforce it, on the other hand cooperatives, as all other enterprises, need risk capital for their economic activity; cooperatives, even more than other enterprises, due to the limited

function of capital (see also items 12-14 below), may face a problem of finance shortage, which means that an equilibrium must be found between the two exigencies, as the SCE Regulation sought to do. In particular, if investor-members in cooperatives are admitted, this equilibrium should ensure that a cooperative is not controlled by investor-members instead of user-members.

The comparative analysis reveals that this point, although important, is not generally dealt with by relevant cooperative laws. Where it is, so that investor-members are admitted, which happens normally on condition of a statutes' provision, the law provides barriers to avoid investor-members from ending up controlling the cooperative (restrictions in the number of investor-members, as in Hungary, or in their total votes in each general meeting, as for example in Italy). This is, as stated above, a condition for cooperative identity preservation (see 4th ICA principle). Only a few national laws explicitly prohibit investor-members in cooperatives.

It is worth mentioning that, in this respect, the SCE Regulation has had a significant impact on cooperative legislation (as the cases of Germany, Italy and Slovenia show[58]).

7) and 8) - Admission of New Members (rules on), and Capital Variability, respectively

These items of the table regard two correlated profiles, both linked to the definition of a cooperative under the 1st ICA principle and the concept of cooperative as an "open" organisation therein. This is also one of the profiles of the cooperative identity directly connected with the social function of the cooperative, as an organisation producing positive externalities, that is, benefiting not only its members, but the community as well. In fact, once the cooperative is "open" to new admissions, all people, by becoming members, may take advantage of the goods and services or jobs it aims to provide to members (one may also note how this issue is also related to the aspect mentioned above of cooperative activity with non-members).

The rules on the variability of capital in cooperatives (as opposed to the fixed capital in other companies) and on the admission of new members serve the purpose of making a cooperative "open" to people wishing to benefit.

Variability of capital – as the basic technical instrument for openness – may be considered a common rule in European cooperative law: both the SCE Regulation and national cooperative laws provide for it (only Danish and Swedish general laws do not explicitly regulate this point). Moreover, as said, in certain cases, cooperative laws include capital variability in the very definition of a cooperative (another point is how the rule on capital variability is combined with that on the minimum capital: see below).

The issue of regulation of new admissions is more complex. In fact, people wishing to become members could not be awarded by the law a subjective right to become members,

[58] But see also UK in table 14, chapter 3, Part I of this Final Study.

for it would affect the cooperative freedom of enterprise, managerial strategies, and finally risk its survival. Therefore, the issue ought to be handled with prudence, by protecting (in compliance with the identity of a cooperative, as defined by the 1st ICA principle) the legitimate interest of third parties to become members and simultaneously respecting the autonomy of a cooperative as an economic player. The SCE Regulation provides a solution which seems to be appropriate and is followed by several national cooperative laws (e.g., Bulgaria, Greece, Latvia, among many others). Other cooperative laws provide weaker rules in this respect or simply leave cooperative statutes the freedom to regulate this aspect (e.g., Belgium, France, Luxembourg, Slovakia), which is questionable from a cooperative identity preservation point of view.

Interesting wordings in this respect may be found in the UK regulation, where it is stated on the one hand that membership “should not be restricted artificially to increase the value of the rights and interests of current members”, and on the other hand that “for example, the membership of a club might be limited by the size of its premises, or the membership of a self-build housing society by the number of houses that could be built on a particular site”; in the Norwegian general law, where it is stated that refusal of admission requires “reasonable grounds”; and in the Polish general law, which prohibits “refusal on grounds of race, citizenship, religion, politics”.

9) Minimum capital requirement

As regards the minimum capital requirement, the SCE Regulation contradicts European national cooperative laws, which, with some exceptions, do not impose such requirements on cooperatives, or when they do so, they either leave statutes the power to determine it or do not provide for a very significant minimum amount (this is around 1,000 € on average; and 18,500 € at the highest as in Belgium for limited liability cooperatives and in France)[59].

The minimum capital requirement in cooperatives, which are not investor-driven enterprises, plays the limited role of ensuring and protecting creditors. However, this function is questioned by some legal and economic scholars even with regard to public-limited liability companies, arguing that creditors do not rely on equity, but rather on other elements when they decide to finance a company. In particular, cooperative reliability before investors may be more enhanced by indivisible reserves and the not-for-profit aim than the minimum capital itself.

The minimum capital requirement, if existent as it is in the SCE Regulation, needs to be combined with capital variability in cooperatives: when the minimum capital requirement applies, variability operates only with regard to the capital exceeding the minimum amount

[59] Cooperative bank laws provide for a higher amount, but this is due to the banking sector general regulation and not to the cooperative form of enterprise in itself.

required, as art. 3, par. 4, SCE Regulation, demonstrates. This means that the minimum capital is also considered a fixed capital.
The aspect of the minimum capital also has implications for that of reserves, as pointed out below.

10) and 11) - Allocation of the surplus and in particular allocation of the surplus to compulsory legal reserve funds, and Distribution of reserves (admissibility and restrictions), respectively

The specific purpose of these items is to learn more about the legal treatment of cooperative reserve funds in European cooperative law, which is a crucial point for cooperative regulation under many aspects, including creditor protection (especially where the law does not provide for a minimum capital) and the social function of cooperatives (given that a particular use of these funds might be required by the law to the benefit of non-members, such as other cooperatives, the cooperative movement, the community, etc.).
More precisely, attention in the table is given to the regulation of compulsory legal reserve funds, in order to find out whether or not cooperative laws provide for the establishment of a compulsory reserve fund, and in the affirmative, how and to what extent this reserve fund is formed and augmented.
Attention is also given to the subject of distribution of reserves in order to find out whether or not compulsory (and also voluntary) reserve funds are distributable to members during the existence of the cooperative and in the event of dissolution (on this point, see item 18).
It must be noted in this regard that both ICA principles and the ILO recommendation on the one hand, and the SCE Regulation on the other, deal with, and provide for, indivisible reserves.
The table reveals the existence of diverse regulations on this matter, as there are:

- laws which do not oblige a cooperative to set up a reserve fund, simply leaving the matter to statutes;
- laws which provide for the constitution of a compulsory reserve fund but allow its distribution to members;
- laws which provide for the constitution of a compulsory reserve fund and prohibit its distribution to members, even in the case of member withdrawal;
- laws which provide for the constitution of a compulsory reserve fund and prohibit its distribution to members, even in the case of cooperative dissolution;
- laws which provide for the constitution of more than one compulsory reserve fund with different purposes.

One fundamental point regards how and to what extent compulsory reserve funds must be augmented through the destination of part of annual surplus. The percentages of annual surplus to be destined to the compulsory reserve funds vary among countries (from 5% to

50%). A distinction must be drawn between those laws which set a limit to the accumulation of reserves (almost all the laws) and those laws (such as the Italian) which do not. In the former, the role of reserves may be weaker, for normally the limit is determined as a percentage on the capital, and in cooperatives normally there is no minimum capital and capital is variable.

12) and 13) - Distribution of dividends on paid-up capital (admissibility and restrictions), and Distinction dividends/refunds and distribution of refunds on the basis, and in proportion to the activity, rispectively

These two items deal with a central issue of cooperative regulation, and a key element for cooperative identity and its distinction from capitalistic (investor-owned) enterprises - that of surplus distribution to members and the distinction between dividends and refunds.
The normal way of surplus distribution to members in capitalistic enterprises is to award an amount which finds its justification in the conferment of the capital by the member and is proportioned to the capital conferred.
In cooperatives, which are not investor-driven, but user-driven enterprises, it is expected that surplus is distributed according to a different model, that of refunds (or "cooperative returns" or "patronage refunds"). In this case, the distribution of the surplus to members is justified by member participation (as purchaser, seller, worker) in the economic activity of the cooperative and should be proportioned to the quantity and/or quality of such participation. Hence, different from capitalistic (investor-driven) enterprises, the capital held by members does not play a function in this regard, as the allocation of surplus to members does not aim to remunerate the capital provided by members, but rather their participation in the economic activity as users or contractual counterparts of their cooperative (mutual exchanges).
Given this, the point is whether cooperative laws recognise the distinction between dividends and refunds, whether and to what extent they allow the distribution of dividends, whether and how they favour the distribution of refunds instead of dividends by obliging the cooperative to distribute the former instead of the latter and/or by fixing a limit to the remuneration of the capital (i.e., the distribution of dividends according to the capital held).
The comparative analysis reveals that, like in the SCE Regulation, in many countries the distinction is not clearly drawn and there are still laws which neither oblige the cooperative to distribute refunds instead of dividends (leaving the matter to statutes: e.g., Austria, Germany), nor indicate a threshold for dividend distribution and moreover consider the remuneration of the capital held as a default rule for surplus distribution (e.g., Romania). There are of course important exceptions (see, for example, the regulation of "mainly mutual cooperatives" in Italian law).
It is worth noting that in some countries (e.g., Germany) surplus distribution by way of refund, though not compulsory under substantial cooperative law, is relevant under tax

law, as a condition for eligibility to the specific tax treatment for cooperatives (because it can be deducted from the taxable income of a cooperative, provided certain conditions are met).

14) Voting rights

The rule "one member, one vote" – which is one of the main and significant points of cooperative regulation – is followed by almost all the countries considered in this research, as the legislative table shows (the only exception is Ireland).
However, only in a few cases is the rule mandatory and may never be derogated (e.g., in Bulgaria, Cyprus).
In fact, in most cases, this point is regulated by a default rule, which means that cooperative statutes may derogate from it. However, in this regard, two situations occur: some cooperative laws do not put limits to statutes, which means that derogation is free (e.g., in Luxembourg, Netherlands); while other cooperative laws permit only particular derogations (e.g., in secondary cooperatives, in agricultural cooperatives, in favour of investor-members, etc.) and within specific limits, which are determined so as to avoid a single member (or category of members) ending up controlling the cooperative.
It is also important to observe that there are cases (e.g., Greek law on rural cooperatives, Norway) where more votes may be awarded to a member in proportion to the volume of activity with the cooperative, which is a criterion for awarding more votes perfectly consistent with the particular aim of a cooperative as discussed above. In this regard, it is also worth mentioning that in the UK regulation it is expressly stated that voting power may not be based on capital contribution by members.

15) Sectorial or section meetings (admissibility)

The democratic principle of organisation which applies to cooperatives needs to be adapted to the concrete characteristics of a cooperative. In some cases, indirect democracy through representatives may be a proper solution to the problems of the member disinterest (which sometimes has rational grounds) in exercising her/his right of control of the cooperative.
The table shows under this item whether and when sectorial or section meetings are allowed by European cooperative laws.

16) Conversion into another legal form of company or entity (admissibility)

In the 2004 EC communication on the promotion of cooperative societies in Europe, it is stated: "Member States are encouraged to provide sufficient protection to cooperative assets by ensuring that in case of take-over bids and of the consequent conversion of a

cooperative to the form of a public company limited by shares the wishes of members and the objectives of the cooperative are respected".
The table seeks to verify whether cooperative laws permit the conversion of a cooperative into another legal form of company, as well as whether they contain restrictions to, and/or conditions for, such conversion, which should aim to avoid a conversion resulting in appropriation by members of resources accumulated by the cooperative for other purposes protected by the law.

17) Management and administrative boards/organs: only members eligible?

Control by members and self-management are principles of cooperative regulation which can and should be enacted in different ways, by taking into account the concrete characteristics of a cooperative, for example its size.
In this item, attention is only given to whether there is a restriction in the formation of the management and administrative organs, namely, whether only the members of the cooperative are eligible to these organs.
There is not a uniform solution. In some countries, the point is not dealt with by the law, or left to statutes, or there is no prohibition, whereas in some other countries, only members may be nominated administrators. An intermediate solution is offered by Italian law, which provides that the majority of administrators must be members of the cooperative.

18) Assets devolution in case of dissolution

In the 2004 EC communication on the promotion of cooperative societies in Europe, it is stated: "the Commission encourages Member States to ensure that the assets of cooperatives upon dissolution or conversion should be distributed according to the cooperative principle of 'disinterested distribution'; that is to say either to other cooperatives, where members can participate, or to cooperative organisations pursuing similar or general interest objectives. Such assets are often built up over generations, and remain collectively owned and are 'locked-in' to the objectives of those cooperatives. However, it should be possible to provide for the assets of a cooperative to be distributed to its members upon dissolution, in well examined cases. Member States are encouraged to provide sufficient protection to cooperative assets by ensuring that in case of take-over bids and of the consequent conversion of a cooperative to the form of a public company limited by shares the wishes of members and the objectives of the cooperative are respected".
The comparative analysis shows that the principle of disinterested distribution is generally not enacted by European cooperative laws (which permits distribution of residual net assets to members, sometimes even in proportion to the capital held) or is left to cooperative statutes. There are, however, some relevant exceptions where the principle of

disinterested distribution applies to residual net assets, only subtracted the capital paid-up by members (see Cyprus, France, Italy, Malta, Portugal, Romania, Spain).
The existing relationship between this issue and the not-for-profit aim of cooperatives must be pointed out: the former is a sort of condition for, and a consequence of, the latter, because the non-disinterested distribution, especially in the case it takes place according to the capital held by members, may be considered a sort of *ex post* distribution of profits. The two aspects would need, therefore, to be considered jointly in an appropriate legal framework regarding cooperatives.

19) Specific tax treatment (main measures)

In the 2004 EC communication on the promotion of cooperative societies in Europe, it is stated: "some Member States (such as Belgium, Italy and Portugal) consider that the restrictions inherent in the specific nature of cooperative capital merit specific tax treatment: for example, the fact that cooperatives' shares are not listed, and therefore not widely available for purchase, results almost in the impossibility to realise a capital gain; the fact that shares are repaid at their par value (they have no speculative value) and any yield (dividend) is normally limited may dissuade new memberships. In addition it is to be mentioned that cooperatives are often subject to strict requirements in respect of allocations to reserves. Specific tax treatment may be welcomed, but in all aspects of the regulation of cooperatives, the principle should be observed that any protection or benefits afforded to a particular type of entity should be proportionate to any legal constraints, social added value or limitations inherent in that form and should not lead to unfair competition. In addition any other granted 'advantages' should not permit the undesirable use of the cooperative form by non *bona fide* cooperatives as a means of escaping appropriate disclosure and corporate governance requirements. The Commission invites Member States when considering appropriate and proportionate tax treatment for equity capital and reserves of cooperatives, to take good care that such provisions do not create anticompetitive situations".
The table shows whether cooperatives are subject to a specific tax treatment and, if so, indicates the main measures which it consists of.
It is important to observe that in some cases national tax laws require cooperatives to have some additional features not requested by substantial cooperative law for the existence of a cooperative (e.g., Belgium, Denmark) or limit the specific treatment to some types of cooperatives individuated by their characteristics (Italy) or the sector of the economy in which they operate (e.g., agriculture, social, etc.).
As to the specific measures applying this specific treatment, some of them are clearly and closely related to the specific nature of cooperatives (such as, for example, that according to which the surplus stemming from the activity with members is not regarded as profit for tax purposes, or that according to which the surplus allocated to a legal non divisible

reserve fund is not or is only partially taxable). Specific tax measures like those indicated above not only are consistent with the cooperative nature, but also encourage a cooperative to act according to its nature.

20) Public and/or other forms of supervision (auditing), including precautionary supervision, specific for cooperatives and not merely financial (main objects)

The table reveals that in some countries cooperatives are subject to a specific form of compulsory supervision, sometimes named “cooperative revision”.
Cooperative revision is not always justified by the fact that the cooperative is subject to a specific tax treatment (as it is in Belgium), for it has a wider scope and mainly concentrates on the cooperative nature of supervised cooperatives (there are examples where revision is provided for even though cooperatives do not enjoy a specific tax treatment: see Poland). Moreover, in some countries (e.g., Italy and Poland), the law expressly recognises that cooperative revision is aimed not only toward auditing cooperatives, but also assisting, adivising and supporting them.
Revision is performed in some cases by the state or other public bodies, while in other cases by cooperative federations, i.e., representative organisations of the cooperative movement recognised by the state; in some cases (see Austria and Germany) cooperatives are obliged to become members of one of these organisations (compulsory membership); in other cases (see Italy), there is no such requirement and cooperatives that are not members of any federation are revised by the state.
It is worth noting that compulsory cooperative revisions by federations is provided for in countries where the cooperative movement is solidly-established and well-developed (France, Germany, Italy, Spain, above all).

5. Legal obstacles

Table 9 below summarises the legal obstacles to the development of cooperatives, as reported by national experts in relation to each country involved in this research.

Table 9. *Legal obstacles to the development of cooperatives*

Country	Legal obstacles
AUSTRIA	Minor problems are represented by fees for the compulsory membership in auditing cooperative associations, and the impossibility for cooperatives, whose aim is social, to assume the "charitable" legal status, which would allow them to benefit of a specific tax treatment
BELGIUM	The fact that SCEs are not allowed to assume SFS (*société à finalité sociale*: company with social purpose) legal status
BULGARIA	Cooperatives may not perform banking, financial and reinsurance activities. The particular regime of lands which limits the formation of an SCE by merger and the transfer of SCE registered office
CYPRUS	No legal obstacles
CZECH REP.	No legal obstacles
DENMARK	No legal obstacles, but the absence of a specific legislation does not promote this legal structure, particularly within specific sectors, such as social inclusion and labour integration
ESTONIA	Minimum capital requirement, which is high (around 2,560 €) and not significantly lower than that which applies to other companies
FINLAND	Taxation of capital income paid to owners which is less favourable for cooperatives than for limited liability companies
FRANCE	The complexity of French cooperative legislation and the key role played by special laws may hamper further development of French cooperatives, and also have negative effects on the use of the SCE form
GERMANY	No legal obstacles
GREECE	Legal limit to capitalisation of civil cooperatives and cooperative banks due to the restriction on investor-members and optional shares; legal status of employees in rural cooperatives; tax law on civil cooperatives which results in a double taxation; the law on social cooperatives is rather narrow; the law on housing cooperatives is rather strict and deviates from cooperative principles; cooperative banks are not allowed to act with non-members
HUNGARY	no legal obstacles, but the obscurity of EU legislation on worker participation is seen, at times, as a stumbling block
ICELAND	Cooperatives are not permitted to run financial lending activities
IRELAND	The absence of a specific legislation on cooperatives has broadly facilitated cooperatives but places an unfair burden on cooperatives in terms of regulatory compliance and could place cooperatives at a competitive disadvantage when individuals are selecting a corporate form
ITALY	No legal obstacles
LATVIA	No legal obstacles
LIECHTENSTEIN	No legal obstacles
LITHUANIA	No legal obstacles
LUXEMBOURG	The absence of provisions regulating cooperatives in compliance with cooperative principles of legislation may be seen as a legal obstacle
MALTA	No legal obstacles
NETHERLANDS	The inadequacy of the current specific tax treatment of cooperatives and the lack of specific consideration under antitrust law may be considered legal obstacles to the development of cooperatives
NORWAY	The repeal by the government of the 15% deduction for non-distributable reserves, after the EFTA surveillance authority communicated that this measure was an illegal state aid, is seen as a legal obstacle in the country

POLAND	The following may be considered minor legal obstacles: the high minimum number of founders (10); the absence of a specific regulation on accountancy, as the currently applicable one is onerous, particularly for small cooperatives; the one member one vote rule, which may reduce capital investment in a cooperative
PORTUGAL	Non-admissibility of non-user (investor) members and the impossibility to derogate from the "one member, one vote" rule in first degree cooperatives
ROMANIA	The imposition of a minimum income tax since 2009 has affected the activity of many small cooperatives, as the payments can amount to approximately 500 Euros (for incomes between 0 and 12.000 Euros) to 10.000 Euros per year. Due to the remainders left by the specific regulation of cooperatives during the communist regime, currently, in many cases, cooperatives possess only the right to use the land on which they carry out their activities or on which they have constructions, but not the full property, which raises a number of problems for cooperatives
SLOVAKIA	No legal obstacles
SLOVENIA	Banking and insurance activities are not permitted to cooperatives. Moreover, cooperatives are perceived as a type of organisation only relevant in the sector of agriculture and forestry (the main example for this is the Ministry of Agriculture's authority over cooperative legislation)
SPAIN	No legal obstacles
SWEDEN	No legal obstacles
UNITED KINGDOM	According to the national expert, strictly speaking, there are no legal obstacles to the development of cooperatives in the UK. Yet, there are some administrative obstacles as follows: - the absence of a public body for the promotion of cooperatives; - the registration system for cooperatives, which does not operate electronically as the companies register does; - the registration fees to establish cooperatives, which are substantially higher than those applicable to companies registered at Companies House

CHAPTER 3

ANALYSIS OF THE DEGREE OF SUCCESS OF THE SCE REGULATION

SUMMARY: 1. *Introduction*. – **2.** *Inventory of SCEs and related information* [Table 10. Existing SCEs (as of 8.5.2010)]. – **3.** *Methodology used for stakeholder consultation* [Table 11 and figure 2. Consulted stakeholders]. – **4.** *Factors with potential positive (persuasive) effect* [Table 12 and figure 3. Factors with potential positive (persuasive) effect]. – **5.** *Factors with potential negative (dissuasive) effect* [Table 13 and figure 4. Factors with potential negative (dissuasive) effect]. – **6**. *The impact of the SCE Regulation on national cooperative legislation* [Table 14. Impact of the SCE R on national cooperative legislation].

1. Introduction

In accordance with the contract with the European Commission, this research was expected to provide information on the number of SCEs created, in order to reach some conclusions on the success of the SCE Regulation. Furthermore, said contract provided that "on the basis of the information collected by the Contractor (within representative organisations and/or individual cooperatives), the study shall analyse and identify how the different provisions of the SCE Regulation can or have affected the decisions of companies and/or natural persons to uptake or not of the SCE form, including an analysis of the legal and economic considerations involved".

Accordingly, the analysis of the degree of success of the SCE Regulation will be conducted by taking into account these three elements:

- the number of existing SCEs (par. 2);
- the results of the stakeholder consultation procedure as regards factors with potential dissuasive effect and with persuasive effect (par. 4 and 5);
- the impact of the SCE Regulation on national cooperative laws (par. 6).

2. Inventory of SCEs and related information

Table 10 below shows the number of SCEs established by country as of 8 May 2010. The third column indicates existing branches. The table in appendix 4, part I of this final study, presents the most relevant data concerning the existing SCEs.

Table 10. *Existing SCEs (as of 8.5.2010)*

Country	Number of SCEs	Branches
AUSTRIA	0	
BELGIUM	2	
BULGARIA	0	
CYPRUS	0	
CZECH REP	0	
DENMARK	0	
ESTONIA	0	
FINLAND	0	1 branch of an Italian SCE
FRANCE	0	1 branch of an Italian SCE?
GERMANY	1	
GREECE	0	
HUNGARY	2	
ICELAND	0	
IRELAND	0	
ITALY	5	
LATVIA	0	
LIECHTENSTEIN	1	
LITHUANIA	0	
LUXEMBOURG	0	
MALTA	0	1 branch of an Italian SCE
NETHERLANDS	1	
NORWAY	0	
POLAND	0	
PORTUGAL	0	
ROMANIA	0	
SLOVAKIA	3	
SLOVENIA	0	
SPAIN	1	1 branch of an Italian SCE
SWEDEN	1	
UK	0	
TOTAL NUMBER OF SCEs	**17**	

Information on the number of existing SCEs was obtained by national experts from the registers indicated in table 5 in chapter 1 above. This number has been matched with the information from the OJEU (see art. 13 SCE Regulation). In the OJEU some SCEs (two out of 17) do not show up at all; eight appear under the "SE" label; another 3 under the "EEIG" label; only four under the "SCE" label. The fact that the OJEU misses many

European societies is a point other researchers have already raised while investigating SE Regulation implementation[60]. This is an issue that needs particular attention, also in terms of a specific recommendation to the Commission.

17 SCEs have been created as of 8 May 2010. Italy is the country with more registered SCEs, which is consistent with the fact that Italy is a country where cooperatives are well developed and promoted by the state pursuant to the constitutional provision of art. 45. The absence of a national implementation law has not discouraged people to set up an SCE in Italy. Slovakia ranks second with three registered SCEs. Belgium and Hungary follow. In 21 countries (19 MSs and 1 EEA country) no SCEs have been established.

Planning SCEs

We also know of an additional seven entities which are planning to incorporate under the SCE Regulation. According to our information, these planning SCEs will be established as follows: two in Belgium (Copernic, Rep Agency), two in Germany (Netfutura, ABG), one in Greece (European Credit cooperative of non privileged citizens), one in Hungary (Ha-Mi), and one in Luxembourg (Logement, habitat, études et développement coopératif).

Information on existing SCEs

We could not obtain any information about two Slovak SCEs, which, however, were both set up very recently (April 2010). Other available information has been provided in accordance with the contract with the EC, and are shown in appendix 4 to part I of this final study. Missing information is due to the fact that either the concerned SCEs are newly established, which makes some points of the table not applicable, or that SCEs refused to provide requested information to national experts.

Formation

As to the 14 SCEs on which there are available data in this regard, all of them have been formed *ex novo* (or *ex nihilo*) in accordance with the first, second and third indents of art. 2, par. 1, SCE R., that is,

- (a) “by five or more natural persons resident in at least two Member States”;
- (b) “by five or more natural persons and companies and firms ... formed under the law of a Member State, resident in, or governed by the law of at least two different Member States”;

[60] See Eidenmüller, Engert, Hornuf, *Incorporating under European Law: The Societas Europaea as a Vehicle for Legal Arbitrage*, in 10 European Business Organisation Review 1 ff. (2009).

- (c) “by companies and firms ... 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.

To be more precise, six SCEs have been formed in accordance with (a) above; another six in accordance with (b) above; and yet another two in accordance with (c) above. The method of formation of three SCEs is still not known.

Formation via merger or conversion did not take place.

One SCE was registered in 2006; five were registered in 2008; seven in 2009; four in 2010 (until 8.5.2010).

Number and nature of founders

As to the 13 SCEs for which there are available data in this regard, the number of founders is 165, which means that the presumable minimum total number of SCE founders ranges from 176 to 185 (assuming the minimum number of founders in the four SCEs on which pertinent information is not available).

99 out of 165 known members are natural persons. A few public bodies are founders of SCEs.

Employees

As to the 12 SCEs for which there are available data in this regard, the known total number of employees is 32. These people are prevalently employed by two SCEs (one has 13 employees, the other 10). Six SCEs have only one or two employees. Four declared that they do not have any employees.

Comments

Almost four years after the SCE Regulation went into effect, there are still a limited number of SCEs established, although a few other entities are planning to incorporate as SCEs.

However, it could be considered quite normal that a new regulation, especially one as complex as the SCE Regulation, would need a few years before becoming really operative. Some interviewees also expressed this view, believing that the non-use (or limited use) of the SCE structure in their country was mainly due to the need to learn more about this European regulation before taking advantage of it. Indeed, this is more or less

what happened for the SE Regulation: in the first three years of its application, only around 60 SEs were established.

Comparing established SCEs and SEs, the difference in the number is apparently significant: 17 *vs.* 596, i.e., 2.85/100 in proportion. The substance, however, may be different.

On the website of the European Trade Union Institute (ETUI) the number of existing SEs and their qualification are freely available[61]. As said, there are 596 existing SEs as of 29 June 2010, divided as follows: 286 UFO, 75 “shelf”, 83 empty, and (only) 152 normal.
According to the qualification system used by ETUI to classify existing SEs:

- a “normal” SE is an SE with operations and employees;
- an “empty” SE is an SE with operations, but without employees;
- a “shelf” SE is an "off the shelf" company, one which has not been set up for a specific purpose but that is available and generally can be bought by anyone who wants it. Some specialist companies offer shelf companies to businesses so that they can set up in a business very quickly. These SEs have neither operations nor employees;
- a “UFO” SE is operating. Although some information is available from the commercial register and the Supplement of the Official Journal, no information on number of employees or agreement on involvement of employees is available.

If one applies these categories of classification to existing SCEs, the result is that:
- “UFO” SCEs would number two at the moment (although these SCEs are “UFO” only because they have been set up recently: in April 2010, as said);
- There would be four “Empty” SCEs;
- “Normal” SCEs would number 11.

Therefore, comparing again the number of SCEs and SEs, but with limited regard to “normal” SCEs and SEs, the result is: 11 *vs.* 152, i.e., 7.23/100 in proportion. Considering that the SE Regulation came into force on 8 October 2004, that is, almost two years before the SCE Regulation came into force, and that in general the number of existing public limited-liability companies is certainly higher than the number of existing cooperatives in Europe, the conclusion is that either both Regulations have failed or that the SCE Regulation has not completely failed. It appears to be too early to make a determination.

What is pointed out above does not mean, of course, that the reasons for the small number of existing SCEs shall not be investigated. This was the objective pursued through

[61] See www.worker-participation.eu.

the stakeholder consultation, the process and results of which are described in the next paragraphs.

3. Methodology used for stakeholder consultation

Our analysis of the degree of success of the SCE Regulation, directed toward identifying the factors with dissuasive effects and those with persuasive effects in the creation of an SCE, involved the consultation of cooperative stakeholders.

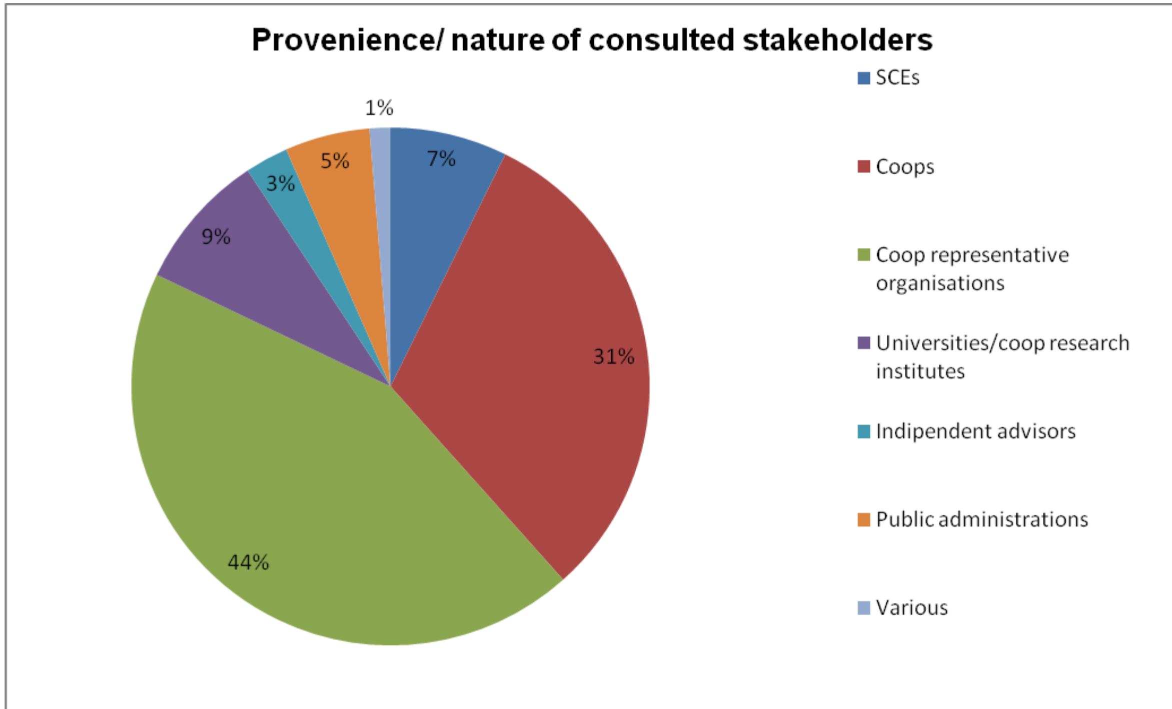
Our main empirical methodology consisted in the administration of 136 in-depth questionnaires to 151 interviewees from 26 European countries[62]. Table 11 and figure 2 below show the number, provenience and nature of consulted stakeholders.

[62] Four national experts (Luxembourg, Norway, Poland, Slovakia), though asked, did not conduct interviews.

Table 11. *Consulted stakeholders*

		Provenience/nature of consulted stakeholders						
Country	**No**	**SCEs**	**Coops**	**Coop representative organisations**	**Universities/ coop research institutes**	**Independent advisors**	**Public adminis trations**	**Various**
Austria	4			3				1
Belgium	8	2	1	2	2	1		
Bulgaria	6		2	4				
Cyprus	3		2	1				
Czech Rep.	3		1	2				
Denmark	4			1		1	2	
Estonia	5			3	1	1		
Finland	3	1		2				
France	13		6	5			1	1
Germany	25	1		17	7			
Greece	5		1	4				
Hungary	1	1						
Iceland	11		10	1				
Ireland	6			3			3	
Italy	7	3		4				
Latvia	3		1	2				
Liechtenstein	1						1	
Lithuania	1			1				
Malta	2			1	1			
Netherlands	11	1	7	1	2			
Portugal	4		1	3				
Romania	4		1	3				
Slovenia	12		12					
Spain	3	1	2					
Sweden	3	1		2				
United Kingdom	3			1		1	1	
TOT	151	11	47	66	13	4	8	2

Fig. 2. *Consulted stakeholders*



The questionnaire combined 15 closed and open ended questions, asking respondents' level of knowledge about the SCE legislation, its weaknesses and strengths, and the likelihood and/or reason why people would join the SCE structure (see section 2 of the questionnaire in annex 2 to this final study). All questionnaires were administered in the country's language.

The purpose of the questionnaire was to obtain the sufficient data to allow us to confirm or disconfirm the reasons why the SCE Regulation has not largely been used by cooperative entrepreneurs, including: the costs of setting up, the minimum capital requirement, the complexity of the SCE Regulation, the fact that the SCE Regulation does not take into account aspects relevant to cross-border cooperation, the absence of a specific tax treatment, and the worker participation regime. These specific hypotheses on the potential reasons why the SCE Regulation might be failing are those that the European Commission requested us to test. The questionnaire met this requirement and also looked to explore if there was any other motivation (other than legal or fiscal) expressed by people to explain why so few SCEs have been established since the SCE Regulation has been issued. We gave respondents the option of providing multiple responses.

In terms of data collection we followed a mixed collection method. Some interviews were conducted by phone, while others were conducted by email and another share of questionnaires administered face-to-face. Regarding the interview, some of them involved only one interviewee, while others involved two or more participants (this is the reason why we indicated 151 respondents and only 136 returned questionnaires). Interviewees were selected based on their cognitive and practical involvement in the SCE and cooperative subject (e.g., country representatives of cooperative organizations and federations, cooperative advisors, public officers knowledgeable of cooperatives, reference persons of established SCEs). All of the interviewees occupy a high rank in their respective organisation.

This method of qualitative interviewing (in-depth interviewing) was applied given its powerful capacity to draw views, experiences, expectations and evaluations from people directly involved in the phenomenon under study. Applied to the cooperative world, in-depth interviewing is particularly adequate given that cooperatives are usually inspired by subjective criteria (e.g. democratic principles, non-economic values, normative expectations) which are pieces of information better identified and assessed if fully expressed by those who experience them.

The data collected were then translated into English and analysed, based on the answers given by the 151 interviewees who replied either individually or in groups. The analysis consisted in a within and across countries comparison of answers in order to identify patterns of similarities and/or differences observed in the points that people refer to as strengths and weaknesses of the SCE Regulation. All answers were pooled together and later categorised in groups synthesising the conceptual motivations that could positively or negatively affect the formation of SCEs.

4. Factors with potential positive (persuasive) effect

The analysis of factors with a persuasive effect was conducted only by considering the answers provided by 11 stakeholders (and contained in 11 returned questionnaires) from registered SCEs or a registered branch of an SCE. This choice was made since it makes the results of this analysis more reliable and certainly less speculative than those regarding the factors with a potential dissuasive effect, even though, of course, the sample is not very significant, given the exiguous number of existing SCEs.

Furthermore, in accordance with the Commission’s contractual indications, we advanced four hypotheses in the questionnaire and proposed them to respondents:

- the value of the European image

- the simplified management structure
- the possibility to transfer the registered office
- the method of setting up

Two of them (simplified management structure and method of setting up) were not selected by any of the respondents.

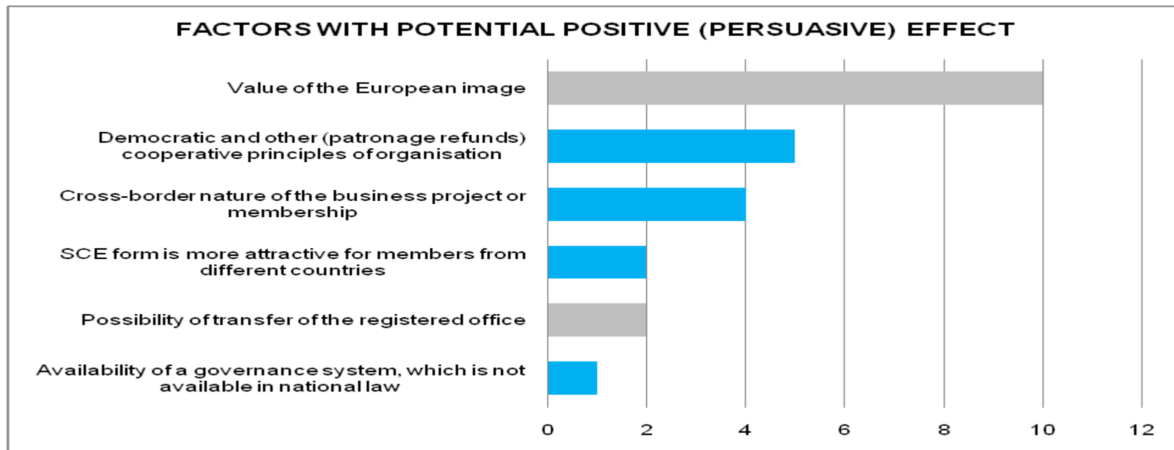
However, interviewees were left free to provide reasons other than those suggested in the questionnaire.

Table 12 and figure 3 below indicate those mentioned by respondents as factors with potential positive (persuasive) effect. Marked lines regard the possible factors suggested in the questionnaire.

Table 12. *Factors with potential positive (persuasive) effect*

FACTORS WITH A POTENTIAL PERSUASIVE EFFECT	ANSWERS OF11 INTERVIEWED PEOPLE (11 returned questionnaires) Multiple answers possible
Value of the European image	10
Democratic and other (patronage refunds) cooperative principles of organisation	5
Cross-border nature of the business project or membership	4
Possibility of transfer of the registered office	2
SCE form is more attractive for members from different countries	2
Availability of a governance system, which is not available in national law	1

Fig. 3. *Factors with potential positive (persuasive) effect*



Moreover, most SCEs highlighted the existence of a real cross-border exigency or at least aspiration to cross-border expansion as a reason to incorporate under the SCE Regulation.
The hope for European Commission special consideration and support, in light of the European form of the enterprise, was highlighted by one interviewed SCE. But this can be considered as a particular aspect of the value of the European image of this legal form of enterprise.
The choice of the country where the SCE is located mainly depends on the nationality of the people or cooperatives promoting the foundation of the SCE and the common language (as pointed out by the Hungarian SCE; but it also stems from the observation of the membership of the other SCEs). The adequacy of national legislation and the existence of a well-structured national cooperative movement were only mentioned by some respondents as a motivating factor for deciding where to locate the SCE.

What comments does this outcome allow us to express?

First of all, it is worth noting that, as already said above, the number of existing SCEs is low and 11 interviews might not be considered a significant sample.

The value of the European image (that is to say, having "European" in the name) is the most persuasive factor, although it can explain the general choice for a European legal form of enterprise but not in particular for the cooperative legal form among the European legal forms available (SE, SCE, EEIG).

The cross-border nature of the business or of the membership is another relevant factor: aspects other than legal, therefore, are also considered in the decision to set up an SCE.

The fact that many respondents mentioned the democratic principle of organisation (which, moreover, was a factor not suggested in the questionnaire) is significant in many aspects. This shows that the SCE is not an European form which is exploited for economic reasons, but a legal form of which people take advantage in order to pursue an economic project using principles and values which are typical of the cooperative form of business as opposed to the capitalistic form. In comparison, the relevant number of "shelf" SEs does support this argument. This impression seems also to be demonstrated by the fact that no choice of the country (and forum shopping) has been made by the existing SCEs (although it is well known that Italy, which has the highest number of SCEs, has a specific tax treatment for cooperatives, in line with art. 45 of the Italian Constitution), as well as by the cooperative background or legal nature of the founders.

Moreover, as regards the simplified management structure (one-tier structure), one could point out that, even though not mentioned by respondents as a persuading element for the choice to set up an SCE, it is concretely adopted by at least five SCEs. Thus, the role concretely played by this factor warrants more investigation.

The limited relevance of the possibility to transfer the registered office as a persuasive factor for setting up an SCE is to a certain extent consistent with the most recent ECJ case-law on the transfer of the head office of a company set up under an MS's national law[63]. However, one must point out that this ruling still does not make free transfer of a national law company's registered office admissible, which makes the SCE Regulation still advantageous on this point.

5. Factors with potential negative (dissuasive) effect

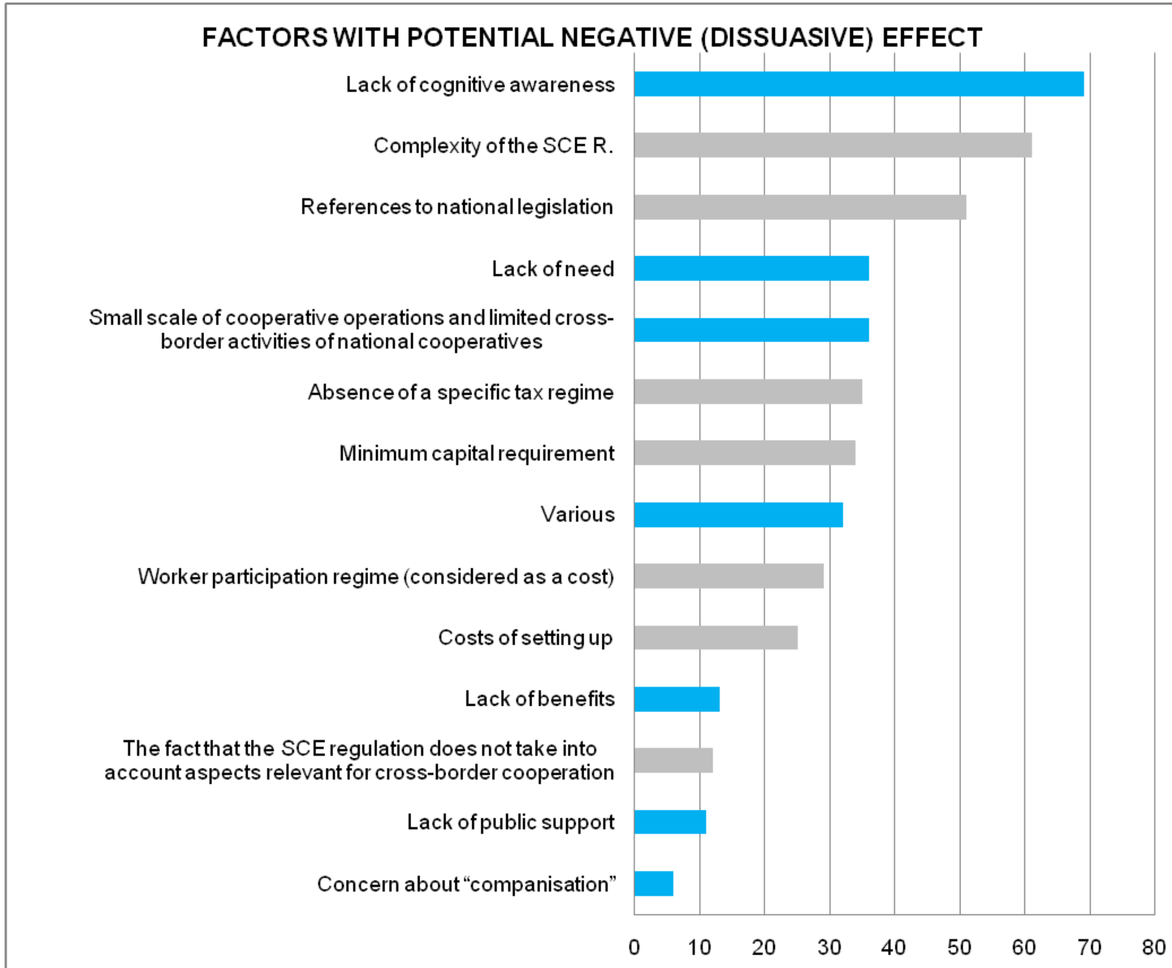
Table 13 and figure 4 below indicate those mentioned by respondents as factors with a potential negative (dissuasive) effect. Marked lines regard the possible factors suggested in the questionnaire.

Tab. 13. *Factors with potential negative (dissuasive) effect*

FACTORS WITH A POTENTIAL DISSUASIVE EFFECT	ANSWERS OF 151 INTERVIEWED PEOPLE (136 returned questionnaires) Multiple answers possible
Lack of cognitive awareness	69
Complexity of the SCE R.	61
References to national legislation	51
Lack of need	36
Small scale of cooperative operations and limited cross-border activities of national cooperatives	36
Absence of a specific tax regime	35
Minimum capital requirement	34
Various	32
Worker participation regime (considered as a cost)	29
Costs of setting up	25
Lack of benefits	13
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	12
Lack of public support	11
Concern about "companisation"	6

[63] See ECJ, 16.12.2008 (C-210/06), *Cartesio*.

Fig. 4. *Factors with potential negative (dissuasive) effect*



Lack of cognitive awareness was not a specific hypothesis in the questionnaire, but was pointed out by the majority of interviewees as a negative factor. In this item we also included the answer "no" to the question "Do you know what an SCE is?", when this answer was not followed by answers given to other questions in the questionnaire.

Interviewees advanced other hypotheses not provided in the questionnaire. Lack of need of the SCE structure and the small scale of cooperative operations are hypotheses formulated by interviews, which gives more value to the high rank occupied by these factors.

The answer "lack of need" includes diverse motivations given by respondents, of which the most common are: the possibility to incorporate under national cooperative law; the ECJ

case-law on the transfer of seat; the fact that national cooperative law is more flexible; and the preference given to the public limited-liability company form for establishing and conducting a cross-border business.

The answer "various" contains several answers, mainly country-related[64].

The answer "references to national legislation" also includes the cases in which respondents answered "YES" to question no 8 of the questionnaire ("Do you think the numerous references back to national legislation lead to complexity?").

What comments does this result allow us to express?

If we consider the initial minimum capital requirement as a cost of setting up (it is perhaps the most relevant one), then costs of setting up may perhaps be considered as one of the most negative factors.

One should also consider that these costs can be seen as particularly high also taking into account that national cooperative laws usually do not require a minimum initial capital or require very low initial capital. This raises the issue of "legal arbitrage": the SCE Regulation is not as attractive as it might have been had it required a lower amount of initial capital. This is the main reason why no legal arbitrage occurred, as the consultation of existing SCEs clearly shows, because no one declared having preferred the SCE Regulation to national cooperative law (and the most recent ECJ case-law on the freedom of establishment of head office strongly contribute to this result, as it weakens, but not completely eliminates, the need for a European structure: indeed, a national law cooperative is permitted to perform a cross-border activity in all EU member states).

The other reason for no legal arbitrage may be that the numerous references to national law, by producing the effect of creating as many SCEs as there are national cooperative laws (or even sub-national cooperative laws, as in Spain), impedes the SCE Regulation

[64] These answers are: non implementation in the country; the fact that the SCE R fails in promoting this new legal form; the protection of the labour market in Austria; problems with property law and the country legal framework; problems in identifying partners from another MS; lack of harmonisation SCE R-national law (e.g., the nature of members); dissuasive national context; Portuguese cooperative which are active cross-border prefer not to create a structure; conservative way of thinking of many cooperative managers; weak knowledge of foreign languages; the SCE, being a company with a share capital, may not benefit of the same tax treatment as national coops; SCE is a hybrid legal form which does not relate to any Dutch legal form; not exact correspondence to national cooperatives; weak cooperative sector; absence of an adequate and cultural environment; disadvantages for SCEs registered in Germany; divisibility of reserves; compulsory elements of the SCE legislation, taking into account the national tradition which does not embody a compulsory regulation; cultural factors; basic differences in national regulation and/or practice; lack of national legislation; lack of operational expertise regarding the operation of cooperatives; bans for cooperatives owning land in Bulgaria; the SCE R is not eligible for small cooperatives; no financial stability; lack of frequent contacts with other MS entities and citizens; provisions regarding the right to vote.

from playing the role of an alternative jurisdiction, which may be chosen by people who appreciate it more than national cooperative law.
Still, if no preference is and may be given to the SCE Regulation, this certainly fails to fulfil two potential objectives: indirect approximation of national legislations and the improvement of national legislation. In fact, why should legislators adapt national cooperative laws to the SCE Regulation if no competition takes place? And if such adaptation or improvements do not occur, this has a negative impact both on the national and European cooperative sector. While, where national legislation is adequate, as in Germany, the need for the SCE Regulation might be null.
The initial capital requirement is particularly onerous for SCEs whose members are natural persons, particularly workers. The SCE becomes a legal form only available to legal entities and cooperatives, entrepreneurs, or large groups of people. By way of contrast, the current proposal on SPE (COM(2008) 396/3) provides for a minimum initial capital which is symbolic (1 €) and in any case will remain low (8.000 €) after the proposed amendment by the European Parliament. If this regulation becomes effective, the SPE will no doubt end up being considered more attractive than the SCE, at least inasmuch as cooperative values and principles are not decisive or do not matter at all.

The complexity of the SCE Regulation, particularly due to the hierarchy of legal rules, is a negative factor pointed out by many interviewees, with particular regard to problems in implementing the regulation in the start-up phase. This manifests as initial costs of setting up and the fact that consultants, lawyers, notaries, as well as banks and investors, know little about this legal form and this increases the costs of setting up, as several existing SCEs pointed out (one SCE reported that a three-year long process was necessary for its establishment, which required specific financial support). And the question arises: why set up an SCE, instead of a national law cooperative, where the national legislation is more flexible (as in the Netherlands), well-known and tested (as in Germany)? In sum, one should try to individuate robust answers to the question an interviewed English consultant raised: “Why should I advise a client to consider using an SCE?”

As pointed out by existing SCEs, other start-up costs are translation costs and specific costs for bureaucracy, due to the differences among legal systems (for Finnish people to participate in the foundation of a company through a notarized act in Italy, a translation of the act into Finnish or English is needed, as well as the production of several documents usually not required for a public act in Finland).

Lack of cognitive awareness of the structure and of information on the part of cooperatives appears to be the other major problem (in the extreme, no one in Iceland seems to know about the SCE Regulation). Many interviewees complained about this. Information has normally been provided by apex organisations among their members, but nothing other

than this has taken place. In this regard, some interviewees invoked the role the European Commission might and should assume in the future promotion of this European legal form of enterprise.

As to the costs of the employee involvement regime[65], this is an hypothesis which needs further investigation. In fact, as regards SEs, there are studies showing that, by way of contrast, the worker participation regime is one of the main forces driving the choice for the SE. In effect, the rules on worker participation mitigate the effect of mandatory co-determination rules which otherwise would apply under national law, and this is a case for legal arbitrage in favour of the SE Regulation, above all in Germany[66].

In addition, it must be noted that this factor is probably over-emphasised by respondents, as on the one hand art. 8, Directive 2003/72/EC excludes some SCEs from its application[67]. On the other hand, according to the "before and after" principle, the purpose of the Directive is only that the setting up of an SCE would not reduce employee rights recognised by national law, which means that when national law (of the country where the SCE is registered) does not provide for a worker participation regime, the SCE is not obliged to apply such a regime, but only to conduct a negotiating procedure (see standard rules in the annex to the Directive).

The small scale of cooperative operations and limited cross-border activities (pointed out by many interviewees from different countries: such as Greece, Cyprus, and also Germany) is not a characteristic of the cooperative legal form, but more generally of European enterprises and SMEs among them (according to the EC, only 8% of SMEs engage in cross-border trade and 5% have subsidiaries or joint ventures abroad). In fact,

[65] This problem makes sense with particular regard to cooperatives other than worker cooperatives, or also in worker cooperatives but with limited regard to employees who are not members of the cooperative, and to whom, therefore, the Directive would apply.

[66] See Eidenmüller, Engert, Hornuf, *Incorporating under European Law: The Societas Europaea as a Vehicle for Legal Arbitrage*, cited above.

[67] Art. 8 states: 1. "In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall apply. 2. In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in only one Member State, employee involvement shall be governed by the following: — in the SCE itself, the provisions of the Member State of the SCE's registered office, which are applicable to other entities of the same type, shall apply, — in its subsidiaries and establishments, the provisions of the Member State where they are situated, and which are applicable to other entities of the same type, shall apply. In the case of transfer from one Member State to another of the registered office of an SCE governed by participation, at least the same level of employee participation rights shall continue to apply. 3. If, after the registration of an SCE referred to in paragraph 2, at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall be applied, *mutatis mutandis*. In this case, the words 'participating legal entities' and 'concerned subsidiaries or establishments' shall be replaced by the words 'SCE' and 'subsidiaries or establishments of the SCE' respectively".

some cooperatives do engage in cross-border activities, particularly in the agricultural sector.

Other negative factors are not specifically SCE-related but follow from the general attitude towards cooperatives in the country. It is less likely that the SCE structure is attractive where cooperatives are unpopular at the national level (for example, in Lithuania, where cooperatives number 600 out of 80.000 enterprises, that is, 0,75% of the total) or not considered by the government (as in Greece) or generally seen as even an hostile creature for historical reasons (as in Latvia and other central-east European countries).

6. The impact of the SCE Regulation on national cooperative legislation

Another element, which is considered in this research in order to assess the degree of success of the SCE Regulation, is the impact of the SCE Regulation on national cooperative laws.

The importance of the element in this respect is given by the expectations placed by the European Commission on the SCE Regulation as a potential means of approximation (or even indirect harmonisation) and/or amelioration of national cooperative laws, which is expressed in the 2004 communication on the promotion of cooperative societies in Europe[68].

As the table below reveals, in 5 countries the SCE Regulation had a relevant impact. Particularly, in Italy, the SCE Regulation was used to improve cooperative legislation and reinforce cooperatives, while in Germany changes to national cooperative law were guided by the intention to make national law more competitive, in other words, as attractive as the SCE Regulation.

Furthermore, the SCE Regulation is being taken into consideration by countries where a reform of cooperative law is being considered.

It seems that the results in this respect are neither significant nor insignificant. The SCE Regulation, perhaps, has not determined the creation of a considerable number of SCEs (although, as seen above, this number cannot be considered low in comparison to the number of existing SEs). However, it has certainly succeeded in influencing national

[68] "Because it is expected that the Regulation has an indirect and gradual harmonising effect, as it becomes a reference for future legislation, particularly in the new and candidate countries, (see also point 3.2.1. of the Communication) the Commission believes that it is even more important that the regulation in the future provides simpler and stronger rules, and that references back to national laws are minimized".

legislators and consequently in indirectly harmonising national cooperative laws, which was one of the objectives envisaged by the European Commission.

Table 14. *Impact of the SCE Regulation on national cooperative legislation*

Country	Impact of the SCE R on national cooperative legislation
AUSTRIA	YES Particularly with respect to the identification of purposes a national cooperative is allowed to pursue (see sec. 1, par. 3, GenG)
BELGIUM	NO
BULGARIA	NO
CYPRUS	NO
CZECH REP.	NO But proposed new legislation does take into account SCE Regulation
DENMARK	NO
ESTONIA	NO
FINLAND	NO
FRANCE	NO
GERMANY	YES Principally as regards the objectives of the cooperative, the minimum number of members, admissibility of investor-members, possibility of a fixed minimum capital, systems of voting
GREECE	YES The law on rural cooperatives was inspired by the SCE Regulation (although not still approved at that time) under many aspects; moreover, art. 59 SCE Reg. was invoked (but without success) to amend the legislation on cooperatives bank as regards the admissibility of multiple votes
HUNGARY	NO
ICELAND	NO
IRELAND	NO But it was seen as one of the sources of interpretation for the consultation paper on national legislation and is an additional stimulus for legislators in Ireland
ITALY	YES The reform of Italian cooperative (and company) law took place before the SCE Regulation came into force. However, during the process of reform of company law, many aspects of the draft SCE Regulation were considered, thereby influencing the regulation of matters such as, in particular, investor-members, voting rights and cooperative administration and control
LATVIA	NO
LIECHTENSTEIN	NO
LITHUANIA	NO
LUXEMBOURG	NO
MALTA	NO
NETHERLANDS	NO
NORWAY	NO
POLAND	NO
PORTUGAL	NO
ROMANIA	NO
SLOVAKIA	NO
SLOVENIA	YES See, in particular, definition and aims; investor member admissibility; minimum capital

	determined by statutes
SPAIN	NO
SWEDEN	NO
UNITED KINGDOM	NO but, while national law has not changed, the FSA as regulator has explicitly announced, partly has a result of the influence of the SCE legislation, that, within its existing powers, it will allow non-user investor-members in national cooperatives

CHAPTER 4

BRIEF NOTES ON VISIBILITY OF THE COOPERATIVE SECTOR AND RELATED ISSUES

According to paragraph 2.3.1., point E), of Annex I to the service contract between the European Commission and the Consortium, “the European Commission would also like to collect information related to measures adopted at national and regional level that support cooperatives and increase awareness of the cooperative form of business”.

To this end, we have included specific sections (sec. no 3, points 1 and 2) in the questionnaire the national experts involved in this research were requested to complete after the consultation of potential stakeholders.

More particularly, in this section of the questionnaire, we asked national experts to provide information on:

- existing measures in support of national cooperatives[69], and
- main trends and best practices in using the business form of cooperatives[70].

30 questionnaires (one for each country covered by this research) containing (in sec. 3, points 1 and 2) pertinent information on these issues may be found in annex I to this final study. Therefore, observations and comments below are limited to those aspects which appear to be of major relevance from a comparative perspective.

[69] The exact item was: “please, indicate and describe measures adopted at national and regional level that support and promote cooperatives and increase awareness of the cooperative form of business, having particular regard to: - Education and training (curricula of business studies, courses at secondary and university levels, initiatives to develop management skills for cooperatives' members, etc.) - Business support services (tailored specialized advise; specialized agencies; dedicated finance services)”.

[70] The exact item was: “please, identify and describe one or more good practices, particularly those that may show the main trends in using of the cooperative form of enterprise for particular purposes and in particular sectors”.

Public measures in support of national cooperatives have been indicated by almost all the national experts. However, there are countries where such measures do not appear. In some countries, like Estonia, there are general measures for NGOs and the third sector, but nothing specific for cooperatives, while in others there is very weak public support (e.g., Hungary, Portugal).
As to countries where public support in favour of cooperatives exists, relevant measures are both national and regional depending on the institutional framework of the country (e.g., Spain where Regions have a high autonomy or Italy where Regions have legislative competence on supporting measures for cooperatives).
The examples provided by the experts may be grouped into macro-areas:

- dedicated research institutes on cooperatives exist in several countries (e.g., Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Greece, Italy, Lithuania, Netherlands, Norway, among others): they are both public or private supported by public funds;

- dedicated courses and curricula of business studies at all levels are also existent: they range from secondary and university levels to Masters and MBAs to lifelong training; there are specialised courses on the management of cooperatives, accounting and auditing provided by public institutes, apex organisations and private institutes and foundations.
  This is by far the most cited example of support for cooperatives, as almost all the countries listed some of the curricula and university courses provided by Universities and other institutes;

- dedicated journals and paper series are also very widespread, in particular where there is a well developed and organised scientific community;

- consulting agencies to help the start-up of cooperatives and assist them during their life;

- national and regional funds, public and private foundations and funds, created to support cooperatives, increase their visibility, train their managers and set up new cooperatives to favour the employment of the young and women and contrast unemployment.

Nowadays cooperatives participate successfully and widely in almost all sectors of the economy, with particular regard to the “traditional” fields, such as agriculture, trade, retail, banking, social care and worker cooperatives. Concerning these traditional sectors, it appears clear from the information delivered by the national experts that the sector of

social care is developing in the sense of adding new services provided to the community. This is also due to the economic difficulties of the traditional providers of these services, which open the way to cooperatives and non-profit organisations in general. Agricultural cooperatives are now also used to prevent and contrast the deruralisation of agricultural areas.
Cooperatives are developed in these sectors in almost all the countries on different scales depending on the level of rootedness of cooperatives in the country.

In addition to these well-established and consolidated sectors, new experiences and attempts to promote the cooperative model in other branches of the market are evident. In some countries, cooperatives are actually considered to be a tool to contrast the economic crisis because they have a high level of credibility in the eyes of citizens and because, in some sectors like banking, they seem to better contrast the crises. Besides this consideration shared by several experts, we present some examples of new trends and experiences provided by national experts, grouped into some macro-areas:

- renewable energies, sustainable development and management of public goods: The market for renewable energy is growing very fast and cooperatives are trying to find their place in that area: photovoltaic and bio-energy are the most common activities run by cooperatives. Cooperatives are also used and promoted to help sustainable development. For instance, they are provided incentives for investments in environmental protection or for modernization and technological innovation. We also witnesses the new trend of management of public goods by cooperatives: water, electricity, gas and recycling. For instance, recently in Germany, cooperatives have been used in the field of production and supply of energy. In this case, citizens join forces to buy gas or electricity at a favourable price or to run a solar energy plant together;

- tourism is a sector in expansion for cooperatives also due to the peculiar character of the services provided, including the development of “social” tourism tending to insert the traditional tourism in a more general process of rural requalification and community promotion;

- housing: It cannot be considered as a real new trend because in several countries housing is one of the most developed sector for cooperatives. Nevertheless, there is a new vision in order to combine housing in the traditional sense with care about the social environment. The importance of this sector is proven by the fact that, in several countries (e.g., Germany, Estonia, Italy, Poland), public support (by funds or financed projects) is given to cooperatives operating in so-called social housing. Almost all the experts indicated housing as one of the biggest sectors of development of cooperatives;

- health care with the so-called "doctors' cooperatives": in Germany and the UK, cooperatives and networks of medical doctors work jointly to provide their services, thus facing the economic difficulties of the public sector in providing them;

- some other particular examples of new trends provided by the national experts are: the management of a private pension system (Hungary); the possibility for cooperatives to be organized in unions (Romania); cooperatives used as a tool for tax planning by law and accounting firms as well as private equity firms (Netherlands and Italy); the recovery of enterprises in economic crisis by their employees or the creation of new enterprises by unemployed people (Italy).

CHAPTER 5

RECOMMENDATIONS

SUMMARY: 1. *Introduction*. – **2.** *Recommendations for possible amendments to the SCE Regulation* [Table 15. Possible amendments to the SCE Regulation]. – **3.** *Recommendations for future policy concerning the promotion of cooperatives in Europe*.

1. Introduction

According to the contract with the European Commission, the conclusions of this study are expected to include recommendations and possible proposals for amendment of the Regulation based on the results of the study.

In particular, the Commission is interested in understanding whether the SCE is considered to be an easy or cumbersome instrument, and whether it meets the expectations of the cooperatives that plan to carry out the reorganisation of their business at a Community scale.

According to the contract, in this section the following points should at least be examined:

- whether the SCE Regulation should provide simpler and stronger rules, and whether references back to national laws should be minimised;
- to what extent the cross border element for the creation of SCEs is still necessary and to what extent allowing other methods of formation of the SCE than those defined in the Regulation may promote the establishment of new cooperatives;
- to what extent it is appropriate to allow an SCE to include in its articles of association rules which deviate from or complete national legislation applied to national cooperatives.

The study is also expected to draw conclusions on future policy concerning the promotion of cooperatives in Europe, as well as to give recommendations, and suggestions as to

what needs to be done in the area of legislation on cooperatives and other policy measures affecting growth and development of cooperatives.

In paragraph 2 below, recommendations are given, both general and specific, on possible amendments to the SCE Regulation. These recommendations results from the analysis conducted thus far, which means that their full understanding presupposes a careful reading of preceding chapters of this synthesis and comparative report.

In subsequent paragraph 3, recommendations are provided on general policies (both legislative and not) in favour of cooperatives.

It is assumed that the purpose of the SCE Regulation is to provide an appropriate legal framework for the SCE as a new type of organisation for cross-border economic activities at the EU level, without aiming expressly to harmonise national cooperative laws.

2. Recommendations for possible amendments to the SCE Regulation

General recommendations

The SCE Regulation should be amended to enhance its effectiveness and facilitate its application for European cooperatives. A revision thereof should be based on the following general recommendations.

1. The SCE Regulation should be simplified, with particular regard to the system of sources of rules and their interplay.

2. The SCE Regulation should provide an appropriate legal framework for an SCE, based on the 1995 Statement on the cooperative identity by the International Co-operative Alliance, which has become an international governmental instrument by incorporation in ILO Recommendation 193/2002 on the promotion of cooperatives and in the UN Resolution of 19.12.2001.

3. The autonomy of the SCE Regulation from national laws should be strengthened, which means in particular that the number of specific references to national law and options for Member States should significantly be reduced.

4. The SCE Regulation should enhance an SCE power of self-regulation, with particular regard to the SCE internal organisation (governance). An SCE should be allowed to include in its statutes rules which deviate from or complete national legislation applied to national cooperatives. Nevertheless, mandatory provisions of

the SCE Regulation should limit the freedom of SCE statutes when this is necessary to preserve an SCE cooperative identity or protect member or minority rights.

5. The role of national laws should be limited to those matters which only affect either a Member State's economic public order (including the protection of third parties) or those aspects of the cooperative identity which are country-specific. Provided that the core agreed elements of an SCE cooperative identity be defined by the SCE Regulation, the SCE Regulation should respect various national approaches to cooperative identity in areas where a range of approaches exists.

6. The system of references to national laws should be simplified. In particular, the SCE Regulation should avoid distinguishing between references to national cooperative law and to national public limited-liability company law, and simply provide that the national law which would apply to a national cooperative also applies to an SCE.

7. Options for Member States should be replaced, where possible, by simple references to the national law applicable to cooperatives.

8. The SCE Regulation should take the multifaceted reality of cooperatives into greater consideration, particularly with regard to small cooperatives established by natural persons.

Specific recommendations

According to the general recommendations above and the outcomes of the overall analysis (both legal and empirical) conducted in this study, the table below individuates by article suggested changes to the SCE Regulation. In some cases multiple options are provided. Furthermore, in some other cases, the table below does not recommend a specific amendment but only puts forward relevant aspects which should be taken into account if and where a decision to amend a specific provision of the SCE Regulation was considered.

Specific recommendations below are susceptible of revision depending on the agreement on the strategy defined by the general recommendations.

Table 15. *Possible amendments to the SCE Regulation*

SCE R	Possible amendments
CHAPTER I – GENERAL PROVISIONS	
Art. 1	No specific amendments
Art. 2	§ 1: under 1st and 2nd indents, a reduction of the minimum number of founders from five to three natural persons should be considered § 1 deals with an element, the cross-border requirement for the creation of an SCE, which should be examined from a more general perspective, as the potential elimination of this element raises the question whether, in light of the principle of subsidiarity, the EU might provide for a European legal structure not characterised by the cross-border element § 2: the maintenance of this option depends on the possible revision of art. 6
Art. 3	§ 2: eliminate this requirement or reduce the minimum capital required, at least as to SCEs set up under art. 2 (1) 1st indent (five or more natural persons) - see also under art. 65 below
Art. 4	§ 6: change as follows: “The applicable national law … shall apply to the SCE” [for the definition of “applicable national law” see under art. 8 below]
Art. 5	§ 3: change as follows: “The applicable national law for the precautionary supervision … shall apply to the control of the constitution of the SCE” [for the definition of “applicable national law” see under art. 8 below]
Art. 6	Considering recent developments in the ECJ case law, the elimination of this requirement should be considered. In this case, the option for MSs should be eliminated accordingly (moreover considering that the majority of MSs have not implemented this option).
Art. 7	No specific amendments
Art. 8	§ 1: change as follows: “An SCE shall be governed: (a) by this Regulation; (b) subject to this Regulation, by the provisions of its statutes; (c) where expressly authorised by this Regulation or in the case of matters not regulated or aspects not covered by this Regulation or the provisions of its statutes, by the laws of Member States which would apply to a cooperative or, failing that, to a public limited-liability company formed in accordance with the law of the Member State in which the SCE has its registered office (hereinafter “applicable national law”)” This article should include a specific provision which clarifies that an SCE shall not be subject to those restrictions, if any, that Member States impose on the economic activity of a national law cooperative
Art. 9	No specific amendments
Art. 10	§ 1: refer to “the applicable national law” § 2: the provision of sanctions for the abusive use of the acronym “SCE” should be considered
Art. 11	§ 1: change as follows: “in accordance with the applicable national law” § 4: eliminate the option and regulate directly the matter as follows: option 1: “in this case, the management or the administrative organ of the SCE may amend the statutes without any further decision from the general meeting”;

	option 2: "in this case, SCE statutes may provide that the management or the administrative organ of the SCE may amend the statutes without any further decision from the general meeting" § 5: refer to "the applicable national law"
Art. 12	§ 1: refer to "the applicable national law" § 2: eliminate the provision and the option therein
Art. 13	§ 1: provide for the obligation of the authority which holds the register in art. 11, § 1 to give notice to the OJUE in accordance with a unified form that the EC shall provide to them
Art. 14	§ 1 (2): change as follows: "Unless the applicable national law provides otherwise …"
Art. 15	§ 1, last indent: refer to "the applicable national law"
Art. 16	No specific amendments
CHAPTER II – FORMATION	
Section 1 – General	
Art. 17	§ 1: refer to "the applicable national law"
Art. 18	No specific amendments
Section 2 – Formation by merger	
Art. 19	No specific amendments
Art. 20	refer to "the applicable national law"
Art. 21	No specific amendments
Art. 22	§ 3: refer to "the applicable national law"
Art. 23	No specific amendments
Art. 24	§ 1: refer to "the applicable national law"
Art. 25	No specific amendments
Art. 26	§ 2: refer to "the applicable national law" § 3: refer to "the applicable national law"
Art. 27	No specific amendments
Art. 28	§ 1: refer to "the applicable national law"
Art. 29	§ 1: refer to "the applicable national law" § 3: change as follows: "If the applicable national law provides for …"
Art. 30	§ 1: change as follows: "The legality … able to scrutinise that aspect in accordance with the applicable national law" § 4: refer to "the applicable national law"
Art. 31	No specific amendments
Art. 32	Refer to "the applicable national law"
Art. 33	§ 3: refer to "the applicable national law" § 4: change as follows: "… arising from the applicable national law …"
Art. 34	No specific amendments
Section 3 – Conversion of an existing cooperative into an SCE	
Art. 35	§ 4: change as follows: "… in accordance with the applicable national law …" § 5: change as follows: "… in accordance with the applicable national law …"

	§ 7: eliminate the option and regulate directly the matter as follows: option 1: "Conversion shall be conditional on a favourable vote …"; option 2: "SCE statutes may make conversion conditional on a favourable vote …" § 8: change as follows: "… arising from the applicable national law …"
CHAPTER III – STRUCTURE OF THE SCE	
Art. 36	No specific amendments
Section 1 – Two-tier system	
Art. 37	§ 1: eliminate the option and regulate directly the matter as follows: "… SCE statutes may provide that a managing director is responsible …" § 2 (2): eliminate the option and regulate directly the matter as follows: "However, SCE statutes may provide that the member or members of the management organ …" § 3: eliminate the option and regulate directly the matter as follows: "During such period, which may not exceed six months/1 year, the functions …" § 4: eliminate the option § 5: eliminate the option or change as follows: "… a Member State shall adopt the appropriate measures in relation to SCEs"
Art. 38	No specific amendments
Art. 39	§ 4: eliminate the option
Art. 40	§ 3: eliminate the option and regulate directly the matter as follows: option 1: "… Each member of the supervisory organ shall be entitled to this facility"; option 2: "… SCE statutes may provide that each member of the supervisory organ shall be entitled to this facility"
Art. 41	No specific amendments
Section 2 – The one-tier system	
Art. 42	§ 1: eliminate the option and regulate directly the matter as follows: "… SCE statutes may provide that a managing director is responsible …" § 2: eliminate the option § 4: eliminate the option or change as follows: "… a Member State shall adopt the appropriate measures in relation to SCEs"
Art. 43	No specific amendments
Art. 44	No specific amendments
Section 3 – Rules common to the one-tier and two-tier systems	
Art. 45	No specific amendments
Art. 46	§ 1: eliminate the reference to national law § 3: eliminate the reference to national law
Art. 47	§ 1: eliminate the reference to national law and change as follows: "… unless SCE statutes provide otherwise …" § 2 (2): eliminate the option § 4: eliminate the option and change as follows: "SCE statutes may provide that …"
Art. 48	§ 3: eliminate the option
Art. 49	Refer to "the applicable national law"
Art. 50	§ 3: eliminate the option
Art. 51	Refer to "the applicable national law"

Section 4 – General meeting	
Art. 52	Eliminate the article (as art. 8 already indicates the sources of SCE regulation)
Art. 53	Eliminate the article (as art. 8 already indicates the sources of SCE regulation)
Art. 54	§ 1: eliminate the option § 2: refer to "the applicable national law"
Art. 55	No specific amendments
Art. 56	§ 3: refer to "the applicable national law"
Art. 57	No specific amendments
Art. 58	§ 2: change "and, if the statutes allow so, any other person entitled to do so under the law of the State in which the SCE's registered office is situated" with "and any other person entitled by SCE statutes" § 3 (2): after "may act", add "Nevertheless, this number shall not be superior to five or 20 in SCEs with more than 500 members"
Art. 59	§ 2 (1): change as follows: "Unless the applicable national law does not permit so, the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. Unless the applicable national law provides for a lower number, this attribution shall not exceed five votes per member or 30% of total voting rights, whichever is lower, in each general meeting" § 2 (2): eliminate this provision § 2 (3): change as follows: "Unless the applicable national law does not permit so, in SCEs the majority of members of which are cooperatives, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity and/or by the number of members of each comprising entity. Unless the applicable national law provides for a lower number, this attribution shall not exceed five votes per member or 30% of total voting rights, whichever is the lower, in each general meeting" § 3: change as follows: "Unless the applicable national law does not permit so, the statutes may provide for non-user (investor) members to have a number of votes determined by their participation in the capital of the SCE. Unless the applicable national law provides for a lower number, non-user (investor) members may not together have voting rights amounting to more than 25% of total voting rights in each general meeting" § 4: change as follows: "Unless, …, the applicable national law does not permit so, the law … voting rights in each general meeting …"
Art. 60	No specific amendments
Art. 61	§ 3 (2): eliminate the option (that is, the sentence beginning "Member States shall be free" until "their territory") § 4 (2): eliminate the reference to national law
Art. 62	No specific amendments
Art. 63	§ 1: eliminate the reference to national law
CHAPTER IV – ISSUE OF SHARES CONFERRING SPECIAL ADVANTAGE	
Art. 64	No specific amendments
CHAPTER V – ALLOCATION OF PROFITS	
Art. 65	§ 1: change as follows: "Subject to this Regulation, the statutes …" § 2 (2): change as follows:

	option 1: "Until such time as the legal reserve is equal to EUR 30,000, the amount …" option 2: "Until such time as the legal reserve is equal to the amount determined by the SCE statutes …"
Art. 66	Change as follows: "Surplus shall be distributed to members in proportion to their business with the SCE, or the services they have performed for it".
Art. 67	§ 1: clarify the concept of "profits available for distribution" and its relationship with the concept of "surplus", used in art. 65 and 67, § 2 § 2 (2): after "shares" add as follows "SCE statutes shall provide for a reasonable maximum percentage of return on paid-up capital and quasi-equity, also taking into account the particular status of non-user (investor) members"
CHAPTER VI – ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS	
Art. 68	§ 1: refer to "the applicable national law" § 1: eliminate the option § 2: refer to "the applicable national law"
Art. 69	No specific amendments
Art. 70	Change as follows: "… in accordance with the applicable national law"
Art. 71	No specific amendments
CHAPTER VII – WINDING UP; LIQUIDATION; INSOLVENCY AND CESSATION OF PAYMENTS	
Art. 72	Refer to "the applicable national law"
Art. 73	§ 2 - § 6: the maintenance of these provisions depends on the decision taken as regards the reform of art. 6 (see above)
Art. 74	Refer to "the applicable national law"
Art. 75	The elimination of the reference to national law and consequently of the possibility for statutes to provide for an alternative arrangement should be considered. In this case, the proposed change would be as follows: "Net assets shall be distributed in accordance with the principle of disinterest distribution, as specifically provided for by statutes. For the purposes …"
Art. 76	§ 4-6: refer to "the applicable national law" If art. 75 is amended as suggested above, a provision should be added to art. 76, in order to protect the principle of disinterested distribution in case of SCE conversion (e.g., "conversion is permitted provided that net assets are distributed, before conversion, in accordance with the principle of disinterested distribution")
CHAPTER VIII – ADDITIONAL AND TRANSITIONAL PROVISIONS	
Art. 77	No specific amendments
CHAPTER IX – FINAL PROVISIONS	
Art. 78	No specific amendments
Art. 79	Not applicable
Art. 80	Not applicable

3. Recommendations for future policy concerning the promotion of cooperatives in Europe

Outcomes of stakeholder consultation show the need to promote cooperatives, particularly in some European countries. The reasons for this are diverse, while the perception that

more should be done to put cooperatives on an equal footing with capitalistic (investor-driven) companies is common.

Limiting our attention to policies which the European Commission might adopt in favour of cooperatives and SCEs, and taking only into account the specific results of this study, the following measures could be recommended:

- to increase awareness of the SCE legal form by several means, since lack of information is among the principal factors for the limited number of existing SCEs;
- to promote and sustain cross-border operation of cooperatives and the collaboration among cooperatives at the European level;
- to promote knowledge of cooperative identity and its difference from capitalistic (investor-driven) companies in a pluralistic market;
- to promote informational campaigns directed toward spreading the benefits associated with the cooperative legal form of business, in particular with regard to its capacity to face economic crises;
- to favour the amelioration and approximation of national cooperative laws, in particular by promoting the English translation of national cooperative laws, as well as research directed toward the elaboration of a European common legal framework on cooperatives;
- to favour legal knowledge of cooperatives, particularly among notaries and legal advisors, by supporting initiatives and studies, as well as training and educational programmes on cooperative law;
- to enhance cooperative visibility within national public bodies, in particular by promoting the establishment of units specifically dedicated to cooperatives;
- to adopt a standard formula for the registration of the European legal forms (SCE, SE, EEIG).

More generally and in addition, all policies indicated in the UN Resolution of 19.12.2001 and ILO Recommendation 193/2002 on the promotion of cooperatives may be here proposed to the attention of the European Commission.

APPENDIX 1

COMPARATIVE TABLES OF OPTION IMPLEMENTATION

Table of options

No	Art.	Content	Q
1	2 (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	OP1
2	6	The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place	OP2
3	7 (2)	The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office	OP3
4	7 (7) (1)	Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer	OP3
5	7 (7) (2)	A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer	OP3
6	7 (14) (1)	The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest	OP3
7	11 (4) (2)	In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting	OP1
8	12 (2)	However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives	OP4
9	21	The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2)	OP3
10	28 (2)	A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger	OP3
11	35 (7)	Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised	OP2
12	37 (1)	A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory	OP4 R1
13	37 (2) (2)	A Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory	OP 1/2
14	37 (3)	No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the	OP2

		management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period	
15	37 (4)	The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number	OP2
16	37 (5)	Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs	OP4
17	39 (4)	The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number	OP2
18	40 (3)	The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility	OP4
19	42 (1)	A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory	OP4
20	42 (2) (1)	The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members	OP2
21	42 (4)	Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs	OP4
22	47 (2) (2)	Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof	OP4
23	47 (4)	A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation	OP1
24	48 (3)	a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation	OP2
25	50 (3)	Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned	OP4 R1
26	54 (1)	A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation	OP1
27	61 (3) (2)	Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory	OP2
28	68 (1)	However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives	OP4
29	77 (1)	If and so long as the third phase of EMU does not apply to it, each Member State may make SCEs with registered	OP2

		offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital	R2
30	77 (2)	If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State	OP2 R2

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (I): AT – BG

No	AT		BE		BG[1]	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	NO		YES	Art. 963 CC	NO	
2	YES	§ 5/1 SCEG	YES	Art. 951 CC	YES	Art. 51a, par. 2
3	YES The management organ shall send a transfer proposal to the national court at least two months before the day of the general meeting dealing with the transfer. The transfer plan shall be published at least one month before the general meeting at which the transfer of registered office is decided.	§ 7 SCEG	NO		NO	
4	YES Creditors, who contact the SCE at least one month after the decision has been made, shall be secured according to certain pre-requisites, for amounts of outstanding claims.	§ 8 SCEG	YES Creditors and holders of other rights have two months after the publication of the transfer proposal to request a new protection (surety or another guarantee). It is also the case for liabilities that arise but are not yet due.	Art. 996 CC	NO	
5	YES Creditors can get securing	§ 8 SCEG	YES	Art. 996 CC	NO	

[1]Additional relevant rule: "A European cooperative society with registered office in another Member State cannot be formed through merger when a participant in the merger procedure owns land in the Republic of Bulgaria. A European cooperative society with registered office in the Republic of Bulgaria, owning land, cannot transfer its registered office to another Member State. This prohibition shall apply under the conditions arising from the accession of the Republic of Bulgaria to the European Union" (art. 51a, par. 4, *ibidem*): see the national report for explanation.

	for outstanding debits which arise until the transfer decision.					
6	NO		YES The competent authority is the Minister who has the economy in his attributions. The decision of the Minister is notified to the company in two months after the publication of the transfer project in the *Moniteur belge*.	Art. 998 CC	NO (but see art. 51a, par. 4, in the footnote)	
7	NO		YES	Art. 953 CC	NO	
8	NO		NO		NO	
9	NO		YES The competent authority is the Minister who has the economy in his attributions. The decision of the Minister is notified to the company in the month of the publication of the indications of art. 24 of the Reg.	Art. 954 CC	NO (but see art. 51a, par. 4, below)	
10	YES For members who do not accept the merger sect. 9 - 11 GenVG (Austrian Cooperative Societies Merger Act) is applicable. (So members that voted against the merger have the right to resign their membership.)	§ 13 SCEG	NO But according to the Belgian common rules on merger, members who have opposed the merger may resign.	art. 698, par. 2; 711, par. 2, CC	NO	
11	NO		NO		NO	
12	NO		NO		NO	
13	YES The statutes may allow that the members of the board are elected and removed by	§ 22 SCEG	YES The member or members of the management organ shall be appointed and removed	Art. 974 CC	NO	

	the general meeting.		by the general meeting. The statutes can provide the conditions of the appointment and removal.			
14	NO		YES Max 1 year	Art. 975, CC	NO	
15	NO		NO	Art. 969, par. 1, CC	NO	
16	YES	§§ 22, 23 SCEG	YES	Art.969-986 CC	NO	
17	NO		YES Min. 3	Art. 969, par. 2, CC	NO	
18	YES	§ 23 SCEG	NO		NO	
19	YES The administrative board may appoint one or more managing directors, entrust them with the management of the active business and authorise them to represent the cooperative in this respects.	§ 25 SCEG	NO		NO	
20	NO		YES Min. 3	Art. 968 CC	NO	
21	YES If the statutes choose the one-tier-system the provisions on the board and the supervisory board do also apply to the administrative board. There is the possibility of a managing director who is responsible for the current management.	§§ 24, 25 SCEG	NO		NO	
22	NO		NO		NO	
23	YES The statutes can allow sole	§ 27 SCEG	YES The statutes may provide the	Art. 978 CC	NO	

	representation.		enlargement. That provision may be relied on against third parties if there is publication on *Moniteur belge*.			
24	NO		NO		NO	
25	NO		NO		NO	
26	NO		YES	Art. 989 CC	NO	
27	NO		NO		YES "The provision of art. 17 is applicable with regard to the quorum of the general meeting of the European cooperative society". According to art. 17, "The general meeting shall be legal and adopt a resolutions if attended by more than half of its members (representatives); for amendments or supplements of the statutes, for conversion or winding-up of the cooperative, for election of president and members of the management and supervisory boards and for acquisition and disposal of realty and realty rights – if attended by more than two-thirds of its members (representatives). In the absence of the required number of members, the meeting shall be held one hour later regardless of the number of members present".	Art. 51b, par. 2, Law 113/99, as modified by LASCL 104/2007
28	YES	§ 30 SCEG	NO		YES	Art. 51c, *ibidem*

	For annual reports and the consolidated reports of the SCE Sect. 22 para 4 - 6 GenG is applicable.				"The annual financial report as well as the consolidated financial report, where the European cooperative society composes such, shall be subject to independent financial audit and shall be submitted for publication to the Commercial register"	
29	NOT APPLICABLE		NOT APPLICABLE		NO	
30	NOT APPLICABLE		NOT APPLICABLE		NO	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (II): CY – DE

No	CY[2]		CZ[3]		DE[4]	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	YES	Art. 6, Law 159(I) 2006	YES	Art. 2, Law 307/2006	NO	
2	YES	Art. 7, *ibidem*	NO		NO	
3	NO		YES	Art. 3, *ibidem*	NO	

[2] Additional relevant rule: Irrespective of the provisions of any other law in force in the Republic, the SCE may carry on activities in any sector within the Republic, provided that they registered and obtain the necessary license under the relevant activity sector Law, or possess equivalent licence under the law of another Member State and are entitled to operate in the Republic (art. 22, *ibidem*)

[3] Additional relevant rules: The court maintaining the Commercial Register shall notify the Authority for Official Publications of the European Communities of each fact contained in Article 13 of the Regulation, within the timetable specified therein; the costs of such a notification made by the court shall be borne by the state (art. 13, ibidem). Section 33 (1) states (pursuant to Section 73 of the Regulation) that "Where the head office of an SCE which has its registered seat in the Czech Republic shall be, at variance with the provisions of Article 6, first sentence of the Regulation, transferred outside of the Czech Republic, the SCE shall without undue delay accept certain of the remedies stipulated by Article 73 (2) of the Regulation so that the head office is returned back to the Czech Republic". Section 33 (2) (pursuant to Article 73 (3) of the Regulation) provides that "Where a remedy is not effected within three (3) months from the day on which the provisions of Article 6, first sentence of the Regulation has been violated, the court may wind up the SCE even without an application, and order its liquidation. The SCE shall be terminated as at the effective day of the court's resolution". Concurrently, Section 33 (2) (pursuant to Article 73 (3) of the Regulation) provides that "Prior to a resolution according to Paragraph 2, the court shall allow the SCE a time-limit for a remedy which may not be shorter than 90 days and longer than 150 days. Upon proposal of the SCE, this time-limit may be prolonged, however only once, and by sixty (60) days as a maximum. The provisions of Section 34 are connected to the provisions of 73 (5) of the Regulation and reads that "5. Where it is established on the initiative of a public body that an SCE has its registered office within the territory of another Member State is located in the Czech Republic, that body shall immediately inform the Ministry of Justice which in turn shall without undue delay inform the respective body of the Member State in which the SCE's registered office is situated." This system has been used to simplify the entire process.

[4] Additional relevant rules: The statutes of the SCE may provide that persons who cannot use the goods or services produced by the SCE can be admitted as 'investing members' (art.. 4, SCEAG). The data required to be disclosed according to Art. 24 SCE-Reg, have to be submitted to the registering court together with the merger plan. The court has to make these data public together with the indication prescribed in § 61 sentence 2 of the Conversion Act (UmwG), which has to include the notice of submission to the register of cooperative societies (art. 5, SCEAG). In case of an SCE having its registered office in Germany, audit of the merger plan and drawing up of the written report according to Art. 26 SCE-Reg is performed by the cooperative auditing federation to which the SCE is affiliated (art. 6, SCEAG). Under conditions laid down in § 60 GenG also the cooperative auditing federation is authorized to convene a special general meeting of the SCE (art. 28, SCEAG). The statutes of the SCE may within the scope of Art. 63 SCE-Reg provide for sector or section meetings. § 43a (7) GenG applies mutatis mutandis, as far as Art. 55 SCE-Reg does not prescribe otherwise (art. 31, SCEAG). The SCE may under Art. 59 (2) SCE-Reg and in accordance with § 43 (3) sentence 3 GenG in its statutes give members plural voting rights (art. 29, SCEAG); Subject to Art. 59 (3) sentence 2 SCE-Reg every investing member has one vote (art. 30 (1), SCEAG).

			The statutory organ of the SCE shall deposit a proposal for transfer of the registered seat in the Collection of Deeds of the Commercial Register and publish it in the Commercial Gazette. The proposal for transfer of the registered seat may not be approved by the General Meeting prior to two months after publication thereof in the Commercial Gazette			
4	NO		YES If, as a result of the transfer of the registered seat, enforceability of claims has significantly worsened, the creditor of the SCE who submits his claims within three (3) months from the day when the transfer proposal has been published in the Commercial Gazette, has the right to request a sufficient security, unless otherwise agreed with the SCE	Art. 5, par. 1, *ibidem*	YES If an SCE transfers its registered office according to Art. 7 SCE-Reg, the claims of creditors have to be guaranteed to the extent in which they may claim payment, if they file their claim in writing within two months from the day in which the planned transfer has been made public and if they can prove that by transfer of the registered office, satisfaction of their claims is endangered. In the plan of transfer of office the creditors have to be informed of this right.	Art. 11, par. 1, SCEAG
5	YES	Art. 8, *ibidem*	NO		YES Within 15 days from the publication of the transfer plan	Art. 11, par. 2, SCEAG
6	YES The decision of the Commissioner to oppose the	Art. 9, *ibidem*	NO		YES	Art. 11, par. 3, SCEAG

	transfer can be reviewed by the competent district court					
7	NO		YES (and sets a specific duty to inform members of the amendment in the subsequent meeting after that)	Art. 14, par. 2, *ibidem*	NO	
8	YES The Commissioner keeps a registry in relation to publication of documents	Art. 10, *ibidem*	NO		NO	
9	YES	Art. 11, *ibidem*	NO		YES	
10	YES The fair value of the assets corresponding to members of cooperative societies registered under the Cooperative Societies Law, involved in the formation of an SCE by merger, who have opposed the merger and left, distributed, mutatis mutandis, in accordance with the provisions of art. 49 of the Cooperative Societies Law with regard to the liquidation of Cooperative Societies	Art. 12, *ibidem*	YES Entitling dissenting and abstaining members to withdrawal, also in case of merger decided by an assembly of delegates	Art. 16, par. 1, 2, *ibidem*	YES If an SCE is formed by merger according to the procedures prescribed in the SCE R, the shares in the SCE and membership based on the effects of merger are deemed to be not acquired, if the member refuses to join, according to art. 8 (2) SCEAG	Art. 8 (1), SCEAG
11	NO		NO		NO	
12	YES Responsible for the current management, with the exception of representation, of SCE which is registered in the Republic either by one – tier system or by two-tier system within the meaning of article 36 of the SCE R, is	Art. 13, *ibidem*	NO		YES	Art. 18 (5) SCEAG and art. 21 SCEAG referring to § 34 GenG

	the secretary as the executive organ of the SCE, under the same conditions that apply to cooperative societies registered under the Cooperative Societies Law					
13	YES In case of a two-tier system SCE within the meaning of art. 36 of the SCE R and notwithstanding the provisions of article 37, par. 2, 1st subpar. of the SCE R, the members of the management organ of an SCE registered in the Republic are appointed and removed by the general meeting, under the same conditions that apply to cooperative societies registered under the Cooperative societies Law	Art. 14, *ibidem*	YES Permission	Art. 23, *ibidem*	YES Statutes may provide for it	Art. 12, SCEAG
14	YES 3 months	Art. 15, *ibidem*	YES Until the next general meeting called for the election of the new member of the management organ	Art. 22, *ibidem*	YES For a limited period of time determined in advance	Art. 13, SCEAG
15	YES Min. 5	Art. 16, *ibidem*	YES Min. 3	Art. 24, par. 1, *ibidem*	YES Min. 2	Art. 14, SCEAG
16	NO		NO		YES	Art. 12-16, SCEAG
17	YES Min. 5	Art. 16, *ibidem*	YES Min. 3	Art. 24, par. 2, *ibidem*	YES Min. 3	Art. 15 (1), SCEAG
18	NO		NO		YES	Art. 16, SCEAG
19	YES Responsible for the current management, with the	Art. 13, *ibidem*	YES	Art. 29, *ibidem*	YES	Art. 21, 22 (6) SCEAG

	exception of representation, of SCE which is registered in the Republic either by one – tier system or by two-tier system within the meaning of art. 36 of the SCE R, is the secretary as the executive organ of the SCE, under the same conditions that apply to cooperative societies registered under the Cooperative Societies Law					
20	YES Min. 5	Art. 16, *ibidem*	YES Min. 3	Art. 25, par. 1, *ibidem*	YES Min. 5 (or 3 in SCEs with not more than 20 members)	Art. 19 (1) SCEAG
21	NO		YES	Artt. 25-32, *ibidem*	YES	Art. 17-27 SCEAG
22	YES Notwithstanding the provisions of art. 47, par. 2, subpar. 1, SCE R, an SCE which is registered in the Republic shall not be bound upon the acts of its organs vis-à-vis third parties, where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it.	Art. 17, *ibidem*	NO		NO	
23	NO		YES	Art. 30, *ibidem*	YES	Art. 23, SCEAG
24	YES Without limiting the, SCEs which are registered in the Republic are subject to the provisions of the	Art. 18, *ibidem*	NO		NO	

	Cooperative Societies Law as regards the categories of transactions that require authorization from the supervisory organ to the management organ or the general meeting of members to the administrative or the management organ or decision of an administrative or management organ					
25	NO		NO		YES	Art. 15 SCEAG
26	NO		NO		NO	
27	NO		NO		NO	
28	YES SCEs which are registered in the Republic prepare their annual and, where applicable, the consolidated accounts under the International Accounting Standards and are obliged within 6 months from the end of each financial year to make available to its members and the public copy of these accounts at its registered office by paying an amount not exceeding the administrative cost of the copy	Art. 19, *ibidem*	NO		NO	
29	NOT APPLICABLE		NO		NOT APPLICABLE	
30	NOT APPLICABLE		NO		NOT APPLICABLE	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (III): DK – EL

No	DK		EE[5]		EL	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	YES	Art. 3, Act 454/2006	NO		NO	
2	YES	Artt. 2 and 13, *ibidem*	NO		NO	
3	NO		YES The management board shall submit the transfer proposal to the registrar of the commercial register and publish a notice concerning the transfer proposal being drawn up in the official publication *Ametlikud Teadaanded*. The notice shall set out that the transfer proposal is available for examination in the registration department and in a place designated by the management board	Art. 4, Law 14.12.2005	NO	
4	YES The transfer has no effects as long as claimants and cooperative reach an agreement or, in case of	Art. 5, par. 1, 2, 4, 5, *ibidem*	YES Creditors of an SCE planning to transfer its registered office may, within two months as of the	Art. 5, par. 1, *ibidem*	NO	

[5] Additional relevant rules: The particulars specified in Article 24 of the Regulation concerning the merging companies shall be published in the publication *Ametilikud Teadaanded* together with a notice as provided for in § 399 of the Commercial Code (art. 8, *ibidem*, with respect to art. 24, par. 1, SCE Reg.). At least one month before the general meeting deciding on the conversion of existing public limited company in SCE, the management board shall submit the draft terms of conversion to the registrar of the commercial register and shall publish a notice concerning the drawing up of the draft terms of conversion in the publication *Ametlikud Teadaanded.* The notice shall set out that the draft terms of conversion are available for examination in the registration department and in a place designated by the management board (art. 9, *ibidem*, with respect to art. 35, par. 4, SCE Reg.).

	disagreement, before the ruling of the bankruptcy court; there is also a particular protection for the customs and tax administration; moreover, after publication of the transfer proposal, the SCE shall include in its name "under transfer"		publication of the transfer proposal, may submit their claims for the receipt of security			
5	YES Until 2 weeks after publication of the transfer proposal; until the transfer where the claimant is the customs and tax administration	Art. 5, par. 3, *ibidem*	YES The SCE shall guarantee the claims of creditors submitted within two months as of the publication of the transfer proposal if the creditors cannot demand their claims to be satisfied and they substantiate that the transfer of the registered office may adversely affect the fulfilment of their claims	Art. 5, par. 2, *ibidem*	NO	
6	YES The opposition may be submitted by the Minister for Economics and Business Affairs in the case of undertakings subject to supervision by the Financial Supervisory Authority	Art. 17, par. 1, *ibidem*	YES The registrar shall not issue the certificate without the consent of the regional structural unit of the Tax and Customs Board; The Tax and Customs Board may not refuse to grant consent if it does not have any claims against the SCE, also, if the Tax and Customs Board deems it probable that no violation of tax law is established in the course of the inspection procedure conducted by a tax authority at the time of the request for	Art. 6, *ibidem*	NO	

			the consent; If consent is not received within twenty days after sending the request, the Tax and Customs Board shall be deemed to agree to the transfer of the registered office			
7	YES	Art. 12, *ibidem*	NO		NO	
8	NO But the Danish Commerce and Companies Agency may provide for such derogations	Art. 15, par. 2, *ibidem*	NO		NO	
9	YES The opposition may be submitted by the Minister for Economics and Business Affairs in the case of undertakings subject to supervision by the Financial Supervisory Authority	Art. 17, par. 1, *ibidem*	YES The registrar shall not issue the certificate without the consent of the regional structural unit of the Tax and Customs Board; The Tax and Customs Board may not refuse to grant consent if it does not have any claims against the SCE, also, if the Tax and Customs Board deems it probable that no violation of tax law is established in the course of the inspection procedure conducted by a tax authority at the time of the request for the consent; If consent is not received within twenty days after sending the request, the Tax and Customs Board shall be deemed to agree to formation of the SCE by way of merger	Art. 7, *ibidem*	NO	
10	YES By entitling dissenting and non-voting members to	Art. 3, par. 1-5	NO		NO	

	withdrawal and to the repayment of their personal accounts with the cooperative pursuant to the provisions of the statutes of the cooperative; moreover, conditioning the issue of the certificate of art. 29, par. 2, SCE Reg., to the provision of acceptable (according to experts appointed by the court) security with respect to withdrawing members' claims against the cooperative					
11	NO		NO		NO	
12	YES	Art. 6, par. 3, *ibidem*	NO		NO	
13	NO		NO		NO	
14	NO		YES 1 year. Re-appointment and extension of term of authority is permitted if the total term of authority of member of a supervisory organ acting as a member of the management board does not exceed one year	Art. 10, *ibidem*	NO	
15	YES Min. 1	Art. 7, par. 2, *ibidem*	YES The management board shall consist of 3 members unless the articles of association prescribe a greater number of members (rule included in a section of the law named "one-tier system")	Art. 12, *ibidem*	NO	
16	YES Reference made by way of	Art. 6, par. 1, 2, 4, 5, *ibidem*	YES The supervisory board may,	Art. 11, *ibidem*	NO	

	analogy to the cooperative practice and legislation in general applicable in cooperatives to the boards of directors and the executive board, with a preference for the first in case of conflict; the Minister for Economic and Business Affairs may lay down rules in this respect within its sphere of competencies		by its decision, determine transactions for the conclusion of which the consent of the supervisory board is needed			
17	YES Min. 3	Art. 7, par. 1, *ibidem*	NO		NO	
18	NO		NO		NO	
19	YES	Art. 9, par. 3, *ibidem*	NO		NO	
20	YES Min. 3	Art. 9, par. 1, *ibidem*	NO		NO	
21	YES Reference made by way of analogy to the cooperative practice and legislation in general applicable in cooperatives to the boards of directors	Art. 8, par. 1, *ibidem*	NO		NO	
22	YES	Art. 10, *ibidem*	NO		NO	
23	NO		YES An SCE may grant, by its statutes, the right of representation to one member of the management board or several members of the management board such that some or all of the members of the management board are only authorised to represent the SCE jointly. Joint	Art. 13, *ibidem*	NO	

			representation shall apply with regard to third persons only if it is entered in the commercial register			
24	NO		NO		NO	
25	NO		NO		NO	
26	YES	Art. 11, *ibidem*	NO		NO	
27	NO		NO		NO	
28	NO		NO		NO	
29	NO		NO		NOT APPLICABLE	
30	NO		NO		NOT APPLICABLE	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (IV): ES – FR

No	ES		FI		FR[6]	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	NO		YES	Art. 3, Law 906/2006	NO	
2	NO		NO		YES	Art. 26-1, par. 2, Law 47-1775
3	NO		YES	Art. 9, par. 1, *ibidem*	YES Said company shall draw up a written transfer agreement. This agreement shall be filed with the office of the clerk of the court in the jurisdiction of which the cooperative company is registered and shall be publicised in accordance with the rules provided for by art. 10 of the decree 22 June 2009: publication in a "journal of annonces légales" .	Art. 26-9, par. 1, *ibidem*
4	NO		YES With implications to Limited Liability Companies Act 624/2006, Chapter 16, sections 6-7 and 15 (par. 1-2), and to SCE Reg. Art. 7,	Art 9, par 2-4, *ibidem*	YES The transfer shall be subject to the approval of the holders of preference shares, in accordance with the terms of art. 11 *bis* (see	art. 26-9, par. 3, *ibidem*

[6] Additional relevant rules: The conversion shall also be subject to the approval of the holders of preference shares in accordance with the terms of Article 11 *bis* of the present law, as well as that of the holders of cooperative investment certificates and that of the holders of member cooperative certificates in accordance with rules provided for by a decree issued after consulting the French Supreme Administrative Court (art. 26-7, par. 5, *ibidem*). European cooperative society statutes shall determine the terms on which approval is given for new cooperative members by the board of directors or by the management board, as well as the terms according to which an appeal may be lodged with the general meeting against decisions that refuse to grant approval (art. 26-27, *ibidem*). European cooperative societies that fall into a specific category of cooperatives, which have a specific obligation to be audited by an outside organisation, shall be subject to the same obligation (art. 26-30, *ibidem*).

			par. 3 and 8		also art. 26-9, par. 11-13)	
5	NO		YES With implications to Limited Liability Companies Act 624/2006, Chapter 15, section 6, par. 1-2: extended to liabilities risen until the date of giving information about liabilities to authorities by creditors	Art 9, par. 2, *ibidem*	NO	
6	NO		NO		YES	Art. 26-6, par. 1, *ibidem*
7	NO		NO		NO	
8	NO		NO		NO	
9	NO		NO		YES	Art. 26-6, par. 1, *ibidem*
10	NO		YES Members of the merging cooperative are entitled to resign, implication to Cooperative Act (1488/2001) Chapter 4, section 25	Art. 5, *ibidem*	NO	
11	NO		NO		YES The conversion agreement shall be approved beforehand by a two-thirds majority of the members of the board of directors or the supervisory board	Art. 26-8, *ibidem*
12	NO		YES There is also implication to national cooperatives and Cooperative Act, unless stipulated otherwise in SCE R	Art. 7, *ibidem*	YES In European cooperative societies with capital of less than 150,000 €, the functions conferred on the management board may be performed by a single person. In this case, the person shall assume the title of sole management board	Art. 26-20, par. 4, *ibidem*

					member	
13	NO		YES National SCE Act implicates to Cooperative Act (1488/2001)	Art. 7, par 1, *ibidem*	YES Statutes may provide for it	Art. 26-21, *ibidem*
14	NO		NO		YES A maximum period of six months stipulated by art 19 of decree 22 June 2009	
15	NO		NO But it has already been stipulated in Cooperative Act (1488/2001) Chapter 5, section 1, par. 2: min 1 max 7 members unless stipulated otherwise in statutes		YES Max 5 (or 7, in case of an SCE which intends to make a public offering of its shares)	Art. 26-21, *ibidem*
16	NO		NO Not needed as two-tier system already exists in the Cooperative Act		YES Upon penalty of the invalidity of the appointment, the members of the management board must be natural persons. They may be chosen from outside the members Unless prohibited by a provision that is applicable to cooperatives in the same category as the SCE, a legal person may be appointed to the supervisory board (see also art. 26-25 and 26-26)	Art. 26-21, *ibidem* Art. 26-23, par. 2, *ibidem*
17	NO		NO But it has already been stipulated in Cooperative Act (1488/2001) Chapter 5, section 12, par. 2: min 3 members, and managing director and members of the board cannot be members of		YES Min. 3, max 18	Art. 26-23, par. 1, *ibidem*

			the supervisory organ			
18	NO		NO But this has already been stipulated in Cooperative Act (1488/2001) Chapter 5, section 13, par. 1		YES	Art. 26-24, *ibidem*
19	NO		YES And there is also implication to national cooperatives and Cooperative Act, unless stipulated otherwise in SCE R	Art. 7, par. 2, *ibidem*	YES	Art. 26-16, par. 2, *ibidem*
20	NO		NO		YES Min. 3, max 18	Art. 26-16, par. 1, *ibidem*
21	NO		NO Not needed as one-tier system already exists in Cooperative Act		YES Unless prohibited by a provision applicable to cooperative companies of the same category, a legal person may be appointed as director (See also articles 26-25 and 26-26)	Art. 26-17, *ibidem*
22	NO		NO		YES (with regard to the managing director) YES (with regard to the management board)	Art. 26-16, par. 4, *ibidem* Art. 26-20, par. 2, *ibidem*
23	NO		YES But by implication to Cooperative Act which has already had this stipulation	Art. 7, par. 1, *ibidem*	YES (with regard to the two-tier system) The statutes may provide that its chairman or the sole management board member or any other member appointed for this purpose by the supervisory board, who shall have the	Art. 26-20, par. 1, *ibidem*

					title of managing director, shall alone represent the company vis-à-vis third parties	
24	NO		NO But in Cooperative Act there has already been some authorisations, such as general meeting authorising management organ to give voluntarily shares to members		NO	
25	NO		NO		NO	
26	NO		NO		NO (statute)	
27	NO		NO		NO	
28	NO		NO		YES SCE annual accounts shall be certified by at least one statutory auditor. However, the consolidated or combined accounts of SCEs shall be certified by at least two statutory auditors (like in others companies) Subject to the provisions of Article L. 524-6-5 of the French Rural Code, SCEs shall prepare annual accounts in accordance with Articles L. 123-12 to L. 123-24 of the French Commercial Code	Art. 26-29, *ibidem* Art. 26-31, *ibidem*
29	NOT APPLICABLE		NOT APPLICABLE		NOT APPLICABLE	
30	NOT APPLICABLE		NOT APPLICABLE		NOT APPLICABLE	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (V):HU – IS

No	HU[7]		IE[8]		IS[9]	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	NO		YES	Part 2.6, S.I. 43/2009	YES	Art. 5, par. 1, Law 92/2006
2	YES	sec. 4, Law LXIX/2006	NO		NO	
3	YES If an SCE transfers its registered office, it shall satisfy the auditing, deposit, disclosure and annual report requirements stipulated in the Accounting Act, effective as on the day on which the new office is registered - which day will also serve as the balance sheet date - within 150 days from the date of registration of the new office	sec. 11, par. 1, *ibidem*	YES An SCE in respect of which there is a transfer proposal referred to in art. 7(2) shall notify in writing its members and every creditor (including the Revenue Commissioners) of whose claim and address it is aware of the proposal and of the right to examine the transfer proposal and the report drawn up under art. 7(3), at its registered office and on request, to obtain copies of those documents free of charge, not later than one month before the general	Part 3.10, *ibidem*	YES - The management organ or an administrative organ in a SCE with a one-tier system shall deliver to the Register of Cooperative Societies proposals for decisions or information in accordance with par. 2, art. 7 of the SCE R. Information concerning registration shall without delay be published in the "Legal Gazette" at the notifying party's expense. In case the proposal be not published in full it shall be stated in the notification where it may be obtained	Art. 10, *ibidem* Art. 12, *ibidem*

[7] Additional relevant rule: If a European cooperative society transfers its registered office from another Member State to Hungary, it shall prepare, in accordance with the Accounting Act, an opening inventory and an opening balance sheet on its assets and liabilities effective as on the day on which the transfer is registered by the court of registry (sec. 11, par. 2, ibidem).

[8] Additional relevant rule: For the purposes of Article 75, the statutes of an SCE may provide for the distribution of its net assets as set out in its statutes otherwise than in accordance with the principle of disinterested distribution (part 3.21, ibidem).

[9] Additional relevant rules: The Register will collect charges on account of a publication in the "Legal Gazette" in accordance with Laws and rules pertaining thereto as well as charges on account of the publication of information about registration and deregistration of European Cooperative Societies in the Official Journal of the European Union (art. 9, par. 2, *ibidem*). Each member is entitled to have a matter taken for consideration at a Society meeting if he files a requirement in writing accordingly at sufficient advance notice that it be possible to adopt the matter to the agenda of the meeting (art. 25, par. 1, *ibidem*).

			meeting called to decide on the transfer. Every invoice, order for goods or business letter, which, at any time between the date on which the transfer proposal and report become available for inspection at the registered office of the SCE and the deletion of the SCE's registration on transfer, is issued by or on behalf of the SCE, shall contain a statement that the SCE is proposing to transfer its registered office to another Member State under Article 7 and identifying that Member State (but see also point 4 below)		- Notification in writing to the known claimants	
4	YES To provide security to the creditors of the merging cooperative in respect of any liabilities arising prior to the publication of the decision for the transfer of registered office, up to the amount of such liabilities	sec. 10, par. 1-5, *ibidem*	YES A statement of solvency with accounts of the SCE shall be delivered to the Registrar of Friendly Societies (but see also point 3 above)	Part 2.7 (2), *ibidem*	YES In case an SCE moves its office to another State in the European Economic Area, a State being a party to the Convention of the European Free Trade Association or the Faeroe Islands the Board of Directors or the Management Board of the Society shall prepare a special Profit and Loss Account for the period as of the end of the latest annual accounts until the date on which the movement of a registered office has entered into force in accordance with par. 10, art. 7 of the SCE R	Art. 2, par. 2, *ibidem*

5	NO		YES	Part 3.11, *ibidem*	NO	
6	NO		YES	Part 3.12 (1), *ibidem*	YES An SCE supervised by the Financial Supervisory Authority is not permitted to transfer an office from Iceland to another State in the European Economic Area, a Member State of the Convention of the European Free Trade Association or in the Faeroe Islands in case the Authority oppose the transfer within two months from the publication of a notice of transfer in the "Legal Gazette" as per par. 2, art. 7 of the SCE R, cf. par. 6 of the same article	Art. 11, par. 1, *ibidem*
7	NO		YES	Part 3.13, *ibidem*	NO	
8	NO		NO	Part. 3.14 (1) (b), *ibidem*	NO	
9	NO		YES	Part 3.15, *ibidem*	YES The Financial Supervisory Authority with regard to entities subject to its supervision	Art. 6, par. 1, *ibidem*
10	YES Members who oppose the merger shall be compensated, based upon the amount of own funds and subscribed capital shown in the statement of source and application of funds, or upon the amount of own funds and balance sheet total	sec. 5, par. 1-6, *ibidem*	NO		YES In case a member of a company has opposed the establishment of an SCE by means of merger he can resign from the take-over company if the merger leads to the fact that the registered office of the SCE will be outside Iceland. A	Art. 8, *ibidem*

					resignation shall be undertaken within the time limits and subject to the conditions stated in par. 5, art. 7 of the SCE R.	
11	NO		YES The draft terms of conversion and the statutes of the cooperative shall be approved by a majority of not less than two-thirds of the votes validly cast at a general meeting of the SCE at which the members present or represented make up at least half of the total number of members on the date the general meeting is convened	Part 4.24 (5), *ibidem*	NO	
12	NO		NO		YES An SCE shall have a managing director	Art. 22, par. 1, *ibidem*
13	YES Obligation. Members of the administrative organ and the managing director are elected and recalled by the general meeting	sec. 6, par. 4, *ibidem*	YES Permitted	Part 3.16, *ibidem*	NO	
14	YES Until a new member is elected to the administrative organ, not to exceed 60 days. The sixty-day period may be altered by provision of the statutes of the SCE	sec. 7, par. 2, *ibidem*	NO		YES Max 3 months	Art. 19, *ibidem*
15	YES Min. 3, all natural persons	sec. 6, par. 1, *ibidem*	YES Min. 2	Part. 3.17, *ibidem*	YES Min. 3	Art. 21, par. 1, *ibidem*
16	NO		NO		YES	Art. 18, *ibidem*

17	YES Min. 3, all natural persons	sec. 7, par. 1, *ibidem*	NO		YES Min. 3	Art. 21, par. 1, *ibidem*
18	NO		YES	Part 3.18, *ibidem*	NO	
19	YES If the SCE has less than 50 members, the statutes may provide for the office of a managing director in lieu of the administrative organ, vested with the same powers as the administrative organ	sec. 6, par. 2, *ibidem*	NO		YES In case the Society's management be a one-tier system, the management organ shall engage a managing director	Art. 22, par. 1, *ibidem*
20	YES Unless otherwise prescribed in the statutes, the board of directors shall consist of at least 5 members and maximum 11 members, all natural persons, to promote employee participation	sec. 8, par. 2, *ibidem*	YES Min 2	Part 3.19, *ibidem*	YES Min. 3	Art. 21, par. 2, *ibidem*
21	YES	Sec. 8 and 9, *ibidem*	NO		YES	Art. 20, *ibidem*
22	NO		NO		NO	
23	NO		NO		NO	
24	NO		NO		NO	
25	NO		NO		NO	
26	NO		YES	Part 3.20, *ibidem*	NO	
27	NO		NO		NO	
28	NO		NO		NO	
29	NO		NOT APPLICABLE		YES An SCE may obtain authority from the Register of Annual Accounts operated by the Director of Internal Revenue to enter its books in a foreign currency in conformity with the provisions of Acts on Book-keeping and to prepare	Art. 2, par. 1, *ibidem*

					and publish its annual accounts in a foreign currency in conformity with Acts on Annual Accounts	
30	NO		NOT APPLICABLE		YES An SCE may obtain authority from the Register of Annual Accounts operated by the Director of Internal Revenue to enter its books in a foreign currency in conformity with the provisions of Acts on Book-keeping and to prepare and publish its annual accounts in a foreign currency in conformity with Acts on Annual Accounts	Art. 2, par. 1, *ibidem*

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (VI): IT – LT

No	IT		LI[10]		LT[11]	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	NO		YES	art. 8, SCEG	NO	
2	NO		NO	art. 4, SCEG	YES	Art. 4, par. 1, Law X-696
3	NO		NO		YES A document attesting to a decision taken by the general meeting of an SCE on the transfer of the registered office of the SCE must, not later than within 5 days of the taking of the decision at the general meeting, be submitted to the manager of the legal entities register. A proposal of the management or administrative organ regarding the transfer of the	Art. 2, par. 1-3, *ibidem*

[10] Additional relevant rule: The office of land and public registration has to inform the EU publications office within one month after announcement about data which have to be published according to art. 13 SCE regulation (art. 7, SCEG).

[11] Additional relevant rules: The European cooperative societies which have their registered office in the Republic of Lithuania shall be governed *mutatis mutandis* by the legal norms of the Republic of Lithuania regulating cooperative societies (cooperatives) and public limited liability companies to the extent that the Regulation permits and the Regulation, this Law and other legal acts regulating European cooperative societies do not establish otherwise (art. 1, par. 3, Law X-696). A decision on the transfer of the registered office of a European cooperative society may not be taken by secret ballot (art. 2, par. 1, *ibidem*). The draft terms of merger may not be approved by secret ballot (art. 3, par. 2, *ibidem*). A European cooperative society's statutes must list the following categories of transactions requiring a decision of the general meeting: 1) a decision on the acquisition, transfer or lease of a portion of long-term assets exceeding 1/10 of the value of the equity capital of the European cooperative society; 2) a decision on standing surety for or guaranteeing of obligations of other economic entities or pledge of assets or taking and granting of long-term loans, where the amount of such a transaction exceeds 1/10 of the value of the equity capital of the European cooperative society (art. 6, *ibidem*). The manager of the Legal Entities Register shall ensure the … submission of the notices about the European cooperative society as referred to in the Regulation to the Office for Official Publications of the European Communities (art. 7, par. 3, *ibidem*).

					registered office of an SCE must be publicised in a source referred to in the statutes 3 times at the intervals not less than 30 days or publicised in a source referred to in the statutes once and notified to all creditors of the SCE in writing. The publication and the notice must state the name, registered office and number of the SCE, the data listed in Article 7(2)(a) and (e) of the Regulation, where and when the documents listed in Article 7(4) of the Regulation could be examined. A proposal on transfer of the registered office of an SCE must be submitted to the manager of the legal entities register not later than on the first day of publication of the transfer proposal in a source referred to in the statutes.	
4	NO		YES	art. 38, par. 2, subpar. a, SCEG	YES Rights of creditors of an SCE whose registered office shall be transferred shall be protected *mutatis mutandis* by the legal norms of the Republic of Lithuania regulating protection of the rights of creditors of a legal person under reorganisation	Art. 2, par. 5, *ibidem*
5	NO		NO		NO	
6	NO		NO		YES	Art. 2, par. 6, 7,

						ibidem
7	NO		NO		NO	
8	NO		NO		NO	
9	NO		NO		YES	Art. 3, par. 1, *ibidem*
10	NO		NO		NO	
11	NO		NO		NO	
12	NO		YES If the statutes provide so	Art. 19, par. 1, SCEG	YES Obligation	Art. 4, par. 4, *ibidem*
13	NO		YES	art. 15, par. 2, SCEG	NO	
14	NO		YES Until the next general meeting, unless the statutes provide otherwise	art. 15, 5), SCEG; art. 18, par. 1, subpar. 3, SCEG	NO	
15	NO		YES Min. 2 if the SCE has a share capital of at least 1 million Swiss francs (approx. 700'000 €), unless it is not a cooperative which only does asset management but no other business in the home country	art. 16, SCEG	YES Min 3	Art. 4, par. 2, *ibidem*
16	NO		YES	art. 15 ff., SCEG	NO	
17	NO		YES Min. 2	art. 16, SCEG	YES Min. 3, max 15	Art. 4, par. 3, *ibidem*
18	NO		YES	Art. 29, SCEG	NO	
19	NO		YES If the statutes provide so	art. 34, SCEG, par. 1, SCEG	YES Obligation	Art. 4, par. 4, *ibidem*
20	NO		YES Min. 3 if the SCE has a share capital of at least 1 million Swiss francs (approx. 700'000 €), unless it is not a cooperative which only does asset management but no other business in the home	art. 33, 1), SCEG	YES Min 3	Art. 4, par. 2, *ibidem*

			country			
21	NO		YES	Art. 32-35, SCEG	NO	
22	NO		NO		NO	
23	NO		YES	art. 15, par. 9 SCEG; art. 19 SCEG; art. 34, par. 1 SCEG	NO	
24	NO		NO		YES	Art. 6 ibidem
25	NO		NO		NO	
26	NO		NO		NO	
27	NO		NO		NO	
28	NO		NO		NO	
29	NOT APPLICABLE		YES	Art. 5, SCEG	NO	
30	NOT APPLICABLE		NO		NO	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (VII): LU – MT

No	LU		LV		MT	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	NO		NO		NO	
2	NO		YES	Section 4, SCE law	NO	
3	NO		YES Prior to transfer the SCE shall submit to the Register of Enterprises Nr.1435/2003 regulation 7, the second part of the office relocation proposal. The business register a record on the proposal - to change the registered office of the Latvian to another - and the new registered address. Newspaper “Latvian Journal” announces office relocation proposal from the registration date, the Company Registry file number containing the address of the transfer proposal, and the new cooperative society registered office.	Section 8, par. 1, *ibidem*	NO	
4	NO		YES If the SCE moved its registered office from Latvian to another, then, the adoption of a SCE general meeting for the transfer, apply the legislation, which	Section 9, *ibidem*	NO	

			provides creditor protection measures for the addition to limited company.			
5	NO		NO		NO	
6	NO		YES	Section 10, *ibidem*	NO	
7	NO		NO		NO	
8	NO		NO		NO	
9	NO		YES	Section 6, *ibidem*	NO	
10	NO		YES Member of cooperative society involved in the merging, who is opposed to the merger, is entitled to require from the cooperative joint stock company reimbursement for cooperative societies functioning of normative acts, regulating withdrawal of a member.	Section 5, par. 2, *ibidem*	NO	
11	NO		NO		NO	
12	NO		NO		NO	
13	NO		YES Obligation (according to art. 39, par. 1, n. 2, Coop Law)	Sec. 11, *ibidem* and sec. 39, par. 1, n. 2, Coop Law	NO	
14	NO		NO		NO	
15	NO		NO		NO	
16	NO		YES The rules applicable to national cooperative analogous organs apply to the SCE unless the SCE regulation and the SCE implementing law provide otherwise	Section 11, *ibidem*	NO	

17	NO		YES Min. 3	Sec. 11, *ibidem* and sec. 42, par. 1, Coop Law	NO	
18	NO		NO		NO	
19	NO		NO		NO	
20	NO		YES Min. 3	Section 12, par. 2, *ibidem*	NO	
21	NO		YES The rules applicable to national cooperative apply to the SCE unless the SCE R and the SCE implementation law provide otherwise	Section 12, par. 1, *ibidem*	NO	
22	NO		NO		NO	
23	NO		NO		NO	
24	NO		NO		NO	
25	NO		NO		NO	
26	NO		NO		NO	
27	NO		NO		NO	
28	NO		NO		NO	
29	NOT APPLICABLE		YES Latvian Monetary Unit		NO	
30	NOT APPLICABLE		YES Latvian Monetary Unit		NO	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (VIII): NL – PL

No	NL[12]		NO		PL	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	YES	Art. 2, SCE implementation act 14.9.2006	YES	Sec 4 SCE law	YES	Art. 7, SCE law
2	NO		NO		NO	
3	YES In order to transfer its registered office towards another member state of the EU, the SCE with registered office in the Netherlands shall submit a proposal of seat transfer within the meaning of art. 7, par. 2 of the Regulation at the office of the commercial register. The SCE announces the submission of the proposal in a national gazette, indicating the commercial register where the proposal has been submitted and the address where according to art. 7, par. 4 of the Regulation notice can be taken of the proposal	Art. 4, *ibidem*	NO		YES But it does not result from SCE law but from the provisions on the National Court Register	

[12] Additional relevant rules: The statutes of a European Cooperative Society with registered office in the Netherlands may provide that the membership is available for non-using members, as referred to in article 14, paragraph 1, of the Regulation. In case the statutes adjudicate voting rights to non-using members as referred to in article 14, paragraph 1, of the Regulation, the amount of voting rights adjudicated as a whole will not exceed a quarter of the total number of voting rights (art. 8, *ibidem*). In the cases referred to in article 63, paragraph 1, of the Regulation, the statutes of a European Cooperative Society may provide for sectorial meetings or section meetings (art. 15, *ibidem*). In the statutes the way of the distribution of the net assets after liquidation, as referred to in article 75 of the Regulation, may be provided for or the procedure through which the distribution can be determined (art. 18, *ibidem*).

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4	YES An SCE with registered office in the Netherlands wishing to transfer its seat towards another member state of the EU provides security for, or otherwise guarantees, satisfaction of the claim of any obligee of such legal persons who demands the same	Art. 5, *ibidem*	NO		YES Creditors are entitled to demand their claim to be protected or satisfied provided that there is a probability that the satisfying thereof is endangered by the transfer	Art. 26, *ibidem*
5	NO		NO		YES	Art 29, *ibidem*
6	YES	Art. 6, par. 1, *ibidem*	YES	Sec 7 par. 3, *ibidem*	YES Only in case of SCEs subject to the control of the Financial supervision commission	Art. 8, par 1, *ibidem*
7	NO		NO		NO	
8	NO		NO		NO	
9	YES	Art. 9, *ibidem*	NO		YES Only in case of cooperative banks, subject to the control of the Financial supervision commission	Art. 8, *ibidem*
10	NO		NO		NO	
11	NO		NO		NO	
12	NO		YES The enterprise shall have a general manager unless otherwise determined in the statutes	Sec. 8, par. 1, *ibidem*	YES The management organ may appoint one of its members	Art. 13, 24, *ibidem*
13	YES Permission	Art. 11, par. 1, *ibidem*	YES	Sec 8 par. 4, *ibidem*	YES Obligation	Art. 15, par. 2, *ibidem*
14	NO		YES 2 months	Art 8 par. 4, *ibidem*	YES Max 3 months	Art. 16, *ibidem*
15	NO		YES Min. 3	Sec. 8, par. 2, *ibidem*	YES	Art. 22, par. 1, *ibidem*
16	NO		YES As regards SCEs that are organised in a two-tier	Sec. 8, par. 1, *ibidem*	NO Polish Cooperative law provides regulations only for	

			system in accordance with articles 37 to 41 of the SE Regulations, the rules stipulated in chapter 6 of the Norwegian Cooperatives Act and other rules stipulated in the Cooperatives Act relating to the enterprise's management apply in so far as these are appropriate and unless otherwise stated in the SCE Regulations. The Cooperatives Act's rules relating to the board apply correspondingly to the management organ in so far as they are appropriate, and the Cooperatives Act's rules relating to the control committee apply correspondingly to the control organ in so far as they are appropriate		the two-tier system, so it was not thought as necessary	
17	NO		YES Min. 3	Sec 8, par. 1, *ibidem* (see national cooperative act sec 64 para 1)	YES Min. 3	Art. 14, *ibidem*, also Art. 12 which refers to the Art. 36 of the SCE REG and the last to the statutes
18	NO		NO		YES	Art. 17, *ibidem*
19	NO		YES The enterprise shall have a general manager unless otherwise determined in the statutes	Sec. 9, par. 2, *ibidem*	YES The administrative organ may appoint one of its members	Art. 13, *ibidem*
20	YES Min. 3	Art. 13, par. 1, *ibidem*	YES Min. 3	Sec. 9, par. 3, *ibidem*	YES Min. 3	Art. 22, *ibidem*
21	NO		YES	Sec. 9, par. 1,	YES	Art. 19-25,

			For a European cooperative that is organised in a one-tier system in accordance with articles 42 to 44 of the SE Regulations, the rules stipulated in chapter 6 of the Norwegian Cooperatives Act and other rules stipulated in the Cooperatives Act relating to the enterprise's management apply in so far as these are appropriate and unless otherwise stated in the SCE Regulations. The Cooperatives Act's rules relating to the board apply correspondingly to the administrative organ in so far as they are appropriate	*ibidem*	In general the one-tier system is not provided by Polish Cooperative law with some exception for social cooperatives and agricultural productive cooperatives	*ibidem*
22	NO		YES	Sec 10, par. 2, *ibidem*	NO The SCE law does not provide any regulations for that case. Only the provisions of the Civil Code on declarations of will are applicable here.	
23	YES 1. The management shall represent the association to the extent that the contrary does not follow from the law. 2. Statutes may also vest representative authority in one or more officers and may provide that an officer may represent the association only with the cooperation of one or more other persons.	Art. 13, par. 2, *ibidem*	YES	Sec 10 par. 1, *ibidem*	NO The SCE law does not provide any regulations for that case. Only in the case of the one-tier system the Art. 21 refers to the Coop. law	

	3. Representative authority vested in the management or in an officer shall be unrestricted and unconditional to the extent that the contrary does not follow from the law. A restriction or condition on the representative authority permitted or prescribed by statutes may only be invoked by the association. 4. Statutes may also vest representative authority in persons other than officers (art. 45, Civil Code)					
24	NO		NO		NO The SCE law does not provide any regulations for that case. Only in the case of the one-tier system art. 21 refers to cooperative law	
25	NO		NO		NO	
26	YES	Art. 14, *ibidem*	NO		NO	
27	NO		NO		NO	
28	NO		NO		NO	
29	NOT APPLICABLE		NO		NO	
30	NOT APPLICABLE		NO		NO	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (IX): PT – SE

No	PT		RO[13]		SE	
	IS THE OPTION IMPLEMENTED?	NATIONAL LAW PROVISION	IS THE OPTION IMPLEMENTED?	NATIONAL LAW PROVISION	IS THE OPTION IMPLEMENTED?	NATIONAL LAW PROVISION
1	NO		NO		YES	Law (2006:595) Entire § 4
2	NO		NO		NO	
3	NO		NO		NO But a public notice is published by *Bolagsverket* in the official gazette (*Post och Inrikes Tidningar*) on receipt of the SCE's notice.	§ 17, *ibidem*
4	NO		NO		YES A full list of liabilities and guarantees is submitted to *Bolagsverket*. That issues a call to all known claimants. A permit to move is issued first after the guarantees were found satisfactory and no claimant opposes the move. In the latter case the issue is proven by a court. Parallel provisions exist in regulation of financial cooperatives	§§ 16-19, *ibidem*
5	NO		NO		NO	
6	NO		NO		YES The authorities listed are the tax authority and *finansinspektionen* (and as	§13; Temporary inhibition § 16, *ibidem*

[13] Additional relevant rules: Law no. 31/1990 on trading companies, republished, as amended by this emergency ordinance, is the internal legal framework required for the direct application of Council Regulation (EC) no. 2.157/2001 of October 8, 2001 on the European Society Statute, published in the Official Journal of the European Union no. L 294 of November 10, 2001, and of Council Regulation (EC) no. 1.435/2003 of July 22, 2003 on the statute for a European Cooperative Society, published in the Official Journal of the European Union no. L 207 of August 18, 2003.

					mentioned above, a court of law).	
7	NO		NO		YES	§35, *ibidem*
8	NO		NO		NO	
9	NO		NO		YES The Tax Authority and in relevant cases Finansinspektionen (FI) may prohibit fusion only in the case that the SCE has its seat *outside* Sweden. The legislators consider this as tantamount to removal of a SCEs seat (see above, point 6. A special para is inserted to cover merger of assistance associations (stödföreningar)	§89, *ibidem*
10	NO		NO		YES Partly A legal distinction between the overtaking and overtaken parties. A member of the overtaking cooperative has the right to request exit if he voted against the decision *and* if the seat of the SCE is to be located outside Sweden. The provisions of Art 7.5 of the SCE directive apply. Members of the overtaken association are covered by Swedish Ec Assoc Law	§9, *ibidem*
11	NO		NO		NO The governing organs have no decisive role. Swedish law applies: fusion requires approval by a highly	

					privileged majority (9/10ths) on general meeting, or on 2 consecutive assemblies (2/3 on the second).	
12	NO		NO		YES Obligatory for SCE that has had 200 employees or more 2 consecutive accounting years . Governing organs control over-	§28 §29, 30, *ibidem*
13	NO		NO		NO	
14	NO		NO		YES 2 months	§23, *ibidem*
15	NO		NO		YES Min 3	§27, *ibidem*
16	NO		NO		YES in the sense that the form is introduced into legislation. The Swedish rules for the (monistic) board apply to the supervisory organ. No modifications of the directive's guidelines as regards the managing organ are introduced.	
17	NO		NO		YES Min 5	§27, *ibidem*
18	NO		NO		YES Par. 29 enlarges that this applies to the information from managing director as well.	§24, §29, *ibidem*
19	NO		NO		YES. Mandatory if the number of employees exceeds 200 two consecutive accounting years, or if that was the case in any of the cooperatives that formed it.	§28, *ibidem*

20	NO		NO		YES Min. 3	§27, *ibidem*
21	NO		NO		YES The Swedish law on Economic associations is to apply in this case.	§26, *ibidem*
22	NO		NO		NO (Considerations provided in Prop. 2005:06/150, 5.24)	
23	NO		NO		NO Legislation not considered necessary. The matter considered covered by existing regulations and mandatory in statutes.	
24	NO		NO		YES As disposition, not as dictate. The power of decision rests with the supervisory board, if not otherwise set in the statutes. Such provisions have to be registered with *Bolagsverket*.	§22, §34, *ibidem*
25	NO		NO		NO	
26	NO		NO		NO The issue is covered by existing legislation, that sets more exacting conditions.	
27	NO		NO		NO Swedish legislation does not admit for non-user (supporter or investor) membership, which makes the issue irrelevant. Other quorum requirements are customarily set in statutes.	
28	NO		NO		NO	
29	NOT APPLICABLE		NO		YES	§33, *ibidem*
30	NOT APPLICABLE		NO		YES	

					No particular legislation. The general requirement is that accounts have to be set in the same currency as own capital, which makes §33 sufficient.	

COMPARATIVE TABLE OF OPTION IMPLEMENTATION (X): SI – UK

No	SI[14]		SK		UK[15]	
	IS THE OPTION IMPLEMENTED?	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**	**IS THE OPTION IMPLEMENTED?**	**NATIONAL LAW PROVISION**
1	NO		YES	Par. 5, SCE Law	YES	Art. 4, SI 2006/2078
2	NO		NO	Par. 11, *ibidem*	NO	
3	NO The Cooperatives Act requires in Art 56 f. that the notification on the submission of the transfer draft to the registration authority is published. However the form of publication is the same that applies to the transfer of the registered office of an SE in accordance with Art. 437 of the Companies Act.		YES Codex of records, Commercial bulletin and Bureau for official publications issuing	Par. 2, 8, 26, *ibidem*	YES Copy of transfer proposal to be sent to UK competent authority; solvency statement to be made and filed (see 4 below for detail); written notification of members and creditors of right to examine and copy solvency statement, Article 7(3) report and draft transfer proposal; statement of proposed transfer on all invoices, orders and business letters before decision	Art. 15, *ibidem*
4	YES Creditors may request the collateralisation of debts	Art. 56.g	YES Accounts receivable assurance	Par 8, art. 1; par 9, art 2, , *ibidem*	YES The administrative organ (in a one-tier SCE) or the management organ (in a two-tier SCE) of an SCE which proposes to transfer its registered office to another EEA State must make a solvency statement	Art. 14, par. 1, *ibidem*

[14] Additional relevant rules: The reproduction of art. 59 SCE Reg. allowing an SCE statutes to provide for the assignment of more votes to members (art. 56 af, SCE law).

[15] The statutes of an SCE may provide for sectorial or section meetings if the SCE: (a) undertakes different activities; (b) undertakes activities in more than one territorial unit; (c) has several establishments; or (d) has more than 500 members (art. 24, ibidem)

					in order to satisfy the competent authority that the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected.	
5	NO		NO Only those accounts receivable are subject of assurance that arose before the day and on the day of publication	Par 8, art 2, *ibidem*	YES	Art. 14, par. 1, *ibidem*
6	YES With particular regard to non-distributable assets according to art. 74 of the Cooperatives Act (assets obtained either as social property before 1992 or through the participation of the cooperative in the process of privatisation of former socially-owned companies)	Art. 56. h	NO		YES	Art. 16, *ibidem*
7	NO		YES	Par 7, *ibidem*	YES	Art. 17, *ibidem*
8	NO		NO On the contrary, particular provisions of the Code de Commerce on the cooperative society are used. Code de Commerce implemented this Directive	Par 2 art 3, *ibidem*	YES The UK competent authorities are required to establish and maintain registers of branches in which the documents and information required by Directive 89/666/EEC are filed and in which a UK branch of an SCE registered in another member state is registered. The register is kept by the cooperatives	Art. 13, *ibidem*

					regulator rather than the company regulator	
9	YES With particular regard to non-distributable assets according to art. 74 of the Cooperatives Act (assets obtained either as social property before 1992 or through the participation of the cooperative in the process of privatisation of former socially-owned companies)	Art. 56.p	NO		YES	Art. 6, par. 1, *ibidem*
10	YES Members may resign before the merger; members of the cooperative being acquired, with its registered office in another MS, may file an application for a judicial review of the share-exchange ratio	Art. 56.n and 56.o	YES	Par. 12, *ibidem*	NO	
11	NO		NO		NO	
12	YES Possibility	Art. 56.z	NO But according to par 2 art 1 SCE Law, everyday management as director executive is executed by chair of a coop society or director of a coop society according to Par 243 art 6 – 7 Code de Commerce	Par 24 – 25, *ibidem*	NO	
13	YES Obligation	Art. 56.z	YES Permitted	par. 16, *ibidem*	YES Permission	Art. 18, *ibidem*
14	NO		YES Max 1 year	par. 16, *ibidem*	NO	
15	YES Min. 3, unless the SCE has	Art. 56.z	YES Min. 3	par. 16, *ibidem*	YES Min. 3	Art. 19, *ibidem*

	fewer than 10 members in which case there may be a single-member management organ					
16	NO Not relevant		NO Dualistic model of management is defined by the Code de Commerce		YES	
17	YES Min. 3	Art. 56.z	YES Min. 3 or a higher number divisible by three	par. 17, *ibidem*	YES Min. 3	Art. 19, *ibidem*
18	YES Possibility. The supervisory organ may authorise its members to make such requests individually.	Art. 29	YES	par. 17, *ibidem*	YES	Art. 20, *ibidem*
19	YES Possibility	Art. 56.ad	YES Possibility	par. 24 – 25, *ibidem*	NO	
20	YES Min. 3	Art. 56.ž	YES Min. 3 or a higher number divisible by three	par. 20, *ibidem*	YES Min. 3	Art. 19, *ibidem*
21	YES	Art. 56.ž – 56.ae	YES	par. 18 ff. , *ibidem*	YES	
22	YES	Art. 6(5) of the Companies Act, which applies to cooperatives on the basis of Art. 56 of the Cooperatives Act	NO		NO	
23	YES Possibility.	Art. 30 and 56.ac	YES In accordance with par 1 art 2 SCE Law representation on behalf of cooperative society /par 243 art 3/		YES A UK registered SCE can either appoint a single person or two or more to act jointly and such provision may be relied on against third parties subject to article 47(2) of the SCE Regulation	Art. 22, *ibidem*

24	NO		YES In accordance with par 1, art 2 SCE Law, Code de Commerce par 1, art e /to define rights and obligations of bodies constituted for a general meeting in par 239/	Par 17, art 3, *ibidem*	NO	
25	NO		NO		NO	
26	NO		NO		YES	Art. 23, *ibidem*
27	NO		NO		NO	
28	NO		NO		NO	
29	NOT APPLICABLE		NOT APPLICABLE		YES	Art. 39, *ibidem*
30	NOT APPLICABLE		NOT APPLICABLE		YES	Art. 39, *ibidem*

APPENDIX 1a

SCE R AND SE R OPTION IMPLEMENTATION: A COMPARISON

Table 1. Equivalent options between SCE R. 1435/2003 and SE R. 2157/2001

OPTIONS	**SCE R. 1435/2003**	**SE R. 2157/2001**
1	Art. 2(2)	Art. 2(5)
2	Art. 6	Art. 7
3	Art. 7(7)(2)	Art. 8(7)(2)
4	Art. 7(14)(1)	Art. 8(14)
5	Art. 11(4)(2)	Art. 12(4)
6	Art. 21	Art. 19
7	Art. 28(2)	Art. 24(2)
8	Art. 35(7)	Art. 37(8)
9	Art. 37(1)	Art. 39(1)
10	Art. 37(2)(2)	Art. 39(2)
11	Art. 37(3)	Art. 39(3)
12	Art. 37(4)	Art. 39(4)
13	Art. 37(5)	Art. 39(5)
14	Art. 39(4)	Art. 40(3)
15	Art. 40(3)	Art. 41(3)
16	Art. 42(1)	Art. 43(1)
17	Art. 42(2)(1)	Art. 43(2)
18	Art. 42(4)	Art. 43(4)
19	Art. 48(3)	Art. 48(1)
20	Art. 48(3)	Art. 48(2)
21	Art. 50(3)	Art. 50(3)
22	Art. 54(1)	Art. 54(1)
23	Art. 77(1)	Art. 67(1)
24	Art. 77(2)	Art. 67(2)

Table 2a. SCE R and SE R option implementation; a comparison. AT to FR

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR
1	**SCE**	N	Y	N	**Y**	Y	N	Y	N	**N**	**N**	Y	N
	SE	N	Y	N	**N**	Y	N	Y	N	**Y**	**Y**	Y	N
2	**SCE**	Y	**Y**	Y	**Y**	**N**	N	Y	N	**N**	N	N	Y
	SE	Y	**N**	Y	**N**	**Y**	N	Y	N	**Y**	N	N	Y
3	**SCE**	Y	**Y**	N	Y	N	Y	Y	**Y**	**N**	**N**	Y	**N**
	SE	Y	**N**	N	Y	N	Y	Y	**N**	**Y**	**Y**	Y	**Y**
4	**SCE**	**N**	Y	N	Y	N	**Y**	Y	**Y**	N	**N**	N	Y
	SE	**Y**	Y	N	Y	N	**N**	Y	**N**	N	**Y**	N	Y
5	**SCE**	N	**Y**	N	**N**	Y	N	**Y**	N	**N**	N	N	N
	SE	N	**N**	N	**Y**	Y	N	**N**	N	**Y**	N	N	N
6	**SCE**	N	Y	**N**	Y	N	**Y**	Y	**Y**	**N**	**N**	N	Y
	SE	N	Y	**Y**	Y	N	**N**	Y	**N**	**Y**	**Y**	N	Y
7	**SCE**	Y	N	**N**	**Y**	Y	Y	Y	**N**	**N**	**N**	Y	N
	SE	Y	N	**Y**	**N**	Y	Y	Y	**Y**	**Y**	**Y**	Y	N
8	**SCE**	N	N	N	N	N	N	N	N	N	N	N	**Y**
	SE	N	N	N	N	N	N	N	N	N	N	N	**N**
9	**SCE**	N	**N**	**N**	Y	**N**	**Y**	**Y**	**N**	**N**	**N**	Y	Y
	SE	N	**Y**	**Y**	Y	**Y**	**N**	**N**	**Y**	**Y**	**Y**	Y	Y
10	**SCE**	**Y**	**Y**	**N**	Y	Y	**Y**	N	**N**	**N**	N	Y	Y
	SE	**N**	**N**	**Y**	Y	Y	**N**	N	**Y**	**Y**	N	Y	Y
11	**SCE**	**N**	Y	N	Y	Y	Y	N	Y	**N**	**N**	N	Y
	SE	**Y**	Y	N	Y	Y	Y	N	Y	**Y**	**Y**	N	Y
12	**SCE**	N	N	**N**	Y	**Y**	Y	**Y**	Y	**N**	**N**	**N**	Y
	SE	N	N	**Y**	Y	**N**	Y	**N**	Y	**Y**	**Y**	**Y**	Y
13	**SCE**	**Y**	Y	N	N	N	**Y**	Y	**Y**	N	**N**	N	**Y**
	SE	**N**	Y	N	N	N	**N**	Y	**N**	N	**Y**	N	**N**
14	**SCE**	**N**	Y	**N**	Y	**Y**	Y	Y	N	**N**	N	**N**	Y
	SE	**Y**	Y	**Y**	Y	**N**	Y	Y	N	**Y**	N	**Y**	Y
15	**SCE**	Y	N	N	**N**	**N**	Y	N	N	N	N	**N**	Y
	SE	Y	N	N	**Y**	**Y**	Y	N	N	N	N	**Y**	Y
16	**SCE**	**Y**	**N**	**N**	**Y**	Y	**Y**	Y	**N**	**N**	**N**	Y	Y
	SE	**N**	**Y**	**Y**	**N**	Y	**N**	Y	**Y**	**Y**	**Y**	Y	Y
17	**SCE**	N	Y	**N**	Y	Y	Y	Y	**N**	**N**	**N**	**N**	Y
	SE	N	Y	**Y**	Y	Y	Y	Y	**Y**	**Y**	**Y**	**Y**	Y
18	**SCE**	**Y**	N	N	**N**	Y	Y	**Y**	**N**	N	N	N	**Y**
	SE	**N**	N	N	**Y**	Y	Y	**N**	**Y**	N	N	N	**N**
19	**SCE**	**N**	N	**N**	Y	**N**	**N**	**N**	**N**	N	**N**	N	N
	SE	**Y**	N	**Y**	Y	**Y**	**Y**	**Y**	**Y**	N	**Y**	N	N
20	**SCE**	**N**	N	N	**Y**	**N**	N	N	N	N	N	N	**N**
	SE	**Y**	N	N	**N**	**Y**	N	N	N	N	N	N	**Y**
21	**SCE**	N	N	N	**N**	N	**Y**	N	N	N	**N**	N	N
	SE	N	N	N	**Y**	N	**N**	N	N	N	**Y**	N	N
22	**SCE**	N	Y	**N**	N	**N**	N	Y	N	N	N	N	N
	SE	N	Y	**Y**	N	**Y**	N	Y	N	N	N	N	N
23	**SCE**	NA	NA	**N**	NA	**N**	NA	**N**	**N**	NA	NA	NA	NA
	SE	NA	NA	**Y**	NA	**Y**	NA	**Y**	**Y**	NA	NA	NA	NA
24	**SCE**	NA	NA	**N**	NA	**N**	NA	**N**	**N**	NA	NA	NA	NA
	SE	NA	NA	**Y**	NA	**Y**	NA	**Y**	**Y**	NA	NA	NA	NA

Table 2b. SCE R and SE R option implementation: a comparison. HU to UK

		HU	IT	LU	LV	NL	NO	PL	PT	RO	SE	SI	SK	UK
1	SCE	N	N	N	N	Y	Y	Y	N	N	Y	N	Y	Y
	SE	N	Y	Y	N	N	Y	Y	N	N	Y	N	Y	Y
2	SCE	Y	N	N	Y	N	N	N	N	N	N	N	N	N
	SE	N	N	N	Y	N	N	N	N	N	N	N	N	N
3	SCE	N	N	N	N	N	N	Y	N	N	N	N	N	Y
	SE	N	N	N	Y	Y	N	N	N	N	Y	N	N	Y
4	SCE	N	N	N	Y	Y	Y	Y	N	N	Y	Y	N	Y
	SE	N	N	N	Y	Y	Y	Y	Y	N	Y	N	N	Y
5	SCE	N	N	N	N	N	N	N	N	N	Y	N	Y	Y
	SE	N	N	N	N	N	N	N	N	N	N	N	N	Y
6	SCE	N	N	N	Y	Y	N	Y	N	N	Y	Y	N	Y
	SE	N	N	N	Y	Y	N	Y	Y	N	Y	N	N	Y
7	SCE	Y	N	N	Y	N	N	N	N	N	Y	Y	Y	N
	SE	Y	N	N	Y	Y	N	Y	Y	Y	N	Y	Y	N
8	SCE	N	N	N	N	N	N	N	N	N	N	N	N	N
	SE	N	N	N	N	N	N	N	N	N	N	N	N	N
9	SCE	N	N	N	N	N	Y	Y	N	N	Y	Y	N	N
	SE	Y	N	Y	Y	N	Y	N	N	Y	Y	Y	Y	N
10	SCE	Y	N	N	Y	Y	Y	Y	N	N	N	Y	Y	Y
	SE	Y	N	Y	Y	Y	Y	Y	N	Y	N	N	Y	N
11	SCE	Y	N	N	N	N	Y	Y	N	N	Y	N	Y	N
	SE	Y	N	N	N	Y	Y	Y	N	N	Y	Y	Y	N
12	SCE	Y	N	N	N	N	Y	Y	N	N	Y	Y	Y	Y
	SE	Y	N	N	N	N	Y	N	Y	Y	Y	N	N	Y
13	SCE	N	N	N	Y	N	Y	N	N	N	Y	N	N	Y
	SE	N	N	Y	N	N	N	N	N	N	Y	N	N	Y
14	SCE	Y	N	N	Y	N	Y	Y	N	N	Y	Y	Y	Y
	SE	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
15	SCE	N	N	N	N	N	N	Y	N	N	Y	Y	Y	Y
	SE	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y
16	SCE	Y	N	N	N	N	Y	Y	N	N	Y	Y	Y	N
	SE	Y	N	Y	Y	N	Y	Y	N	N	Y	Y	N	N
17	SCE	Y	N	N	Y	Y	Y	Y	N	N	Y	Y	Y	Y
	SE	Y	N	N	Y	N	N	Y	Y	N	Y	Y	Y	Y
18	SCE	Y	N	N	Y	N	Y	Y	N	N	Y	Y	Y	Y
	SE	N	N	N	Y	Y	N	Y	N	N	N	N	Y	N
19	SCE	N	N	N	N	N	N	N	N	N	Y	N	Y	N
	SE	N	N	N	N	N	N	N	N	N	Y	Y	Y	N
20	SCE	N	N	N	N	N	N	N	N	N	Y	N	Y	N
	SE	N	N	N	N	N	N	N	Y	N	N	N	N	N
21	SCE	N	N	N	N	N	N	N	N	N	N	N	N	N
	SE	N	N	N	N	N	N	N	N	N	N	N	N	N
22	SCE	N	N	N	N	Y	N	N	N	N	N	N	N	Y
	SE	N	N	Y	N	Y	N	N	N	N	Y	N	N	Y
23	SCE	N	NA	NA	Y	NA	N	N	NA	N	Y	NA	NA	Y
	SE	Y	NA	NA	Y	NA	Y	N	NA	Y	Y	NA	NA	Y
24	SCE	N	NA	NA	Y	NA	N	N	NA	N	Y	NA	NA	Y
	SE	Y	NA	NA	Y	NA	N	N	NA	Y	N	NA	NA	Y

APPENDIX 2

COMPETENT AUTHORITIES ACCORDING TO ARTICLE 78 (2) SCE R

Table of competent authorities according to art. 78 (2) SCE R.

N.	Art.	Content
1	Art. 7, par. 8 Art. 7, par. 14	Transfer of registered office authority issuing the certificate; authority opposing the transfer
2	Art. 21	Opposition to a merger authority opposing the merger
3	Art. 29, par. 2	Scrutiny of merger procedure authority issuing the certificate
4	Art.30	Scrutiny of legality of merger
5	Art.54, par.2	Convocation of the general meeting
6	Art.73	Winding-up authority ordering the SCE to be wound up

COMPARATIVE TABLE OF COMPETENT AUTHORITIES art. 78, par. 2, SCE R. (I): AT – CZ

N.	AT	BE	BG	CY	CZ
1	Courts of first instance for commercial matters	The notary of the incorporation act through a merger (par. 8); the Ministry of the economy (par. 14)	Registration agency holding the commercial register	Commissioner of the Authority for the supervision and development of cooperative societies appointed under the cooperative societies law	Notary
2	Not applicable	Ministry of the Economy	Registration agency holding the commercial register	Commissioner	Not applicable
3	Courts of first instance for commercial matters	The notary of the incorporation act through a merger	Registration agency holding the commercial register	Commissioner	Notary
4	Courts of first instance for commercial matters	The notary of the incorporation act through a merger	Registration agency holding the commercial register	Commissioner	Notary
5	Courts of first instance for commercial matters	Not applicable	District court	Commissioner	Not applicable
6	Courts of first instance for commercial matters	Courts of first instance for commercial matters	District court	Commissioner	Court and Ministry of Justice

COMPARATIVE TABLE OF COMPETENT AUTHORITIES art. 78, par. 2, SCE R. (II): DE – ES

N.	DE	DK	EE	EL	ES
1	Court	Danish Commerce and Companies Agency (Ministry of Economy and Industries); Minister for Economics and Business Affairs (in certain cases)	Registrar of the SCE registered office	Not implemented	Not designated
2	Not applicable	Danish Commerce and Companies Agency (Ministry of Economy and Industries); Minister for Economics and Business Affairs (in certain cases)	Not applicable	Not implemented	Not designated
3	Court	Danish Commerce and Companies Agency (Ministry of Economy and Industries)	Registrar of the SCE registered office	Not implemented	Not designated
4	Court	Danish Commerce and Companies Agency (Ministry of Economy and Industries)	Registrar of the SCE registered office	Not implemented	Not designated
5	Court	Danish Commerce and Companies Agency (Ministry of Economy and Industries)	Not applicable	Not implemented	Not designated
6	Court; State Minister of Economic Affairs (§ 1)	Danish Commerce and Companies Agency (Ministry of Economy and Industries)	Court	Not implemented	Not designated

COMPARATIVE TABLE OF COMPETENT AUTHORITIES art. 78, par. 2, SCE R. (III): FI – IS

N.	FI	FR	HU	IE	IS
1	National Board of Patents and Registration	Notary (par. 8); Public prosecutor (par. 14)	Court of registry	Registrar of Friendly Societies	Register of cooperative societies (par. 8) The Financial Supervisory Authority with regard to entities subject to its supervision (par. 14)
2	National Board of Patents and Registration	Public prosecutor	Not applicable	Registrar of Friendly Societies	The Financial Supervisory Authority with regard to entities subject to its supervision
3	National Board of Patents and Registration	Clerk of the commercial court	Court of registry	High Court	Register of cooperative societies
4	National Board of Patents and Registration	Notary or the Clerk of the commercial court	Court of registry	High Court	Register of cooperative societies
5	State provincial office	Not applicable	Court of registry	Registrar of Friendly Societies	Minister of economic affairs (Art. 26 law 92/2006)
6	Court (the Financial Supervisory Authority in case of SCEs supervised under the Act 878/2008 on financial supervision)	Court	Court of registry	Registrar of Friendly Societies (application); High Court (order)	Minister of economic affairs

COMPARATIVE TABLE OF COMPETENT AUTHORITIES art. 78, par. 2, SCE R. (IV): IT – LV

N.	IT	LI	LT	LU	LV
1	Regions of Sicily, Region of Val D'Aosta, Region of Friuli-Venezia Giulia, Province of Bolzano, Province of Trento (for those SCEs whose registered office is located in these regions and provinces) Ministry of economic development (for all the other SCEs)	Office of land and public registration	Legal entities register (par. 7); Ministry of Justice and Bank of Lithuania (par. 14)		Register of enterprises (7); Financial and Capital Market Commission, the State Revenue Department or Economic Affairs (par. 14)
2	Regions of Sicily, Region of Val D'Aosta, Region of Friuli-Venezia Giulia, Province of Bolzano, Province of Trento (for those SCEs whose registered office is located in these regions and provinces) Ministry of economic development (for all the other SCEs)	Office of land and public registration	Ministry of Justice		Financial and Capital Market Commission, State Revenue Service and the Ministry of Economic Affairs
3	The notary of the incorporation act through a merger	Office of land and public registration	Legal entities register		Register of enterprises
4	The notary of the incorporation act through a merger	Office of land and public registration	Notary public		Register of enterprises
5	Province of Bolzano, Province of Trento (for those SCEs whose registered office is located in these provinces) Not applicable	Office of land and public registration	Not applicable		Register of enterprises

	for all the other SCEs (as Italian law does not provide for the intervention of an authority on this point)				
6	Regions of Sicily, Region of Val D'Aosta, Region of Friuli-Venezia Giulia, Province of Bolzano, Province of Trento (for SCEs whose registered office is located in these regions and provinces) Ministry of economic development (for all the other SCEs)	Office of land and public registration	Court		Register of enterprises

COMPARATIVE TABLE OF COMPETENT AUTHORITIES art. 78, par. 2, SCE R. (V): MT – PT

N.	MT	NL	NO	PL	PT
1	Cooperative board	Notary (par. 8); Minister of Justice (par. 14)	Register of business enterprises (par. 8) (par. 14) The King, i.e. the cabinet, is the competent authority under art 7 para 14	Registration Court (par. 8); Financial supervision commission, only with regard to SCEs subject to its control (par. 14)	Not implemented
2	Cooperative board	Minister of Justice	Foundation Authority	Financial supervision commission (only with regard to cooperative banks)	Not implemented
3	Cooperative board	Notary	Foundation Authority	Registration Court	Not implemented
4	Cooperative board	Notary	Register of business enterprises	Registration Court	Not implemented
5	Cooperative board	Not applicable	The District Court	Not applicable	Not implemented
6	Cooperative board	Public prosecutor (application); Court (order); Head of the office of the Court of Appeal in Amsterdam (information in par. 5)	Register of business enterprises	Registration Court	Not implemented

COMPARATIVE TABLE OF COMPETENT AUTHORITIES art. 78, par. 2, SCE R. (VI): RO – UK

N.	RO	SE	SI	SK	UK
1	Director of the Trade register office attached to the court and/or the person or persons designated by the director general of the National Trade Register Office.	Swedish companies registration office (*Bolagsverket*) (§ 8); Tax authority and Swedish Financial Supervisory Authority *finansinspektionen* (§14)	District court (par. 8); Ministry of Agriculture, Forestry and Food (par. 14)	Notary, Court	Financial Service Authority (for Great Britain); Registrar of Credit Unions (Northern Ireland)
2	Not applicable	Tax authority and Swedish Financial Supervisory Authority *finansinspektionen*	Ministry of Agriculture, Forestry and Food	Court	Financial Service Authority (for Great Britain); Registrar of Credit Unions (N. Ireland)
3	Director of the Trade register office attached to the court and/or the person or persons designated by the director general of the National Trade Register Office.	Swedish companies registration office (*Bolagsverket*)	District court	Notary	Financial Service Authority (for Great Britain); Registrar of Credit Unions (N.Ireland)
4	Director of the Trade register office attached to the court and/or the person or persons designated by the director general of the National Trade Register Office.	Swedish companies registration office (*Bolagsverket*)	District court	Notary	Financial Service Authority (for Great Britain); Registrar of Credit Unions (N. Ireland)
5	Not applicable	The county administrative board in the location of the SCEs main office , on complaint from directly concerned[1].(36§)	Not applicable	Court	Financial Service Authority (for Great Britain); Registrar of Credit Unions (N. Ireland)
6	Not applicable	Swedish companies registration office (*Bolagsverket*)	District court	Court	Financial Service Authority (for Great Britain); Registrar of Credit Unions (N.Ireland)

[1]Regarding the authority to convene a general meeting if the board neglected its obligation to do so, or failed to adhere to proper notice procedure. New legislation on economic associations (presently in referral/remittal) proposes to transfer this right to *Bolagsverket*

APPENDIX 3

COMPARATIVE TABLES OF NATIONAL COOPERATIVE LEGISLATION

Comparative table of national cooperative legislation

	ICA PRINCIPLES - 193/2002 ILO RECOMMENDATION	SCE REGULATION	NATIONAL LAW
1) Definition and aim	Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination (1st ICA Principle: Voluntary and Open Membership) "Cooperative" means an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (193/2002 ILO Rec., I.2)	The satisfaction of members' needs and/or the development of their economic and social activities, in particular through agreements to supply goods or services or to execute work; or by promoting, in the manner above mentioned, their participation in economic activities, in one or more SCEs and/or national cooperatives (art. 1, par. 3)	
2) Economic activity (restrictions)	It is recognised that cooperatives operate in all sectors of the economy (193/2002 ILO Rec., I.1)	No direct restrictions, but national law provisions apply (art. 8, par. 2)	
3) Activity with non-members (admissibility and restrictions)	No provisions	Permitted only if allowed by the statutes (art. 1, par. 4) No restrictions	
4) Registration	Governments should provide a supportive policy and legal framework … which would: (a) establish an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible (193/2002 ILO Rec., II.6)	Yes, in a register designated by the national law in accordance with the law applicable to public-limited liability companies (art. 11, par. 1).	
5) Minimum number of members	No provisions, but see "Cooperative"	2 companies or 5 natural persons	

	means an autonomous association of persons (193/2002 ILO Rec., I.2)	(art. 2)	
6) Investor-members (admissibility)	Cooperatives are autonomous, self-help organisations controlled by their members. If they enter to agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy (4th ICA Principle: Autonomy and Independence) Governments should, where appropriate, adopt measures to facilitate the access of cooperatives to investment finance and credit (193/2002 ILO Rec., III.12)	Yes, on condition of statutes provision and if national law so permits (art. 14, par. 1, subpar. 2)	
7) Admission of new members (rules on)	Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination (1st ICA Principle: Voluntary and Open Membership)	Subject to approval by administrators. Candidates refused membership may appeal to the general meeting (art. 14, par. 1)	
8) Capital variability	Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership (1st ICA Principle: Voluntary and Open Membership)	Yes (art. 1, par. 2)	
9) Minimum capital requirement	No provisions	30,000 €	
10) Allocation of the surplus and in particular allocation of the surplus to compulsory legal reserve funds	At least part of that capital is usually the common property of the cooperative ... Members allocate	The statutes shall lay down rules for the allocation of the surplus without prejudice to mandatory provisions of	

	surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible (3rd ICA Principle: Member Economic Participation). Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives (5th Principle: Education, Training and Information). Cooperatives work for the sustainable development of their communities through policies approved by their members (7th ICA Principle: Concern for Community) Governments should provide a supportive policy and legal framework … which would: (b) promote policies aimed at allowing the creation of appropriate reserves, part of which at least could be indivisible, and solidarity funds within cooperatives (193/2002 ILO Rec., II.6)	national laws (art. 65, par. 1). Before any other allocation, 15% of the surplus shall be allocated to a legal reserve fund, as long as the legal reserve is equal to 30,000 € (art. 65, par. 2)	
11) Distribution of reserves (admissibility and restrictions)	At least part of that capital is usually the common property of the cooperative ... Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible (3rd ICA	Not permitted to the withdrawing member (art. 65, par. 3)	

	Principle: Member Economic Participation)		
12) Distribution of dividends on paid-up capital (admissibility and restrictions)	Members usually receive limited compensation, if any, on capital subscribed as a condition of membership (3rd ICA Principle: Member Economic Participation)	Yes, without limitations (art. 67), if statutes do not provide for the payment of "dividends" under art. 66	
13) Distinction dividends/refunds and distribution of refunds on the basis, and in the proportion to the activity	Members allocate surpluses for any or all of the following purposes: ... benefiting members in proportion to their transactions with the cooperative (3rd ICA Principle: Member Economic Participation)	Dividends are not clearly distinguished from refunds. Art. 66 names "dividends" those that are "refunds" in fact. While art. 67, par. 2, 3rd indent, uses the term "return" with regard to "dividends". "Dividends" of art. 66 prevail over "returns" of art. 67 if statutes provide for the payment of the former.	
14) Voting rights	Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organised in a democratic manner (2nd ICA Principle: Democratic Member Control)	One member, one vote (art. 59, par. 1), but statutes may provide for some exceptions if national law so permits (art. 59, par. 2-4)	
15) Sectorial or section meetings (admissibility)	No provisions	Yes, where the SCE undertakes different activities or activities in more than one territorial unit, or has several establishments or more than 500 members, if permitted by the relevant national legislation and provided for by the statutes (art. 63, par. 1)	
16) Conversion into another legal	No provisions	Only the hypothesis of the	

form of company or entity (admissibility)		conversion into a national law cooperative is envisaged (art. 76)	
17) Management and administrative boards/organs: only members eligible?	Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership (2nd ICA Principle: Democratic Member Control). Cooperatives are autonomous, self-help organisations controlled by their members (4th ICA Principle: Autonomy and Independence) Governments should provide a supportive policy and legal framework … which would: (e) encourage the development of cooperatives as autonomous and self-managed enterprises (193/2002 ILO Rec., II.6)	Management organ: NO, it depends on statutes provision (art. 37, par. 4), but as regards the supervisory organ not more than ¼ of the posts available may be filled by non-user members (art. 39, par. 3) Administrative organ: not more than ¼ of the posts available may be filled by non-user members (art. 42, par. 2)	
18) Assets devolution in case of dissolution	Members usually receive limited compensation, if any, on capital subscribed as a condition of membership (3rd ICA Principle: Member Economic Participation)	Disinterested distribution of net assets or, where permitted by national law, in accordance with an alternative arrangement set out in the statutes (art. 75)	
19) Specific tax treatment (main measures)	Cooperatives should be treated in accordance with national law and practice and on terms no less favourable than those accorded to other forms of enterprise and social organization. Governments should introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or	No (see recital No 16)	

	the development of activities benefiting disadvantaged groups or regions. Such measures could include, among others and in so far as possible, tax benefits, loans, grants, access to public works programmes, and special procurement provisions (193/2002 ILO Rec., II.7.2)		
20) Public and/or other forms of supervision (auditing), including precautionary supervision, specific for cooperatives and not merely financial (main objects)	Governments should provide a supportive policy and legal framework … which would: (c) provide for the adoption of measures for the oversight of cooperatives, on terms appropriate to their nature and functions, which respect their autonomy, and are in accordance with national law and practice, and which are no less favourable than those applicable to other forms of enterprise and social organization (193/2002 ILO Rec., II.6)	National law provisions apply (articles 5, par. 3; 8, par. 2; 71)	

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (I): AT – BG

	AT	BE	BG [95]
1	A cooperative is an association of an unlimited number of members serving to support acquisitions and commercial activities of their members (cooperatives) as well as for Loan-, Purchase-, Sale-, Consume-, Utilization-, Exploitation-, Construction-, Residential- and Establishment Cooperatives. Cooperatives may also pursue the purposes mentioned in sect 1, par. 3, of the enactment 2003/1435/EG on the statute of the European Corporation (SCE) (sec. 1, GenG)	A cooperative is a company "*which consists of members whose number and subscriptions are variable.*" (art. 350 companies code) : - The "*cooperative company with unlimited liability*", is characterized by the fact that members are personally and jointly liable for debts, - The "*cooperative company with limited liability*" is that in which members are liable for debts only to the extent of their contribution. (art. 352 C.C.)	A cooperative is an association of natural persons with variable capital and variable number of members who shall engage in activities based on mutual assistance and cooperation to satisfy their economic, social and cultural interests. The cooperative is a legal entity (art. 1, CL). Members have the right to participate in and benefit from the cooperative's activity (art. 9, par. 1, n 1, CL) and are obliged to aid the accomplishment of the cooperative's object (art. 10, oar. 1, n 4, CL)
2	Generally all economic activities are permitted	No restrictions	Restrictions regard: - Reinsurance (art. 23, Insurance code) - Banking (art. 7, par. 1, Law on credit institutions), but mutual assistance lending cooperatives of private agricultural farmers are permitted (decree of the Council of Ministers, 30.12.2008, No 343) - Finance (art. 3a, par. 1, 1st point, *ibidem*)
3	Permitted if allowed by statutes (Sect. 5a par. 1 subpar. 1 GenG).	No provision	No provision
4	YES In the commercial register (Sect 3 par. 1 subpar. 3 GenG).	YES In the register of "*personnes morales*" (legal persons), held by the clerk office of the court for commercial matters (art. 67 C.C.)	YES In the commercial register (art. 3, par. 1, CL)
5	There is no explicit provision concerning a minimum number of members. Implicitly, the minimum number of members is 2	3 (art. 351 C.C.)	7 (art. 2, par. 1, 54, par. 2, CL)
6	YES If stipulated by statutes (Sect 5a par. 2 subpar. 1 GenG)	YES If statutes provide for their admissibility (art. 366 C.C.)	No provision
7	For admission, a written declaration of	The statutes provide for the rules on admission	There is no right of admission. Admission is

[95] Other relevant provisions: only individuals may be members of a cooperative (except cooperative unions formed of cooperatives): see art. 7, par. 1, CL

	accession is needed and the acceptance by the cooperative as well as the signing of at least one cooperative share. Members have to meet the special membership requirements laid down by statutes (e.g., personal requirements like a special profession or the residence in a certain area).	(art. 366 C.C)	subject to approval by the management board and confirmation by the general meeting. Candidates refused membership may appeal to the general meeting (art. 8, CL)
8	YES	YES (350, 392 C.C)	YES (art. 1, CL)
9	NO There is also no legal rule concerning the amount of the shares, except for Construction-, Residential- and Establishing Cooperatives (minimum amount € 218).	18,550 € only for a *cooperative company with limited liability* (art. 390 C.C.). This amount also represents a "fixed capital"	NO (but each member shall subscribe a share contribution as defined by statutes (art. 31, CL)
10	No provisions concerning legal reserves.	The statutes shall lay down rules for the allocation of the surplus. In limited liability cooperatives, 5% of annual total profits shall be allocated to a legal reserve fund, until this legal reserve fund reaches 10% of the fixed part of the capital (art. 428 C.C.)	Reserve fund and Investment fund are compulsory (art. 34, par. 1, CL). Their amount shall be no less than respectively 20% and 10% of the subscribed capital (art. 34, par. 2, 4, CL)
11	Reserves can be distributed to members.	A restriction: Not permitted if, on the date of closing of the financial year, the "*actif net*" (net assets) fall below the fixed capital or the paid up capital (if it is below the fixed part) (art. 429 C.C.)	Reserve fund and Investment fund may not be distributed to withdrawing members (arg. *ex* art. 14 and 33, par. 3, CL) but they are distributable in the case of dissolution of the cooperative (arg. art. 48, CL) or by decision of the general meeting for distribution of funds exceeding the minimal amount required by the CL (arg. art. 33, par. 2, CL and art. 34, par. 2, 4, CL).
12	YES The statutes have to include a provision on the distribution of assets and losses among cooperative members.	A restriction : Not permitted if, on the date of closing of the financial year, the "*actif net*" (net assets) fall below the fixed capital or the paid up capital (if it is below the fixed part) (art. 429 C.C.) If the cooperative has an agreement with the NCC, there is a maximum : 6 % net (art. 1 §2, 6° Royal decree on NCC)	No restrictions, but the distribution of profits shall follow the allocation of income to Reserve and Investment funds (art. 33, par. 3, CL)
13	YES	YES	No distinction.

	If stipulated by statutes on the basis of objective criteria, such as the transaction volume of members.	There is a section for the refunds (art. 374 to 376 C.C.) and a section for the distribution of profits (art. 428-429 C.C.). For a cooperative having an agreement with the NCC: the surplus shall be distributed to the members, in proportion to the operations with the cooperative (art. 1, §2, 5°, Royal decree on NCC)	No provisions in the sense that profits shall or may be distributed according to the participation of the member in the cooperative activity instead of the amount of her/his subscribed capital
14	One member, one vote, but statutes may stipulate a (limited) voting right by shares (Sect. 27 par. 2 GenG).	One share, one vote (382, par.1 C.C.) but statutes may provide otherwise. For a cooperative with an agreement with the NCC: one member, one vote, but additional votes may be awarded to a member with the limit of 1/10 of the total votes (art. 1, §2, 3° Royal decree on NCC)	One member, one vote (art. 19, CL)
15	No provision	No provision	YES
16	No provision	YES (art. 774 ff. C.C.)	No provision
17	YES The members of the management board shall be elected amongst the members of the cooperative. If a legal person is member of the cooperative, it is possible to vote the person who is authorized to represent the legal person.	YES Unless statutes provide otherwise (art. 378 C.C.)	YES The members of the management board shall be elected amongst the members of the cooperative (art. 20, par. 1, CL)
18	Sect. 48 GenG First priority is the settlement of creditor's claims (art. 1), second priority is the refunding of the shares of the members (art. 2). If there are some funds left, the conventional procedures of the distributions of dividends take place.	Devolution of net residual assets to the members of the cooperative (art. 190 §2 C.C.)	Devolution of net residual assets to the members of the cooperative in proportion to their subscribed shares, unless stipulated otherwise in the statutes (art. 48, CL)
19	NO	NO Except for cooperatives having an agreement with the NCC, in which case: - No reclassification of interest in dividend - Exemption from withholding tax	YES - corporate income tax partial exemption of the income used for investment purposes (art. 187, CITA, into effect until 31.12.2010) - exemption from taxes related to their formation, transformation, termination and

		- Reduced corporate tax. - Exemption of the discounts for members for purchases they have made.	winding up (art. 35 CL)
20	YES Each cooperative has to be a member in an auditing association. Auditor supervises the management both formally and substantially	NO Except for cooperatives having an agreement with the NCC: the agreement is reviewed every four years (supervision by the minister who has the economy in his attributions).	NO

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (II): CY – DE

	CY	CZ	DE
1	A cooperative is a society whose object is the promotion of the financial interests of its members in accordance with the cooperative principles (sec. 6, sub 1, cooperative society law: CSL). The "cooperative principles" stated in subsection (1) aim, by the application of the principles of self-help, solidarity and helping one another, self-governing and self-supervising, the improvement of the financial, social and educational position of the members of the Cooperative Societies and the encouragement of the spirit of saving, the restriction of usury and the proper use of credit (sec. 6, sub 3). Without prejudice or affecting the generality of subsection (3), the cooperatives aim, based on the principles therein, especially in the organisation and promotion of farmer and worker credit and agricultural development, more beneficial provision of necessary equipment for farmers and workers, better use of the natural resources, more productive exploitation of the immovable property, more suitable disposal of its products and their security, of industries supported by techno economic study, improvement of the way of living, operation of social services concerning the housing and health and the general improvement of the standard of living, social, educational and cultural standard of its members (sec. 6, sub 4).	Cooperative is an association of unrestricted number of persons united for the purpose of carrying out business activity or meeting the economic, social or other needs of its members (sec. 221, par. 1, Commercial code: CC)	Societies with a variable number of members, which have as their object to promote the income or economy of their members or their social or cultural needs by means of a jointly owned and operated enterprise (art. 1, par. 1, GenG)
2	No restrictions (directly connected to the cooperative legal form of enterprise)	- Reinsurance (sec. 36, par. 2, Insurance code) - Banking (sec. 1 par. 1 Banking code)	No restrictions (exception is only insurance, for which a special legal form is provided: mutual insurance association and their own supervisory authority (VAG).
3	No general provision (restrictions only with	No provision	Permitted only if allowed by statutes (art. 5, par.

	regard to the granting of loans by a cooperative other than a cooperative credit institution: see sec. 37, sub 1, CSL; and by cooperative credit institutions: see sec. 37, sub 3, *ibidem*, and Rule 57A of the cooperative societies rules)		1, n. 5, GenG) No restrictions
4	YES In the register of cooperatives under the cooperative societies law 1985 to 2009, held by the Commissioner	YES In the commercial register (sec. 225, CC)	YES In a register of cooperative societies kept by local courts (art. 10, 11, 11a, 12 GenG; GenRegV)
5	12 natural persons for primary cooperatives (sec. 8, sub 2, CSL) or 5 registered cooperatives for secondary cooperatives (sec. 8, sub 4, *ibidem*)	2 companies or 5 natural persons (sec. 221, par. 4 CC)	3 persons (art. 4, GenG)
6	No provision	No provision	YES If statutes provide for their admissibility (art. 8, par. 2 GenG)
7	Members of a cooperative society may be individual persons and other cooperative societies. Individual persons should be over eighteen year of age and reside or own immovable property within the intended area for operations of the society seeking registration (sec. 8, sub. 1 and 2 CSL). Admission of new members is approved by the Committee of cooperative. Every new member must pay a fee prescribed in the statutes. Persons with competitive activities or with criminal or other offences (including bankruptcy) should not be accepted. Candidates refused membership may appeal to the Commissioner of the Authority for Supervision and Development of Cooperative Societies (ASDCS) and further to the Minister of Commerce (sec. 16 of cooperative societies rules).	There is no right of admission. Admission is subject to approval by administrators or members' meeting (sec. 227 CC)	On written application (art. 15 GenG) and with a legally prescribed contents (art. 15a GenG). There is no right of admission. Admission is subject to approval by administrators.
8	YES Only in case of admission of new members or issue of additional shares to existing members, while in case a member ceases to be such	YES	YES By admission of new members contributing capital and by withdrawal of members with the right to claim repayment of their share

	she/he may not obtain the restitution of the value of the shares held (and only may sell them, sec. 31A CSL)		contribution, except in case of art.8a GenG where withdrawal of capital would affect the guarantee of a minimum capital. See also art. 16 par. 2 N° 10 GenG limiting such rights by amendment of statutes, requiring a ¾ majority of votes cast in the general meeting. Statutes may provide for a fixed minimum capital (art. 8a, GenG)
9	No general provision (but 1 million € for cooperative credit institutions)	Registered basic capital no less than 50,000 CZK (sec. 223, par. 2, CC) – around 1,935 €	NO But statutes may provide for a fixed minimum capital (art. 8a, Gen)
10	At least half of the net profits of every registered society with limited liability shall be carried forward for the creation of a reserve fund. The remainder of such profits and any profits of past years available for distribution may be divided among the members by way of dividend or refund, or allocated to any other fund constituted by the registered society, to such extent or under such conditions as may be prescribed by the statutes. Cooperatives with unlimited liability shall allocate the whole of the net profits to a reserve fund and may not distribute profits without permission of the Committee of the ASDCS as regards Cooperative Credit Institutions or of the Minister of Commerce as regards any other cooperative (sec. 41, sub 1, CSL). Any registered cooperative may contribute to any charitable or public purpose an amount not exceeding seven and half per cent of the total net profits of the year (sec. 41, sub 2, *ibidem*)	Upon its incorporation, the cooperative must create an indivisible fund in an amount of no less than 10 % of its registered (basic) capital. This fund shall be supplemented by adding no less than 10 % of the cooperative's annual net profit, until it reaches an amount equal to one half of registered (basic) capital of the cooperative. The statutes may determine that such cooperative's indivisible fund shall attain a higher proportion of registered capital or that other securing (reserve) funds shall be established (sec. 235, par. 1, CC)	No provisions on a compulsory legal reserve fund. Reserves are to be provided for by statutes (voluntary reserves) and are normally indivisible, except where claiming part of a special reserve fund is allowed under certain conditions in the statutes (art. 73 par. 3 GenG). Statutes may provide that surplus is not distributed but allotted to legal or other reserves (art. 20 GenG).
11	Not permitted as regards general reserves. For other reserves distribution is permitted based on the scope for which reserves are created.	The indivisible fund may not be distributed among members during the existence of the cooperative (sec. 235, par. 2, CC). The settlement share (i.e., the amount to be	Voluntary reserves may not be distributed unless statutes provide otherwise (art. 73, par. 3 GenG).

		provided in case of membership termination) may not be calculated by taking into account the indivisible fund (sec. 233, par. 3, CC)	
12	No restrictions, but dividends may be paid to members up to that maximum amount determined in the statutes (rule 24)	No restrictions, but statutes have to provide for such distribution and the manners to determine its amount (sec. 226, 236 CC)	YES No restrictions The law prescribes allocation of part of the annual surplus to members' share accounts in proportion to their paid-up share capital, until the shares are paid up in full (art. 19, par. 1 GenG). Statutes may provide for different forms of allocation to share accounts or distribution to members. According to art. 21 GenG, surplus cannot be distributed in form of payment of interest on share capital (art. 21 GenG), however, art. 21a GenG allows payment of interest on shares except in cases where no annual surplus was made and no provisions for covering expenses caused by payment of interest on shares was made in the budget of the preceding financial year (art. 21a GenG).
13	No distinction. No provision according to which profits shall or may be distributed according to the participation of the member in the cooperative activity instead of the amount of her/his subscribed capital	No distinction. No provision in the sense that profits shall or may be distributed according to the participation of the member in the cooperative activity instead of the amount of her/his subscribed capital	No provision (but see point 19 on tax treatment). Statutes may provide for the allocation of surplus in form of patronage refund. According to art. 19, par. 2 GenG this is a matter of the statutes.
14	One member, one vote (art. 15, CSL)	One member, one vote: but it is a mandatory rule only where voting on statutes amendments, winding up, conversion, entering into particular agreements; therefore, in all other cases, statutes may provide otherwise (sec. 240, par. 1, CC)	One member, one vote, but statutes may provide for some exceptions: - additional votes (only up to 3) (art. 43, par. 3 (1), GenG); - in cooperatives where more than ¾ of all members are entrepreneurs additional votes (but up to 1/10 of all votes in each general meeting) (art. 43, par. 3 (2) GenG). There are special rules for secondary cooperative societies (art. 43, par. 3 GenG).
15	A registered society which operates in a town or in more than one village may, in its statutes, provide for local meetings (sec. 15, sub 2, CSL)	YES An assembly of delegates is permitted to cooperatives whose size makes it not feasible to convene a meeting of the members (sec.	YES Meeting of delegates if provided for by statutes in cooperatives with more than 1,500 members (art. 43a, par. 1, GenG)

		239, par. 7, CC). Also partial members' meetings are possible (sec. 239, par. 6, CC), but their function and power are diverse (it implies a different mode to reach the general meeting's decision and not the delegation of power to delegates in the assembly of delegates).	
16	Not permitted	YES	YES (UmwG)
17	YES (according to cooperative statutes)	YES Only members or representatives of legal entities that are members (sec. 238, par. 1, CC)	YES Only natural persons who are members, or members of the corporate member, or natural persons representing the member who is a legal person are eligible. (art. 9, par. 2, GenG). However, often professional managers are admitted as members for the sole purpose of becoming eligible to serve on the board ("promotional members"). Boards of cooperatives have to consist of at least 2 members (art. 24, par. 2 GenG). Since 2006 there are special provisions for small cooperatives (having not more than 20 members) (art. 9, par. 1 GenG). Such small cooperatives may work without a supervisory committee, the tasks of which being taken over by the general meeting and have a board consisting only of 1 person (art. 24, par. 2 GenG).
18	Devolution of net residual assets, the share capital subtracted, to any object or objects described in the statutes of the registered society whose registration has been cancelled, and, where no object is so described, shall be deposited by the Commissioner in a bank or with a registered society, until such time as another society operating in the same area shall have been registered when such surplus shall be transferred to such new society for the	Devolution of net residual assets to members (sec. 259 par. 3 CC)	To be regulated in the statutes. According to art. 91 par.s 1 and 2 GenG in case of dissolution the remaining assets can be distributed among the members provided that statutes may determine otherwise. According to art. 92 GenG the remaining assets after repayment of members' shares may be allocated to a natural or legal person in the community in which the dissolved cooperative had its registered office to be used for charitable purposes.

	purpose of forming a reserve fund under the Rules (sec. 49, sub 2, CSL). In case of liquidation of a registered society the members of which are registered societies, any surplus may be divided amongst such registered societies in such manner as described in the statutes of the society whose registration has been cancelled (sec. 49, sub 3, *ibidem*)		
19	YES Profits of a cooperative arising from transactions with its members are exempted from tax	NO	NO Except for: - deduction from the taxable income of the income distributed to members by way of patronage refund, provided that the income is earned in transactions with members; equal treatment of members; amounts paid out to members (according to judgements of the highest financial courts)
20	YES By the ASDCS as regards cooperative credit institutions and by the Minister of Commerce and the ASDCS as regards other cooperatives (sec. 3 CSL). Supervision includes precautionary supervision . The main object of supervision is to ensure the overall soundness of cooperatives, mainly of cooperative credit institutions based on EU Directives. The annual accounts of all cooperatives are audited by the Audit Service of Cooperative Societies (sec. 19 CSL).	NO	YES Pre-registration audit by audit cooperative federations (art. 11, par. 2 N° 2 GenG). Compulsory membership in a cooperative auditing federation (art. 54 GenG). If elected officers of a cooperative society cause damage to the public and the general meeting of the society does not correct the situation, or if the cooperative society pursues other objectives than the legally prescribed objective of member promotion, the competent state government agency may ask the competent court to dissolve the cooperative society *ex-officio* by court ruling (art. 811, par. 1 GenG).

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (III): DK TO EL

	DK	EE[96]	EL	
			Greek law on rural coops	**Greek law on civil cooperatives**
1	A cooperative (a cooperative society) means an undertaking … whose objects are to help promote the common interests of the members through their participation in the business activities as buyers, suppliers or in any other, similar way, and whose profit, other than normal interest on the paid-up capital, shall either be distributed among the members in proportion to their share of the turnover or remain undistributed in the undertaking (art. 4, Law 651/2006). Distinction is made between a limited liability cooperative company called "A.M.B.A" (art. 6.6) and a cooperative with unlimited liability.	A commercial association is a company the purpose of which is to support and promote the economic interests of its members through joint economic activity in which the members participate: 1) as consumers or users of other benefits; 2) as suppliers; 3) through work contribution; 4) through the use of services; 5) in any other similar manner (art. 1, par. 1, Law 19.12.2001)	A rural cooperative organization is an autonomous association of persons, which is set up voluntarily and aims, through the mutual assistance of its members, their economic, social and cultural development and advance through a co-owned and democratically-run business (art. 1, par. 1, Law 2810/2000)	A civil cooperative is a voluntary association of persons with economic purpose, which does not have activities in the sector of agricultural, and aims especially through the co-operation of its members to the economic, social and cultural development of its members and the amelioration of their life standards through a common enterprise (art. 1, par. 1, Law 1667/1986)
2	No restrictions	No restrictions (directly connected to the cooperative legal form enterprise)	Any activity in agriculture (including pasturing, forestry, stock living, beekeeping, fishery etc.)	No restrictions (except agriculture)
3	No restrictions (but see the definition of taxable cooperative below)	No provision	Permitted (arg. *ex* art. 19, par. 1, *ibidem*)	No provisions
4	YES With the Danish Commerce and Companies Agency (artt. 8, 9, Law 651/2006)	YES In the commercial register (art. 7, LCS)	YES In the register of rural cooperatives held by the district court (art. 3, *ibidem*)	YES In the Register of cooperatives held by the district court (art. 1, par. 3, *ibidem*)

[96]Other relevant provision: The members of an association shall be treated equally under equal circumstances (art. 25, LCS)

5	2 (but see the definition of taxable cooperative below)	2 natural or legal persons (art 4.1 Commercial Associations Act)	7 natural persons and legal entities, if the statutes provide so (art. 5, *ibidem*)	15 natural persons (100 for consumer cooperatives) and legal entities, if statutes provide so (art. 2, par. 2, *ibidem*)
6	No provision	No provision	YES (art. 8, par. 3, *ibidem*)	No (arg. ex art. 3)
7	No provision	There is no right of admission. Admission is subject to approval by administrators (or the general meeting or supervisory board, if so provided by statutes). Acceptance may be refused with good reasons (indicated by the law). Candidates refused membership may appeal to the general meeting. The refusal by the general meeting may be contested in a court (artt. 13 and 14, LCS)	There is no right of admission. Admission is subject to approval by administrators. Candidates refused membership may appeal to the general meeting (artt. 5 and 6, *ibidem*)	There is no right of admission. Admission is subject to approval by administrators, whose decision may be reversed by the general meeting. Candidates refused membership may appeal to the general meeting and, in case of refusal, appeal to the district court and then the first-instance court (art. 2, par. 1-6, *ibidem*)
8	No provision	YES (arg. *ex* artt. 13, 14, LCS)	YES (arg. *ex* art. 8, *ibidem*)	YES (art. 2, par. 9, *ibidem*)
9	No provision	Unless the articles of association prescribe the personal liability of the members of the association for the obligations of the association, the share of the association capital shall be at least 40 000 kroons (art. 1, par. 3, LCS). Equal to 2,560 €	NO	NO
10	No provision	The net profit of an association shall be transferred to the reserves which are not subject to distribution between the members of the association (art. 29, par. 1, LCS). An association shall have a legal reserve. Legal reserve may be used to cover loss if it is impossible to cover the loss from undistributed	YES At least 10% of the surplus, i.e., that part of income which comes from the activity with members, and all non distributed	YES At least 10% of profits shall be allocated to a legal reserve until the total amount reaches the amount of the accumulated shares

		profits from previous periods (art. 31, LCS)	profit, i.e., that part of income which comes from the activity with non-members, until the total amount is equal to the capital (art. 19, par. 3, *ibidem*)	(art. 9, par. 4, *ibidem*)
11	No provision	All reserves, being legal or not, are not distributable	Compulsory legal reserve may not be distributed (art. 19, par. 3, *ibidem*).	Compulsory legal reserve may not be distributed (art. 19, par. 4, *ibidem*)
12	No provision (but see definition of taxable cooperative below)	Statutes may prescribe that payments are made to members from net profit or from profit of the previous financial year from which uncovered losses of previous years have been deducted (art. 29, LCS). In this case, at least 1/20 of the net profit shall be entered in the legal reserve during each financial year, unless statutes prescribe a greater transfer (art. 31, par. 3, LCS)	YES Surplus may be distributed to members as dividends. Distribution of profit is possible but only in favour of the holders of investment (optional) shares, being members or not if so provided by the statutes. Part of the surplus may also be distributed to holders of optional shares. The statutes may also provide any other way for allocation of surplus or profit (art. 19, par. 2, 4, *ibidem*)	YES A half of profits according to the shares held by each partner and another half according to the member's volume of business with the cooperative (art. 9, par. 4, *ibidem*)
13	No provision (but see the definition of taxable cooperative below)	If, according to the statutes, dividends must be paid to members, a share of profit (dividend) shall be paid to members according to their participation in the activities of the association. Statutes may prescribe that a dividend is paid to a member in proportion to the contribution of the member. Such dividend shall not be greater	The law recognises the distinction between surplus and profit (see above) (art. 19, par. 1, *ibidem*), and provides that surplus may be	No provision

		than the dividend paid to the member according to the participation of the member in the activities of the association or an interest calculated on the basis of an ordinary long-term deposit (art. 30, par. 2, 3, LCS)	assigned to members in reason of the volume of the business with the cooperative	
14	No provision	One member, one vote (art. 43, LCS)	One member, one vote, but statutes may award a member max 3 votes depending on the volume of business with the cooperative (art. 8, par. 1, *ibidem*).	One member, one vote (art. 4, par. 2, *ibidem*)
15	No provision	YES Permitted to cooperatives with more than 200 members. Minimum 20 representatives. One representative may not represent more than 50 members (art. 54, LCS)	Only section meetings. Art. 10, par. 7, *ibidem*, provides for election of representatives of members by local meetings to participate in General Meeting, in case the cooperative has over 500 members.	Only section meetings. Art. 5, par. 1, *ibidem*, provides for election of representatives of members by local meetings to participate in General Meeting, in case the co-operative has over 1000 members.
16	Admissible according to general principles of law	No provision	Admissible only for secondary or tertiary agricultural cooperatives (art. 21, par. 11, *ibidem*)	No provisions
17	No provision	NO (art. 55, par. 2, LCS)	NO	NO
18	No provision	Devolution of net residual assets to the members of the cooperative in proportion with their subscribed shares unless stipulated otherwise in the statutes (art. 89, par. 1, LCS)	According to the statutes (art. 25, *ibidem*)	Devolution of net residual assets to members in proportion to the number of shares held, unless statutes provide otherwise (art. 10, par. 2, *ibidem*)

19	YES 14,1% instead of 25% if the cooperative is a "taxable cooperative", which means that, according to its statutes, it has these characteristics: the purpose to promote the common business interest of at least 10 members through the participation of these persons in the activity of the company as either, costumers, deliverers, or in other capacities; a turnover with non-members that does not exceed 25% of the total turnover; and whose surplus, except for a normal interest on invested capital (normally equal to the discount rate of Danish National Bank), is distributed to members as dividend in proportion to their turnover with the company or re-invested or destined to common social purposes (art. 1, par. 3, Law 1001/2009)	NO	YES - corporate income tax exemption of the surplus allocated to reserves - no stamp duty or other taxation in a number of transactions - no tax for capital accumulation - no VAT in many cases (Article 21, par. 9, 10, 10A, Articles 35 and 36)	NO
20	NO	NO	YES The supervisory authority is the Minister of Rural development and Food. The main object is the legal function of the cooperative (art. 16, *ibidem*).	YES The supervisory authority is the Minister of economy, competitiveness and shipping. The main object is the legal function of the cooperative (art. 13, *ibidem*).

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (IV): ES – FR

	ES	FI[97]	FR
1	A company formed by persons that join themselves on a regimen based on free membership and free resignation, to develop economic activities with the principal object of satisfying its members' economic and social needs and aspirations, with a democratic structure and running off, in accordance with the principles proclaimed by the International Cooperative Alliance in the terms that results from the present law (art. 1, par. 1, CL, 27/1999)	'Cooperative' is defined as an organisation whose membership and share capital have not been determined in advance. The purpose of a cooperative shall be to promote the economic and business interests of its members by way of the pursuit of economic activity where the members make use of the services provided by the cooperative or services that the cooperative arranges through a subsidiary or otherwise (chap. 1, sec. 2, par. 1, Law 1488/2001). It may be stipulated in the statutes of the cooperative that its main purpose is the common achievement of an ideological goal (chap. 1, sec. 2, par. 2)	Cooperatives are companies, the primary purposes of which are: 1 to reduce, for the benefit of their members and through the joint effort of said members, the cost price and, where applicable, the sale price of certain products or certain services, by performing the functions of the entrepreneurs or intermediaries whose remuneration would increase said cost price. 2 to improve the merchantable quality of the products supplied to their members or of those products produced by said members and delivered to consumers. 3 and, in general, to contribute to the satisfaction of their members' needs, the promotion of their members' economic and social activities and the training of their members. (art. 1, par. 1, Law 47-1775)
2	No restrictions (directly connected to the cooperative legal form of enterprise). Any legal economic activity can be organized and developed by a company formed under this act (art. 1, par. 2, CL)	No restrictions (directly connected to the cooperative legal form enterprise)	Cooperatives may be active in all areas of human activity (art. 1, par. 2, Law 47-1775) No insurance (but mutual companies allowed)
3	Permitted only if allowed by statutes and within the limits determined by law (art. 4, par. 1, CL). In any case authorisation may be required to the Ministry of Labour and Social Affairs (or Economy, in case of cooperative banks) where the cooperative faces a diminution of activity which may undermine its economic viability (art. 4, par. 2, CL). As to express legal restrictions, see for example the following: agricultural cooperatives may conduct operations with non-members to a maximum of 50% of those made with the partners for each type of activity	Permitted only if allowed by the statutes (chap. 2, sec. 6, par. 1, n. 2) No restrictions	Not permitted. Cooperatives may not allow non-members to benefit from their services, unless the specific laws that govern them authorise them to do so. If cooperatives avail themselves of this option, they are required to admit as members those persons who they allow to benefit from their activity or whose work they use, and who meet the conditions laid down by their statutes (art. 3, Law 47-1775). Admitted without restrictions in certain special laws (consumer coops and credit unions). Admitted subject to restrictions in other special laws

[97]Other relevant provisions: The general meeting of the cooperative shall not make a decision conducive to conferring an unjustified benefit to a member or another person to the detriment of another member or the cooperative (chap. 4, sec. 19; see also chap. 5, sec. 11)

	undertaken by that (art. 93, par. 4, CL)		(SCOP; agriculture; coops of SMEs)
4	YES In the register of cooperative societies (art. 7, CL)	YES In the trade register held by the National Board of Patents and Registration (chap. 2, sec. 3, par. 1)	YES In the Trade and companies registry
5	3 natural or legal persons; 2 in case of second degree cooperatives (artt. 8, 12, CL)	3 natural or legal persons (chap. 2, sec. 1, par. 1)	2 (in cooperatives with the status of a limited liability company); 7 (in cooperatives with the status of a joint stock company)
6	YES (art. 53, CL)	YES If the statutes provide for their admissibility (chap. 12). A cooperative may also issue other financial instruments.	YES Under conditions laid down by the statutes and with restrictions as to voting rights (they may not hold more than 33% or 49% of total voting rights) See also: member preference shares (art. 11) and non-voting preference shares (art. 11-*bis*); cooperative investment certificates (art. 19-*sexdecies* ff.); member cooperative certificates (art. 19-*tervicies*)
7	There is no right of admission. Admission is subject to approval by administrators. Candidates refused membership may appeal to the *comité de recursos* or the general meeting (art. 13, parr. 1, 2, CL)	The board of directors shall decide on admission or on the admission procedure and admission criteria. It may be stipulated in the statutes that the admission decision is to be taken by the general meeting of the cooperative, by the delegates or by the supervisory board (chap. 3, sec. 2, n. 1). It may be stipulated in the statutes of the cooperative that admission is to be granted to everyone who meets the admission criteria as stipulated in the statutes. In this event, it may also be stipulated in the statutes that admission can be refused if this is especially necessary owing to the nature or extent of the operations of the cooperative or for some other reasons (chap. 3, sec. 2, n. 2)	According to the statutes
8	YES	YES	YES If they are incorporated in the form of variable capital companies
9	NO The matter is devolved to the statutes (art. 45, par. 2, CL) (though it is required by most	NO	18,500 €

	cooperative autonomous laws, ranging generally between 3,000 and 6,000 €)		
10	Two compulsory reserve funds are provided for by law: the compulsory reserve fund (art. 55, CL), and the education and promotion fund (art. 56, CL). The following amounts shall be destined to these funds: - 20% (to the former) and 5% (to the latter) of the cooperative surplus (before tax) (art. 58, par. 1, CL) - 50% of the extra-cooperative and extraordinary surplus (before tax) to the compulsory reserve fund (art. 58, par. 2, CL) Non profit cooperative is that which creates a voluntary indivisible reserve where allocating the positive results (art. 57, par. 5, CL)	A cooperative shall have a reserve fund. Five per cent of the surplus of the financial year, as shown on the balance sheet, less the losses of the preceding financial years, as shown on the balance sheet, shall be credited to the reserve fund. The reserve fund shall be augmented until it equals or exceeds one per cent of the balance sheet total of the cooperative. In any event, the reserve fund shall be augmented up to EUR 2,500 (chap. 8, sec. 9)	Except as otherwise provided for by specific legislation, for as long as the various reserve funds accrued do not reach the amount of the share capital, the amounts allocated to them cannot be less than 3/20 of the operating surpluses (art. 16, par. 2, Law 47-1775)
11	- Members leaving the cooperative shall have no claim against the sums thus allocated to the compulsory reserve fund. The exception is in second degree cooperative (art. 77.4 CL). - Nevertheless, loss of membership shall entitle the member to his/her part of the *Volunteer Reserve Funds* allocated, created by a provision of the statute or agreement of General meeting (art. 75.c. CL)	The compulsory legal reserve may not be distributed	Reserves other than the legal reserve fund are distributable. The cooperative's statutes may authorise the general meeting to capitalise the monies deducted from the reserve funds and consequently to raise the value of the shares or distribute bonus shares. The initial capitalisation can only concern one-half of the available reserve funds that exist on the closing date of the financial year prior to the extraordinary general meeting convened to vote on the capitalisation; subsequent capitalisations can only concern one-half of the increase in said reserve funds recorded since the previous capitalisation (art 16 Law 47)
12	YES (art- 48 CL): A) The Statutes shall lay down the compulsory assets compensation/reward. B) The General meeting (or the administrative organ, if the statues admit it) shall lay down the voluntary assets compensation/reward. The compensated/rewarded could be an	It may be stipulated in the statutes that the surplus or a part thereof is to be distributed as interest or other benefit accruing on the paid-up share prices (chap. 8, sec. 2, n. 2)	Cooperatives may only remunerate their capital with limited interest for which the rate, as stipulated by their statutes, is at the most equal to the average rate of return on private company bonds published by the Minister for the Economy (art. 14, Law 47-1775)

	interest rate of 6%, but never superior to the legal money rate of interest. The assets will be compensated only if there are profits in the financial year before the compensation distribution. The whole financial year profits mark the limit to the compensation/reward (artt. 47 and 48 LCoop).		
13	YES (*cooperative return*: art. 58, parr. 3, 4, CL). The surplus not allocated to the legal funds may be devolved to members as *cooperative return*, which is an amount calculated in proportion to the cooperative activity realised by the member with the cooperative	Any surplus may be distributed to the members only if so stipulated in the statutes. If there are no stipulations in the statutes on the basis for the distribution, the distribution shall take place in proportion to the use of the services of the cooperative by the members (chap. 8, sec. 2, n. 1)	YES No patronage refund can be awarded to members except that determined in proportion to the business transacted with each of them or the work supplied by them. Surpluses derived from business transacted with clients must not be included in these distributions (art. 15, Law 47-1775)
14	One member, one vote (art. 26, par. 1, CL), but: - the statutes may provide for a member (which is a cooperative, a company controlled by a cooperative, or a public entity) to have a number of votes determined by his/her participation in the cooperative activity; this attribution shall not exceed one third of total voting rights per member. (art. 26, par. 2, CL); - in agrarian-; services-; hauliers-; marine cooperatives, the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity; this attribution shall not exceed five votes and in any case one third of total voting rights per member (art. 26, par. 4, CL); - other exceptions regard community land exploitation cooperatives (art. 26, par. 5, CL), second degree cooperatives (art. 26, par. 6, CL), cooperative banks, and the so-called cooperative ventures	One member, one vote (chap. 4, sec. 7, n. 1). However, it may be stipulated in the statutes that members have differentiated numbers of votes. The number of votes of one member may be more than ten times the number of votes of another member only in a cooperative in whose rules it is stipulated that the majority of members are to be cooperatives or other legal persons (chap. 4, sec. 7, n. 2)	One member, one vote (art. 9, par. 1, Law 47-1775), but statutes may: - in cooperative unions allocate each of the cooperatives that are members of the union a number of votes that is determined either on the basis of the number of the union's members, or the volume of business transacted with the union and that is the most proportionate to them (art. 9, par. 2, Law 47-1775) - allocate more votes to investor-members in proportion to the shares but with the maximum of 35 or 49% - in agricultural cooperatives, allocate more votes (max 1/20th; 2/5th in cooperative unions) on the extent of business with the cooperative or the nature of commitments (art. L 524-4of the rural code)
15	YES If provided for by the statutes (art. 30, CL)	NO	YES If provided for by the statutes (art. 10, Law 47-1775)

16	YES (art. 69, par. 1, CL), but autonomous laws provide for some requirements to be met and authorisations. A) Reserve funds In case of conversion, distribution of compulsory or voluntary non distributed reserves funds will have the same destiny that in case of dissolution (art. 69.6 CL, art. 75 CL). B) Assets a) If members want to leave the cooperative, the loss of membership shall entitle the member to refund his/her part of the assets (art. 69.2 CL). b) If members want to stay in the new legal form of company or entity, their participation in the capital of this one will be proportional to the part of their assets in the cooperative (art. 69.2 CL)	YES Into a limited liability company (chap. 18)	Only with the authorisation of the ministry in case it is necessary for the cooperative survival or expansion (art. 25 Law 1947
17	YES In case the cooperative (having less than 10 members) is administered by a sole administrator (art. 32, par. 1, CL) NO In case the cooperative is administered by the governing council, though in this case non-member administrators shall be qualified and expert persons and may be fewer than 1/3 of total administrators (and in any case may not be appointed president or vice president) (art. 34, par. 2, CL)	NO	NO
18	In general, disinterested distribution to federation or confederation of cooperatives (in accordance with art. 75, par. 2, CL). Members are only entitled to receive the amount of the subscribed capital and of the distributable reserve funds.	Devolution of net residual assets to the members either in proportion to the number of members or as provided for otherwise by the statutes (chap. 19, sec. 16)	In the event of winding-up and subject to the provisions of special laws, the net assets that remain after clearance of the liabilities and the reimbursement of the capital effectively paid, subject to the application of the provisions of Articles 16 and 18, shall be allocated by decision of the general meeting, either to other

			cooperatives or unions of cooperatives, or works of general or professional interest (art. 19, Law 47-1775)
19	YES Law 20/1990 of 19 December on the Taxation of Cooperatives (LRFC) A) General Tax Treatment Protection Law 20/1990 provides in art. 6 the conditions to be fulfilled by a cooperative to qualify as a "tax protected", and in art. 13 lists the reasons why the cooperative loses that status. *In fact, the fulfilment from each cooperative with the requirements imposed by the substantive law in each and every one of the issues raised by the tax law allows it to achieve protected status.* B) Special Tax Treatment Protection Certain kinds of cooperative (work associated agricultural community land exploitation, maritime, consumers and users) and second-degree cooperatives, can enjoy special protection (LRFC arts.7-12). This cooperative has to be explicitly include n their statutes the requirements established by the LRFC for special protection.	YES - deduction from the taxable income of the income distributed to members by way of cooperative refund (i.e., in reason of the transaction) - Tax free bonuses for members of consumer and banking cooperatives (this concerns also other enterprise forms and their customers, e.g. limited liability companies)	YES - consumer coops (as well as cooperative and mutual banks) may deduct from their taxable results all amount paid as patronage refund to their members; this possibility is available only to coops with a majority capital stake held by their cooperative (and not investor) members - corporate tax exemption for agricultural and coops of law 83-657, provided that investor-members hold less than 50% of the equity and that operations with non-cooperative members do not exceed 20% of turnover (these operations are subject to corporate tax) - worker coops can deduct from the taxable base the 'labour share' distributed to members
20	YES - Audit (art. 62 CL, art. 91 CL) - Disqualification of the cooperative (art. 116 CL) - Inspection and sanction rules (RDLeg. 5/2000, the 4th of august, on infractions and sanctions in the labour framework (Published 8-8-2000)	NO	YES (only worker, agricultural, SCIC, cooperatives of law 83-657). Cooperative revision is conducted by federations of revision and aims to ensure that cooperatives operate according to cooperative principles (art. 19 duo decies)

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (V): HU – IS

	HU	IE	IS
1	A cooperative is an economic operator with legal personality that is established with a share capital whose amount is specified in its statutes; it operates under the principle of open membership and variable capital with the objective of lending assistance to its members so as to satisfy their economic and other needs (cultural, educational, social and healthcare) (sec. 7, Law X/2006). See also sec. 55 on the modes of collaboration between the cooperative and its members.	No particular definition. Agricultural coops are defined as a "society the business of which is wholly or substantially agriculture and the majority of the members are mainly engaged in farming". A similar definition for fishing cooperatives	To enhance the interests of their members, according to their economic participation in their activity (art. 1, Law 22/1991) The scope of the activities of a cooperative society can be as follows: 1. to provide and satisfy the needs of its members and others with goods and various services 2. to produce and sell products that members produce in their own business 3. to take care of activity that enhances the interests of its members (art. 2, *ibidem*)
2	No restrictions (directly connected to the cooperative legal form of enterprise) (sec. 68, par. 1, *ibidem*)	Banking activity (sec. 19)	Financial activity not permitted (art. 13, Law 161/2002)
3	No provisions	No provision	No restrictions
4	YES In the register of companies held by the court of registry (sec. 15, *ibidem*)	YES In the Registrar of Friendly Societies.	YES In the register of cooperative societies (art. 10, *ibidem*)
5	7, natural or legal persons, the latter may not exceed half of total members (sec. 10, par. 1, *ibidem*)	7	15, but the Minister of economic affairs can decide exceptions from this minimum (art. 4, *ibidem*)
6	YES If the statutes provide for their admissibility. The number of investor-members in a cooperative may not exceed 10% of all members, and the nominal value of investor share certificates shall not exceed 30% of the share capital (sec. 60, *ibidem*).	No provision	YES If the statutes provide for their admissibility (art. 4 and 5, *ibidem*)
7	The statutes may provide for criteria consistent with the cooperative's objective, which are to be observed in the process of evaluation of applications for admission (sec. 42, par. 2, *ibidem*). The admission of members shall be conducted and the rights and obligations of	According to the statutes	New members have to be accepted by the board of the coop in question unless general meeting decides otherwise (art. 16, *ibidem*)

	members shall be determined under the principle of equal treatment (sec. 42, par. 3, *ibidem*). There is no right of admission. Admission is subject to approval by the organ indicated by the statutes. Candidates refused membership may appeal to the general meeting (sec. 43, *ibidem*).		
8	YES (sec. 7)	Shares are non-withdrawable	YES (art. 1, *ibidem*)
9	NO But it may provided for by the statutes (sec. 7, *ibidem*)	NO	NO Cooperatives that operate deposit accounts are obliged to hold minimum 100 million Icelandic kronas in assets (art. 2.a, *ibidem*)
10	The cooperative shall allocate a portion of its taxed profit to the fellowship fund aiming to provide benefits and support (social benefits, cultural assistance, etc.) to natural person members and their families (sec. 57 and 58, *ibidem*).	No provision	YES According to statutes, but not until 10% of annual profits have been paid to reserve fund that amounts to 10% of the establishment funds. After that and until the serve fund amounts to ¼ of establishment funds, 5% shall be paid to the reserve fund (art 54, Act 22/1991)
11	The fellowship fund is a tied-up reserve (sec. 67, par. 1, 71, par. 1 and 6, *ibidem*).	According to the statutes	Not permitted
12	YES (see point 13 below)	According to the statutes	YES But only after the compulsory allocation to the legal reserve fund has been paid and losses of previous years have been balanced (art. 41, Act 22/1991).
13	YES The general meeting shall determine the part of taxed profit from the cooperative's economic activities: - to be distributed among the members as commensurate according to their economic collaboration with the cooperative; - to be distributed among the members according to the shares they subscribe in the cooperative's capital (sec. 59, par. 2, *ibidem*)	According to the statutes	YES Statutes may prescribe that annual profits be distributed in proportion to the scale of the business with the cooperative or work contribution (art. 53, *ibidem*)
14	One member, one vote (sec. 23, par. 1, *ibidem*)	According to the statutes	One member, one vote, but statutes may

			provide for extra votes in accordance with scale of transactions of members when the cooperative is a processing unit of the products of it members (art. 20, *ibidem*).
15	YES The statutes may provide for section meetings if the cooperative has more than 500 members, or if it is justified based upon the location of the members' home or work place, or upon any other criteria specified by the statutes (sec. 27, *ibidem*). Where a cooperative has over 500 members statutes may provide for the meetings of delegates (sec. 28, *ibidem*).	According to the statutes	No provisions
16	YES (sec. 74, 85 ff., *ibidem*).	YES	YES
17	YES But an exemption from this provision may be provided in the statutes if running the main activity of the cooperative requires special expertise, and consistent with the cooperative's special characteristics, democratic governance and directing the operations of the cooperative (management) cannot be disassociated (sec. 30, lit a, *ibidem*)	No provision	YES Only members are eligible as members of the board of a cooperative. In cases when corporation or non-cooperative societies are members of a cooperative, only members of their board or managers are eligible board members of the coop in question (art 27, Act 22/1991). Managers of cooperatives may not be members of the cooperative in question (*ibidem*)
18	Remaining assets are distributed among the members (sec. 94, par. 1, *ibidem*), with the exception of the fellowship fund, which is transferred to another cooperative or a federation of cooperatives if the cooperative is wound up without succession or transferred into a business association (sec. 67, par. 2, 71, par. 5, *ibidem*).	No provision	Devolution of net residual assets is determined by Act 22/1991 according to which claims of owners of shares in section B of establishment funds have priority over claims by members of the coop in question. Statutes may determine that net residual assets, except assets in section B of establishment funds, may be paid to other parties then members of the coop in question (art. 65). In cases when 2/3 of the members of a coop decide to change it into an incorporated firm, members of the cooperative and owners of shares in section B of establishment funds determine unilaterally if they are paid their assets or their assets are

			transformed into shares in the new incorporated firm (art. 61.a, *ibidem*).
19	YES Profits allocated to the reserve fund are tax-free up to 6,5%	NO	NO
20	NO	NO	NO

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (VI): IT – LT

	IT	LI	LT[98]
1	Cooperatives are societies with variable capital and mutual purpose, registered in the register of cooperative societies of article 2512, second paragraph, and article 223-*sexiesdecies* of the provisions for the implementation of the present code (art. 2511, c.c.) The mutual purpose implies the conclusion of agreements (mutual exchanges) to supply goods or services or to execute works (art. 2512-2513, c.c.)	Cooperatives are organizations of an open number of persons or trading companies with the main purpose to promote and secure economic interests of the members by means of common self-help (art. 428, par. 1, Law 4/1926 on natural persons and companies PGR)	An enterprise established by legal and (or) natural persons in accordance with the procedure set by law for the purpose of meeting economic, social and cultural needs of its members. Its members shall contribute funds for capital formation, share the risk and profit according to the turnover of members' goods and services with this society and take an active part in the governing of the cooperative society (art. 2, par. 2, CL)
2	No restrictions (directly connected to the cooperative legal form of enterprise)	No restrictions	No restrictions (directly connected to the cooperative legal form of enterprise)
3	Permitted only if allowed by statutes (art. 2521, par. 2, c.c.) Mainly mutual cooperatives (MMCs) may act with non-members only within certain limits: MMCs shall act predominantly with members (artt. 2512-2513, c.c.) Other cooperatives (OCs) face no restrictions in the operation with non-members	Permitted if the law or cooperative statutes do not provide otherwise	No restrictions
4	YES In the register of enterprises and in the register of cooperative societies (artt. 2511, 2523, par. 1, c.c.)	YES In the register of companies at the office of land and public registration (art. 429, par. 3, PGR), except small cooperatives (art. 483, PGR)	YES Register of legal entities (art. 6, par. 1, CL)
5	3 natural persons or 9 natural persons or legal entities; 3 cooperatives for secondary cooperatives	No provision (2 implicitly)	5, natural or legal persons (artt. 3, par. 3, 4, par. 1, CL)
6	YES If statutes provide for their admissibility (art.	YES If the statutes provide so (art. 428, par. 1,	No provisions, but should be implicitly not permitted as all members shall engage in

[98]Other relevant provisions: A member of a cooperative society must adhere to the statutes, implement decisions of the management and supervisory organs of the cooperative society, carry out turnover with the cooperative society, have care of the property of the cooperative society, and look after the increase thereof (art. 11, par. 2, CL)

	2526, c.c.)	PGR).	cooperative activity. Art.11 par. 2; CL)
7	There is no right of admission. Admission is subject to approval by administrators. Candidates refused membership may appeal to the general meeting (art. 2528, c.c.)	New members can be admitted at any time according to the statutes of the cooperative. Restrictions to membership (residence, special profession etc.) can be provided by the statutes. Government can regulate that there may be no restrictions to membership. There may be provisions by public law that persons can be forced to be member of a cooperative. (art. 438, PGR)	There is no right of admission. Admission is subject to approval according to the statutes (art. 8, par. 1, CL) Final decision regarding admission is taken by the general meeting, art. 16, par.1. sec.1; CL.
8	YES (art. 2511, c.c.)	YES (art. 430, par. 2, subpar. 1, PGR)	YES (art. 12, par. 1 CL)
9	NO (but each member shall subscribe at least one share of 25 €)	NO	NO
10	The statutes shall lay down rules for the allocation of the surplus. 30% of annual total profits shall be allocated to a legal reserve fund, before any other allocation and without limitations (art. 2545-*quater*, par. 1, c.c.)	The statutes can rule that reserves or funds in favour of members, employees or professional goals are built out of the surplus (art. 453, par. 3, subpar. 1, PGR). The general meeting may decide to create reserves even if it is not regulated in the statutes (subpar. 2). 5 % of the net profit has to be allocated to the reserves until 10 % of the cooperatives' assets are achieved, if the net earnings are not used to increase the assets of the cooperative or if there are cooperative shares (subpar. 3).	The distribution of the net profit earned by a cooperative society during a financial year must be approved not later than within 4 months after the end of the financial year. Net profit shall be distributed in the following manner: 1) deductions to capital reserve fund shall be made; 2) a part of the profit proportionate to the volume of the turnover; 3) dividends shall be paid. The undistributed profit shall be used according to the procedure established in the statutes. Up to 10 per cent of the dividends shall be appropriated for the payment of dividends. The maximum amount of dividend shall be established in the statutes of the cooperative society (art. 14) Own funds shall constitute fixed and reserve capital. Fixed capital shall be used for business activities of a society and for the acquisition of assets. On the decision of the meeting of the members (agents), the reserve capital shall be used for extraordinary expenditure and for covering losses, and a part of the reserve capital, exceeding 1/10 of the own capital, may be used for other

			purposes on the decision of the members' meeting. Deductions to the reserve capital shall be mandatory for cooperative societies until the reserve capital makes up 1/10 of the own funds value. The amount of mandatory deductions into the reserve fund make up not less than 5 per cent of the net profit (art. 12, par. 2, 3, CL)
11	MMCs may not distribute reserves to user-members (art. 2514, par. 1, lit. c, c.c.) OCs may distribute reserves to members	Withdrawing members or legal successors can be outweighed if the statutes provide so (art. 454, PGR). If the statutes do not provide any compensation there is no legal entitlement (art. 455, PGR).	Reserve capital by decision of members' meeting is used for unexpected expenditure and refunds; and the part of reserve capital which exceeds 1/10 of own capital, according the decision of members meeting may be used for other purposes. The payoffs to reserve capital are obligatory for cooperative company, while reserve capital doesn't amount 1/10 of own capital forth. Obligatory payoffs to reserve capital must amount not less than 5 percents of net profit.(art. 12., par. 2, 3, CL)
12	YES But restraints for MMCs (art. 2514, par. 1, lit. a, c.c.) Both MMCs and OCs are subject to compulsory destination of profits to a legal reserve fund (30%) and mutual funds run by federations of cooperatives (3%)	YES According to the statutes of the cooperative, but in line with the legal provisions on the allocation of reserves (art. 453, PGR). If not otherwise provided by the statutes, net earnings are allocated to the assets of the cooperative (art. 452, par. 2, subpar. 1, PGR). In case of distribution of earnings it is either per capita (subpar.2) or per share (subpar. 3), if not otherwise provided by the statutes.	YES Dividends are paid to the members of the cooperative society in proportion to their member shares (art. 14 CL)
13	Cooperative refunds are well distinguished from dividends. Refunds shall be distributed in proportion to the quantity and quality of member transactions with the cooperative. No limits to the distribution of refunds (except for worker cooperatives)	Net earnings, if distributed at all, can either be distributed on a per capita basis or per share, if not otherwise provided by the statutes (art. 453, par. 2, subpar. 2 and 3, PGR).	YES Dividends/refunds are well distinguished from refunds. "Turnover of goods and services of a cooperative society member with the cooperative society" means the amount of value of economic operations and economic events, expressed in monetary value, performed during a financial year by a cooperative society member with the

			cooperative society. "Payments proportionate to the turnover" means payments to cooperative society members from the profit, in proportion to the turnover of cooperative society members' goods and services with the cooperative society. "Dividend" means the portion of profit paid to a cooperative society member which is in proportion to the value of share held by each member (art. 2, par. 5-7). See also art. 14
14	One member, one vote (art. 2538, par. 2, c.c.), but statutes may provide for some exceptions: - more votes (but up to five) to a member which is a legal entity in connection with the amount of the capital held or the number of its members (art. 2538, par. 3, c.c.) - in cooperatives among entrepreneurs, more votes (but up to 1/10 of total votes in each general meeting) in reason of member's participation to mutual exchanges (but up to 1/3 for all these so privileged members together) (art. 2538, par. 3, c.c.) - more votes (but up to 1/3 of total votes in each general meeting) to financial instruments holders (art. 2526, par. 2, c.c.) - more votes in reason of the amount of the capital held or the participation to mutual exchanges in the election of the supervisory organ (without any limit) (art. 2543, par. 2, c.c.)	One member, one vote if not otherwise provided by the statutes. For small cooperatives (art. 483 to art. 495, PGR), if there are shares, each share is one vote, parts of a share down to 25 % of one single share have the regarding reduced vote (art. 490, par. 1, subpar. 3)	One member, one vote (art. 11, par. 2, CL), but in the statutes of cooperative society with more than a half of the members being cooperative societies, may be determined that a number of votes is assigned to the member according to its participation in an activity of cooperative society (turnover), but not including its capital investments (share contributions). Under above stated circumstances the member is permitted to have up to 5 votes, though not more than 30 percent of all votes. The provision of voting according to participation in an activity of society is not applied and each member of the cooperative society has one vote despite his share, if the number of members decreases to half of all members (art.11, 2008-11-11 amendment)
15	YES If provided for by the statutes, also in connection with particular matters or in presence of particular categories of members (art. 2540, par. 1, c.c.). They are even compulsory when the cooperative has more than 3000 members and undertakes its activity in 2 or more provinces, or when it has more than 500 members and undertakes 2 different mutual relationships with its members (art.	YES If statutes provide for. Sections are supervised by the umbrella cooperation (art. 478, PGR)	YES In cooperatives with more than 100 members (art. 15, par. 2, CL)

	2540, par. 2, c.c.)		
16	Only OCs may be converted into another legal forms of companies (but in this case they shall devolve their net assets, only subtracted the compulsory minimum capital for the resulting company, to mutual funds)	YES Conversion into another legal form (stock corporation, participation company or limited company) is treated similar to a conversion of a stock corporation into a limited company (art. 482, PGR)	YES But no detailed regulation on conversion of cooperative. Exception: credit unions, they may not be converted into another legal form.(Law on credit unions, art. 67, par.2)
17	Management organ: NO, but the members of the supervisory organ shall be elected amongst the members of the cooperative (art. 2544, par. 2, c.c.) Administrative organ: the majority of the administrators shall be elected amongst the members of the cooperative (art. 2542, par. 2, c.c.)	Management organ: NO, the statutes of the cooperative can allow the delegation of management duties to one or more non-members, as long as the it is supervised by the administration (art. 474, par. 2, PGR), but the majority of management members must be members of the cooperative (art. 474, par. 1, PGR)	NO (art.17, CL) Credit unions; Board of directors – only members eligible. (CU, art. 28, par.1) Administrative organ - no
18	Devolution of net residual assets to the mutual funds for the promotion of the cooperative movement (MMCs) In accordance with the statutes (OCs)	Net assets must be maintained in accordance with the purpose of the cooperation, if the statutes do not provide otherwise (art. 479, par. 2). The statutes also can regulate that net assets continue as a independent foundation after the dissolution of the cooperation (art. 479, par. 3).	The remaining property shall be distributed among the cooperative society members in the manner prescribed by the statutes, having regard to the amount of the member's share (art. 21, par. 5, sub 8, CL)
19	YES - corporate income tax exemption of part of the income appropriated to an indivisible reserve fund - deduction from the taxable income of the income distributed to members by way of cooperative refund	YES - alp-, forest-, and land-coops are subject to a non-progressive tax of 1.5 per mill (property tax) and 3 per cent (income tax) (art. 50, par. 2, tax law 7/1961). - reduced tax regime of 2 per mill (property tax) and 3 per cent (income tax) for commercial coops, as long as they support member interests and distribute limited benefits (self-help cooperatives, no dividend payout, not more than 5 % price reduction on goods for members, moderate interest rate on assets) (art. 80 tax law 7/1961) NO - non-profit coops of public utility are completely	YES 1. For the participants (members) of cooperative company (cooperative) from benefit, in 2009 it is applied rate of 5 percents from income tax of individuals, in 2010 – rate of 10 percents from income tax of individuals. (Law on Income Tax art. 17. par. 3) 2. The real estate of cooperative companies (cooperatives) is not taxed under The law on real estate tax of The Republic of Lithuania. (art. 7. par. 11) 3. Taxed profit (or its part) of cooperative companies (cooperatives) proportionally falling to shareholders according the value of their share contribution last day of taxing period is taxed applying 0 percentage rate of profits tax,

		exempted from tax payments. In this regard, cooperatives are treated like other corporations, associations etc. with non-profit purpose (culture, science, education, social help or other activities of public utility) (art. 32, par. 1, supar. e, tax law 7/1961)	if: 1) during taxing period more than 50 percent of incomes of cooperative company (cooperative) is incomes from agricultural activity, or 2) during taxing period more than 85 percent of incomes of cooperative company (cooperative) is incomes from agricultural activity and (or) incomes for sold, purchased from its members, produced these members agricultural products and (or) sold fuel, fertilizers, seeds, fodders, aids from pests and weeds to its members and tangible property, dedicated for use only in agricultural activity of its members. (Law on Profit tax art. 5. par. 6) 4. If the member of cooperative company distributes benefit disbursing dividends the sum in cash of deducted profits tax is counted and reduces profit tax sum of dividends receiving Lithuanian unit for this taxable period, when the tax was deducted from dividends paid to him. If dividends receiving Lithuanian unit offset deducted tax sum exceeds this units sum of payable benefit tax for this taxable period, when tax was offset defined in the law of tax administration of Lithuania.
20	YES The supervisory authority is the Minister of economic development, but cooperative revisions are conducted by representative cooperative organisations on their members. The main object is the respect of the rules associated with the mutual nature of the enterprise. No precautionary supervision required, other than the formal legal control by the notary of the incorporation act.	NO	NO

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (VII): LU – MT

	LU	LV	MT[99]
1	A society composed of a variable number of members who may subscribe a variable number of shares, and whose shares may not be transferred to non-members (art. 113, Law 1915 on commercial companies)	A voluntary association of natural persons and legal persons the aim of which is to provide services in order to increase the effectiveness of the commercial activity of its members (sec 1, par 5, CL). The basic principles of the activity of cooperative societies shall be the following: 1) a cooperative society shall be a voluntary organisation in which any natural person and legal person with the capacity to act may join without any social, gender, political and religious discrimination if such a person wishes to receive the services of this organisation and to undertake its membership duties in conformity with the articles of association of the	An autonomous association of persons united voluntarily to meet their economic, social and cultural needs and aspirations, including employment, through a jointly-owned and democratically-controlled enterprise, in accordance with cooperative principles, and which, subject to the provisions of this Act, may be registered by the Board as a cooperative society under this Act (art. 21, par. 1, Law XXX/2001)

[99]Other relevant provisions: For the purposes of subarticle (1), cooperative principles are:
First principle - Voluntary and open membership: Cooperatives are voluntary organisations. open to all persons who are able to use their services and willing to accept their responsibilities of membership, without gender, social, racial, political or religious discrimination. Second principle - Democratic member control: Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and taking decisions. Men and women serving as elected representatives are accountable to the members. In primary cooperatives, members have equal voting rights - each member having one vote only. Cooperatives at other levels are also organised in a democratic manner. Third principle - Member economic participation: Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, at least part of which would be indivisible; benefitting members in proportion to their transactions with the cooperative; and supporting other activities approved by the members. Fourth principle - Autonomy and independence: Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including the Government, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy. Fifth principle - Education, training and information: Cooperatives provide education and training for their members, elected representatives, managers and employees so that they may contribute effectively to the development of their cooperatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of cooperation. Sixth principle - Co-operation among cooperatives: Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures. Seventh principle - Concern for the community: Cooperatives work for the sustainable development of their communities through policies approved by their members.
The principles stated in subarticle (2) shall not be directly enforceable in any court or tribunal, but shall be adhered to in the interpretation and implementation of this Act and of any regulations made thereunder (art. 21, par. 2, 3, *ibidem*)

		society; 2) the activity of a cooperative society shall be managed by its members, by actively and democratically participating in the management of the society; 3) each cooperative society member shall have one vote at the general meeting of members; 4) the capital of a cooperative society shall be formed and controlled, and the profit gained (in an agricultural services cooperative society — surplus) shall be distributed by its members (sec. 3, CL)	
2	No restrictions	No restrictions	No restrictions (directly connected to the cooperative legal form of enterprise)
3	No restrictions	No provision	No provisions
4	YES In the commerce and companies register	YES In the register of enterprises (sec. 16, par. 2, CL)	YES In the register of cooperative societies held by the Cooperative Board (art. 29, *ibidem*)
5	7 (art. 114, par. 2, *ibidem*)	3 (sec. 8, par. 4, CL)	5 individuals in primary cooperatives; 2 societies in secondary and tertiary cooperatives (art. 22, par. 2, *ibidem*)
6	No provisions	No provisions. But the cooperative may issues additional cooperative shares (art. 27, CL), and also create other capital (sec. 32, CL)	No provisions
7	According to the statutes (otherwise on approval by the general meeting)	The admission shall be approved by both the board of directors and the general meeting. No person may be refused admission to a cooperative society, unless the person has been excluded from the cooperative society due to violation of the articles of association of the society. Only those cooperative societies which in compliance with the articles of association service their own members and cannot successfully service a greater number of members may refuse to admit new members. Candidates refused membership may appeal to the general meeting (sec. 18, CL)	There is no right of admission. Admission is subject to approval by the committee of management on an application made for that purpose. Candidates refused membership may appeal to the general meeting and in any such case they may be admitted as members by a resolution passed by not less than two-thirds of the members present and voting at such a meeting (art. 52, par. 2, *ibidem*)

8	YES (art. 113, *ibidem*)	YES (sec. 24, par. 1, 2, CL)	YES
9	NO The incorporation act may provide for a minimum to be immediately subscribed	YES 2000 LATS (equal to 2,850 €) (sec. 24, par. 3, CL); 200 LATS as to cooperatives of apartment owners, of vehicle garage owners, of boat garage owners, agricultural services cooperatives, horticultural cooperatives and amelioration cooperatives (*ibidem*).	NO
10	There is a compulsory legal reserve. 20% of net profit shall be destined to this reserve as long as its amount reaches 10% of the capital (art. 129, referring to art. 72)	By a decision of the general meeting of members (meeting of authorized persons) the profit remaining following the payment of taxes and making of other mandatory payments shall be distributed as follows: 1) for the formation of the reserve capital specified in the articles of association, as well as other capital; 2) for the payment of dividends for cooperative shares in accordance with the procedures prescribed by the articles of association; and 3) for profit refund in accordance with the procedures prescribed by the articles of association (sec. 34, CL). A cooperative society shall create a reserve capital (sec. 31, par. 1).	A cooperative shall transfer into the reserve fund at least 20% of its surplus at the end of each accounting period, unless the reserve fund is equal to the total of the paid-up share capital and of 20% of the borrowed capital of the society as shown in the audited and approved balance sheet of the preceding financial period (art. 90, par. 3, *ibidem*). A cooperative shall contribute 5% of the surplus resulting from its activities, operations, investments and any other sources at the end of each accounting period to the Central Cooperative Fund (art. 91, par. 3, *ibidem*)
11	YES Without restrictions	A member who has withdrawn from a cooperative society shall receive cooperative shares within a year of the date the annual report was approved, deducting from the value thereof the losses which have been incurred, or adding a dividend (sec. 23, par. 4, CL) reserve capital, which by a decision of the general meeting of members (meeting of authorised persons) shall be utilised to cover the losses of the society (sec. 31, par. 1, CL). The reserve capital, equity capital, as well as other capital shall be utilised to cover the losses of a cooperative society (sec. 35, par. 2, CL)	The reserve fund shall be used exclusively to cover losses (art. 90, par. 1, *ibidem*). The amount that should be paid to the withdrawing member for the redemption of his share or interest shall be the nominal amount thereof (art. 60, par. 2, *ibidem*)
12	YES According to the statutes	YES No restrictions	YES But with a maximum rate: if not specified in the statute, this is that specified, from time to time, by regulations made by the Minister, in

			consultation with the Board (art. 92, par. 1, 2, *ibidem*
13	No provision (moreover, a default rule provides for the allocation of profits in proportion to the capital held)	Profit (in an agricultural services cooperative society: surplus) refund is a part of the profit of a cooperative society (in an agricultural services cooperative society: surplus) which, in accordance with the procedures prescribed in this Law and the articles of association of the society, is paid to the members of the society in conformity with the amount of cooperative society services utilised by them (sec. 1, CL). By a decision of the general meeting of members (meeting of authorised persons) the profit remaining following the payment of taxes and making of other mandatory payments shall be distributed as follows: 1) for the formation of the reserve capital specified in the articles of association, as well as other capital; 2) for the payment of dividends for cooperative shares in accordance with the procedures prescribed by the articles of association; and 3) for profit refund in accordance with the procedures prescribed by the articles of association (sec. 34, CL).	YES A cooperative may distribute any part of the remainder of its net surplus by way of patronage refund. Patronage refund means the distribution of all or any part of the net surplus of a society, paid among its members in proportion to the volume of business or other transactions done by them with the society (art. 93, *ibidem*)
14	One member, one vote, but statutes may provide otherwise	One member, one vote (sec. 40, CL)	One member, one vote, unless the statute provides otherwise (art. 56, par. 1, *ibidem*). According to the statute in secondary and tertiary cooperatives (art. 56, par. 2, *ibidem*)
15	No provision	YES If provided for by the statutes (sec. 37, par. 2, CL)	No provision
16	YES	No provision	*According to David Fabri, an expert on Cooperative Law: "It has now become , at least on conceptual level, possible to convert a cooperative into a commercial enterprise, and vice versa. The precise legal mechanisms to enable such a process to happen has not yet been provided. Indeed Article 108 (4) foresees the issuing of regulations by the Minister for*

			this purpose. The article makes a reference to the relevant articles in the Companies Act, which however do not yet permit or recognise the conversion of a commercial partnership into a cooperative or other entity not regulated by the Companies Act. This means that appropriate amendments to the Companies Act would have to precede the issue of any such regulations
17	NO (art. 114, par. 3, *ibidem*)	NO	YES (art. 72, *ibidem*) Eligibility to members of the Committee of Management is restricted to members of cooperatives. It makes no allowances for outsiders to become members of this Committee which is equivalent to the Board of Directors of a commercial enterprise. The establishment of a supervisory board is optional. Maltese cooperatives have adopted the monistic structure.
18	According to the statutes	Devolution of residual assets to members in proportion of the capital held (sec. 53, par. 5, CL).	Remaining assets are devolved to the Central Cooperative Fund (art. 105, *ibidem*)
19	NO	A cooperative society shall receive tax relief in accordance with the procedures set out in the tax laws. (2) In conformity with the procedures prescribed by the tax laws an agricultural services cooperative society shall not pay enterprise income tax independently, but each member of the agricultural services cooperative society shall pay personal income tax or corporate income tax from the part of the surplus which is due to the member of the agricultural services cooperative society (sec. 33, CL).	YES Corporate income tax exemption (art. 12, q, Income Tax Act of 1948)
20	NO	NO	YES By the Cooperatives Board

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (VIII): NL – PL

	NL	NO[100]	PL
1	A cooperative is an association established as a cooperative by notarial deed. Under its articles its object must be to provide for certain material needs of its members under agreements, other than insurance agreements, concluded with them in the business it conducts or causes to be conducted to that end for the benefit of its members (art. 53, par. 1, NCC)	By a cooperative is meant a group whose main objective is to promote the economic interests of its members by the members taking part in the society as purchasers, suppliers or in some other similar way, when the return, apart from a normal return on invested capital, is either left in the society or divided among the members on the basis of their share of the trade with the group (sec. 1, par. 2, CL). A cooperative also exists if the interests of the members as mentioned in subsection two are promoted through the members' trade with an enterprise which the cooperative owns alone or together with other cooperatives, including a secondary cooperative pursuant to section four, second subsection. The same applies if the interests of the members are promoted through the members' trade with an enterprise which the secondary cooperative owns alone (sec. 1, par. 3, CL).	The cooperative shall be a voluntary association of an unlimited number of persons, with a variable personal composition and variable share capital, which in the interest of its members conducts a joint business activity. A cooperative may conduct social as well as educational and cultural activities in favour of its members (art. 1, Cooperative Law)
2	No restriction, except for insurance	No restrictions (directly connected to the cooperative legal form of enterprise)	No restrictions (directly connected to the cooperative legal form of enterprise)
3	Cooperative statutes may allow a cooperative to conclude with others agreements similar to those it concludes with its members, but it may not do so to such an extent that the agreements with its members are only of subordinate importance (art. 53, par. 3, 4, NCC)	As part of the definition of a cooperative (art 1 para 2 CL), it is presupposed that the main bulk of the activities of the cooperative should take place between itself and its members	Permitted in general. Restrictions stem implicitly from the specific regulation of workers', agricultural, and housing cooperatives
4	YES In the commercial register (act on commercial registers 2007)	YES In the register of business enterprises (sec. 12, CL)	YES In the National Court Register

[100]Other relevant provisions: A cooperative shall treat all its members in the same way. Any differential treatment requires reasonable grounds (sec. 17).
The annual meeting may decide to make occasional gifts as well as gifts for the benefit of cooperatives or the general public that are reasonable based on the objective of making the gift, the enterprise's position and the circumstances otherwise (sec. 34, par. 1, CL).
The general meeting is the enterprise's supreme authority (sec. 35, CL).

5	2, natural or legal persons (but in case only one member left, this does not lead to dissolution)	2 A cooperative may be established by at least two persons, both natural persons and legal entities, and must always have at least two members. Should there be fewer members, the enterprise is to be dissolved (sec. 8, par. 1, 2, CL)	10 (natural and legal persons); 3 (legal persons) (art. 15, CL); 5 (in agricultural producer- and in social cooperatives)
6	No provisions. (although legal scholars argue for their admissibility, subject to art. 38, par. 2, NCC, as regards limitation on voting power: no more than ½ of total votes)	No provisions (implicitly not permitted because all members are supposed to interact with the cooperative. Capital contributions do not qualify for any additional influence or member rights).	NO
7	Unless the statutes otherwise provide, admission to membership shall be decided by the management and, if a person is not so admitted, the general meeting may nevertheless still resolve to admit the same (art. 33, NCC)	Consumers, businesses and others that may have their economic interests safeguarded by a cooperative are entitled to become a member of the enterprise by enrolling in it. The enterprise may only refuse membership if there are reasonable grounds for doing so. The statutes may stipulate conditions governing becoming and remaining a member provided there are reasonable grounds for these (sec. 14, par. 1, CL).	There is no right of admission. Admission is subject to approval by administrators. Refusal on grounds of race, citizenship, religion, politics, is not permitted (art. 16, CL)
8	YES (arg. *ex* 33 on new member admission, NCC; moreover if we consider Dutch cooperative as organisations without a capital in the strict sense)	YES (arg. *ex* sec. 14, CL)	YES
9	NO	NO But a cooperative shall always have an equity that is adequate based on the risk involved in and scope of the enterprise's operations (sec. 25, par. 1, CL).	NO
10	No provisions. According to the cooperative statutes.	No provision about a compulsory legal reserve (but see sec. 25, par. 1, CL)	Not less than 5% of the annual surplus shall be allocated to a legal reserve fund until such fund is equal to the share capital of the cooperative (art. 76, CL)
11	No provisions. According to the cooperative statutes	When equity is only allocated to collective equity it may not be distributed, sec 26-30	Not distributable during the existence of the cooperative (art. 26, par. 2, CL).
12	No provisions.	YES	YES

	According to the cooperative statutes	But only up to 3% above the interest payable on government bonds with a five-year term to maturity (sec. 30, par. 1, CL)	(art. 77, par. 4, CL)
13	No provisions. According to the cooperative statutes	YES The statutes may stipulate that the members may be paid all or parts of the annual profit on the basis of their trade with the enterprise (subsequent payment) (sec. 27, par. 1, CL). If the profit is not distributed or allocated to special distribution funds, it may not be distributed at a later point in time. There is a lock-in effect under sec 26-30	No provisions
14	One member, one vote, but statutes may provide otherwise (art. 38, par. 1, NCC)	One member, one vote, but The statutes may contain provisions stating that members may have several votes if the votes are divided among the members according to their trade with the enterprise. In a secondary cooperative, the statutes may also stipulate that the votes are to be divided according to the membership figures or the geographical area to which the primary cooperative belongs. One member may not have a majority of the votes in the enterprise (sec. 38, CL)	One member, one vote (art. 36, par. 3, CL). Exception only for cooperatives made up of legal persons
15	YES The articles may provide that the general meeting shall consist of delegates elected by and from the members (art. 39, par. 1, NCC)	YES In nationwide enterprises or enterprises with more than 100 members, the statutes may stipulate that the members are to be represented by delegates at the annual meeting (sec. 37, CL)	YES (art. 37, 59, CL)
16	YES	YES But In a cooperative where the members are entitled to all the remaining assets in the case of a dissolution, a resolution to convert the society requires the same majority as a resolution to amend the statutes unless the statutes stipulate stricter requirements regarding this resolution. In other cooperatives, a four-fifths majority of the votes is required. A resolution pursuant to	NO

		the second sentence may only be passed if there are reasonable grounds for this and requires the approval of the Norwegian Gaming and Foundations Authority. Conditions may be stipulated in such an approval (sec. 146, par. 2, CL)	
17	NO (only default rule) The management shall be appointed from the members. Notwithstanding the foregoing, the articles may provide that non-members may also be appointed officers (art. 37, par. 1, NCC)	NO Sec 62-64 CL	NO
18	According to the cooperative statutes	The members of the enterprise are entitled to be paid their membership contributions and the balance of the members' capital accounts if there are any assets left in the enterprise once the debts have been settled. The members are only entitled to be paid interest on their membership contributions or members' capital accounts if the statutes stipulate that interest is to be accrued on these. The statutes may stipulate that, if the enterprise is dissolved, the members shall not be entitled to be repaid their membership contributions or the balance of their members' capital accounts (sec. 135, par. 3, CL). Assets remaining in excess of this shall be spent on cooperative or non-profit purposes. In a secondary cooperative, the assets shall instead be divided among those that are members on the dissolution date unless otherwise stated in the statutes (sec. 135, par. 4, CL). The statutes may stipulate that the remaining assets shall in whole or in part become the property of those that are members on the dissolution date, and possibly also previous members. The distribution of the assets must in such case take place on the basis of the members' trade with the enterprise during the past five years (sec. 135, par. 5, CL).	The net residual assets are devoluted to the purposes indicated by the resolution of the last general meeting (art. 125, par. 5, CL). When such resolution does not provide any indication, the residual assets are devoluted to the "cooperative or social purposes" (art. 125, par. 6, CL).

		An amendment to the statutes which means that the members receive a larger share of the remaining assets in the case of a dissolution requires a four-fifths majority of the votes cast. Such an amendment to the statutes may only be made if there are reasonable grounds for this and requires the approval of the Norwegian Gaming and Foundation Authority. Conditions may be stipulated for such approval (sec. 135, par. 6, CL).	
19	YES deduction from the taxable income of that part of profit constituting the "deductible profit" (profit coming from transactions with members), which is: - distributed to members (who are natural persons) within one year after the book year in which the profits were gained; - gained in the last book year; - distributed to membership proportion to the value of their economic transactions with the cooperative Art. 9, CTL 1969) Moreover: Cooperatives are not considered by the Minister of Finance as companies with share capital, which implies they can distribute profits to members without paying any taxes on dividends	YES Many cooperatives that are enumerated in the Income Tax Act 1999 10-50, among them consumer cooperatives, may claim a deduction against taxable income for the distribution of surplus due to economic transactions with members	NO
20	NO	YES The Norwegian Gaming and Foundations Authority authorises certain crucial decisions (sec. 103, par. 2; 112; 120, par. 2; 135, par. 6; 146, par. 2, CL).	YES By the supervisory council and by unions of cooperative This control (audit, in Polish *lustracja* or *rewizja* = vetting, revision) is compulsory every 3 years according to the law (art. 91, par. 1, CL). It may be also executed on a voluntary basis in any time on demand of the General meeting, Supervisory Council or 1/5 of the members (art. 91, par. 2 CL). The internal audit (supervision)

			by the supervisory council is mentioned in art. 44, CL.

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (IX): PT – SE

	PT[101]	RO[102]	SE
1	Cooperatives are autonomous legal persons, from free creation, with variable capital and membership, which, through cooperation and mutual assistance of its members, with obedience to cooperative principles, aim, in a	A cooperative society as an autonomous association of natural and/or legal persons, as appropriate, set up on the basis of the free consent expressed by these ones, with the aim to promote the economic, social and cultural	The object of a cooperative society is to promote the economic interests of its members by means of economic activities in which the members participate: 1. as consumers or other users, 2. as suppliers,

[101]Other relevant provisions: Explicit reference to ICA principles as those principles which the cooperative has to comply with in its constitution and functioning (art. 3, CC).

[102]Other relevant provisions: The cooperative principles set out in para. (1) are: a) the principle of voluntary and open association, according to which the cooperative societies are voluntary organizations which are set up based on free consent and are open to all persons able to use their services and who agree to assume the responsibilities of cooperative membership, without any discrimination on grounds of nationality, ethnic origin, religion, political affiliation, social origin or sex; b) the principle of democratic control of the cooperative members, according to which the cooperative societies are democratic organizations controlled by the cooperative members who participate in setting the policies and in adopting the decisions. Persons acting as elected representatives are accountable to the cooperative members. In the cooperative societies grade 1, members have equal voting rights, each having one vote, regardless of the number of shares held; c) the principle of economic participation of the cooperative members, according to which members contribute fairly to the setting up of the cooperative society's property, exercising a democratic control on it. At least part of this property is indivisible. Cooperative members receive, usually, limited compensation in money or in kind, from the profit based on the annual financial statements and on the profit and loss account, proportional with their participation to the share capital. The cooperative members allocate from the net profit of the cooperative society the amounts needed to achieve the following goals: development of the cooperative society, rewarding of the cooperative members in relation to their participation to activity of the cooperative society, or supporting other activities approved by the cooperative members; d) the principle of autonomy and independence of the cooperative societies, according to which the cooperative societies are autonomous organizations based on own support and controlled by their members. Entry into legal relationships with other natural or legal persons, including the Government, or attraction of funding from external sources take place by ensuring the democratic control of the cooperative members and by maintaining the autonomy of the cooperative societies;
e) the principle of education, training and information of the cooperative members, according to which the cooperative societies provide the education and training of their members, of the elected representatives, of the managing directors or of the employees, so that they can contribute effectively to the development of the cooperative societies to which they belong. The cooperative societies inform the public, particularly the youth and the opinion leaders, about the nature and the benefits of cooperatives; f) the principle of cooperation between the cooperative societies, according to which the cooperatives serve their members and strengthen the cooperative movement. The cooperative societies work together within the local, national, regional and international structures; g) the principle of concern for the community, according to which the cooperative societies act for the sustainable development of communities of which they are part, through policies approved by their members.
The principles stated in para. (3) are not normative; they are used for the interpretation and application of this law. (art. 7, par. 3, 4, CL).
Between the cooperative society and the cooperative member may exist following categories of relationships: a) property, resulting from the obligation of the cooperative member to file the shares and / or the contributions in kind; b) work, where the cooperative members are associated to labor and capital, under the individual employment contract or under the individual employment agreement, as appropriate, entered into with the cooperative society whose members they are; c) cooperative commercial deliveries of products and execution of services for the cooperative society by the cooperative members as an independent traders. (art. 33, par. 1, CL)

	non-profit way, to meet the economic, social or cultural needs and aspirations of the members (art. 2, par. 1, Cooperative Code)	interests of cooperative members, being held jointly and democratically controlled by its members, in accordance with the cooperative principles. (art. 7, par. 1 CL). The cooperative society is a private capital economic agent. (art. 7 par.2 CL).	3. by contributing labour, 4. by making use of the society's services, or 5. in some other similar way. When assessing whether the preconditions in accordance with paragraph one are fulfilled, the members in another cooperative society who are members in the first named society shall also be taken into consideration as well as the society's own members. Furthermore, a society shall be considered a cooperative society if: 1. the object of the society is to promote the economic interests of its members by working towards their participation, in the manner stated in paragraph one, in economic activities conducted by one or more other societies, 2. the society's assets to a predominant part comprise shares in it or the other societies, and 3. it or the other societies in accordance with paragraph one constitute cooperative societies. A cooperative society's activities may be pursued in one of the society's wholly owned subsidiaries. 2 A cooperative society is characterised by the fact that it fulfils specific conditions concerning rights for membership, the right to vote and the distribution of surpluses (dividends). Chapters 3, 7 and 10 contain provisions concerning this. (SFS 2000:493) (Chap. 1, sec. 1, SFS 1987:667)
2	No restrictions. Cooperatives may freely exercise any economic activity …it cannot be prohibited, restricted or conditioned to cooperatives the access and the exercise of activities that can be developed by private companies or other entities of the same nature, as well as by any other legal persons governed by private law with non-profit aim (art. 7, CC). But the law on banks and financial institutions	No restrictions (but authorization regime provided by the specific legislation in force) (art. 8, CL)	No restrictions. Financial and insurance institutions are regulated in their operations and auditing by appropriate sector legislation. Additional legislation addresses branch-specific features in some branches.

	only mentions agricultural credit cooperatives and its central institution, thus making questionable whether other cooperative banks are permitted		
3	YES Within the limits established by the special law governing the cooperative (art. 1, par. 2, CC). Yet, there are no limits provided therein; therefore, the only consequences may be found under tax law	No provisions	No provisions.
4	YES In the commercial register office (art.16 CC and art. 4 Code of Commercial Registration)	YES In the trade register (art. 14, par. 4 and 9, CL)	YES In the register of economic associations, with *Bolagsverket* (that manages all commercial registers).
5	5 in first degree cooperatives; 2 in cooperative unions, federations and confederations (art. 32, CC)	5 (art.12 CL)	Three, regardless whether natural or legal persons.. Lag (1987:667) om ekonomiska föreningar 1 kap. 1§,
6	NO But the cooperative may issue investment securities (art. 26, CC) and bonds (art. 30, CC).	No provisions.	No provisions. However, non members may contribute capital (förlagsinsatser, 5 kap, 1-8§). Such "capital deposits" may not carry voting rights nor variable dividend, and have a status comparable to that of preference shares.
7	There is no right of admission. Admission is subject to approval by administrators. Candidates refused membership may appeal to the general meeting (art. 31, CC)	The Ordinary General meeting is entitled to approve the inclusion of new members. (art. 23, 40, par. 2, h, CL)	A general right of admission (within criteria specified in the statutes) 3 kap 1§. Subject to approval by the board (unless otherwise stipulated by statutes) on grounds of suitability. No appeal to the general meeting. Rejection may be challenged in court..
8	YES (art. 18, par. 1, CC)	YES (art. 9, para.1)	Not regulated
9	YES Min. 2,500 €, unless differently provided by special laws (art. 18, par. 2, CC)	5,000,000 lei (=500 RON - New Romanian Leu ; = 518€) (art. 9, par. 1, CL)	No provision (no legal minimum; symbolical 1 SEK shares allowed) but has to be specified. The lack of lower limit indirectly impacts on level of reserve funds
10	YES Cooperatives shall establish a legal reserve (art. 69, par. 1, CC) and a cooperative education and cultural and technical training reserve of cooperative workers and the	The cooperative society will take over at least 5 per cent of the gross profits every year, in order to form the legal reserve until it amounts to a minimum of a fifth part of the registered capital. If the reserve fund, after its settling, is reduced	No less than 5% of the balanced surplus (10% in financial associations) should be allocated to reserve funds. 10 kap, 6§. However, allocation is compulsory only until an upper threshold is reached (same §), which is 20% of the paid-in

	community (art. 70, par. 1, CC). Every year min 5% of the surplus shall be allocated to the former as long as it is equal to the capital (art. 69, par. 2, CC); min 1% shall be allocated to the latter (art. 70, par.2,CC)	for any reason whatsoever it shall be dully completed. (art. 66 CL)	shares, or – 40% of net assets (both may be quite low in some branches). Otherwise- as the general meeting sees fit
11	Reserves may not be distributed to members, not even in case of dissolution (artt. 72, 79, CC)	The constitutive act may establish ways of setting up and use of the statutory or contractual reserves, and of other reserves. (art.67 CL)	Not permitted, (10 Kap, 6§ 2nd mom) (unless in liquidation proceedings, when other paragraphs apply)
12	YES Permitted after the allocation to reserves and on condition that the total amount of distributable dividends does not exceed 30% of the surplus of the financial year (art. 73, par.3 CC). Some special cooperatives may not distribute profits (housing and social solidarity coops). *I make a distinction between dividends(=share remuneration, a interest) and profits. About profits, it´s right:* only surplus coming from the operations with members may be distributed, and not that coming from operations with third non-members. *And also,* for profits: YES, permitted after the allocation to reserves (art. 73, par. 1, CC)	YES The cooperative members are entitled to receive dividends from the annual profit, in proportion to ownership. (art. 31, par. d CL)	No direct restriction (see 6)
13	*See above, the distinction between dividends(=share remuneration, a interest) and refunds (or profits, or surpluses, it is similar, I think). There is a general provision allowing the distribution of surpluses- art. 73, par. 1, CC..There are special provisions for housing and social solidarity coops stipulating they are not allowed to distribute profits. There is a special provision for education coops – they can only distribute 50% of the annual surplus. See point 3.6, pages 12/13 of my report.*	No distinction. See point 12)	No clear distinction between dividends and refunds (except för förlagsinsatser, see point 3 above). No limit to distribution, which may also include non-members (10 kap, §4.)
14	One member, one vote in primary cooperatives (art. 51, par. 1, CC). Exception for secondary cooperatives (art. 83).	One member, one vote, irrespective of the number of shares for the cooperative societies of grade 1. (art. 37) For the cooperative	One member, one vote, unless otherwise specified in the statutes.(7 kap. Föreningsstämman, 1§)

		societies of grade 2 each cooperative member is entitled to one vote, irrespective of the number of shares he holds, if in the constitutive act is not provided that each cooperative member is entitled to multiple limited votes, proportional to his participation in the share capital of the cooperative society. (Art.38 CL)	
15	YES If provided by the statutes (art. 44, par. 3, 54, CC)	No provision.	YES If stated in statutes. (Regulated by 7 kap. 1§ subpar 2, and §12) that allow for the operation of a second tier assembly.
16	NO (art. 80, CC)	NO Cooperative societies cannot be reorganized or transformed into trading companies or into family associations (art. 19 CL)	No provision. Generally, there is no neat way of moving from one register (I e incorporation form) to another as operating concern.
17	YES Only members (art. 40, par. 1, CC) (except for agricultural credit cooperatives)	YES The administration and management of the cooperative society is ensured by the sole manager or by the Managing Board. (art. 45 CL). The cooperative society can be administered only by persons who are cooperative members. (art.46 CL) The president is elected from among those cooperative members that have management skills and expertise in the respective field. (art. 55, par.3) the Executive Director may not be a cooperative member. (art. 56, par. 1 CL)	The board members shall be members of the association, unless the statutes in clearly specified cases permit otherwise (6 kap. 4§, subpar 2). Employee board representation is regulated by other legislation (SFS 1987:1225, 2008:8, 2008:15)
18	Net residual assets are allocated to another cooperative, preferably of the same municipality, determined by the federation or confederation representing the principal activity of the cooperative (art. 79, CC)	The assets remaining after payment of amounts due to creditors of the Cooperative Society and of the divisible part to the cooperative members is transferred, by the decision of general meeting, to another cooperative society under the provisions of the constitutive act. If there is no decision taken by the general meeting, the remaining assets shall be assigned by the competent court to a cooperative society of the same form, from the locality where the cooperative society has its registered office or	Members' right to residual (including reserve funds) considered self evident (unless otherwise stipulated in the statutes). The notion of social (oegennytig) distribution, though not explicitly forbidden, is alien to the Swedish tradition, that concentrates on members' interests.

		from the nearest locality, by irrevocable court decision (art. 87, par. 2, CL)	
19	YES In accordance with the constitutional provision and the specific cooperative tax law of 1998: - corporate income tax exemption for the surplus gained in operations with members – *for some cooperatives; for the others, a reduced tax of 20% - See point 3.10, pages 16/17 of my report.* - exemption from local taxes for real estate - deferment and reduction of VAT for certain cooperatives and in certain cases	NO	NO Reserve funds have same tax status as reserve funds in other commercial enterprises.
20	NO exception for agricultural credit cooperatives	YES The Agency for the Implantation of Projects and Programmes for SMEs (body under the direct subordination of the Ministry of Economy, Trade and Business Environment) assures the implementation and monitoring of the provisions of the CL.(art.106, para.4 CL) Internal auditing is performed by auditors elected by the general meeting (art. 57-58 CL). Other forms of control are performed according to the general national legislation. Controls cannot be conducted by the representative cooperative organizations.	NO Basically same provisions and control instances as for other incorporation forms. Rules (or federation statutes) that limit the choice of auditors considered a breach of competition laws.

COMPARATIVE TABLE OF NATIONAL COOPERATIVE LEGISLATION (X): SI – UK

	SI	SK	UK
1	A cooperative is an organisation the number of whose members is not defined in advance, whose aim is to promote the economic interests and develop the economic and social activities of its members and based on voluntary membership, free resignation, equal participation and management by the members. A cooperative may conduct its activities through a subsidiary. A cooperative may also establish a company, another cooperative or another legal entity, or itself become a member of another legal entity, if this serves the purpose with which the cooperative has been established (art. 1, Cooperatives Act)	A cooperative is a community of members (their number is not predetermined) and is established either to undertake business, or to satisfy the economic, social or other needs of its members (art. 221, par. 1, Commercial code)	The expression "cooperative society" does not include a society which carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with, or lent to, the society or any other person (sec. 1, par. 3, IPSA 1965). See also the essentials of a bona fide cooperatives according to the FSA notes, and in particular: Community of interest - There should be a common economic, social or cultural need or interest among all members of the cooperative. Conduct of business - The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business. Participation may vary according to the nature of the business and may consist of: o buying from or selling to the society; o using the services or amenities provided by it; or o supplying services to carry out its business (FSA notes, point 9)
2	In principle no restrictions (directly connected to the cooperative legal form of enterprise) (art. 56, par. 2, CA). But the laws governing banking and insurance reserve these activities to limited-liability company (or SE). Other limitations in the law on financial instruments market	No restrictions (directly connected to the cooperative legal form of enterprise)	No restrictions (directly connected to the cooperative legal form of enterprise) (sec. 2, par. 1, IPSA 1965).
3	YES Cooperative statutes may allow the cooperative to deal with non-members, as long as it only conducts with them the same types of transactions it conducts with its members and	No provisions	Such societies are formed primarily to benefit their own members, who will participate in the business of the society (FSA notes, point 9)

	not in such a way and to such an extent as to render secondary the cooperative's dealing with its members (art. 2, par. 2, CA)		
4	YES In the business register (art. 56 CA)	YES In the commercial register (art. 225, par. 1, CC)	YES With the Financial Services Authority (FSA), if it is shown to the satisfaction of the FSA that the society is a bona fide cooperative society (sec. 1, IPSA 1965)
5	3, natural or legal persons (art. 4 CA)	5, or 2 legal entities (art. 221, par. 2, CC)	3 natural or legal persons, or 2 registered societies (sec. 2, par. 1, a, IPSA 1965)
6	YES (art. 8.a, CA) moreover the cooperative may issue financial instruments (art. 34, par. 4, CA)	No provisions	YES Subject to restrictions which include restricted voting rights, compliance with applicable regulatory requirements under FSMA 2000, and an overriding requirement that the society remains, in the FSA's view, a bona fide cooperative.
7	The statutes may provide either that the admission of new members is automatic (upon receiving their signed declaration of membership) or that it is subject to approval by a competent organ of the cooperative. The statutes may provide that candidates refused membership may appeal to the general meeting or another organ of the cooperative (Art. 8, CA). The general meeting (or another organ authorised by it) must approve the admission of every new investor member (Art. 8.a, CA).	According to the statutes (art. 227, par. 5, CC)	There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members, but there may be grounds for restricting membership in certain circumstances, which do not offend cooperative principles. For example, the membership of a club might be limited by the size of its premises, or the membership of a self-build housing society by the number of houses that could be built on a particular site (FSA notes, point 9)
8	YES	YES (arg. *ex* art. 221, par. 1, CC)	YES
9	NO but statutes may provide for a minimum amount below which the capital may not be reduced by repaying the member shares	YES Min. 1,250 € (art. 223, par. 2, CC)	NO
10	At least 5% of the total annual surplus must be allocated to the legal reserve, unless the statutes have set the minimum capital requirement of at least 30,000 EUR and the legal reserves are not lower than the minimum	Upon its registration into the Commercial Register the cooperative is bound to create an Indivisible Fund equal to not less than 10% of the registered capital. This Fund shall be supplemented by no less than 10% of the	There are no compulsory legal reserves for national cooperatives unless the cooperative's statutes so provide. For the SCE, the obligation arises from the EU Regulation. See FSA Note mentioned in point 12 (below) on allocation of

	amount of capital (art. 43 and 39.a, par. 3, CA)	annual profits until the Fund shall have reached the amount equal to one half of the registered capital of the cooperative. The indivisible fund may not be distributed among members throughout the existence of the cooperative. (art. 235, CC)	surplus which is dealt with according to the society's own statutes which have been confirmed to be appropriate to a bona fide co-operative on registration of the society and of any statute amendments since registration.
11	Distribution of legal reserves not permitted. The statutes may provide the right of withdrawing members to a share of voluntary funds (Art. 44, CA).	The indivisible fund may not be distributed among members throughout the existence of the cooperative. (art. 235, par. 2, CC). The assets comprising part of the Indivisible Fund shall not be taken into account when calculating the settlement share, which is the share the terminated member is entitled to receive (art. 233, par. 1, 3, CC)	See Point 10 (above)
12	YES If the statutes provide so (and following the compulsory allocation to the legal reserve) (art. 45, CA)	YES (art. 236, CC)	If the statutes of the bona fide cooperative society allow profits to be distributed, they must be distributed among the members in line with those rules. Where part of the business capital is the common property of the cooperative, members should receive only limited compensation (if any) on any share or loan capital which they subscribe. Interest on share and loan capital must not be more than a rate necessary to obtain and retain enough capital to run the business. Section 1(3) of the 1965 Act states that a society may not be a bona fide cooperative if it carries on business with the object of making profits mainly for paying interest, dividends or bonuses on money invested with or lent to it, or to any other person (FSA information notes, point 9)
13	YES The default rule is that the distributable surplus may be assigned to members in proportion to the extent of their dealing with the cooperative (art. 45, CA)	NO It is only provided that the statutes or a resolution of the members' meeting may stipulate another method of determining a member's share in the profits to be distributed among members, if the statutes so allow (art. 236, par. 3, CC)	YES If the statutes of the bona fide cooperative society allow profits to be distributed, they must be distributed among the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business. For example, in a retail trading

			society or an agricultural marketing society, profits might be distributed among members as a dividend or bonus on purchases from or sales to the society. In other societies (for example, social clubs) profits are not usually distributed among individual members but members benefit through cheaper prices or improvements in the amenities available (FSA notes, point 9)
14	One member, one vote, but statutes may provide otherwise (without restrictions, except for investor members: max 25% of total votes or even less than this) (art. 18, 23, par. 4, CA)	One member, one vote, but statutes may provide otherwise (art. 240, par. 1, CC)	Control of the bona fide cooperative society lies with all members. It is exercised by them equally and should not be based, for example, on the amount of money each member has put into the society. In general, the principle of 'one member, one vote' should apply (FSA notes, point 9)
15	YES If provided for by the statutes (art. 16, CA).	YES If it is impossible to convene the members' meeting due to the size of the cooperative, the statutes may stipulate that within the scope determined therein, an assembly of delegates shall replace the members' meeting (art. 239, par. 7, CC)	This issue is a matter for the society's own statutes, subject to meeting the "bona fide co-operative" requirement. However, section 74 of the 1965 Act provides that in the Act references to a "meeting" include a meeting of delegates appointed by the members where the society's statutes so allow.
16	YES	YES	YES (sec. 52, IPSA 1965)
17	Only the following persons may be elected members of the administrative board or the supervisory board: - cooperative's members, - the members' statutory representatives, - persons who are employed at, or members of, another legal entity that is itself a member of the cooperative (Art. 26, CA).	YES Or an individual acting on behalf of a legal entity member (art. 238, par. 1, 2, CC)	This is a matter for the society's own statutes, subject to meeting the "bona fide co-operative" requirement
18	Devolution of net residual assets to members in proportion to their shares, unless the cooperative statutes provide otherwise (art. 48, CA). A particular regime applies to assets of art. 74, CA (assets obtained either as social property before 1992 or through the	To the members according to the statutes (art. 259, par. 3, CC)	This is a matter for the society's own statutes, subject to meeting the "bona fide co-operative" requirement

	participation of the cooperative in the process of privatisation of former socially-owned companies): they may not be distributed to members and shall be allocated to a cooperative association		
19	NO	NO	Membership patronage and interest on members' shares is deducted in calculating trading profit for corporation tax purposes for any industrial and provident society. In addition, mutual trading, whereby a society's trade is exclusively with members is not regarded as giving rise to a profit for tax purposes – ss 132, 499-500 and 633 Corporation Tax Act 2009. Many co-operatives also trade with non-members and so gain only the first concession and not the second one.
20	NO Specific cooperative supervision conducted by auditing cooperative associations was abolished in 2009	NO	YES By the FSA which verifies the ongoing respect of the bona fide cooperative requirements

APPENDIX 4

DATA ON EXISTING SCEs

Country	Name, address	Year of setting up	Fields of economic activity (NACE code)	Object	Method of formation	No. of founders
Belgium	SEEDS Villa Voltaire, Rue du Grand Cerf 2, 1000 Brussels	2008	Communication (J) and marketing	Management, development and financial participation on each affiliate company	art. 2.1 (b) SCE R	4 natural persons +1 legal entity
Belgium	WALKENA Rue des Hirondelles 7, 1420 Braine-l'Alleud	2009	Real estate activities (L)	Management of projects of collective ownership (purchasing, renovating and renting with a normal price of old buildings).	art. 2.1 (a) SCE R	7 natural persons
Germany	EUROPAISCHES PRUFINSTITUT FUR WELLNESS & SPA SCE Eichenscheidtstr. 7, 34537 Bad Wildungen	2008	Medical consulting (Q), audit (M69.2), certification	Medical consulting, audit, certification	art. 2.1 (a) SCE R	7 natural persons
Hungary	FEUVA (Első Európai Jármű Üzemeltető Korlátolt Felelősségű Európai Szövetkezet) SCE Alkotmany 46, 1221 Budapest	2008	Maintenance and repair of motor vehicles (G45.2)	Business services	art. 2.1 (b) SCE R	19 natural persons + 17 legal entities

Hungary	FANTÁZIAORSZÁG Korlátolt Felelősségű Európai Szövetkezet SCE 0757/10 hrsz., 4274 Hosszúpályi	2009	Development of building projects (F41.1.0)	Project Management for Building	art. 2.1 (b) SCE R	8 natural persons + 11 legal entities
Italy	AGRISOCIALCOOP SCE via Galliari 2/bis 10125 – Torino	2008	Agriculture (A) and social services (Q)	Training and employment of disadvantaged people and persons with disabilities in the agriculture sector.	art. 2.1 (a) SCE R	5 natural persons
Italy	ESCOOP SCE (European Social Cooperative – Cooperativa Sociale Europea) Via R. Canudo, 12, 70042 Mola di Bari (BA)	2006	Social services (Q)	Promotion of human advancement and social integration of citizens through the management of socio-health, education and training services for the benefit of underprivileged people.	art. 2.1 (b) SCE R	1 natural person + 10 legal entities
Italy	NOVA SCE Via Fiamme Gialle, 10 - 34123 Trieste	2009	Business and management consultancy activities (M70.2.2)	The corporate object is to achieve continuity of employment under the most favourable economic, social and professional conditions, by	art. 2.1 (b) SCE R	8 natural persons + 2 legal entities

				managing the enterprise collectively.		
Italy	COOPERAZIONE EUROMEDITERRANEA SCE Via Principessa Jolanda 51, 96010 Canicattini Bagni (SR)	2009	A - D35.1 - G46 - G47 - H49.4.1 - H50.2 - H52 - I - I56 - N79 - N82 - R90.0.4 - S - U	Recovering and fostering of values such as social solidarity and economic integration within the Mediterranean area, through the sharing of a new cultural dimension for the development of territories, to reinforce the sustainability of values such as the work, the sustainable development, both environmental and social-economic, in the public sphere as in the private sphere.	art. 2.1 (b) SCE R	16 natural persons + 11 legal entities
Italy	FONDO SALUTE SCE Via San Gregorio n. 48, 20124 Milano	2010	Human Health (Q)	The SCE aims to develop an international cooperation between mutuals to act in the sector of health care.	art. 2.1 (c) SCE R	2 legal entities

Liechtenstein	ALTINA Global Network SCE Vaduz	2010	Information not available	Information not available	art. 2.1 (a) SCE R	12 natural persons
Netherlands	CASSIA CO-OP SCE Keizergracht 62-64, 1015 CS Amsterdam	2009	Growing of spices, aromatic, drug and pharmaceutical crops (A1.2.8) Support activities for crop production **(**A1.6.1)	To integrate vertically the supply chain of cinnamon in order to control quality, secure availability, add value at origin and in the process benefit its members.	art. 2.1 (a) SCE R	all natural persons
Slovakia	SCHEDAR SCE Za kasárňou 1, 831 03 Bratislava	2010	Information not available	Information not available	Information not available	Information not available
Slovakia	PROSPERITY GROUP SCE Koceľova 9, 821 08 Bratislava	2009	Renting and operating of own or leased real estate (L68.2)	Information not available	Information not available	Information not available
Slovakia	STRONGHOLD SCE Za kasárňou 1, 831 03 Bratislava	2010	Information not available	Information not available	Information not available	Information not available
Spain	EUSKAL HERRIKO IKASTOLAK SCE Parque Tecnológico de Zamudio, 208 B-1 de Zamudio (Bizkaia, Spain)	2009	Education (P)	The main object of the SCE is to develop its partner´s common educational Project, the so-called IKASTOLA Project, by helping each partner´s own educational Project and by	art. 2.1 (c) SCE R	12 legal entities

				collectively representing them all, ultimately promoting the euskaldun education beyond the partnership scope.		
Sweden	CAMPUS REDESIGN SCE Signalhornsgatan 124 656 34 Karlstad	2008	Business and management consultancy activities (J63; M74.14)	1.Promotion of the economic interests of its members by means of providing training based on ecologically and socially sustainable development, and other operations connected and compatible therewith.	art. 2.1 (a) SCE R	12 natural persons

Name	Board structure	Board structure of the founding companies	No of employees	DIR 72/2003 application	Initial subscribed capital	Subsidiaries/ branches	Net turnover
SEEDS	one-tier	one-tier	1	No	30.000 €	No	Information not available
WALKENA	one-tier	one-tier	0	No	34.000 €	No	Information not available
EUROPAISCHES PRUFINSTITUT FUR WELLNESS & SPA SCE	one-tier	Not relevant, all founders are natural persons	2	No	30.000 €	No	less than 15.000€
FEUVA	two-tier	Information not available	1	No	110.000 €	No	1.000 €
FANTÁZIAORSZÁG	two-tier	one-tier	2	No	36.200 €	No	Information not available
AGRISOCIALCOOP	two-tier	Information not available	Information not available	Information not available	30.000 €	No	Information not available
ESCOOP SCE	two-tier	Information not available	0	No	33.250 €	2 branch offices (Finland and Spain)	Information not available
NOVA	two-tier	one-tier	1	No	30.000 €	No	Information not available
COOP EUROMEDITERRANEA	two-tier	Information not available	0	No	40.500 €	1 branch office (Malta)	Information not available
FONDO SALUTE SCE	two-tier	Information not available	Information not available	Information not available	30.000 €	Information not available	Information not available
ALTINA	one-tier	Not relevant, all founders are natural persons	0	No	30.000 €	No	Information not available
CASSIA CO-OP SCE	two-tier	Not relevant, all founders are natural persons	10	Information not available	30.200 €	No	Information not available

SCHEDAR SCE	Information not available	Information not available	Information not available	Information not available	30.000 €	Information not available	Information not available
PROSPERITY	two-tier	Information not available	2	Information not available	30.000 €	No	Information not available
STRONGHOLD SCE	Information not available	Information not available	Information not available	Information not available	30.000 €	Information not available	Information not available
EUSKAL HERRIKO IKASTOLAK SCE	one-tier	one-tier	Information not available	Information not available	30.000 €	No	Information not available
CAMPUS REDESIGN SCE	two-tier	Not relevant, all founders are natural persons	13	No	30.000 €	No	Information not available

APPENDIX 5

ANALYSIS OF THE DEGREE OF SUCCESS OF THE SCE REGULATION (by country)

AUSTRIA	
Dissuasive factors	
Absence of a specific tax regime	1
Complexity of the SCE R.	4
Costs of setting up	1
Lack of cognitive awareness	2
Minimum capital requirement	1
References to national legislation	2
Small scale of cooperative operations and limited cross-border activities of national cooperatives	3
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	1
Worker participation regime	2
Various: - Provisions regarding the right to vote	1
BELGIUM	
Dissuasive factors	
Absence of a specific tax regime	2
Complexity of the SCE R.	5
Costs of setting up	1
Lack of cognitive awareness	4
Lack of need	2
Minimum capital requirement	1
References to national legislation	2
Worker participation regime	3
Persuasive factors	
Cross-border nature of the business project or membership	1
Democratic and other (patronage refunds) cooperative principles of organisation	3
Possibility of transfer of the registered office	1
Value of the European image	1
BULGARIA	
Dissuasive factors	
Absence of a specific tax regime	4
Complexity of the SCE R.	3
Concern about “companization”	4
Costs of setting up	2
Lack of cognitive awareness	5
Minimum capital requirement	5
References to national legislation	3
The fact that the SCE Reg. does not take into account aspects relevant for cross-border cooperation	1
Worker participation regime	2
Various: - Bans for cooperatives owning land in Bulgaria - Lack of frequent contacts with other MS entities and citizens - No financial stability - Not eligible for small cooperatives	 1 1 1 1
CYPRUS	
Dissuasive factors	
Small scale of cooperative operations and limited cross-border activities of national cooperatives	3
CZECH REPUBLIC	
Dissuasive factors	
Absence of a specific tax regime	3
Complexity of the SCE R.	2

COOPERATIVES europe Euricse Ekai center

Minimum capital requirement	1
DENMARK	
Dissuasive factors	
Absence of a specific tax regime	1
Complexity of the SCE R.	2
Costs of setting up	1
Lack of cognitive awareness	2
Lack of need	2
Minimum capital requirement	2
References to national legislation	1
Worker participation regime	2
Various:	
- Basic differences in national regulation and/or practice	1
- Compulsory elements of the SCE legislation, taking into account the national tradition which does not embody a compulsory regulation	1
- Cultural factors	1
- Lack of national legislation	2
- Lack of operational expertise regarding the operation of cooperatives	1
ESTONIA	
Dissuasive factors	
Complexity of the SCE R.	1
Lack of cognitive awareness	4
Lack of need	2
Lack of public support	1
FINLAND	
Dissuasive factors	
Costs of setting up	1
Minimum capital requirement	2
Persuasive factors	
Democratic and other (patronage refunds) cooperative principles of organisation	1
Value of the European image	1
FRANCE	
Dissuasive factors	
Absence of a specific tax regime	6
Complexity of the SCE R.	11
Costs of setting up	5
Lack of cognitive awareness	5
Lack of need	3
Minimum capital requirement	2
References to national legislation	9
Small scale of cooperative operations and limited cross-border activities of national cooperatives	2
Worker participation regime	4
Various:	
- Divisibility of reserves	1
GERMANY	
Dissuasive factors	
Complexity of the SCE R.	3
Concern about “companisation” (investor-members)	1
Costs of setting up	2

Lack of cognitive awareness	14
Lack of need	14
Minimum capital requirement	2
References to national law	3
Small scale of cooperative operations and limited cross-border activities of national cooperatives	15
Worker participation regime	2
Various: - Disadvantages for SCEs registered in Germany	 1
Persuasive factors	
Value of the European image	1
GREECE	
Dissuasive factors	
Complexity of the SCE R.	2
Lack of public support	3
References to national legislation	3
HUNGARY	
Persuasive factors	
Value of the European image	1
ICELAND	
Dissuasive factors	
Lack of cognitive awareness	11
IRELAND	
Dissuasive factors	
Complexity of the SCE R.	1
Concern about "companisation"	1
Lack of benefits	3
Lack of need	1
Minimum capital requirement	2
Small scale of cooperative operations and limited cross-border activities of national cooperatives	2
Worker participation regime	1
ITALY	
Dissuasive factors	
Complexity of the SCE R.	3
Costs of setting up	1
Lack of cognitive awareness	2
Lack of public support	1
Minimum capital requirement	4
References to national legislation	3
Small scale of cooperative operations and limited cross-border activities of national cooperatives	1
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	1
Worker participation regime	2
Various: - Absence of an adequate and cultural environment	 1
Persuasive factors	
Cross-border nature of the business project or membership	2
Value of the European image	3

LATVIA	
Dissuasive factors	
Absence of a specific tax regime	2
Complexity of the SCE R.	2
Costs of setting up	2
Lack of cognitive awareness	2
Minimum capital requirement	2
References to national legislation	1
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	1
Various: - Weak cooperative sector	2
LIECHTENSTEIN	
Dissuasive factors	
Absence of a specific tax regime	1
Complexity of the SCE R.	1
Costs of setting up	1
Lack of benefits	1
Lack of cognitive awareness	1
References to national legislation	1
Small scale of cooperative operations and limited cross-border activities of national cooperatives	1
Worker participation regime	1
LITHUANIA	
Dissuasive factors	
Absence of a specific tax regime	1
Complexity of the SCE R.	1
Costs of setting up	1
Lack of need	1
Minimum capital requirement	1
References to national law	1
Small scale of cooperative operations and limited cross-border activities of national cooperatives	1
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	1
Worker participation regime	1
MALTA	
Dissuasive factors	
Lack of cognitive awareness	2
Small scale of cooperative operations and limited cross-border activities of national cooperatives	4
Worker participation regime	1
NETHERLANDS	
Dissuasive factors	
Absence of a specific tax regime	5
Complexity of the SCE R.	10
Costs of setting up	1
Lack of benefits	8
References back to national legislation	9
The fact that the SCE regulation does not take into account aspects relevant for cross-	4

border cooperation	
Worker participation regime	5
Various: - SCE is a hybrid legal form which does not relate to any Dutch legal form: not exact correspondence to national coop - The SCE, being a company with a share capital, may not benefit of the same tax treatment as national coops	 1 3
Persuasive factors	
Cross-border nature of the business project or membership	1
Democratic and other (patronage refunds) cooperative principles of organisation	1
Possibility of transfer of the registered office	1
Value of the European image	1
POLAND	
Dissuasive factors	
Absence of a specific tax regime	1
Complexity of the SCE R.	2
Lack of need	1
Minimum capital requirement	1
Small scale of cooperative operations and limited cross-border activities of national cooperatives	1
Various: - Conservative way of thinking of many cooperative managers - Weak knowledge of foreign languages	 1 1
PORTUGAL	
Dissuasive factors	
Absence of a specific tax regime	2
Complexity of the SCE R.	1
Lack of need	2
Lack of public support	5
Minimum capital requirement	1
References to national law	4
Small scale of cooperative operations and limited cross-border activities of national cooperatives	1
Various: - Portuguese cooperative which are active cross-border prefer not to create a structure	 1
ROMANIA	
Dissuasive factors	
Costs of setting up	1
Lack of cognitive awareness	3
Minimum capital requirement	4
References back to national law	1
Various: - Dissuasive national context - Lack of harmonisation SCE-national law (e.g., the nature of members) - Problems in identifying partners from another MS - Problems with the property law and the country legal framework	 1 1 1 3
SLOVENIA	
Dissuasive factors	
Absence of a specific tax regime	3

Complexity of the SCE R.	4
Costs of setting up	1
Lack of cognitive awareness	9
Lack of need	4
References back to national legislation	6
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	2
Worker participation regime	2
Various: - The protection of the labour market in Austria - The SCE reg. fails in promoting this new legal form	 1 1
SPAIN	
Dissuasive factors	
Absence of a specific tax regime	1
Complexity of the SCE R.	1
Costs of setting up	1
References to national law	1
The fact that the SCE regulation does not take into account aspects relevant for cross-border cooperation	1
Various: - Non implementation in the country	 1
Persuasive factors	
SCE form is more attractive for members from different countries	1
Value of the European image	1
SWEDEN	
Dissuasive factors	
Complexity of the SCE R.	1
Costs of setting up	2
Lack of cognitive awareness	2
Lack of need	2
Minimum capital requirement	2
Persuasive factors	
Availability of the two-tier system, which is not available in national law	1
SCE form is more attractive for members from different countries	1
Value of the European image	1
UNITED KINGDOM	
Dissuasive factors	
Absence of a specific tax regime	2
Complexity of the SCE regulation	1
Costs of setting up	1
Lack of benefits	1
Lack of cognitive awareness	1
Lack of need	2
Lack of public support	1
Minimum capital requirement	1
References back to national legislation	1
Small scale of cooperative operations and limited cross-border activities of national cooperatives	2
Worker participation regime	1