

Cooperative Societies, European Forms of Organizing the Economic Activities

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Abstract

The European cooperative (wholesale) society represents a form of organizing and unfolding economic activities, and its Regulation issued in 2003 determines its legal nature, by also offering it a standard regulation, different from the standardization which exist as far as the trade law is concerned. The key element of this European institution or construction is its international, cross border nature, a feature which is present from the start and all through its existence.

This type of company is a legal person, having legal personality, and its purpose is not to unfold a trading activity and gain profit, its objective and main purpose a social one, namely to satisfy the needs of its members.

Keywords: *European Cooperative Society, regulation, establishment*

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1. Introduction

Achieving an inner, national market and the improvements this market intends to bring to the economic and social situation within the European Union requires not just surpassing the obstacles that trade has to face, but also adapting the production structures to the size of the European Union. By ensuring such an adaptation, it is very important for companies which unfold their activities on a larger scale and satisfy more than local needs to be able to start and develop their economic activity in other member states. Restructuring and cooperation implied by such an activity, regarding companies from different member-states, face a series of legal, psychological and financial difficulties.

The standardisation of trading company law which is functioning within member states, by issuing provisions based on European Union treaties, may solve some of these difficulties. Nevertheless, such a standardisation does not exclude companies regulated by different legal systems from choosing a type of company regulated by a certain national legal system.

The legal frame within which the companies have to unfold their activities all through the E.U is still basically based on the national systems, and this is the reason why it no longer corresponds to the economic background within which businesses need to develop in order to achieve the objectives established by the Treaties.

This situation represents a serious obstacle for the creation of company groups belonging to different member states. It was very important to ensure, as much as possible, a maximum coherence within the European Union between the economic frame and the legal business system. Hence, it is necessary to provide the conditions for the creation, aside from companies regulated by the national law, of companies based on the legal provisions of an European Union regulation, applicable directly within all member states.

These provisions allow the creation and the management of companies which have an European vocation, without the inherent constraints caused by the borders or by the limited applicability of national legal systems concerning trade companies.

The expression societies and companies is clearly defined, according to art. No 48 in the Treaty regarding the European Community, and it refers to all civil or trading persons (including cooperative associations), public or private persons except non-profit associations.

From the European point of view the concept of company is a broad notion, comprising any economic activity which has a clear patrimonial purpose. The differences as far as trading is concerned compared to the civil association are pointless and make no sense. Such is the case of public or private economic activities. The key element of the trading activity is making a profit, as the main objective of the entity.

2. Regulating the European Cooperative Company (SCE).

The European legislator defined by the Regulations the legal nature of the European Company (SE) [1], according to the general provisions regarding joint-stock companies, and the European Economic Interest Grouping (GIEE)[2] , allowing businesses to unfold some operations and activities in common, without losing their autonomy. Still, it did not consider these regulations as being enough for the cooperative businesses.

As it wanted to ensure the equality of conditions as far as the competition is concerned, and to offer economic development a chance, it provided to the cooperative entities, which are generally acknowledged by all member states, some legal instruments in order to help transnational and cross-border activities.

The United Nations Organization encouraged all governments to ensure an adequate environment to cooperative development, where these entities may function under the same conditions as all the other forms of organization.[3]

The legal base of the European Cooperative Company is offered by the CE Regulation no. 1435/2003 [4], on different levels; if the upper levels do not offer a complete regulation of the company, the legal source shall be found on a lower level. SCE is to be governed by the above-mentioned Regulation, by the national law, if the Regulation allows it, or, if there is no provision within the Regulation or if the provisions are incomplete, for areas which are not regulated by the national law, by its own constitutive documents are by the provisions of the national law of the member state where the legal office is.

In case the national legislation offers norms and/or special restrictions regarding the nature of the activities unfolded by a SCE, or a form of control by a special authority, these provisions apply to the SCE as they are.

Relevant texts which regulate the European Cooperative Companies are:

(a) CE Regulation no. 1435/2003 shows the constitutive elements of the European Cooperative Company. The previous regulation intends to create a standard legal frame for the cooperative entities, as well as other legal entities or other natural persons, to plan and reorganize their activities in a cooperative manner, within the Union.

(b) Directive no 2003/72/CE issued on July 22nd 2003 completes the European Cooperative Companies statute regarding workers' participation .[5]

(c) the Report of the Commission filed to the Council, The European Parliament, the Economic and Social Committee and the Region Committee regarding the revision of Directive no 2003/72/CE issued on July 22nd 2003 which completes the European Cooperative Company statute regarding workers' participation [6].

2.1. SCE functioning: objective and general principles.

The European Cooperative Companies are, according to the Regulation, first of all, groups of natural or legal persons which have legal personalities and follow special functioning principles, different from other economic agents. One can easily mention, for example, the principle of democratic control and structure, or the even distribution of the net profit during the financial exercise. The special principles concern the preeminence of the person and materializes in member adherence, withdrawal or exclusion conditions; we should mention the rule „one person, one vote”, the right to vote being strictly linked to the person, so the members may not exert any right on the cooperative company assets.

As Directive no 2003/72/CE stipulates, SCE represents any cooperative company established according to CE Regulation no. 1435/2003.

The cooperative companies own a registered capital and the members may be natural persons or legal persons. The stock-holders may be customers in part or entirely, workers or suppliers. In case the cooperative company is made up of members which are cooperative companies themselves, we are talking about a “second degree” cooperative company. Under certain circumstances, the cooperative companies may also have a well-defined percent of investing members which are not customers or third parties which benefit from their activities or exert or unfold activities for the cooperative company.

An European cooperative company has as a main objective to satisfy the needs of its members and/ or the development of their economic and/ or social activities, especially by signing agreements with them, in order to supply goods or render services or in order to execute works within the activity SCE (the European cooperative company) exerts or controls. The cooperative company may also have aim to fulfill or meet the needs of its members while encouraging at the the same time their participation to the activities of one or more SCE and /or the activities of national cooperative companies. SCE may develop its activities through a subsidiary.

The European cooperative company works according to the following principles:

- the activities should aim the mutual benefit of the members, in order to ensure a proportional benefit or profit, according to their participation;

- the SCE members are either customers, workers, or suppliers, or somehow connected to the SCE activities;
- the control is equally shared between the members, even though in some cases a proportional vote is allowed, according to every member's contribution to the SCE;
- the retribution received from the borrowed capital or from the shares should be limited;
- the profit is distributed or shared according to the activities exerted by the SCE, or it may be used for meeting the needs of the members;
- there shall be no artificial obstacles or boundaries facing the association;
- in case of termination, the actual assets and the resources are distributed and shared according to the principle of selfless transfer, meaning to another cooperative entity having similar general objectives and aims.

2.2. The Establishment of SCE. General Provisions.

An European cooperative company may be established within the European Union territory, according to the Regulation.

The key element for this type of company is the cross-border component. SCE is to be established, from the membership point of view, as follows:

- (1) by at least five natural persons residing in at least two member states;
- (2) by at least five natural persons and companies, or by other public or private legal entities (legal persons), established accordingly to the laws of a member state, residing in at least two member states or subject to the laws of at least two member states.

The Regulation names three ways of establishing an European cooperative company, any all three imply overreaching the national legal systems:

- (a) by companies or by other legal entities subject to public or private law, established accordingly to the legislation of a member state, residing in at least two member states or regulated by at least two different national legal systems;
- (b) by merging cooperative companies established according to the laws of a member state, having their legal office and central administration within the European Union, provided at least two of them be regulated by different national legal provisions;
- (c) by transforming a cooperative company established according to the laws of a member state and having its legal office and central administration within the E.U

territory, provided it has had a subsidiary governed by the laws of another member state for at least two years.

A member state may allow a legal entity which does not have its central administration within the European Union to participate in the establishment of a SCE, provided it be established according to the laws of a member state, while having its legal office within that state and having an actual and continuous binding relation to the economy of that state .[7]

As far as the legal office is concerned, a mixed solution has been adopted, stating that „the legal office of the SCE is situated within the Community, within the same member state which shelters the central administration. Another member state may also impose on the companies registered within its territory the obligation to have the central administration and the legal office in the same place”[8] . Taking into consideration the particular nature of a SCE, the provisions regarding the „actual office” imposed on the SCE by the Regulation do not affect the legislation regarding the joint-stock companies of the member states, or any other virtual, potential community legal provisions (texts) regarding trade companies. The advertisement or publicity are made according to the legal provisions on joint-stock companies of the member state where the legal office is registered .[9] The registering, the delisting of a SCE are subject to a notification which is to be published in the Official Journal of the European Union after having been previously published within the state where the legal office is. The notification should comprise the name, the number, the date the place where the SCE (the European cooperative company) is registered, the date, the place and the name of the publication, the legal office and the field of activity.

2.3. The Structure of the Constitutive Documents. Basic Requirements.

The social capital (the assets) is expressed using national currency. An European cooperative company (SCE) which has its legal office registered outside the Euro zone may also express its assets (its capital) using euros. The subscribed capital (share capital) has to be at least 30.000 euros. The legal provisions of a state which require a higher subscribed capital for legal persons unfolding certain activities apply to the companies (SCE) which have their legal office registered within that state. The state regulates a certain amount (sum) under which the subscribed capital cannot be reduced

by the drawback of the shares held by members which seize to be a part of the SCE. This sum cannot go under the above-mentioned limit (30.000 euros). The capital may be increased by consecutive installments made by the members or by admitting new members and may be lowered by total or partial drawback of the contributions. The variations of the capital do not require modifications of the constitutive documents or any publicity.

SCE is a type of joint-stock company, as its subscribed capital is divided into shares, and their value is expressed in national currency. There are more types of shares that may be issued. The constitutive act may stipulate the fact that, as far as benefit distribution is concerned, different types of shares offer different rights. The shares which offer the same rights constitute a category. Shares are nominative, and this is a mandatory condition. Their nominal value is identical for each type of shares. This value is stipulated within the constitutive documents. Shares may not be issued for a value under their nominal value.

The shares issued for cash contributions are paid off on the subscription day, and at least 25 percent of the nominal value has to be discharged. The rest of the sum is to be discharged within no more than five years, except the case where the constitutive act stipulates a shorter period of time.

The shares issued for in-kind contributions are to be entirely paid off on the moment of the subscription. The provisions which apply to joint-stock companies within the state where the legal office of the SCE is registered, provisions regarding expert designation and contribution assesment, aside from cash contributions, are analogically applicable to SCE.

Under the conditions stipulated by the constitutive documents and after having the green light oh the board or of the management, shares may be demised or transferred to a member or to any person who obtains the membership. When the SCE members face a limited liability, the name of the SCE ends in „limited-liability”

3. Conclusions

The fierce competition and the incresing search for performance influence the manner in which trade companies are organized and the way they function, and the evolution implies company systems, namely groups of economic structures linked by

various legal relations (European Economic Interest Grouping or European Societies). Societies (holdings) may develop by creating subsidiaries and branches in order to cover large territories, thus expanding the business opportunities.

Transnational or crossborder cooperation between cooperative companies used to face, within the European Union, legal and administrative difficulties, which have been overcome within a borderless market.

The establishment of an European legal cooperative institution, based on some common basic principles which have taken into consideration the particularities of cooperative entities, has allowed these entities to operate outside national borders, within the entire European territory or on a part of this territory.

The main objective of this standardization is to allow the creation of a SCE by natural persons residing in different member states, or by legal persons established in accordance to the legal systems of different member states. This will also allow the establishment of a SCE by merging two existing cooperative companies or by transforming a national cooperative company, without going through delisting, in case this cooperative company has its legal office and the central management within a member state and a branch or a subsidiary within another member state.

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