



Implementation Report for Bulgaria

Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees

milieu
ENVIRONMENTAL LAW & POLICY

This National Implementation Report has been prepared by Milieu Ltd. under Contract No VC/2008/0338 [Bulgaria]. The actual implementation study was carried out in Bulgaria by Prof. Vasil Mrachkov.

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

This project is financed by the European Community Programme for Employment and Social Solidarity (2007-2013). This programme is managed by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contributing to the achievement of the Lisbon Strategy goals in these fields.

Milieu Ltd. (Belgium), 29 rue des Pierres, B-1000 Brussels, tel: 32 2 506 1000; Fax 32 2 514 3603; e-mail: sophie.vancauwenbergh@milieu.be; nienke.vanderburgt@milieu.be , web address: www.milieu.be

<p>ANALYSIS OF THE TRANSPOSING LEGISLATION AND THE IMPLEMENTATION OF DIRECTIVE 2003/72/EC OF 22 JULY 2003 SUPPLEMENTING THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES</p>

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
ABBREVIATIONS USED	9
1 INTRODUCTION	13
1.1 The situation before transposition in Bulgaria	13
1.2 Procedures for incorporating Directive 2003/72/EC	14
1.3 Stakeholder involvement in transposition.....	14
2 LEGAL ANALYSES OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2003/72/EC SUPPLEMENTING THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES	14
2.1 Objective and Definitions (Articles 1 and 2)	14
2.1.1 Scope (Article 1)	14
2.1.2 Definitions (Article 2).....	15
2.2 The creation of a special negotiating body (Article 3).....	20
2.2.1 Necessary steps to start negotiation	20
2.2.2 Election of appointment of members and methodology	20
2.2.3 Arrangements for involvements of employees.....	21
2.3 The content of the agreements (Article 4)	23
2.4 Rules on negotiations (Articles 5, 6 and 7 and Annex).....	23
2.4.1 Procedural rules (Articles 5 and 6)	23
2.4.2 Standard rules (Article 7 and Annex).....	24
2.5 SCEs established exclusively by natural persons and participation in general meetings (Articles 8 and 9)	25
2.5.1 SCEs established exclusively by atural persons (Article 8).....	25
2.5.2 Participation on meetings (Article 9)	26
2.6 Confidential information, spirit of co-operation and protection (Articles 10, 11 and 12) ...	26
2.7 Jurisdiction and compliance (Articles 13, 14 and 15)	28
3 AFTER THE IMPLEMENTATION OF DIRECTIVE 2003/72/EC: PROGRESS OR REGRESSION?	30
3.1 The situation after transposition in Bulgaria.....	30
3.2 Stakeholder views on implementation	31
4 CONCLUSION	32
BIBLIOGRAPHY	33
ANNEX I:	Table of concordance for Directive 2003/72/EC
ANNEX II:	List of national implementing measures
ANNEX III:	Selected national case law

EXECUTIVE SUMMARY

1. Introduction

Directive 2003/72/EC is a comparatively new Directive of the EU. It reflects a new direction in EU legislative activity. While the majority of Directives lay down minimum standards which the legislature of the Member States must reflect, some of the new Directives, including Directive 2003/72/EC, establish supra-national regulation of the new forms of economic association of the EU Member States. What is special about these Directives, including Directive 2003/72/EC, is that they supplement the Statute for a European Cooperative Society (SCE) as a new form of economic cooperation within the EU as laid down in Regulation No. 1435/2003 with regard to the involvement of employees in the society's affairs. Involvement takes place by means of specific mechanisms, which include for example informing and consulting the employees and having them join the process of managing the society and setting up special bodies for negotiations. As demonstrated by the title of the Directive, it supplements the Statute for an SCE, that is to say, it creates new norms regarding its activity.

Bulgarian labour legislation has chosen a specific approach to the transposition of the Directive. Bulgarian labour legislation did not adopt the common approach of supplementing the Labour Code (LC) and the other Laws with separate provisions dispersed therein, but rather created a special Law on informing and consulting the employees in multinational undertakings, groups of undertakings and European companies (LIC) in 2006 and on the eve of Bulgaria's accession to the EU. Within the said law, Chapter IV 'Informing and consulting the employees upon establishing a European Cooperative Society' (Articles 20 to 28) introduces the main part of the provisions of Directive 2003/72/EC.

2. Legal analysis of the transposing measures and their practical implementation for Directive 2003/72/EC in Bulgaria

What is specific to the introduction of Directive 2003/72/EC into the Law on informing and consulting (LIC) is that it follows the Directive so closely that in certain places the texts of the Law reflect it *in extenso*, i.e. by introducing wholly and literally the provisions of the Directive, turning them into legal norms of a separate domestic law. In addition, the structure of the Directive (i.e. the order in which the provisions taken from the Directive are set out in Chapter IV of the LIC) is also adopted.

The main objective of the Directive is to ensure the involvement of the employees in the affairs of the SCE (§21 of the Preamble to the Directive) and this is expressed in the first text of Chapter IV of the LIC (Article 20), which lays down the basic obligation of the administrative bodies of legal entities when preparing a project for setting up an SCE. This obligation, which was taken from the Directive, requires that administrative bodies should submit information regarding the participating legal entities and their subsidiaries and establishments within the SCE both to the trade union organizations and to the workers' representatives for information and consultation. Additionally, information regarding the number of workers employed therein for the purpose of creating a special negotiating body should also be given. This should happen as early as at the stage of preparing the project for setting up an SCE to perform its activity within the territory of the Republic of Bulgaria, the administrative bodies should submit

Later on, the transposition of the Directive into the LIC provides *inter alia* for the constitution of a special negotiating body, the procedure for putting forward the candidatures for members of the said body and the election thereof, the distribution of the seats in the special negotiating body in accordance with the number of employees represented, the rules on the operation of the negotiating bodies, the agreement between the said bodies and the administrative bodies of the participating legal entities, the standard rules on information and consultation. These rules are set out in Section II of the Directive (Articles 3 to 7) and have been transposed into Articles 21 to 23 LIC. They establish the

organisational and institutional infrastructure of the participation of the employees in an SCE that performs its activity in the territory of Bulgaria.

The standard rules on the activity of the special negotiating bodies and the representative bodies (Article 7 of the Directive) which are set up after the SCE has already been created and registered in Bulgaria have been transposed into Articles 24 to 27 LIC.

LIC also contains the transposition of the special rules regarding SCEs established exclusively by natural persons or by a single legal entity and natural persons (Part II of the Directive, Article 8). These are transposed in Article 28 LIC. In addition, LIC also contains the transposition of the rules regarding the confidentiality of the activity of the special negotiating bodies and their experts, and the special protection of the members of these bodies in the representing workers.

Apart from the LIC, certain provisions of the Directive have been transposed into the Labour Code (Article 333 and other Articles of the LC). These are the provisions regarding the protection in the course of performance of the representative functions on the part of the negotiating bodies and the representative bodies.

The regulation of Directive 2003/72/EC is new to Bulgarian legislation in two senses. On the one hand, the rules of the Directive which are transposed into the LIC are new ones that were created in July 2006 on the eve of Bulgaria's accession to the EU, and entered into force on 1 January 2007. The rules have therefore only been applied for two years. On the other hand, Regulation 1453/2003 creates a new form of economic organisation, namely the European Cooperative Society in which legal entities from Member States can participate and organise their business on a Community scale.

The Directive covers the main issues of involvement of the SCE employees in the management thereof, i.e. the employees' information, consultation and participation. It fills a gap existing in Regulation 1435/2003, which did not cover these matters. Due to the great diversity of rules and practices in the Member States as regards the manner in which employees' representatives are involved in decision-making within cooperatives, it was considered unadvisable to set up a single European model of employee involvement in the SCE by means of a Regulation. Rather, a Directive was considered the most appropriate instrument. Additionally, as both the Regulation and the Directive have been prepared in parallel and were adopted on the same day (22 July 2003) their respective objectives are complementary. The Directive, on the one hand, regulates the issues identified above, and, on the other hand, fills the gaps of the Regulation regarding those matters which, because of their nature, would be more appropriate to regulate by means of a directive.

This specific purpose of Directive 2003/72/EC poses a challenge to Member States in terms of its precise transposition into domestic legislation. The Directive can only perform its purpose if it is precisely transposed.

In principle, the Bulgarian legislator has been guided by this purpose of the Directive. It has chosen a somewhat unusual approach to the transposition of the Directive by adopting a separate law. The LIC is exceptional in the sense that instead of transposing the Directive, it has literally translated it. This is clearly stated in the comparison of the Directive, as a source of supra-national legislation, and the LIC, as a source of Bulgarian domestic labour legislation.

The transposition of Directive 2003/72/EC has one more important feature. §2 of the Supplementary Provisions explicitly states that 'This Law transposes the provisions of ... Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees'. Such provisions are, though this is a legal obligation included in every EU Directive seldom included in the *corpus juris* of the Bulgarian laws through which the EU Directives are transposed. This provision is also important in another way in that it contains express guidance on interpretation which enriches the law as a whole. In cases of incompleteness, omissions and contradictions within the law transposing the Directive, they may and should be overcome by way of

direct use and application of the Directive itself. In §2, the legislator clearly states the main objective, which is to provide the complete and consistent implementation of the Directive. It is not a mere coincidence that the printed issues of the LIC contain the full text of Directive 2003/72/EC and the text of Regulation 1435/2003¹ along with the full text in Bulgarian. The availability of the three ‘mutually complementing’ acts provides the opportunity of gaining a deeper understanding of the content of each of them and of the law.

As a whole, the analysis undertaken by the expert indicates that the transposition of the Directive has been carried out correctly.

3. Analysis of progress and regression in the implementation of Directive 2003/72/EC

The implementation of Directive 2003/72/EC through the adoption of explicit and detailed legal regulation has enriched Bulgarian labour legislation. The implementation of Directive 2003/72/EC has supplemented the Statute for the SCE, which was generally established by Regulation No. 1435 of 2003, the latter having a binding and direct effect upon Bulgaria after 1 January 2007 (argument under Article 249, § 2 of the EC Treaty).

Undoubtedly, the new legislation demonstrates the progressive development of Bulgarian labour law and it extends the protection given to the employees involved in the various forms of joint economic activities of two or more EU Member States. The stakeholders interviewed for this report confirm and approve the newly established regulation in the LIC (Articles 20-28). Nevertheless they declare that for the time being such forms of joint economic activity do not exist on the territory of the Republic of Bulgaria.

4. Conclusions

The involvement of employees in the affairs of the European Cooperative Societies through employee information, consultation and participation in the administration of the SCE, its subsidiaries and establishments, marks an important step in the development of European and national labour legislation of the EU Member States.

With regard to Bulgarian labour law, the new regulation has yet to prove its usefulness and practical importance. In any case, the beginning has already been set through the adoption of the law in 2006. There are certain omissions, which do however not concern substantial matters of the Directive’s content. As a whole, the Directive has been cautiously transposed.

The Law is already in force, this being due to the joint efforts of the social partners. Finally, the State has the important role to take up in the supervision of the observance of this regulation.

¹ *European United Societies, Collection*, Sibi Publishing House, Sofia, 2007, pp. 130-256

KEY POINTS

- Directive 2003/72/EC as well as Regulation 1435/2003 reflect a new direction in EU legislative activity, establishing a supra-national regulation of new forms of economic organisation, enabling cooperatives to organise their business on a Community-scale through a European Cooperative Society. Directive 2003/72/EC supplements the Regulation and aims at ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the entities participating in the establishment of an SCE. The Directive's requirements are new in the Bulgarian legal order.
- Bulgaria did not follow the common approach of supplementing the Labour Code or other Laws with new provisions, but rather adopted a special Law (LIC) on informing and consulting employees in multinational undertakings, groups of undertakings and European companies in 2006. Chapter IV of this Law introduced the requirements of Directive 2003/72/EC. Some provisions have been included in the Labour Code.
- The overall transposition of the Directive in the Bulgarian legal order is effective. For many provisions, the transposition is almost literal. Nevertheless, some minor inaccuracies were detected.
- This new regulation in Bulgarian labour law yet has to prove its practical relevance. The beginning has been set by the establishment of the legal framework. It is still to be seen how the legislation will be applied and relied upon in practice.
- The implementation of Directive 2003/72/EC enriches another aspect of collective labour through the extension of the employees' rights to participation in new forms of economic association, both at the EU level and in Bulgaria. It is an expression of the dynamic evolution of these matters in the past decade. Its transposition in the Bulgarian legal framework thus marks significant progress in the development of the labour law in Bulgaria.

ABBREVIATIONS USED

Art	Article
CA	Competent Authority
ECJ	European Court of Justice
SCE	European Cooperative Society
SE	European Company
EWC	European Works Council
LIC	'Law on informing and consulting'
TL	Trade Law
SP	Supplementary Provisions to the Labour Code
LC	Labour Code

1 INTRODUCTION

This implementation study analyses in detail the provisions of Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees and compares it with the legislation in place in Bulgaria. Directive 2003/72/EC has Article 308 EC Treaty² as its legal basis.

Cooperatives wishing to engage in cross-border business may make use of the Statute of European Cooperative Society (SCE) established by EU Regulation (1435/2003). The information, consultation and participation rights of employees in an SCE are safeguarded and promoted by a supplementary Directive (2003/72/EC).³

The Directive aims at ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the entities participating in the establishment of an SCE.

In this study an overview will firstly be given of the national context of transposition. Secondly, an analysis by Article will provide an overview of the status of transposition and issues of practical implementation (including case law) in Bulgaria. Section 3 shall discuss whether practical information leads to progress or regression and Section 4 includes some concluding remarks.

1.1 The situation before transposition in Bulgaria

Directive 2003/72/EC is issued to complement the application of Regulation 1435/2003 of the Council on the Statute for a European Cooperative Society (SCE) as a new form of economic organisation of undertakings in more than one Member State. The main purpose of the Directive is to lay down the rules with regard to the involvement of employees applicable to an SCE.

No such legislation existed in Bulgarian legislation prior to the country's accession to the EU. This legislation was created by way of transposing the Directive within the framework of implementing the Agreement on the association of Bulgaria to the European Union (1995-2006) on the eve of Bulgaria's accession to the Community. The transposition was carried out by way of adopting the Law on informing and consulting the employees in multinational undertakings, groups of undertakings and European companies, in short the 'Law on informing and consulting' (LIC) (prom. SG No. 57/14 July 2006). The Law entered into force on 1 January 2007 when Bulgaria became a member of the EU.

Compared to the Directive, this law has a wider scope of regulation. It regulates the informing and consulting of employees in three new forms of economic organisation of undertakings in Member States: 1. in multinational undertakings and groups of undertakings; 2. in establishing a European (commercial) company; 3. in establishing a European cooperative society. The new LIC, into which Directive 2003/72/EC is transposed, regulates the informing and consulting of the employees, as well as their involvement in all these three forms of supranational economic activity. The Directive has been transposed into one part of the said Law – Chapter IV, Articles 20 to 28. It is this part of the Law that forms the subject matter of the analysis below (see item 2 below).

² "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

³ Website DG EMPL Labour Law, <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=213>.

1.2 Procedures for incorporating Directive 2003/72/EC

The approximation of the legislation to European requirements and the transposition of Directive 2003/72/EC was carried out within the implementation of the Agreement on the association of Bulgaria to the European Union in 2006, as a condition precedent to the accession of Bulgaria to the European Union (Articles 69 and 70 of the said Agreement).

The Bill on informing and consulting employees was drafted by the Ministry of Labour and Social Policy with the participation of representatives of the social partners – the six representative employers' organisations and the two representative trade union organisations, and experts. In compliance with Article 3 LC, the Bills were discussed in detail by the National Council for Tripartite Partnership (NCTP). It is a social dialogue body consisting of two representatives of each representative employers' or trade union organisation and two representatives of the government, one of them being the Deputy Prime Minister who chairs the NCTP. The social partners' representatives actively participated in the discussions on the Bill. The main line when transposing Directive 2003/72 EC was to closely follow the Directive's text in the LIC. Also the social partners proposed to stick to the provisions of the said directive. They have confirmed their support to the Bill but they did not indicate any specific examples of their proposals apart from their wish to closely follow the Directive. The government discussed and approved it and, in spring 2006, brought it into the Parliament where it was debated in the course of two readings within the normal parliamentary legislative process. The Bill was largely supported by all parliamentary groups and was promulgated in the State Gazette (SG) (prom. SG No. 57/2006).

1.3 Stakeholder involvement in transposition

The elaboration and discussion of the Bill on informing and consulting employees involved representatives of the State administration (the Ministry of Labour and Social Policy) and those of the social partners (the representative employers' and trade union organisations).

The representatives of the executive power, i.e. the Ministry of Labour and Social Policy, and the representatives of the social partners took part in the meetings of the Parliamentary Commission on Labour and Social Policy both before the first reading of the Bill and between the first and the second readings. Thus, the transposition of Directive 2003/72/EC has been carried out with the active participation of the parties concerned with the regulation of informing and consulting the employees in a European Cooperative Society as well as in a EWC and SE.

The stakeholders have participated in the discussions of the Bill by the NCTP, as well as by the Parliamentarian Commission on Labour and Social policy before the first and between the first and the second readings of the Bill. They have supported the Bill and have insisted to closely follow the provisions of the Directive. In their interviews they did not supply any concrete information about their proposals made during the discussions in the NCTP as well as in the Parliamentary commission.

2 LEGAL ANALYSES OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2003/72/EC SUPPLEMENTING THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY WITH REGARD TO THE INVOLVEMENT OF EMPLOYEES

2.1 Objective and Definitions (Articles 1 and 2)

2.1.1 Scope (Article 1)

The objective of the Directive is to govern the involvement of employees in the affairs of the European cooperative societies incorporated under Regulation No. 1435/2003. The said objective of the Directive has been transposed into Article 1 LIC, according to which ‘This Law regulates ... the involvement of employees into the activities of ... a European cooperative society’.

The meaning of this provision of the Directive is to oblige the EU Member States, in the territory of which SCEs under Regulation 1435/2003 are created and carry out activities with legal entities from other EU Member States, to govern the participation of the employees in this SCE. ‘To govern’ means to create legal regulation which makes this participation obligatory in every SCE (Article 1(2) LIC). As a whole, this provision has been transposed through the LIC.

The purpose of Article 1(1) of the Directive and Article 1, paragraph 1 LIC coincide and indicate the similar objective of these two respective pieces of legislation. In conclusion, the objective laid down by the Directive is also adopted as the objective of the domestic law regulation (Article 1, paragraph 1 LIC).

The objective set by the Directive is attained by way of introducing rules on negotiations by special negotiating bodies, and rules on concluding agreements under the legislation of the country in which the registered office of the SCE is situated as well as standard rules, protection and guarantees, and others safeguards which will be elaborated in more detail below. Article 2 LIC provides for the same objective. The said Article aims at ensuring the employees’ right to in the management of the SCE and to be represented by special negotiating bodies and representative bodies or by way of using certain procedures provided for in law. These procedures are set out in Chapter IV LIC. The provision of Article 1(2) of the Directive has been transposed into Article 2 LIC.

2.1.2 Definitions (Article 2)

The Directive contains definitions of the key terms used (Article 2(a)–(k)). This detailed regulation has been transposed into §1, subparagraphs 9, 10, 11, 12, 13, 15, 16, 17, 18, 19 and 20 of the Supplementary Provisions (SP) of the LIC. The transposition has been carried out by way of reproducing the provisions of the Directive into the Supplementary Provisions (SP) of the LIC. The role of the Supplementary Provisions is to explain and clarify the meaning of the key terms used in the LIC. They turn out to be necessary and useful because of the specific economic and juridical nature of the terms used in corpus juris of the law related to the involvement of employees in this new form of economic activity which the European Cooperative Society represents.

- SCE (Article 2(a))

The ‘European Cooperative Society’ regulated under Regulation (EC) No. 1435/2003⁴ means any cooperative society established in accordance with Regulation 1435/2003. This provision has been transposed into §1, subparagraph 9 SP LIC, which reads: ‘SCE is any society incorporated under Regulation No. 1435/2003/EC of the Council.’ The transposition has been carried out correctly.

According to Bulgarian commercial legislation, a European Cooperative Society under Regulation 1435/2003/EC is a trader within the meaning of Article 1, paragraph 2 of the Trade Law (TL). According to Article 1, paragraph 2 of the TL, traders are: commercial companies under Article 64 TL (unlimited partnerships, limited partnerships, limited liability companies and limited partnerships with shares) and cooperatives. Cooperatives are regulated by the Law on Cooperatives. According to Article 1 of the said Law, cooperatives are voluntary associations of natural persons⁵, with a variable

⁴ Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), OJ L 207, 18.8.2003, p. 1–24.

⁵ Note the possibility of participating legal entities below.

amount of capital and a variable number of members, who carry out commercial activity on the grounds of mutual assistance and collaboration.

According to Article 1 of the Law on Cooperatives (promulgated SG, No. 113/1999, as amended), a cooperative is a voluntary association of individuals which has a variable amount of capital and a variable number of members who carry out commercial activity through mutual assistance and collaboration. A cooperative may as well perform social or cultural activity aimed at satisfying the interests of its members. A cooperative may be set up by at least seven legally capable individuals, who have taken a decision thereof at a constituent assembly. The latter approves the Statutes and elects the Chairperson of the cooperative, the Management Board and the Supervisory Board. The Statutes of the cooperative may regulate the employment and insurance relationships between the cooperative members and the cooperative, in accordance with the operative labour and social security legislation. Cooperatives are legal entities. They are entered in the Commercial Register which is maintained by the Registry Agency with the Minister of Justice.

- Participating legal entities (Article 2(b))

According to the Bulgarian legislation, there are two types of legal entities:

- a) legal entities having an economic purpose – enterprises, commercial companies, cooperatives. The commercial companies and the enterprises are regulated by the 1991 Commercial Law (prom. SG, No. 48/1991, am.) and other special laws. The various types of commercial companies were specified above. Cooperatives are regulated in the Law on Cooperatives of the year 1999. They are traders (Art. 1, para. 2, subpara. 2 of the Commercial Law).
- b) non-profit legal entities. They are regulated in the Law on Non-Profit Legal Entities (LNPLE) (prom. SG, No. 81/2000, am.). They are two types:
 - aa) associations. They are set up by three or more persons who join for carrying out non-profit activity (Arts. 19 to 33 of the LNPLE);
 - bb) foundations, through which, by virtue of a unilateral constituent act, property is granted – either before or after someone’s death – for achieving a non-profit purpose (Arts. 34 to 36 of the LNPLE).

‘Participating legal entities’ means companies and firms within the meaning of the second paragraph of Article 48 of the Treaty. This includes cooperatives as well as legal bodies formed under and governed by the law of a Member State directly participating in the establishing of an SCE.

This provision has been transposed in §1, subparagraph 10 SP LIC, which reads: ‘Participating legal entities’ means legal entities which directly participate in the establishing of an SCE. The complete identity of the definitions in the Directive and in §1, subparagraph 10 SP LIC proves the transposition of this provision into the domestic law. According to Bulgarian law, ‘participating legal entities’ are commercial companies and cooperatives (see above).

- Subsidiary of a participating legal entity (Article 2(c))

‘Subsidiary’ of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence.

This definition has been transposed in §1, subparagraph 11 which is as follows: ‘Daughter society’ of a participating legal entity or of an SCE means an undertaking over which this legal entity or SCE exercises a dominant influence in the meaning of Article 3, paragraphs 2 to 7 of Directive 94/45/EC. The transposition is correct and complete. The ‘subsidiary’ is translated into Bulgarian language as ‘daughter society’ because it is the commonly used term in the Bulgarian legal terminology. That does not change the essence of the ‘subsidiary’ within the meaning of Article 2(c) of the Directive.

‘Subsidiary’ is an undertaking the activity of which is controlled by a commercial company or legal entity. The ‘controlled’ element in relation to the subsidiary is deduced from subparagraph 5 SP LIC. According to the said subparagraph, a ‘controlling undertaking is the one which exercises a dominant influence over the controlled undertaking by way of financial participation, ownership, administration or in any other way’.

“Dominant influence” in subparagraph 5 is understood in line with Article 3, para 2 to 7 of Directive 94/45/EC. The meaning of the “dominant influence” is legally defined in § 1, para 5, subpara 2 SP LIC, according to which dominant influence occurs when “directly or indirectly, the controlling enterprise”: a) holds a majority of the subscribed capital of the controlled enterprise; b) controls the majority of the votes attached to the share capital emitted by the controlled enterprise; c) can appoint more than the half of the members of management or supervisory body of the controlled enterprise. In each of these three separate cases a dominant influence is present without prejudice to proof to the contrary.

- Concerned subsidiary or establishment (Article 2(d))

‘Concerned subsidiary or establishment’ means a subsidiary or establishment of a participating legal entity which is proposed to become a subsidiary or establishment of the SCE upon its formation. This provision has been transposed in §1, subparagraph 12 SP LIC, which provides as follows: ‘Concerned subsidiary or establishment shall be a subsidiary or an establishment of a participating company or of a participating legal entity which is proposed to become a subsidiary or an establishment of a European Commercial Company or a European Cooperative Society upon its formation.’ The transposed provision reproduces almost literally the provision of the Directive.

‘Concerned subsidiary or establishment’ is also a part of a commercial company or legal entity, the latter controlling its activity (Article 284 TL). The establishment is a separate part of a company or cooperative, which has its own property and organization and is situated outside the population centre in which the registered office of the company is situated (Article 17 TL). Within the meaning of §1, subparagraph 1 SP LIC, the establishment is an employer without legal personality. It is a separate part of the legal entity, which has its own property and organization and is entitled to employ workers of its own under employment relationships.

- Employees’ representatives (Article 2(e))

Article 2(e) defines ‘Employees’ representatives’ as the employees’ representatives provided for by national law and/or practice. This provision has been transposed in §1, subparagraph 16 SP LIC in which employees’ representatives are established as those who have been elected or determined in accordance with the national legislation or have been established in practice. Until now no European Cooperative Society has been created in Bulgaria.

In Bulgaria, these representatives are elected according to Article 7, paragraph 2 LC by the general assembly of the employees for a period of one to three years. It can be concluded that the provision has been correctly transposed. Article 21, paragraphs 1 and 2 of the LIC specify the election procedure for employee representatives from Bulgaria. These employees’ representatives have been elected by the General Assembly of the employees according to Article 7a, para. 2 LC for one to three years.

According to Bulgarian labour law, the employees’ representatives are those elected by the general assembly in accordance with Article 7, paragraph 2 LC for participating in the information and consultation of employees in the process of solving those important issues of governance of the undertaking’s activity which are explicitly specified in the LC. These include collective redundancies, transfer of the undertaking, the introduction of part-time and extended working time, the adoption of internal labour rules (Articles 130a, 130b, 136a, 138a, 181 LC, etc., see the Report on Directive 2002/14/EC), as well as the representatives under Art. 7a LC for employees’ information and consultation on current matters relating to the activity of the undertaking (Article 130c, 130d, see the

Report on Directive 2002/14/EC). An important particular feature of Bulgarian labour law is that, according to the LC, the trade union organizations are also identified as representatives of the employees for the information and consultation thereof (Articles 130-130d, 136a, 138a, etc., see the Report on Directive 2002/14/EC).

It should be noted that there are two kinds of employees working in cooperatives. The first types are members of cooperatives, the subject of activity of which consists in the production of goods and the provision of services. This type of cooperatives may provide its members with employment under an employment relationship based on the cooperative membership (Article 9, para. 2 of the 1999 Law on Cooperatives). These employment relationships are regulated by the Law on Cooperatives, the Statutes of the respective cooperative as well as by the Labour Code in as much as the Law on Cooperatives and the Statutes do not provide otherwise. This category of employees forms the great majority of employees in cooperatives. A second category consists of non-members of cooperatives, namely specialists, such as engineers, accountants, lawyers who are necessary for the subject of activity of the cooperative in those cases where there are no such specialists among the members of the cooperative. They conclude an employment contract with the cooperative, and the latter is the employer in this employment relationship. These relationships are entirely regulated by the Labour Code. The number of this category of employees in cooperatives is relatively small.

- Representative body (Article 2(f))

The ‘representative body’ is the body set up by the agreement referred to in Article 4 (see below). This provision has been transposed in §1, subparagraph 15 SP LIC, pursuant to which the representative body is a body which has been created according to the agreement provided for in Article 15 LIC or 23 or to the standard rules. The representative body includes employees’ representatives and its tasks include those mentioned in the definition (see below). It can be concluded that this provision has been transposed.

- Special negotiating body (Article 2(g))

The special negotiating body is a body established in accordance with Article 3 to negotiate with the competent organ of the participating legal entity regarding the establishment of arrangements for the involvement of employees within the SCE. This provision has been transposed in §1, subparagraph 13, which provides that a special negotiating body is an organ which has been created in accordance with Article 22 LIC for the purpose of the establishment of arrangements for the involvement of employees within the SCE. The transposition and cross reference to articles is correct.

- Involvement of employees (Article 2(h))

‘Involvement of employees’ means any mechanism including information, consultation and participation through which employees’ representatives may exercise an influence on decisions to be taken within an undertaking. This provision has been transposed in §1, subparagraph 19 SP LIC according to which the ‘involvement of employees’ is any form of information, consultation and participation through which employees’ representatives may exercise an influence on decisions to be taken within a company.

The LC does not contain a separate legal definition of ‘involvement of employees’. However, the LIC reproduces the definition of ‘involvement of employees’ of Article 2 of the Directive. And the application of this definition is also confirmed by the provisions of the LC (Articles 7, 7a-7d, 130-130d LC) which provide regulations in relation to both employees’ representatives and on their participation and their functions in employees’ information and consultation.

- Information (Article 2(i))

‘Information’ means the informing of the representative body of the employees by the competent organ of the SCE on questions which concern the SCE and its subsidiaries. This provision has been transposed in §1, subparagraph 17 SP LIC. This Article defines ‘Information’ as the provision of information by the administrative organs referred to in Articles 4, 12 and 20 to the employees’ representatives and/or the representative body on questions which concern the undertakings, companies or their subsidiaries or establishments situated in other Member States, or on questions which exceed the powers of the decision-making bodies. Both the Directive and the SP LIC require this to be done, at a time, in a manner and with a content that allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SCE. The different elements in this definition⁶, ie. transnational competence, reflect the elements of the concept information as well as the addressee are included in this definition.

The definition refers to “decision-making bodies” rather than to “competent organ”. “Decision-making bodies” within the meaning of §1, subparagraph 17 SP LIC are the competent administrative organs of the participating undertakings. As such, the transposition of the definition is effective.

- Consultation (Article 2(j))

According to Article 2(j), ‘consultation’ means the establishment of dialogue and exchange of views between the body representative of the employees and the competent organ of the SCE, at a time, in a manner and with a content which allows the employees’ representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SCE. This provision has been transposed in §1, subparagraph 18 SP LIC which provides almost for exactly the same wording and the same notion of the ‘consultation’ as defined in Article 2(j) of the Directive.

Nevertheless, a small difference can be noted. While the Directive uses the wording “exchange of views” as part of the definition of consultation, the transposing legislation has used the wording “expressing opinions”. These two words do not entirely cover the same meaning. The Bulgarian text refers to “expressing an opinion”, which means that an opinion is pronounced, declared, and does not imply an “exchange of views”. However, the expression “expressing an opinion” is followed by the next part of the same sentence “establishment of a dialogue between ...”. This second part means that there is a discussion, a “mutual expression of opinions”, i.e. a discussion between two or more persons, which contains implicitly but tangibly the idea that different opinions are exchanged. Without an exchange of views there is not a dialogue and every dialogue is an exchange of views and not simply “expressing an opinion”. As such, the overall result of this provision of the Directive is considered to be achieved.

- Participation (Article 2 (k))

According to Article 2(k) of the Directive, ‘participation’ means the influence of the representative body of the employees in the affairs of a society by way of two main rights: a) to elect or appoint some of the members of the society’s supervisory or administrative organ; b) to recommend and/or oppose the appointment of some or all of the members of the society’s supervisory or administrative organ.

This provision has been effectively transposed into §1, subparagraph 20 SP LIC. The participation rights of this representative body of the employees according to §1, subparagraph 20 SP LIC also include its rights to: a) elect or appoint some of the members of the society’s supervisory or administrative organ; b) to recommend and/or oppose the appointment of some or all of the members

⁶ Group of Experts “SCE – European Cooperative Society” On the implementation of Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. Working Paper N°11 The definition of “information” – Article 2(i).

of the society's supervisory or administrative organ. The transposition fully coincides with the requirements of the Directive.

2.2 The creation of a special negotiating body (Article 3)

2.2.1 Necessary steps to start negotiation

Article 3(1) of Directive 2003/72 EC provides that where the management or the administrative organs of participating entities draw up a plan for the establishment of an SCE, they shall take as soon as possible the necessary steps to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE.

This provision has been transposed in Article 20 LIC. This legal provision expressly provides that where the management organs of participating legal entities draw up a plan for the establishment of an SCE, the management organs which carry out their economic activities within the territory of Bulgaria are obliged to undertake as soon as possible the necessary measures to submit information about the participating legal entities as well as about the number of their employees to the organs of trade union organisations and to the employees' representatives under Article 7 LC. In addition to the requirements of the Directive, the LIC specifies that this information should be provided to the trade union organisations, not only to the employees' representatives.

2.2.2 Election of appointment of members and methodology

Article 3(2) of the Directive provides for concrete practical measures to be undertaken for the creation of a special negotiating body a) in electing or appointing members of the special negotiating body; b) in determining the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed within the territories of the respective Member States of the EU.

This provision of the Directive has been transposed into Article 21 LIC. According to Article 21, paragraph 1 LIC the employees in the cooperative societies which carry out their activities in the territory of the Republic of Bulgaria and participate in the creation of the SCE, elect their representatives for participation in the special negotiating body by general assemblies of the employees in the respective cooperatives convened under Article 6a LC. These representatives are elected in proportion to the number of employees employed in the relevant legal entities and concerned subsidiaries carrying out their economic activities in the territory of Bulgaria. One seat is allocated for each group of employees employed in Bulgaria which equals 10%, of the number of employees employed in all the Member States taken together (Article 21, paragraph 6 LIC). However, the transposition of Article 3(2)(a)(i) is incorrect since the Bulgarian legislation does not allow for the allocation of seats for a fraction of the 10% as is mentioned in the Directive.

In the case of an SCE formed by way of merger, there are further additional members from each Member State. This is in order to ensure that the special negotiating body includes at least one member representing each participating cooperative society which is registered and has employees in Bulgaria and which it is proposed will cease to exist as a separate legal entity following the registration of the creating SCE. It must be ensured that:

- a) the number of such additional members does not exceed 20%;
- b) the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such a cooperative is higher than the number of additional seats, they shall be allocated to cooperatives in other Member States by decreasing order of the number of employees they employ (Article 21, paragraph 9, LIC).

As for the method to be used for the election or appointment of the members of the special negotiating body, the Directive provides in Article 3(2)(b) that each Member State shall determine this. In doing so Member States should seek to promote a balance between genders (Article 3(2)(b) of the Directive). On the other hand, without prejudice to national legislation and/or practice, Member States shall provide that employees in undertakings and establishments in which there are no employees' representatives, through no fault of their own, have the right to elect or appoint members of the special negotiating body. The requirement that the Member State 'shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating legal entity which has employees in the Member State concerned' was transposed as giving the employees' representatives the possibility ("may") to agree on this rule of representation. As the wording in the Bulgarian legislation is clearly less strong than the Directive, it could be argued that the transposition is not sufficiently effective.

The general assembly for election of the members of the special negotiating body may be convened by the employer, by the management of the trade union organisation, as well as upon the initiative of one tenth of the number of employees in the enterprise. Candidatures for election of members of the special negotiating body under Article 21 LIC may be proposed by an individual employee, a group of employees as well as by trade union organisations (Article 7a, paragraph 6 LC). The general assembly shall take its decisions in electing the members of the special negotiating body by a simple majority of the attending employees (Article 21, paragraph 5 LIC).

When electing the members of the special negotiating body, the participating legal entities and their subsidiaries and establishments which carry out their economic activities in the territory of Bulgaria may agree that, without increasing the total number of the members of the special negotiating body, each of them shall have its representative in the said body. In Bulgaria, the general meeting has the possibility to delegate these functions to representatives that are designated by the trade union organisations or to the employee representatives mentioned in the Labour Code.

As mentioned above, the Directive also requires participating legal entities and their subsidiaries and establishments to provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body. This provision appears not to have been transposed in the Labour Code. According to Article 6, para. 2 LC, the General Assembly can be convened by the employer.

2.2.3 Arrangements for involvements of employees

According to Article 3(3) of the Directive, the special negotiating body and the competent organs of the participating legal entities shall determine by written agreements the arrangements for the involvement of employees within the SCE. To this end, the competent organs of the participating legal entities shall inform the special negotiating body of the plan and the actual process of establishing the SCE, up to its registration.

These provisions of the Directive are transposed into Article 22, paragraphs 1 and 2 LIC. According to Article 22, paragraph 1 LIC, the special negotiating body and the administrative organs of the participating legal entities determine, by written agreement, the arrangements for involvement. Before the conclusion of this agreement, the competent management organs of the participating legal entities inform the special negotiating body of the plan and of the actual process of establishing it, up to its registration (Article 22, paragraph 2 LIC). The transposition is correct.

According to Article 3(4) of the Directive, the special negotiating body takes its decisions by an absolute majority provided that such a majority also represents an absolute majority of the employees. However, if the result of negotiating leads to a reduction of participation rights, the majority required shall be two thirds of the employees, including the votes of members representing employees employed in at least two Member States. The provisions of Article 3(4) are transposed in Article 22, paragraphs 3 and 4 LIC. They lay down that each member of the special negotiating body has the right

to one vote. The special negotiating body takes its decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees in the European cooperative society (paragraph 4).

However, should the result of the negotiations lead to a reduction of participation rights, the majority required under paragraph 3 shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States:

- in the case of an SCE to be established by way of merger, if participation covers at least 25% of the overall number of employees of the participating cooperatives, or
- in the case of an SCE to be established by any other way, if participation covers at least 50% of the overall number of employees of the participating legal entities.

According to Article 3, paragraph 4 of the Directive, 'reduction of participation rights' means a proportion of members of the organs of the SCE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating legal entities. This specification has not been transposed.

Article 3(5) of the Directive provides that the special negotiating body may request experts of its choice. These experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, and, where appropriate, promote coherence and consistency at Community level. This provision was used in Article 22, paragraph 5 LIC. According to Article 22, paragraph 5 LIC, for the purpose of the negotiations, the special negotiating body may be assisted by experts of its choice and by representatives of the representative Community-level trade union organisations. They may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations. Specifically to the Bulgarian implementation, not only experts, but also trade union representatives can be invited to assist.

Article 3(6) of the Directive regulates certain matters regarding the conduct of negotiations on the part of the special negotiating body and lays down the rules thereupon. The first paragraph concerns the possibility that the special negotiating body may decide not to open negotiations or to terminate negotiations that have been opened (paragraph 1). The second one concerns the majority required to take the above decision. This majority shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States (paragraph 2). According to the third paragraph, no decision under the preceding two paragraphs shall be taken in the case of an SCE established by way of transformation, if there is participation in the cooperative to be transformed (paragraph 3). The fourth one concerns the reopening of the negotiations after it has been decided either not to open them or to terminate them. The negotiations may be reopened, not earlier than two years after the abovementioned decision, at the written request of at least 10% of the employees (paragraph 4). The regulation of paragraph 6 has been transposed into Article 22, paragraphs 6 to 9 LIC. The transposed regulation closely follows and strictly reproduces Article 3(6) of the Directive. The comparison between Article 3(6) of the Directive and Article 22, paragraphs 6 to 9 LIC is clearly indicated in the TOC, attached to this report. The transposition of these requirements is close to literal. Nevertheless, the last sentence on the non-application of the Annex has not been transposed.

According to Article 3(7)(1) of the Directive, the expenses relating to the functioning of the special negotiating body and in general to negotiations, shall be borne by the participating legal entities so as to enable the special negotiating body to carry out its task in an appropriate manner. The first part of this provision has been effectively transposed in Article 22, paragraph 10 LIC. The second part of this sentence, indicating that this should enable the special negotiating body to carry out its task in an appropriate manner has not been transposed. Subparagraph 2 of Article 3, paragraph 7 allows Member States to lay down budgetary rules regarding the operation of these negotiating bodies and to limit the funding to cover an expert. In Bulgaria, this option has not been used.

2.3 The content of the agreements (Article 4)

Article 4(1) indicates the spirit in which the competent organs of the participating legal entities shall negotiate: a spirit of cooperation with a view to reaching an agreement on arrangements for involvement of the employees within the SCE. It is a general requirement which is addressed to the parties. This general provision is largely accepted and completely transposed into Article 23, paragraph 1 LIC, which uses the term "administrative bodies" of the participating legal entity instead of the "competent organ of the participating legal entity" used in Article 4(1) of the Directive. Administrative bodies of the participating legal entities are their management. They include their Administrative Council (Board), the manager and the Supervisory board. As the administrative bodies are the competent organ, transposition is correct.

Article 4(2) specifies the fundamental and minimum content of the agreements concluded between the competent organs of the participating legal entities and the special negotiating body. It enumerates them in eight points: the scope of the agreement; the composition of the special negotiating body; the functions and the procedures for the information and consultation of the representative body; the frequency of its meetings; the financial and material resources; the procedures for information and consultation; the arrangements for participation and the date of entry into force of the agreement and its duration as well as the cases in which the agreement should be changed. This provision is completely transposed into Article 23, paragraph 2, subparagraphs 1 to 10 LIC. Eight of them are literal transpositions of the basic elements, as enumerated in Article 4(2) of the Directive. This approach follows an exemplary (non-exhaustive) nature of the content of the agreement under Article 5 of the Directive and emphasises its contractual character.

Article 23, para 2 LIC only uses the term "legal entity" and does not include a reference to the coverage of establishments as well. The "legal entity" includes all units which are part of the enterprise or legal entity. Nevertheless due to this explicit legal wording of subpara 23, para 2 LIC, it is difficult to include any other formations such as establishment, which *stricto sensu* are not legal entities.

According to paragraph 3, the agreement shall not, unless provision is otherwise made therein, be subject to the standard rules referred to in the Annex. This solution is used in Article 23, paragraph 4 LIC, which expressly provides that the parties to the agreement may decide to apply to the special negotiating body to use the standard rules set out in Articles 25 to 27 LIC. These are rules concerning the creating of a representative organ (Article 25); the information and consultation within the representative organ (Article 26) and the standard rules regarding participation (Article 27).

According to paragraph 4, in the case of an SCE established by means of transformation, the agreement shall provide for at least the same level of all elements of employees' involvement as the ones existing within the cooperative to be transformed into an SCE. This provision has been transposed in Article 23, paragraph 5, which reads: 'In the case of paragraph 3, subparagraph 7 the agreement shall provide for at least the same level of all elements of employees' involvement as the ones existing within the cooperative to be transformed into an SCE.'

2.4 Rules on negotiations (Articles 5, 6 and 7 and Annex)

2.4.1 Procedural rules (Articles 5 and 6)

- Duration of negotiations (Article 5)

According to Article 5(1) and (2), negotiations commence as soon as the special negotiating body is established and may continue for six months thereafter. The parties may decide, by joint agreement, to

extend them for up to a total of one year. The reason for this solution is to ensure that the negotiations start as soon as the special negotiating body is established and that sufficient time is provided for their duration. This provision has been transposed completely and in the same words and content in Article 23, paragraph 2 LIC. The two sentences of Article 23, paragraph 2 LIC embrace the two paragraphs of Article 5. Their transposition is underpinned by the objective of the prompt start of the negotiations and ensuring adequate time for their realisation.

- Applicable legislation (Article 6)

Pursuant to Article 6, except where otherwise provided in the Directive, the legislation applicable to the negotiation procedure provided for in Articles 3 to 5 of the Directive shall be the legislation of the Member State in which the registered office of the SCE is situated. As a consequence, the bulk of the legal framework is determined by the Member State where the registered office of the SCE is situated. For example, that law will contain the applicable rules making it possible to determine the number of members of the Special Negotiating Body and the geographical allocation of seats within it. However, the form of election or of designation of the members of that body will have to be determined by the legislation of each of the Member State in which are located the founding entities and their subsidiaries and establishments. This provision has not been transposed correctly. Article 20 and following, which regulate the negotiation procedure, systematically apply the Bulgarian legislation to the legal entity carrying out its activity within the territory of the Republic of Bulgaria, not necessarily to the entities having their registered office in Bulgaria. As the negotiation procedure and the standard rules should be regulated by the Member State where the registered office of the SCE is situated, the transposition is thus not correct.

2.4.2 Standard rules (Article 7 and Annex)

Article 7(1) obliges the Member States to establish standard rules on employee involvement which must satisfy the provisions set out in the Annex. These standard rules shall apply from the date of registration of the SCE in two alternative hypotheses:

- a) either the parties so agree, or
- b) by the deadline laid down in Article 5 (see Article 5 above) no agreement has been concluded.

These provisions of paragraph 1 are effectively transposed into Article 24, paragraphs 1 and 2 LIC, which provide:

1. Where the special negotiating body and the administrative organ of each of the participating legal entities have so decided, the standard rules on creating, informing, consulting and participation are applied;
2. The standard rules also apply where the special negotiating body and the administrative organ of each of the participating legal entities decide to accept the application of the standard rules on informing and consulting the employees.

According to Article 7(2), the standard rules fixed by national legislation of the Member States shall only apply in the hypotheses exhaustively enumerated in Article 7(2)(a)-(c). These detailed provisions are transposed into Article 24, paragraph 3, subparagraphs 1 to 5 and paragraph 4 LIC. Their compliance with the provisions of the standard rules is detailed in the TOC. (see Annex I to this report).

The main feature of transposing the standard rules is that they are transposed by being included in the Law on informing and consulting, and form part of its content. The provisions of the standard rules are completely transposed into the LIC as follows:

Part I – in Article 25 LIC. This legal regulation provides for setting up a body representative of the employees for the purpose of ensuring their involvement in the activities of the SCE. This body consists of employees in the SCE, its subsidiaries and establishments who have been elected or appointed in accordance with the rules and procedure for electing employees' representatives for

information, consultation and participation under Article 7 and Article 7a LC. Where the number of members of the representative body allows, a standing committee is elected from its members, which consists of no more than three members. The body representative adopts rules on its activities and notifies the administrative organ of its composition.

Part II – Standard rules on informing and consulting. These rules provide for:

- a) the competencies of the body representative. They are limited to matters concerning the respective SCE itself and any of its subsidiaries or establishments situated in another Member State;
- b) the body representative's right to be informed and consulted and, for that purpose, to meet with the competent organ of the SCE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SCE and its prospects.

Informing and consulting is done at joint meetings with the administrative organs. The matters discussed at these meetings concern the structure of the company, its financial situation, the expected development of its activities, the measures relating to the social activities of the company, the tendencies in the company's employment, etc. The administrative body submits to the representative body the agenda of its meetings, as well as copies of the documents presented to its members. The costs of the body representative's activities are borne by the SCE. It shall provide the body representative's members with the financial and material resources needed to enable them to perform their duties.

Part III: Standard rules on participation. They have been transposed into Article 27 LIC and cover the following matters. The members of the body representative shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE. The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from different Member States. It shall also decide upon the way in which the SCE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SCE's employees in each Member State. Each member of the administrative body or the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or by the employees shall have the same rights and obligations as the members representing the members of the cooperative, including the right to vote.

Where Bulgarian legislation lays down rules which are different from the standard rules on participation, the standard rules shall apply (Article 27, paragraph 5 LIC). In other words, the standard rules as they are defined in the Bulgarian legislation transposing the Directive will have supremacy over other provisions of domestic legislation that would contradict or differ from these standard rules, thus guaranteeing their application in the Bulgarian legal order at all times.

2.5 SCEs established exclusively by natural persons and participation in general meetings (Articles 8 and 9)

2.5.1 SCEs established exclusively by natural persons (Article 8)

According to Article 8(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. This provision has been transposed into Article 28, paragraph 1 LIC, according to which the provisions laid down in Articles 25 to 27 LIC are applied to the SCEs established 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, providing that the SCE has its registered office in Bulgaria. Articles 25 to 27 LIC only transpose the legislation regulating the standard rules and therefore do not fully transpose the requirement to apply Articles 3 to 7 to these SCEs. As such, the transposition of Article 8 of the Directive is not fully ensured.

According to Article 8(2)(1), in the case of an SCE established under the terms of paragraph 1 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 provisions:

- a) in the SCE itself, the provisions of the Member State of the SCE's registered office shall apply;
- b) in its subsidiaries and establishments, the provisions of the Member State where they are situated shall apply.

This provision has been transposed into the LIC. In these cases, the LIC provisions on informing and consulting shall apply to the SCE itself and to its subsidiaries and establishments. Directive 2003/72/EC provides for two cases to which the provisions of Article 8(2) are applicable: SCEs employing fewer than 50 employees, or employing 50 or more employees in only one Member State. The LIC has only transposed the first case, not the second, thus being only applicable to SCEs employing fewer than 50 employees in both cases. As the legal basis of Directive 2003/72/EC is Article 308 EC, ensuring the realisation of the internal market, the gap in transposition affects the legislation's conformity with the Directive. Though not explicitly mentioned in the Bulgarian legislation as it only regulates the undertakings within its territory, for the subsidiaries/establishments outside Bulgaria, the legislation of the respective Member State shall be applied where they are situated, in accordance with the domestic legislation of that Member State transposing the Directive.

According to Article 8(2)(2) of the Directive, in the case of transfer of the registered office of an SCE from one Member State to another, at least the same level of employee participation rights shall continue to apply. This provision has been transposed into Article 28, paragraph 4 LIC and provides that in the case of the SCE's transfer to another State 'the existing rules on employee participation shall continue to apply if they are more favourable than the rules laid down in the SCE'. In the case where an SCE transfers its seat out of Bulgaria, the legislation of the respective Member State into which the society has been transferred shall be applied, in accordance with the transposing legislation of the Directive in that Member State.

According to Article 8(3) of the Directive, 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, the provisions of Articles 3 to 7 of the Directive shall be applied *mutatis mutandis*. This provision has been transposed into Article 28, paragraph 3 LIC, according to which the provisions of Articles 25 to 27 shall also apply to an SCE established exclusively by natural persons or by a single legal entity and natural persons, if it has its registered office in Bulgaria and at least one third of the employees of at least two Member States so requests. With regard to the transposition of the reference to Articles 3 to 7 by reference to Articles 25 to 27, please note the comment on the transposition of Article 8(1).

2.5.2 Participation in meetings (Article 9)

Article 9 of the Directive regulates the rights and obligations of the employees of the SCE and/or their representatives to participate in the general meeting or, if it exists, in the section or sectoral meeting, and determines the prerequisites for the exercise of this right. LIC does not regulate these matters. This provision has not been transposed.

The domestic law (Articles 15-19 of the Law on cooperatives) regulates the general meeting of the cooperative in which directly participate all the members of the respective cooperative. Other meetings – section or sectoral are not provided for in the Law.

2.6 Confidential information, spirit of co-operation and protection (Articles 10, 11 and 12)

Article 10(1) of the Directive provides that the members of the special negotiating body and the representative body, and the experts who assist them, are not authorised to reveal any information which has been given to them in confidence. Disclosing this information to the other employees or third persons is forbidden. This obligation shall continue to apply even after the expiry of the terms of office of the said persons. This obligation has been transposed into Article 29, paragraphs 1 and 2 LIC.

The employees' representatives are not explicitly specified in Article 29, para. 1 LIC because this provision specifies only the members of the special negotiating body and the experts, i.e. those persons who are specific to this Directive. However, the employees' representatives have the said obligation by virtue of Art. 7c, para. 2 LC, which reads: 'The employees' representatives are obliged ... 2. not to reveal to third persons and not to use the information which was submitted to them in confidence, this being valid both during the time they are employees' representatives and after the termination of their functions.' Thus, the full scope of Article 10(1) is transposed.

Article 10(2) of the Directive grants the Member States the option to provide, in their national legislation, that the members of the supervisory or administrative organ of an SCE are not obliged to transmit information where its nature is such that to do so would seriously harm the functioning of the SCE or its subsidiaries and establishments or would be prejudicial to them. This option has been used in Bulgarian legislation – in Article 29, paragraph 3 LIC, which reads: 'Where the nature of the information under paragraph 1 (of Article 29, paragraph 1 LIC, and Article 10(2) of the Directive, respectively – *author's note*) is such that it might seriously harm the functioning of the enterprises or companies or be prejudicial to them, the administrative organs may refuse to transmit it on the grounds of an objective assessment.'

According to Article 10(4) of the Directive, the Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SCE demands confidentiality of the information submitted. This provision has been transposed into Article 29, paragraph 4 LIC, according to which, 'In case of refusal to submit information, where a dispute over the reasonableness of this refusal arises, the parties may approach the National Institute of Conciliation and Arbitration for having the dispute settled through mediation or arbitration performed by the latter'.

According to Article 12 of the Directive, the members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure, and any employees' representatives in the supervisory or administrative organ of an SCE who are employees of the SCE, its subsidiaries or establishments shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment. This provision has been transposed into Article 333, paragraph 1, subparagraph 6 LC, according to which 'In the cases under Article 328, paragraph 1, subparagraphs 2, 3, 5 and 11, and Article 330, paragraph 2, subparagraph 6 it is only after receiving the permission of the labour inspectorate that the employer may dismiss:.....6) an employee who is a member of a special negotiating body, a European works council or a representative body in a European commercial or cooperative society, while the employee is performing such functions'.⁷ In addition, Article 161, para 3 LC provides for a guarantee for workers by ensuring that a worker or employee, who is a member of a representation body in European trade or cooperative company, shall have the right to leave for studies, necessary for the implementation of his/her functions. The duration of the leave and the remuneration, which is due

⁷ Article 328, paragraph 1, subparagraphs 2, 3, 5 and 11 LC provide for the following grounds for dismissal: closure of a part of the undertaking; job cuts; reduction in the amount of work; absence of the qualities required for the performance of the assigned job; a change in the requirements regarding the assigned job; and Article 330, paragraph 2, subparagraph 6 LC provides for disciplinary dismissal. As for these grounds, see Mrachkov, V., Sredkova, K., and Vassilev, A., *Commentary on the Labour Code*, 9th ed., Sibi Publishing House, Sofia, 2007, pp. 889-900, 910-911, 930-931.

during its using, shall be negotiated in a collective contract or in an agreement between the parties to the employment relationship.

Other guarantees have not been expressly regulated, creating a gap in the law. From a legal point of view, the problem de lege lata could be resolved by means of the following two options:

- a) in virtue of Art. 161, para 1 LC, according to which “ The worker or employee may be permitted a paid or unpaid official or creative leave under conditions and by an order established by the collective employment contract or by an agreement between the parties to the legal terms of employment. “;
- b) in virtue of Art. 7a, para 4, LC, which provides for that a collective contract or an individual agreement with the employer may be settled that, where necessary with respect to their obligations, the representatives of the employees can use reduced duration of the working hours, additional leave.

Nevertheless, in the view of the expert, the desirable and most adequate solution would be to amend LC (Article 161, para 3 LC).

2.7 Jurisdiction and compliance (Articles 13, 14 and 15)

2.7.1 Misuse of procedure (Article 13)

According to Article 13 of the Directive, Member States shall be obliged to take measures with a view to preventing the misuse of an SCE for the purpose of depriving employees of the rights to employee information, consultation and participation. This provision has not been transposed into the Bulgarian legal order.

2.7.2 Compliance with the Directive (Article 14)

Article 14 of the Directive stipulates that compliance should be ensured for the SCEs which are situated within the Member States and for their subsidiaries and establishments, as well as for their supervisory and administrative organs, and the employee representatives.

In Bulgarian legislation, the provision of Article 14 of the Directive has been transposed through the very fact that a separate Law was adopted for the implementation of the Directive, this Law closely following the provisions of the Directive and making obligatory their implementation and application.

In addition, sanctions were introduced for violations of the provisions of this Law by the employer. Where the employers and their officials fail to fulfil the obligations included in the labour legislation, the employer is punished by way of a material sanction at the amount of BGN 10,000 up to BGN 30,000, while the officials in default are punished by a fine at the amount of BGN 2,500 up to BGN 20,000 in accordance with Article 414, paragraphs 1, 2 and 4 LC.⁸

As for the employees’ representatives, they bear responsibility for violating their obligation not to reveal to third persons and not to use the information which was submitted to them in confidence (see Art. 10.1 above). Art. 7d LC reads as follows: ‘Those persons to whom information has been submitted in confidence shall bear responsibility for the damages caused to the employer as a result of non-fulfilment of their obligation to maintain the confidentiality of this information.’ This provision also applies to the employees’ representatives.

2.7.3 Link between the Directive and other Directives

⁸ The ratio of BGN and EUR is: BGN 1.95 is exchanged for EUR 1.

Directive 2003/72/EC is linked to other Directives which regulate related, yet different matters, such as Directive 94/45/EC on the establishment of a European Works Council as amended by Directive 97/74/EC and Directive 2006/106/EC.

Bulgarian legislation takes into account the differences in the field of application of these Directives, although it regulates them through one and the same Law – the regulation is contained in separate Chapters of the Law on informing and consulting. Thus, the said Law provides the parallel application and operation of these Directives, as well as the observance of the differences between them – each of the Directives is effective within its specific field of application.

Nevertheless, the link between these Directives mentioned in Article 15.1 is not transposed. In Article 15, the Directive clearly mentions some particularities with regard to the interaction between Directive 2003/72 and Directive 94/45/E, indicating that Directive 94/45/EC does not apply to SCEs unless in the case in which the special negotiating body decides not to open negotiations or to terminate negotiations already opened. These provisions have not been transposed in the Bulgarian legislation.

There is an extremely close link between Directive 2003/72/EC and Directive 2002/14/EC. Both Directives have the same subject – employees' information and consultation, however, they differ in their field of application. Directive 2003/72/EC has a narrower field of application – SCEs only, while Directive 2002/14/EC applies to all undertakings and their establishments within the country. Information and consultation under Directive 2002/14/EC has longer traditions, while the regulation of Directive 2003/72/EC is more recent, as the economic activity it concerns is new. However, the implementation of Directive 2003/72/EC can utilise the experience gained in the implementation of Directive 2002/14/EC, taking into account the differences between the two Directives. The link between these two Directives is highlighted in Article 15(3) of the Directive and is implemented in the Bulgarian legal order as mentioned above.

2.8 Standard Rules (Annex)

The transposition of the Standard Rules is contained in Article 25 to 27 LIC. The transposition of Part 1 concerning the composition of the representative body has been carried out in Article 25 LIC. The requirements of Part 1(a) concerning the composition of the representative body and its election or appointment are literally transposed into Article 25, paras. 1 and 2 LIC, according to which where an SCE has its registered office in Bulgaria, a representative body of the employees shall be created after the registration of the SCE for the purpose of ensuring arrangements for the involvement of employees in the affairs of the said society. It is in compliance with the requirement of Part 1(c) that Article 25, para. 4 LIC provides that a standing committee of no more than three members is elected by the representative body where its composition allows it. The rules of procedure of the representative body are adopted by the latter in accordance with Article 25, para. 3 LIC, as required by Part 1(d) of the Directive. The requirement of Part 1(f) providing that the competent body of the SCE shall be informed of the composition of the representative body has been correctly transposed into Article 25, para. 5 LIC, according to which the representative body shall adopt its own rules of procedure, etc.

Part 2 of the Standard Rules for information and consultation have been transposed into Article 26 LIC. Part 2(a) requires that the competence of the representative body shall be limited to questions which concern the SCE itself. This requirement has been transposed into Article 26, para. 1 LIC, pursuant to which the representative body shall be informed and consulted on matters which concern the SCE as a whole and its subsidiaries or establishments. It is in compliance with Part 2(b) that Art. 26, para. 2 LIC provides that the representative body shall be informed and consulted at a joint meeting with the administrative body of the SCE. According to the same Part 2(b), this meeting shall relate to the structure, economic and financial situation, the probable development of the business and other important issues. Article 26, para. 3 LIC enumerates the questions which shall be discussed at the joint meeting, such as: the structure, the economic and financial situation, and the probable trends

in employment as well as other important issues. It should be noted that the transposing legislation does not specifically require the probable level of production and sales to be covered – this level is included under the probable development of business. In addition, other matters of mutual interest for the parties are included on the agenda.

The requirements of Part 3 regarding participation have been transposed into Article 27 LIC. According to Part 3(a), where an SCE is established by transformation, all aspects of employee participation shall continue to apply to the SCE. According to Article 27 LIC in the case where an SCE having its registered office in Bulgaria is established by transformation, those rules relating to participation of employees which applied before its registration shall continue to apply after the registration as well. In other cases where an SCE is established the employees shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE equal to the highest proportion in force in the participating companies concerned before the registration of the SCE (Part 3(b) has been transposed into Article 27, para. 1 LIC). A minor problem was detected with regard to the standard rules included in Annex to the Directive. Article 3(d) of the Annex. According to Part 3(d), the representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States. If the employees of one or more Member States are not covered, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office, where that is appropriate. The first sentence of this provision has been transposed into Article 27, para. 4 LIC, but its second sentence, which ensures the representation of employees of Member States not covered by the proportional criterion, has not been transposed. Part 3(e) of the Directive provides that each member of the administrative body or the supervisory body shall be a full member with the same rights and obligations as the members representing the members of the cooperative, including the right to vote. This provision has been transposed into Article 27, para. 2 LIC, according to which each member of the administrative body or the supervisory body of the SCE who has been elected, appointed or recommended shall be a full member with the same rights and obligations as the members of the cooperative, including the right to vote.

3 AFTER THE IMPLEMENTATION OF DIRECTIVE 2003/72/EC

3.1 The situation after transposition in Bulgaria

During the transitional period, since 1989, the cooperative sector in the country has endured severe difficulties. This also concerns producers' cooperative societies which were well developed in the craft industry until the end of the 1980s. The number of employees in the producers' cooperatives has considerably decreased since then. Now it is about 10,000 employees in some 350 cooperatives (these data are collected by the Central Council of Producers' Cooperative Societies, Sofia, and concern the year 2008). Cooperatives continue existing in carpet industry, arts and crafts, carpentry and the like. There are no official data. In agriculture, some producers' cooperatives continue existing successfully. There are no official data about their number, employees and the volume of production.

The implementation of Directive 2003/72/EC – through the adoption of explicit and detailed legal regulation supplementing the Statute for a European Cooperative Society with regard to the involvement of employees in the affairs of the SCE and its subsidiaries and establishments – has enriched Bulgarian labour legislation. The implementation of Directive 2003/72/EC has supplemented the Statute for the SCE, which was generally established by Regulation No. 1435 of 2003, the latter having a binding and direct effect upon Bulgaria from 1 January 2007 (argument under Article 249, § 2 of the EC Treaty). The Directive has imparted completeness to the Statute for a European Cooperative Society, and was adopted on 22 July 2003, along with the Regulation. Both entered into force on 1 January 2007. It is worth mentioning that the said Directive and its specific subject of regulation – the involvement of employees into the affairs of the SCE – is one of those acts of the EU

secondary legislation accompanying the Regulation which impart social dimensions to this new economic formation – the European Cooperative Society.

The Directive has enriched European and Bulgarian law, and especially the collective labour law, through the extension of the employees' right to participation in the new forms of economic association of the Community Member States.

Undoubtedly, the new regulation is an expression of the progressive development of labour law and its extended protection given to the employees involved in the various forms of joint economic activities of two or more EU Member States. As this form of activity emerges as a prospective one for the Member States, the application of Directive 2003/72/EC is a prospective framework of employment relationships both at the level of national employment rights within the EU Member States and at the level of the general labour law of the Community.

Directive 2003/72/EC is not yet applied in Bulgaria, firstly because Bulgaria has only recently joined the EU. In addition, Directive 2003/72/EC is not well known by the cooperatives. Bulgaria has long national traditions in the cooperative movement. The operative Law on cooperatives was adopted in 1999 when SCEs did not exist at all. The step to transnational cooperation between cooperatives has not yet been taken by any Bulgarian cooperatives. In addition to the above, it is worth noting that the actual financial and economic crisis has also a retentive influence on the national cooperatives.

On the whole, the transposition of Directive 2003/72/EC is correct from the legal point of view. The transposition has been carried out through a separate Law, which is unusual in the national legislative practice. On the one hand, its transposition follows so closely the text of the Directive that it seems to be its literal translation *in extenso*. On the other hand, the transposition might give rise to certain difficulties as regards its understanding and integration into Bulgarian cooperative and labour laws. This aspect of the implementation will be more visible and tangible when the transposing operative Bulgarian legislation starts being applied in practice. Until now it is not the case. The difficult economic juncture during the transitional period, and particularly in the crisis situation of the last two years, is unfavourable to the development of cooperatives at national level.

3.2 Stakeholder views on implementation

The Law on informing and consulting the employees in multinational undertakings, groups of undertakings and European companies was drawn up and discussed in collaboration with and involved the joint efforts of the State bodies – the Ministry of Labour and Social Policy – and the social partners – the representative employers' and trade union organisations both within the well-established tripartite partnership and in the course of discussing the Bill in Parliament.

Due to their specific, yet common subject of regulation, the implementation of the Directive and the Law transposing it into the domestic legislation was carried out with the direct participation of the social partners in the election of the members of the special negotiating bodies and the employees' representatives in the European Cooperative Societies and the subsidiaries and establishments thereof.

The stakeholders in their interviews underlined that the SCEs are not yet established in practice, at least for the time being. Because of the very specific legal nature of the cooperatives, the employers and the trade union organisations have not yet shown great interest in transnational cooperatives. Given the present circumstances, with companies facing an economic and financial crisis, many enterprises and cooperatives focus on the challenge to survive and do not look to expand activities or to reorganise their structure. It may be opportune and even necessary to launch an explanatory campaign in order to make the public aware of and confident in the advantages of the SCEs as a prospective form of joint economic activity in the framework of the EU.

4 CONCLUSION

The involvement of employees in the affairs of the European Cooperative Societies through the employee information, consultation and participation in the administration of the SCE and its subsidiaries and establishments marks an important step in the development of European and national labour legislation of the EU Member States.

Both the creation and the application of the new regulation within national labour law take place under the direct influence and impulses coming from the European Union, in two senses. On the one hand, this regulation is contained in EU instruments – Regulation No. 1435 and Directive 2003/72/EC – and, on the other, it deals with matters connected with the joint economic activities of Member States of the Community. The regulation of these matters in Directive 2003/72/EC is a new stroke added to the EU social dimensions and is an expression of the intensive and dynamic development these matters have had in the last decade.

As regards Bulgarian labour law, the new regulation has yet to prove its usefulness and practical importance. In any case, the beginning has already been set through the adoption of the Law in 2006. There are certain omissions, however, they do not concern the most substantial matters of the Directive's content. Some of the deficiencies relate to the lack of transposition of some sentences and articles of the Directive, such as the possibility to allocate a seat to fractions of 10% of the employees or explicit references to subsidiaries and establishments. Articles 13 and 15 of the Directive were not included in the transposing legislation. The most important gap occurs in the transposition of Article 8 since the legislation only applies the provisions of Articles 25 to 27 of the LC to SCEs established by natural persons rather than the entire transposition of Articles 3 to 7 of the Directive as is required. As the negotiated procedure is not covered by these articles of the LC, the transposition is incorrect. Finally, the expert noted that the inclusion of some explicit guarantees for employees' representatives into the LC could be recommended.

As the legislation on SCEs has not yet been applied in Bulgaria and, in other words, no SCE has yet been established, it might be necessary to launch an explanatory campaign in Bulgaria that would make the public aware of and confident in the advantages of the SCE as a prospective form of joint economic activity in the framework of the EU.

It can nevertheless be concluded that the regulation, at least in view of the legal framework, will fulfil its main purpose: to strengthen the protection of the employees' employment rights in a future European Cooperative Society and in its subsidiaries and establishments.

BIBLIOGRAPHY

1. Mrachkov, V., Sredkova, K., and Vassilev, A., *Commentary on the Labour Code*, 9th ed., Sibi Publishing House, Sofia, 2007, pp. 946-949
2. Katsarski, Al., *European United Societies, Introduction*, Sibi Publishing House, Sofia, 2007, pp. 7-9

ANNEX I: Table of concordance for Directive 2003/72/EC

ANNEX II: List of national implementing measures

1. Law on informing and consulting the employees in multinational undertakings, groups of undertakings and European companies (prom. SG No. 57/2006) (Закон за информиране и консултиране на работниците и служителите в многонационални предприятия, групи предприятия и европейски дружества (обн.ДВ, бр.57 от 2006 г.))
2. Labour Code: Article 333, paragraph 1, subparagraph 6 (Кодекс на труда – чл. 333, ал. 1, т. 6)

ANNEX III: Selected national case law

No national case law.